

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1997
First Extraordinary Session, 1997
Second Extraordinary Session, 1996

Volume I
Chapters 1 — 123

**COMPILED AND PUBLISHED
UNDER THE DIRECTION
OF
GREGORY M. GRAY**

Clerk & Parliamentarian

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FOREWORD

These volumes contain the Acts of the First Regular Session and the First Extraordinary Session of the 73rd Legislature, 1997, and the Second Extraordinary Session, 1996.

First Regular Session, 1997

The First Regular Session of the 73rd Legislature convened on January 8, 1997, and following election of officers of the two houses, the opening and publishing of the returns of the election of state officers at the general election held on the 5th day of November, 1996, all as prescribed by Section 18, Article VI of the Constitution of the State, the adoption of rules to govern the proceedings of the two houses and concurrently and separately acting on certain other matters incident to organization, took an adjournment until February 12, 1997, as provided by the aforesaid section of the Constitution. Reconvening, pursuant to the adjournment, the constitutional sixty-day limit on the duration of the session was midnight, April 12, 1997. The Governor issued a proclamation on April 9, 1997, extending the session for a period not to exceed five days for the sole purpose of considering the Budget and supplementary appropriation bills. Subsequent proclamations were issued extending the session, and the Legislature adjourned *sine die* on April 20, 1997.

Bills totaling 1,483 were introduced in the two houses during the session (913 House and 570 Senate). The Legislature passed 241 bills, 121 House and 120 Senate.

The Governor vetoed 13 bills (H. B. 2189, Clarifying legislative intent as to qualification and certification of managed timberland; H. B. 2681, Terminating the oil and gas conservation commission and transferring duties; H. B. 2697, Prohibiting discrimination against students and graduates of private institutions of higher education participating in job training and employment opportunities; H. B. 2866, Procedures relating to faculty senate recommendations and duties of teachers and personnel on days of faculty senate meetings; H. B. 2886, Relating to the natural resources commission; S. B. 157, Authorizing various agencies within division of tax and revenue to promulgate legislative rules; S. B. 348, Removing mental

health centers from public employees retirement system; S. B. 350, Increasing salary of state tax commissioner; S. B. 368, Reducing total tax credits to all companies authorized by economic development authority; S. B. 544, Relating to public employees retirement system; S. B. 561, Establishing magistrate court rules as rules of procedure for municipal jury trial; S. B. 567, Making supplemental appropriation to schools for the deaf and blind; and S. B. 569, Making supplemental appropriation to department of agriculture). The Legislature amended and again passed S. B. 157, S. B. 350, S. B. 368, S. B. 544 and S. B. 561. The Governor again vetoed S. B. 561, leaving a net total of 232 bills, 116 House and 116 Senate, which became law.

There were 94 Concurrent Resolutions introduced during the session, 51 House and 43 Senate, of which 16 House and 24 Senate were adopted. Twenty-three House Joint Resolutions and seventeen Senate Joint Resolutions were introduced, proposing amendments to the State Constitution. One Senate Joint Resolution, S. J. R. 4, Proposing an amendment to the Constitution designated the Modern Investment Management Amendment, was adopted by the Legislature. The House introduced 25 House Resolutions and the Senate introduced 47 Senate Resolutions, of which 21 House and 47 Senate were adopted.

The Senate failed to pass 140 House bills passed by the House, and 60 Senate bills failed passage by the House. Two House bills and three Senate bills died in conference: H. B. 2575, Reallocation of resources for education development; H. B. 2722, Prohibiting emergency medical personnel who are convicted sex offenders from serving on an ambulance crew; S. B. 98, Relating to licensing requirements for carrying concealed handguns; S. B. 439, Relating to salary increase for conservation officers; and S. B. 541, Making supplemental appropriation to division of human services from surplus funds.

First Extraordinary Session, 1997

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

The Legislature passed 19 bills, 11 House and 8 Senate. The House adopted two House Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* on April 20, 1997.

Second Extraordinary Session, 1996

The Proclamation calling the Legislature into Extraordinary session at 12:00 P.M., Noon, October 15, 1996, contained five items for consideration.

The Legislature passed 10 bills, all of which were House bills. The House adopted two House Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* on October 16, 1996.

* * * * *

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

These Acts may be purchased from the Office of the Clerk of the House or from the Department of Administration, Purchasing Division Section, State Capitol, Charleston, West Virginia 25305.

GREGORY M. GRAY
*Clerk of the House and
Keeper of the Rolls.*

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- 18. (SB1003) Authorized Borrowing From Consolidated Fund for Construction of Regional Jails 1873

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- 19. (HB110) Supplemental Appropriation, Solid Waste Management Board, Landfill Assistance 1875

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1996**

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- 1. (HB 205) Governor's Office, Civil Contingent Fund 1879
- 2. (HB 206) Governor's Office, Civil Contingent Fund 1881
- 3. (HB 207) State Department of Education 1883
- 4. (HB 208) Division of Human Services 1884
- 5. (HB 204) Authorizing Transfer of Certain Funds to Revenue Shortfall Reserve Fund 1886
- 6. (HB 201) Division of Human Services 1887
- 7. (HB 202) Division of Human Services 1888
- 8. (HB 209) Division of Highways 1889
- 9. (HB 210) Division of Highways 1891

HEALTH

- 10. (HB 203) West Virginia Health System 1893

MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1997

OFFICERS

Speaker—Robert S. Kiss, Beckley

Clerk—Gregory M. Gray, Charleston

Sergeant at Arms—Oce Smith, Fairmont

Doorkeeper—John A. Roberts, Hedgesville

District	Name	Address	Prior Legislative Service
First	Jeff Davis (D)	New Cumberland ..	
	Tamara Pettit (D)	New Cumberland ..	Appt. 12/1/89, 69th; 70th-72nd
Second	Timothy R. Ennis (D)	Wellsburg	72nd
	Roy E. Givens (D)	Wellsburg	64th-69th; 72nd
Third	Tal Hutchins (D)	Wheeling	72nd
	L. Gil White (R)	Wheeling	70th-71st
Fourth	Kenneth D. Tucker (D)	Moundsville	
	Scott G. Varner (D)	Moundsville	71st-72nd
Fifth	Charles Clements (R)	New Martinsville ..	72nd
Sixth	James E. Willison (R)	Sistersville	69th-72nd
Seventh	Otis A. Leggett (R)	St. Marys	68th-72nd
Eighth	Everette W. Anderson, Jr. (R)	Williamstown	71st-72nd
Ninth	Larry Border (R)	Davisville	70th-72nd
	Tom Azinger (R)	Vienna	72nd
Tenth	J. D. Beane (D)	Parkersburg	70th-72nd
	Fred Gillespie (R)	Parkersburg	
Eleventh	Bob Ashley (R)	Spencer	67th-72nd
Twelfth	Karen L. Facemyer (R)	Ripley	71st-72nd
Thirteenth	Jerry K. Kelley (D)	Red House	72nd
	Gary Otho Tillis (D)	Eleanor	72nd
Fourteenth	Kelly L. Given (R)	Hurricane	72nd
	William Michael Hall (R)	Hurricane	72nd
Fifteenth	Arley R. Johnson (D)	Huntington	72nd
	Margarette R. Leach (D)	Huntington	71st-72nd
Sixteenth	Mark Forest Underwood (D)	Huntington	
	Susan Hubbard (D)	Huntington	72nd
Seventeenth	Evan H. Jenkins (D)	Huntington	72nd
	Jody G. Smirl (R)	Huntington	58th-61st; 67th; 72nd
Eighteenth	Jerry Mike Damron (D)	Wayne	
Nineteenth	Larry Jack Heck (D)	Huntington	71st-72nd
	K. Steven Kominar (D)	Kermit	72nd
Twentieth	Harry Keith White (D)	Gilbert	Appt. 9/11/92, 70th; 71st
	Greg A. Butcher (D)	Chapmanville	
Twenty-first	Sammy D. Dalton (D)	Harts	62nd-67th; 69th; (Senate 70th-71st)
	Tracy Dempsey (D)	Harts	70th-72nd
Twenty-second	Tom Tomblin (D)	Logan	72nd
	Earnest H. Kuhn (D)	Van	72nd
Twenty-third	Lacy Wright, Jr. (D)	Welch	62nd-64th; (Senate 65th-66th)
	Emily W. Yeager (D)	Welch	Appt. 3/10/93, 71st; 72nd
Twenty-fourth	Joe Sparks (D)	Pineville	
	W. Richard Staton (D)	Mullens	69th-72nd
Twenty-fifth	Eustace Frederick (D)	Bluefield	Appt. 10/17/93, 71st; 72nd
Twenty-sixth	Richard D. Flanigan (D)	Princeton	66th-71st
	Elizabeth Osborne (D)	Princeton	Appt. 10/20/94, 71st; 72nd
Twenty-seventh	Mary Pearl Compton (D)	Union	69th-72nd
	Robert S. Kiss (D)	Beckley	69th-72nd
Twenty-eighth	Virginia Mahan (D)	Elton	
	Warren R. McGraw II (D)	Beckley	71st-72nd
Twenty-ninth	Robert P. Pulliam (D)	Beckley	71st-72nd
	Ron Thompson (D)	Beckley	72nd

HOUSE OF DELEGATES

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Twenty-eighth ..	Thomas W. Campbell (D)	Lewisburg	
	Carroll Willis (D)	Alderson	
Twenty-ninth ...	William R. Laird IV (D)	Fayetteville	
	Tom Louisos (D)	Oak Hill	67th-68th; 70th-72nd
	John Pino (D)	Oak Hill	67th-68th; 72nd
Thirtieth	Jon Amores (D)	Charleston	72nd
	Shelley Moore Capito (R)	Charleston	
	Joe Farris (D)	Charleston	70th-72nd
	Margaret Miller (R)	South Charleston ...	69th-72nd
	Larry L. Rowe (D)	Malden	
	Rudy Seacrist (D)	Charleston	Appt. 7/25/77, 63rd; 65th-69th; 72nd
	Sharon Spencer (D)	Charleston	66th; 68th-71st
Thirty-first	Mark A. Hunt (D)	Charleston	72nd
Thirty-second ...	Steve Harrison (R)	Nitro	71st-72nd
	Dick Henderson (R)	St. Albans	71st-72nd
	Ronald Neal Walters (R)	Cross Lanes	71st-72nd
	Rusty Webb (R)	Cross Lanes	
Thirty-third	William Stemple (D)	Arnoldsburg	
Thirty-fourth ...	Brent Boggs (D)	Gassaway	
Thirty-fifth	John W. Shelton (D)	Summersville	
Thirty-sixth	C. Randy White (D)	Webster Springs ...	
Thirty-seventh .	Joe Martin (D)	Elkins	Appt. 6/15/78, 63rd; 64th-72nd
	William Proudfoot (D)	Elkins	70th-72nd
Thirty-eighth ...	Douglas K. Stalnaker (R)	Weston	72nd
Thirty-ninth	Dale F. Riggs (R)	Buckhannon	69th-72nd
Fortieth	Richard H. Everson (D)	Philippi	71st-72nd
Forty-first	Samuel J. Cann (D)	Bridgeport	72nd
	Ron Fragale (D)	Clarksburg	70th-72nd
	Larry A. Linch (D)	Bridgeport	71st-72nd
	Barbara A. Warner (D)	Bridgeport	69th-72nd
Forty-second	Tom Coleman (D)	Grafton	
Forty-third	Michael Caputo (D)	Rivesville	
	Nick Fantasia (D)	Kingmont	52nd-53rd; 57th-60th; 62nd; 69th; Appt. 2/23/93, 71st; 72nd
	Paul E. Prunty (D)	Fairmont	61st; 63rd-65th; 67th-68th; 70th; 72nd
Forty-fourth	Robert C. Beach (D)	Core	Appt. 7/27/90, 69th; 70th-72nd
	Mike Buchanan (D)	Morgantown	68th-69th
	Eugene Claypole (D)	Granville	(Senate 70th-71st)
	Barbara Evans Fleischauer (D) ...	Morgantown	72nd
Forty-fifth	Larry A. Williams (D)	Tunnelton	Appt. 10/08/93, 71st; 72nd
Forty-sixth	David Collins (D)	Davis	70th-72nd
Forty-seventh ...	Harold K. Michael (D)	Moorefield	69th-72nd
Forty-eighth	Allen V. Evans (R)	Dorcas	70th-72nd
Forty-ninth	Carl C. Thomas (R)	Keyser	72nd
Fiftieth	Jerry L. Mezzatesta (D)	Romney	68th-72nd
Fifty-first	Charles S. Trump IV (R)	Berkeley Springs ...	71st-72nd
Fifty-second	Vicki V. Douglas (D)	Martinsburg	70th-72nd
Fifty-third	Larry V. Faircloth (R)	Inwood	65th-72nd
Fifty-fourth	John Overington (R)	Martinsburg	67th-72nd
Fifty-fifth	John Doyle (D)	Shepherdstown	66th; 71st-72nd
Fifty-sixth	Dale Manuel (D)	Charles Town	69th-72nd

(D) Democrats	74
(R) Republicans	26

TOTAL 100

MEMBERS OF THE SENATE

REGULAR SESSION, 1997

OFFICERS

President—Earl Ray Tomblin, Chapmanville*Clerk*—Darrell E. Holmes, Charleston*Sergeant at Arms*—Tony DeRaimo, Leewood*Doorkeeper*—Andrew J. Trail, Charleston

District	Name	Address	Prior Legislative Service
First	Edwin J. Bowman (D)	Weirton	72nd
	Andy McKenzie (R)	Wheeling	
Second	Don Macnaughtan (D)	New Martinsville	70th-72nd
	Larry Wiedebusch (D)	Glen Dale	(House 62nd-67th); 69th-72nd
Third	Donna Jean Boley (R)	St. Marys	Appt. 5/14/85, 67th; 68th-72nd
	J. Frank Deem (R)	Vienna	(House 52nd-56th); 57th-62nd; 64th-65th; (House 69th); 72nd
Fourth	Oshel B. Craigo (D)	Hurricane	(House 65th); 66th-72nd
	Robert L. Dittmar (D)	Ravenswood	69th-72nd
Fifth	Robert H. Plymale (D)	Ceredo	71st-72nd
	Thomas F. Scott (R)	Huntington	72nd
Sixth	H. Truman Chafin (D)	Williamson	66th-72nd
	John Pat Fanning (D)	Jaeger	58th-64th; 67th-68th
Seventh	Lloyd G. Jackson II (D)	Hamlin	68th-69th; 72nd
	Earl Ray Tomblin (D)	Chapmanville	(House 62nd-64th); 65th-72nd
Eighth	Jack Buckalew (R)	Charleston	72nd
	Vic Sprouse (R)	South Charleston	(House 72nd)
Ninth	Billy Wayne Bailey, Jr. (D)	Alpoca	Appt. 1/9/91, 70th; 71st-72nd
	William R. Wooton (D)	Beckley	(House 63rd-67th; 69th); 70th-72nd
Tenth	Leonard W. Anderson (D)	Hinton	70th-72nd
	Homer Ball (D)	Athens	(House 72nd)
Eleventh	Shirley D. Love (D)	Oak Hill	72nd
	Randy Schoonover (D)	Lewisburg	(House 69th-70th); Appt. 9/27/93, 71st; 72nd
Twelfth	William R. Sharpe, Jr. (D)	Weston	55th-64th; 67th-72nd
	Rebecca I. White (D)	Jane Lew	72nd
Thirteenth	Michael A. Oliverio II (D)	Morgantown	(House 71st); 72nd
	Roman W. Prezioso (D)	Fairmont	(House 69th-72nd)
Fourteenth	Jon Blair Hunter (D)	Morgantown	
	Sarah M. Minear (R)	Parsons	72nd
Fifteenth	Walt Helmick (D)	Marlinton	(House 1 yr., 69th); Appt. 9/13/89, 69th; 70th-72nd
	Mike Ross (D)	Coalton	71st-72nd
Sixteenth	Harry E. Dugan (R)	Martinsburg	72nd
	Herb Snyder (D)	Shenandoah Junction	
Seventeenth	Lary Kimble (R)	Charleston	72nd
	Martha Yeager Walker (D)	Charleston	(House 70th); 71st-72nd

(D) Democrats 25
 (R) Republicans 9

TOTAL 34

COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 1997

STANDING

AGRICULTURE AND NATURAL RESOURCES

Beach (*Chair of Agriculture*), Kelley (*Vice Chair of Agriculture*), Proudfoot (*Chair of Natural Resources*), Fragale (*Vice Chair of Natural Resources*), Boggs, Buchanan, Caputo, Claypole, Damron, Davis, Dempsey, Ennis, Flanigan, Heck, Prunty, Stemple, Tomblin, Williams, Willis, Anderson, Border, Evans, Riggs, Leggett and Overington.

BANKING AND INSURANCE

Farris (*Chair of Banking*), Thompson (*Vice Chair of Banking*), Beane (*Chair of Insurance*), Johnson (*Vice Chair of Insurance*), Cann, Dempsey, Fantasia, Flanigan, Heck, Hunt, Hutchins, Jenkins, Laird, Pino, Seacrist, Shelton, Tillis, Tomblin, H. White, Azinger, Clements, Faircloth, Gillespie, Walters and G. White.

CONSTITUTIONAL REVISION

Fleischauer (*Chair*), Osborne (*Vice Chair*), Amores, Collins, Dalton, Frederick, Givens, Kominar, Laird, Leach, Linch, Martin, McGraw, Rowe, Underwood, Varner, H. White, Wright, Capito, Given, Harrison, Leggett, Overington, Smirl and Webb.

EDUCATION

Mezzatesta (*Chair*), Manuel (*Vice Chair*), Beach, Boggs, Caputo, Damron, Dempsey, Ennis, Fragale, Hubbard, Martin, Osborne, Rowe, Shelton, Sparks, Spencer, R. White, Williams, Yeager, Anderson, Gillespie, Hall, Harrison, Henderson and Webb.

FINANCE

Michael (*Chair*), Doyle (*Vice Chair*), Beane, Campbell, Cann, Compton, Farris, Frederick, Jenkins, Kelley, Laird, Leach, Mezzatesta, Pettit, Proudfoot, Pulliam, Seacrist, Warner, Border, Clements, Evans, Facemyer, Leggett, Miller and Walters.

GOVERNMENT ORGANIZATION

Douglas (*Chair*), Collins (*Vice Chair*), Butcher, Claypole, Davis, Everson, Fantasia, Flanigan, Heck, Kuhn, Louisos, McGraw, Prunty, Thompson, Tucker, Varner, H. White, Willis, Azinger, Capito, Given, Harrison, Overington, Stalnaker and Willison.

HEALTH AND HUMAN RESOURCES

Compton (*Chair*), Hutchins (*Vice Chair*), Amores, Beach, Caputo, Doyle, Fleischauer, Hubbard, Kelley, Leach, Louisos, Mahan, Manuel, Osborne, Pino, Rowe, Stemple, Warner, Capito, Facemyer, Gillespie, Given, Henderson, Miller and Thomas.

INDUSTRY AND LABOR

Pettit (*Chair*), Kuhn (*Vice Chair*), Butcher, Cann, Caputo, Claypole, Coleman, Dalton, Doyle, Farris, Frederick, Linch, Louisos, Mahan, Prunty, Sparks, Tillis, Tucker, Williams, Border, Evans, Harrison, Overington, Walters and Webb.

JUDICIARY

Staton (*Chair*), Amores (*Vice Chair*), Buchanan, Coleman, Dalton, Fleischauer, Givens, Hunt, Hutchins, Johnson, Kominar, Linch, Mahan, Pino, Stemple, Tillis, Tomblin, Underwood, Wright, Faircloth, Riggs, Smirl, Thomas, Trump and G. White.

POLITICAL SUBDIVISIONS

Seacrist (*Chair*), Yeager (*Vice Chair*), Beane, Campbell, Damron, Everson, Fantasia, Flanigan, Givens, Johnson, Kuhn, Louisos, Pettit, Proudfoot, Pulliam, Underwood, C. White, Willis, Facemyer, Miller, Smirl, Stalnaker, Trump, G. White and Willison.

ROADS AND TRANSPORTATION

Warner (*Chair*), Everson (*Vice Chair*), Boggs, Butcher, Coleman, Damron, Davis, Ennis, Hubbard, Kominar, Manuel, McGraw, Pulliam, Shelton, Spencer, Thompson, Varner, C. White, Wright, Border, Clements, Evans, Hall, Miller and Stalnaker.

RULES

Kiss (*Chair*), Douglas, Manuel, Martin, Mezzatesta, Michael, Pino, Staton, Varner, Ashley, Faircloth and Miller.

VETERANS' AFFAIRS

Givens (*Chair*), Frederick, (*Vice Chair*), Buchanan, Campbell, Coleman, Collins, Doyle, Everson, Hutchins, Kelley, Kuhn, Linch, Seacrist, Sparks, Spencer, Thompson, Tucker, Yeager, Anderson, Azinger, Facemyer, Henderson, Stalnaker, Thomas and Willison.

JOINT

ENROLLED BILLS

Fantasia (*Chair*), Dempsey (*Vice Chair*), Fragale and Overington.

GOVERNMENT AND FINANCE

Kiss (*Chair*), Martin, Mezzatesta, Michael, Staton, Ashley and Trump.

GOVERNMENT OPERATIONS

Douglas (*Chair*), Collins, Varner, Stalnaker and Willison.

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Hunt (*Chair*), Linch (*Vice Chair*), Compton, Jenkins, Faircloth and Riggs.

PENSIONS AND RETIREMENT

Jenkins (*Chair*), Hubbard (*Vice Chair*), Beane, Campbell, Williams, Clements and Hall.

RULES

Kiss (*Chair*), Martin and Ashley.

STATUTORY LEGISLATIVE COMMISSIONS**FOREST MANAGEMENT REVIEW**

Williams (*Chair*), Heck (*Vice Chair*), Martin, Mezzatesta, Proudfoot and Willison.

INTERSTATE COOPERATION

Beane (*Chair*), Amores, Doyle, Farris, Jenkins, Ashley and Walters.

**OVERSIGHT COMMISSION ON
EDUCATION ACCOUNTABILITY**

Mezzatesta (*Chair*), Beach, Doyle, Manuel, Williams and Anderson.

**OVERSIGHT COMMISSION ON HEALTH
AND HUMAN RESOURCES ACCOUNTABILITY**

Compton (*Chair*), Douglas, Leach, Martin, Michael, Ashley and Facemyer.

**OVERSIGHT COMMISSION ON
REGIONAL JAIL AND CORRECTIONAL FACILITY**

Manuel (*Chair*), Linch (*Vice Chair*), Compton, Jenkins, Faircloth and Riggs.

SPECIAL INVESTIGATIONS

Kiss (*Chair*), Martin, Staton, Faircloth and Trump.

COMMITTEES OF THE SENATE
Regular Session, 1997

STANDING

AGRICULTURE

Anderson (*Chair*), White (*Vice Chair*), Ball, Dittmar, Helmick, Love, Ross, Dugan, Minear and Sprouse.

BANKING AND INSURANCE

Helmick (*Chair*), Snyder (*Vice Chair*), Chafin, Craigo, Dittmar, Fanning, Prezioso, Sharpe, Wiedebusch, Wooton, Deem, Kimble and Scott.

CONFIRMATIONS

Bowman (*Chair*), Chafin (*Vice Chair*), Bailey, Jackson, Love, White, Wooton, McKenzie and Scott.

EDUCATION

Jackson (*Chair*), Plymale (*Vice Chair*), Bailey, Ball, Fanning, Helmick, Hunter, Oliverio, Schoonover, White, Boley, Dugan, McKenzie and Minear.

ENERGY, INDUSTRY AND MINING

Sharpe (*Chair*), Fanning (*Vice Chair*), Anderson, Helmick, Hunter, Macnaughtan, Oliverio, Ross, Snyder, White, Deem, Dugan, McKenzie and Minear.

FINANCE

Craigo (*Chair*), Sharpe (*Vice Chair*), Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Walker, Boley, Dugan, McKenzie, Minear and Sprouse.

GOVERNMENT ORGANIZATION

Wiedebusch (*Chair*), Bailey (*Vice Chair*), Ball, Bowman, Jackson, Macnaughtan, Plymale, Schoonover, Walker, White, Wooton, Boley, Buckalew, Minear and Scott.

HEALTH AND HUMAN RESOURCES

Walker (*Chair*), Macnaughtan (*Vice Chair*), Craigo, Hunter, Plymale, Prezioso, Ross, Sharpe, Snyder, Wooton, Boley, McKenzie, Scott and Sprouse.

INTERSTATE COOPERATION

White (*Chair*), Anderson (*Vice Chair*), Bowman, Prezioso, Schoonover, Deem and Scott.

JUDICIARY

Wooton (*Chair*), Bowman (*Vice Chair*), Ball, Dittmar, Fanning, Hunter, Oliverio, Ross, Schoonover, Snyder, White, Wiedebusch, Buckalew, Deem, Kimble and Scott.

LABOR

Macnaughtan (*Chair*), Schoonover (*Vice Chair*), Bowman, Hunter, Love, Prezioso, Wiedebusch, Deem, Dugan and Minear.

MILITARY

Prezioso (*Chair*), Hunter (*Vice Chair*), Bailey, Dittmar, Helmick, Oliverio, Wooton, Buckalew and Kimble.

NATURAL RESOURCES

Dittmar (*Chair*), Love (*Vice Chair*), Anderson, Bowman, Craigo, Macnaughtan, Plymale, Ross, Snyder, Wiedebusch, Boley, Deem, Minear and Sprouse.

PENSIONS

Plymale (*Chair*), Prezioso (*Vice Chair*), Fanning, Jackson, Walker, Kimble and Sprouse.

RULES

Tomblin (*Chair*), Anderson, Chafin, Craigo, Sharpe, Walker, Wooton, Boley, Buckalew and Dugan.

SMALL BUSINESS

Oliverio (*Chair*), Fanning (*Vice Chair*), Anderson, Ball, Bowman, Craigo, Plymale, Ross, Sharpe, Buckalew, Kimble and Sprouse.

TRANSPORTATION

Ross (*Chair*), Ball (*Vice Chair*), Dittmar, Love, Oliverio, Schoonover, Wiedebusch, Buckalew and McKenzie.

JOINT

ENROLLED BILLS

Schoonover (*Chair*), Bailey, Snyder, Walker and Kimble.

GOVERNMENT AND FINANCE

Tomblin (*Chair*), Chafin, Craigo, Sharpe, Wooton, Buckalew and Deem.

GOVERNMENT OPERATIONS

Wiedebusch (*Chair*), Bailey, Bowman, Walker and Minear.

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Ross (*Chair*), Anderson (*Vice Chair*), Bowman, Macnaughtan, Boley and Buckalew.

PENSIONS AND RETIREMENT

Plymale (*Chair*), Prezioso (*Vice Chair*), Fanning, Jackson, Walker, Boley and Sprouse.

RULES

Tomblin (*Chair*), Chafin and Buckalew.

STATUTORY LEGISLATIVE COMMISSIONS

FOREST MANAGEMENT REVIEW

Plymale (*Chair*), Bowman, Helmick, Love, Ross and Minear.

INTERSTATE COOPERATION

White (*Chair*), Anderson (Vice Chair), Bowman, Prezioso, Schoonover, Deem and Scott.

**OVERSIGHT COMMISSION ON
EDUCATION ACCOUNTABILITY**

Jackson (*Chair*), Bailey, Craigo, Plymale, Prezioso and Dugan.

**OVERSIGHT COMMISSION ON HEALTH AND
HUMAN RESOURCES ACCOUNTABILITY**

Walker (*Chair*), Craigo, Hunter, Prezioso, Sharpe, Snyder and Scott.

**OVERSIGHT COMMISSION ON REGIONAL
JAIL AND CORRECTIONAL FACILITY**

Love (*Chair*), Craigo, Helmick, Hunter, Wiedebusch and Buckalew.

SPECIAL INVESTIGATIONS

Tomblin (*Chair*), Sharpe, Wooton, Buckalew and Sprouse.

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST REGULAR SESSION, 1997

CHAPTER 1

**(Com. Sub. for S. B. 125—By Senators Anderson,
Bowman, Schoonover and Deem)**

[Passed April 12, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section three, article two, chapter thirty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact article eight, chapter thirty-six of said code; to further amend said chapter by adding thereto a new article, designated article eight-a; and to amend and reenact section three-c, article one, chapter forty-two of said code, all relating to the disposition of abandoned and unclaimed property; providing for the disposition of abandoned derelict property; adopting the uniform unclaimed property act; defining terms; establishing time periods for presumption of abandonment; providing for the abandonment of property held in safe deposit boxes; establishing rules for the taking of custody of abandoned property; permitting the imposition of dormancy charges in certain instances; establishing burden of proof on abandonment issues; providing for the reporting of abandoned property; providing for the payment or delivery of abandoned property; requiring notice and publication of

lists of abandoned property; providing for the custody of property paid or delivered to the state; providing for the recovery of property by holder and granting holder certain defenses; crediting of dividends, interest and increments to owner's account; providing for the public sale of abandoned property; requiring the deposit of funds into the general revenue fund; authorizing administrator to maintain a trust fund for the payment of claims; permitting the administrator to deduct expenses of public sale from deposits to general revenue fund; providing for the recovery of property by another state; establishing procedures for the filing and handling of claims; providing for a civil action to establish claim; authorizing the administrator to decline and accept certain property; authorizing holder to report and deliver property before presumption of abandonment; authorizing administrator to destroy or dispose of certain property; establishing periods of limitation; setting forth authority of administrator to request reports and examine records of holder; providing for confidentiality of holder's records; providing for the retention of records; authorizing administrator to enforce article and to enter into agreements with other states; providing for the imposition of interest and civil penalties for failure to report, pay or deliver property; exempting records held by the administrator from public disclosure; limiting scope of article; establishing transitional provisions; requiring administrator to promulgate legislative rules, including emergency legislative rules; establishing uniformity of application and construction, short title, severability and effective date; providing for disposition of unclaimed stolen property held by law-enforcement agencies; setting forth definitions; requiring law-enforcement agencies to file reports on unclaimed stolen property with state treasurer; requiring treasurer to evaluate reports and issue responses to law-enforcement agencies; providing for the sale or donation of such property to nonprofit organizations; authorizing law-enforcement agencies to retain the proceeds of a public sale of such property conducted by the law-enforcement agency; requiring the treasurer to deposit into the general revenue fund the proceeds of a public sale of such property conducted by the treasurer; authorizing law-enforcement agencies to trade in unclaimed stolen firearms and ammunition of sufficient quality on new

weapons and ammunition; requiring that unclaimed stolen firearms and ammunition of poor quality be delivered to the treasurer for destruction; providing immunity to law-enforcement agencies acting in compliance with this article; and providing for the disposition of property of certain intestate estates.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 34. Estrays, Drift and Derelict Property.**
- 36. Estates and Property.**
- 42. Descent and Distribution.**

CHAPTER 34. ESTRAYS, DRIFT AND DERELICT PROPERTY.

ARTICLE 2. DERELICT PROPERTY.

§34-2-3. Decree of title to state.

1 If, in such a suit as is mentioned in section one of this
 2 article, no person appears to show title in himself, the court
 3 shall decree the residuum or other property to the state,
 4 and enforce the collection thereof, or of the proceeds of
 5 the sale of such property. Any real property so decreed to
 6 the state shall be remitted to the state auditor. Any
 7 personal property shall be remitted to the state treasurer
 8 for disposition by public sale in accordance with the
 9 provisions of section twelve, article eight, chapter thirty-six
 10 of this code. The proceeds of the sale of any such real
 11 property shall be deposited to the credit of the general
 12 school fund. The proceeds of the sale of any such
 13 personal property shall be deposited to the credit of the
 14 general fund.

CHAPTER 36. ESTATES AND PROPERTY.**Article****8. Uniform Unclaimed Property Act.****8A. Unclaimed Stolen Property Held By Law-Enforcement Agencies.****ARTICLE 8. UNIFORM UNCLAIMED PROPERTY ACT.**

- §36-8-1. Definitions.
- §36-8-2. Presumptions of abandonment.
- §36-8-3. Contents of safe deposit box or other safekeeping depository.
- §36-8-4. Rules for taking custody.
- §36-8-5. Dormancy charge.
- §36-8-6. Burden of proof as to property evidenced by record of check or draft.
- §36-8-7. Report of abandoned property.
- §36-8-8. Payment or delivery of abandoned property.
- §36-8-9. Notice and publication of lists of abandoned property.
- §36-8-10. Custody by state; recovery by holder; defense of holder.
- §36-8-11. Crediting of dividends, interest and increments to owner's account.
- §36-8-12. Public sale of abandoned property.
- §36-8-13. Deposit of funds.
- §36-8-14. Claim of another state to recover property.
- §36-8-15. Filing claim with administrator; handling of claims by administrator.
- §36-8-16. Action to establish claim.
- §36-8-17. Election to take payment or delivery.
- §36-8-18. Destruction or disposition of property having no substantial commercial value; immunity from liability.
- §36-8-19. Periods of limitation.
- §36-8-20. Requests for reports and examination of records.
- §36-8-21. Retention of records.
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- §36-8-23. Interstate agreements and cooperation; joint and reciprocal actions with other states.
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§36-8-1. Definitions.

1 As used in this article:

2 (1) "Administrator" means the state treasurer.

3 (2) "Apparent owner" means a person whose name
4 appears on the records of a holder as the person entitled to
5 property held, issued or owing by the holder.

6 (3) "Business association" means a corporation, joint
7 stock company, investment company, partnership,
8 unincorporated association, joint venture, limited liability
9 company, business trust, trust company, safe deposit
10 company, financial organization, insurance company,
11 mutual fund, utility or other business entity consisting of
12 one or more persons, whether or not for profit.

13 (4) "Domicile" means the state of incorporation of a
14 corporation and the state of the principal place of business
15 of a holder other than a corporation.

16 (5) "Financial organization" means a savings and
17 loan association, bank, banking organization or credit
18 union.

19 (6) "Holder" means a person obligated to hold for
20 the account of, or deliver or pay to, the owner property
21 that is subject to this article.

22 (7) "Insurance company" means an association,
23 corporation, or fraternal or mutual benefit organization,
24 whether or not for profit, engaged in the business of
25 providing life endowments, annuities or insurance,
26 including accident, burial, casualty, credit life, contract
27 performance, dental, disability, fidelity, fire, health,
28 hospitalization, illness, life, malpractice, marine, mortgage,
29 surety, wage protection and workers' compensation
30 insurance.

31 (8) "Mineral" means gas; oil; coal; other gaseous,
32 liquid and solid hydrocarbons; oil shale; cement material;
33 sand and gravel; road material; building stone; chemical
34 raw material; gemstone; fissionable and nonfissionable
35 ores; colloidal and other clay; steam and other geothermal

36 resource; or any other substance defined as a mineral by
37 the law of this state.

38 (9) "Mineral proceeds" means amounts payable for
39 the extraction, production or sale of minerals, or, upon the
40 abandonment of those payments, all payments that
41 become payable thereafter. The term includes amounts
42 payable:

43 (i) For the acquisition and retention of a mineral lease,
44 including bonuses, royalties, compensatory royalties, shut-
45 in royalties, minimum royalties and delay rentals;

46 (ii) For the extraction, production or sale of minerals,
47 including net revenue interests, royalties, overriding
48 royalties, extraction payments and production payments;
49 and

50 (iii) Under an agreement or option, including a joint
51 operating agreement, unit agreement, pooling agreement
52 and farm-out agreement.

53 (10) "Money order" includes an express money
54 order and a personal money order, on which the remitter
55 is the purchaser. The term does not include a bank
56 money order or any other instrument sold by a financial
57 organization if the seller has obtained the name and
58 address of the payee.

59 (11) "Owner" means a person who has a legal or
60 equitable interest in property subject to this article or the
61 person's legal representative. The term includes a
62 depositor in the case of a deposit, a beneficiary in the case
63 of a trust other than a deposit in trust, and a creditor,
64 claimant or payee in the case of other property.

65 (12) "Person" means an individual, business
66 association, financial organization, estate, trust, govern-
67 ment, governmental subdivision, agency or instrumen-
68 tality, or any other legal or commercial entity.

69 (13) "Property" means tangible personal property
70 described in section three of this article or a fixed and
71 certain interest in intangible personal property that is held,
72 issued or owed in the course of a holder's business, or by

73 a government, governmental subdivision, agency or
74 instrumentality, and all income or increments therefrom.
75 The term includes property that is referred to as or
76 evidenced by:

77 (i) Money, a check, draft, warrant for payment issued
78 by the state of West Virginia, deposit, interest or dividend;

79 (ii) Credit balance, customer's overpayment, gift
80 certificate, security deposit, refund, credit memorandum,
81 unpaid wage, unused ticket, mineral proceeds or
82 unidentified remittance;

83 (iii) Stock or other evidence of ownership of an
84 interest in a business association or financial organization;

85 (iv) A bond, debenture, note or other evidence of
86 indebtedness;

87 (v) Money deposited to redeem stocks, bonds,
88 coupons or other securities or to make distributions;

89 (vi) An amount due and payable under the terms of an
90 annuity or insurance policy, including policies providing
91 life insurance, property and casualty insurance, workers'
92 compensation insurance, or health and disability
93 insurance; and

94 (vii) An amount distributable from a trust or custodial
95 fund established under a plan to provide health, welfare,
96 pension, vacation, severance, retirement, death, stock
97 purchase, profit sharing, employee savings, supplemental
98 unemployment insurance or similar benefits.

99 (14) "Record" means information that is inscribed on
100 a tangible medium or that is stored in an electronic or
101 other medium and is retrievable in perceivable form.

102 (15) "State" means a state of the United States, the
103 District of Columbia, the Commonwealth of Puerto Rico
104 or any territory or insular possession subject to the
105 jurisdiction of the United States.

106 (16) "Utility" means a person who owns or operates
107 for public use any plant, equipment, real property,
108 franchise or license for the transmission of

109 communications or the production, storage, transmission,
110 sale, delivery or furnishing of electricity, water, steam or
111 gas as defined in section two, article one, chapter twenty-
112 four of this code.

§36-8-2. Presumptions of abandonment.

1 (a) Property is presumed abandoned if it is unclaimed
2 by the apparent owner during the time set forth below for
3 the particular property:

4 (1) Traveler's check, fifteen years after issuance;

5 (2) Money order, seven years after issuance;

6 (3) Stock or other equity interest in a business
7 association or financial organization, including a security
8 entitlement under article eight of the uniform commercial
9 code, five years after the earlier of: (i) The date of the
10 most recent dividend, stock split or other distribution
11 unclaimed by the apparent owner; or (ii) the date of the
12 second mailing of a statement of account or other
13 notification or communication that was returned as
14 undeliverable or after the holder discontinued mailings,
15 notifications or communications to the apparent owner;

16 (4) Debt of a business association or financial
17 organization, other than a bearer bond or an original issue
18 discount bond, five years after the date of the most recent
19 interest payment unclaimed by the apparent owner;

20 (5) A noninterest bearing demand, savings or time
21 deposit, including a deposit that is automatically
22 renewable, five years after the earlier of maturity or the
23 date of the last indication by the owner of interest in the
24 property; an interest bearing demand, savings or time
25 deposit including a deposit that is automatically renewable,
26 seven years after the earlier of maturity or the date of the
27 last indication by the owner of interest in the property. A
28 deposit that is automatically renewable is deemed matured
29 for purposes of this section upon its initial date of
30 maturity, unless the owner has consented to a renewal at or
31 about the time of the renewal and the consent is in writing
32 or is evidenced by a memorandum or other record on file
33 with the holder;

34 (6) Money or credits owed to a customer as a result of
35 a retail business transaction, three years after the
36 obligation accrued;

37 (7) Gift certificate, three years after the thirty-first day
38 of December of the year in which the certificate was sold,
39 but if redeemable in merchandise only, the amount
40 abandoned is deemed to be sixty percent of the
41 certificate's face value;

42 (8) Amount owed by an insurer on a life or
43 endowment insurance policy or an annuity that has
44 matured or terminated, three years after the obligation to
45 pay arose or, in the case of a policy or annuity payable
46 upon proof of death, three years after the insured has
47 attained, or would have attained if living, the limiting age
48 under the mortality table on which the reserve is based;

49 (9) Property distributable by a business association or
50 financial organization in a course of dissolution, one year
51 after the property becomes distributable;

52 (10) Property received by a court as proceeds of a
53 class action, and not distributed pursuant to the judgment,
54 one year after the distribution date;

55 (11) Property held by a court, government,
56 governmental subdivision, agency or instrumentality, one
57 year after the property becomes distributable;

58 (12) Wages or other compensation for personal
59 services, one year after the compensation becomes
60 payable;

61 (13) Deposit or refund owed to a subscriber by a
62 utility, two years after the deposit or refund becomes
63 payable;

64 (14) Property in an individual retirement account,
65 defined benefit plan or other account or plan that is
66 qualified for tax deferral under the income tax laws of the
67 United States, three years after the earliest of the date of
68 the distribution or attempted distribution of the property,
69 the date of the required distribution as stated in the plan or
70 trust agreement governing the plan, or the date, if

71 determinable by the holder, specified in the income tax
72 laws of the United States by which distribution of the
73 property must begin in order to avoid a tax penalty;

74 (15) Warrants for payment issued by the state of West
75 Virginia which have not been presented for payment,
76 within six months of the date of issuance;

77 (16) All funds held by a fiduciary, including the state
78 municipal bond commission, for the payment of a note,
79 bond, debenture or other evidence of indebtedness, five
80 years after the principal maturity date, or if such note,
81 bond, debenture or evidence of indebtedness is called for
82 redemption on an earlier date, then the redemption date,
83 such premium or redemption date to also be applicable to
84 all interest and premium, if any, attributable to such note,
85 bond, debenture or other evidence of indebtedness; and

86 (17) All other property, five years after the owner's
87 right to demand the property or after the obligation to pay
88 or distribute the property arises, whichever first occurs.

89 (b) At the time that an interest is presumed abandoned
90 under subsection (a) of this section, any other property
91 right accrued or accruing to the owner as a result of the
92 interest, and not previously presumed abandoned, is also
93 presumed abandoned.

94 (c) Property is unclaimed if, for the applicable period
95 set forth in subsection (a) of this section, the apparent
96 owner has not communicated in writing or by other means
97 reflected in a contemporaneous record prepared by or on
98 behalf of the holder, with the holder concerning the
99 property or the account in which the property is held, and
100 has not otherwise indicated an interest in the property. A
101 communication with an owner by a person other than the
102 holder or its representative who has not in writing
103 identified the property to the owner is not an indication of
104 interest in the property by the owner.

105 (d) An indication of an owner's interest in property
106 includes:

107 (1) The presentment of a check or other instrument of
108 payment of a dividend or other distribution made with

109 respect to an account or underlying stock or other interest
110 in a business association or financial organization or, in
111 the case of a distribution made by electronic or similar
112 means, evidence that the distribution has been received;

113 (2) Owner-directed activity in the account in which the
114 property is held, including a direction by the owner to
115 increase, decrease or change the amount or type of
116 property held in the account;

117 (3) The making of a deposit to or withdrawal from a
118 bank account; and

119 (4) The payment of a premium with respect to a
120 property interest in an insurance policy; but the
121 application of an automatic premium loan provision or
122 other nonforfeiture provision contained in an insurance
123 policy does not prevent a policy from maturing or
124 terminating if the insured has died or the insured or the
125 beneficiary of the policy has otherwise become entitled to
126 the proceeds before the depletion of the cash surrender
127 value of a policy by the application of those provisions.

128 (e) Property is payable or distributable for purposes of
129 this article notwithstanding the owner's failure to make
130 demand or present an instrument or document otherwise
131 required to obtain payment.

**§36-8-3. Contents of safe deposit box or other safekeeping
depository.**

1 Tangible personal property held in a safe deposit box
2 or other safekeeping depository in this state in the
3 ordinary course of the holder's business and proceeds
4 resulting from the sale of the property permitted by other
5 law, are presumed abandoned if the property remains
6 unclaimed by the owner for more than five years after
7 expiration of the lease or rental period on the box or other
8 depository.

§36-8-4. Rules for taking custody.

1 Except as otherwise provided in this article or by other
2 statute of this state, property that is presumed abandoned,

3 whether located in this or another state, is subject to the
4 custody of this state if:

5 (1) The last known address of the apparent owner, as
6 shown on the records of the holder, is in this state;

7 (2) The records of the holder do not reflect the
8 identity of the person entitled to the property and it is
9 established that the last known address of the person
10 entitled to the property is in this state;

11 (3) The records of the holder do not reflect the last
12 known address of the apparent owner and it is established
13 that:

14 (i) The last known address of the person entitled to the
15 property is in this state; or

16 (ii) The holder is domiciled in this state or is a
17 government or governmental subdivision, agency or
18 instrumentality of this state and has not previously paid or
19 delivered the property to the state of the last known
20 address of the apparent owner or other person entitled to
21 the property;

22 (4) The last known address of the apparent owner, as
23 shown on the records of the holder, is in a state that does
24 not provide for the escheat or custodial taking of the
25 property and the holder is domiciled in this state or is a
26 government or governmental subdivision, agency or
27 instrumentality of this state;

28 (5) The last known address of the apparent owner, as
29 shown on the records of the holder, is in a foreign country
30 and the holder is domiciled in this state or is a government
31 or governmental subdivision, agency or instrumentality of
32 this state;

33 (6) The transaction out of which the property arose
34 occurred in this state, the holder is domiciled in a state that
35 does not provide for the escheat or custodial taking of the
36 property, and the last known address of the apparent
37 owner or other person entitled to the property is unknown
38 or is in a state that does not provide for the escheat or
39 custodial taking of the property; or

40 (7) The property is a traveler's check or money order
41 purchased in this state, or the issuer of the traveler's check
42 or money order has its principal place of business in this
43 state and the issuer's records show that the instrument was
44 purchased in a state that does not provide for the escheat
45 or custodial taking of the property, or do not show the
46 state in which the instrument was purchased.

§36-8-5. Dormancy charge.

1 A holder may deduct from property presumed
2 abandoned a charge imposed by reason of the owner's
3 failure to claim the property within a specified time only if
4 there is a valid and enforceable written contract between
5 the holder and the owner under which the holder may
6 impose the charge and the holder regularly imposes the
7 charge, which is not regularly reversed or otherwise
8 canceled. The amount of the deduction is limited to an
9 amount that is not unconscionable.

§36-8-6. Burden of proof as to property evidenced by record of check or draft.

1 A record of the issuance of a check, draft or similar
2 instrument is prima facie evidence of an obligation. In
3 claiming property from a holder who is also the issuer, the
4 administrator's burden of proof as to the existence and
5 amount of the property and its abandonment is satisfied
6 by showing issuance of the instrument and passage of the
7 requisite period of abandonment. Defenses of payment,
8 satisfaction, discharge and want of consideration are
9 affirmative defenses that must be established by the
10 holder.

§36-8-7. Report of abandoned property.

1 (a) A holder of property presumed abandoned shall
2 make a report to the administrator concerning the
3 property.

4 (b) The report must be verified and must contain:

5 (1) A description of the property;

6 (2) Except with respect to a traveler's check or money
7 order, the name, if known, and last known address, if any,

8 and the social security number or taxpayer identification
9 number, if readily ascertainable, of the apparent owner of
10 property of the value of fifty dollars or more;

11 (3) An aggregated amount of items valued under fifty
12 dollars each;

13 (4) In the case of an amount of fifty dollars or more
14 held or owing under an annuity or a life or endowment
15 insurance policy, the full name and last known address of
16 the annuitant or insured and of the beneficiary;

17 (5) In the case of property held in a safe deposit box
18 or other safekeeping depository, an indication of the place
19 where it is held and where it may be inspected by the
20 administrator, and any amounts owing to the holder;

21 (6) The date, if any, on which the property became
22 payable, demandable or returnable, and the date of the last
23 transaction with the apparent owner with respect to the
24 property; and

25 (7) Other information that the administrator by rule
26 prescribes as necessary for the administration of this
27 article.

28 (c) If a holder of property presumed abandoned is a
29 successor to another person who previously held the
30 property for the apparent owner or the holder has
31 changed its name while holding the property, the holder
32 shall file with the report its former names, if any, and the
33 known names and addresses of all previous holders of the
34 property.

35 (d) The report must be filed before the first day of
36 November of each year and cover the twelve months next
37 preceding the first day of July of that year, but a report
38 with respect to a life insurance company must be filed
39 before the first day of May of each year for the calendar
40 year next preceding.

41 (e) The holder of property presumed abandoned shall
42 send written notice to the apparent owner, not more than
43 one hundred twenty days or less than sixty days before

44 filing the report, stating that the holder is in possession of
45 property subject to this article, if:

46 (1) The holder has in its records an address for the
47 apparent owner which the holder's records do not disclose
48 to be inaccurate;

49 (2) The claim of the apparent owner is not barred by a
50 statute of limitations; and

51 (3) The value of the property is fifty dollars or more.

52 (f) Before the date for filing the report, the holder of
53 property presumed abandoned may request the
54 administrator to extend the time for filing the report. The
55 administrator may grant the extension for good cause.
56 The holder, upon receipt of the extension, may make an
57 interim payment on the amount the holder estimates will
58 ultimately be due, which terminates the accrual of
59 additional interest on the amount paid.

60 (g) The holder of property presumed abandoned shall
61 file with the report an affidavit stating that the holder has
62 complied with subsection (e) of this section.

§36-8-8. Payment or delivery of abandoned property.

1 (a) Except for property held in a safe deposit box or
2 other safekeeping depository, upon filing the report
3 required by section seven of this article, the holder of
4 property presumed abandoned shall pay, deliver or cause
5 to be paid or delivered to the administrator the property
6 described in the report as unclaimed, but if the property is
7 an automatically renewable deposit, and a penalty or
8 forfeiture in the payment of interest would result, the time
9 for compliance is extended until a penalty or forfeiture
10 would no longer result. Property held in a safe deposit
11 box or other safekeeping depository may not be delivered
12 to the administrator until one hundred twenty days after
13 filing the report required by section seven of this article.

14 (b) If the property reported to the administrator is a
15 security or security entitlement under article eight of the
16 uniform commercial code, the administrator is an
17 appropriate person to make an indorsement, instruction or

18 entitlement order on behalf of the apparent owner to
19 invoke the duty of the issuer or its transfer agent or the
20 securities intermediary to transfer or dispose of the
21 security or the security entitlement in accordance with
22 article eight of the uniform commercial code.

23 (c) If the holder of property reported to the
24 administrator is the issuer of a certificated security, the
25 administrator has the right to obtain a replacement
26 certificate pursuant to article eight, section four hundred
27 eight of the uniform commercial code, but an indemnity
28 bond is not required.

29 (d) An issuer, the holder, and any transfer agent or
30 other person acting pursuant to the instructions of and on
31 behalf of the issuer or holder in accordance with this
32 section is not liable to the apparent owner and must be
33 indemnified against claims of any person in accordance
34 with section ten of this article.

§36-8-9. Notice and publication of lists of abandoned property.

1 (a) The administrator shall publish a notice not later
2 than the thirtieth day of November of the year next
3 following the year in which abandoned property has been
4 paid or delivered to the administrator. The notice must be
5 published in a newspaper of general circulation in the
6 county of this state in which is located the last known
7 address of any person named in the notice. If a holder
8 does not report an address for the apparent owner, or the
9 address is outside this state, the notice must be published
10 in the county in which the holder has its principal place of
11 business within this state or another county that the
12 administrator reasonably selects. The advertisement must
13 be in a form that, in the judgment of the administrator, is
14 likely to attract the attention of the apparent owner of the
15 unclaimed property. The form must contain:

16 (1) The name of each person appearing to be the
17 owner of the property, as set forth in the report filed by
18 the holder;

19 (2) The last known address or location of each person
20 appearing to be the owner of the property, if an address or
21 location is set forth in the report filed by the holder;

22 (3) A statement explaining that property of the owner
23 is presumed to be abandoned and has been taken into the
24 protective custody of the administrator; and

25 (4) A statement that information about the property
26 and its return to the owner is available to a person having a
27 legal or beneficial interest in the property, upon request to
28 the administrator.

29 (b) The administrator is not required to advertise the
30 name and address or location of an owner of property
31 having a total value less than fifty dollars or information
32 concerning a traveler's check, money order or similar
33 instrument.

§36-8-10. Custody by state; recovery by holder; defense of holder.

1 (a) In this section, payment or delivery is made in
2 "good faith" if:

3 (1) Payment or delivery was made in a reasonable
4 attempt to comply with this article;

5 (2) The holder was not then in breach of a fiduciary
6 obligation with respect to the property and had a
7 reasonable basis for believing, based on the facts then
8 known, that the property was presumed abandoned:
9 *Provided*, That no fiduciary shall be deemed to be in
10 breach of a fiduciary obligation for purposes of this
11 section by virtue of paying or delivering property to the
12 administrator prior to the expiration of the period for
13 holding unclaimed or abandoned property contained in
14 the instrument under which such fiduciary is acting; and

15 (3) There is no showing that the records under which
16 the payment or delivery was made did not meet reasonable
17 commercial standards of practice.

18 (b) Upon payment or delivery of property to the
19 administrator, the state assumes custody and responsibility
20 for the safekeeping of the property. A holder who pays

21 or delivers property to the administrator in good faith is
22 relieved of all liability arising thereafter with respect to the
23 property.

24 (c) A holder who has paid money to the administrator
25 pursuant to this article may subsequently make payment
26 to a person reasonably appearing to the holder to be
27 entitled to payment. Upon a filing by the holder of proof
28 of payment and proof that the payee was entitled to the
29 payment, the administrator shall promptly reimburse the
30 holder for the payment without imposing a fee or other
31 charge. If reimbursement is sought for a payment made
32 on a negotiable instrument, including a traveler's check or
33 money order, the holder must be reimbursed upon filing
34 proof that the instrument was duly presented and that
35 payment was made to a person who reasonably appeared
36 to be entitled to payment. The holder must be reimbursed
37 for payment made even if the payment was made to a
38 person whose claim was barred under subsection (a),
39 section nineteen of this article.

40 (d) A holder who has delivered property other than
41 money to the administrator pursuant to this article may
42 reclaim the property if it is still in the possession of the
43 administrator, without paying any fee or other charge,
44 upon filing proof that the apparent owner has claimed the
45 property from the holder.

46 (e) The administrator may accept a holder's affidavit
47 as sufficient proof of the holder's right to recover money
48 and property under this section.

49 (f) If a holder pays or delivers property to the
50 administrator in good faith and thereafter another person
51 claims the property from the holder or another state
52 claims the money or property under its laws relating to
53 escheat or abandoned or unclaimed property, the
54 administrator, upon written notice of the claim, shall
55 defend the holder against the claim and indemnify the
56 holder against any liability on the claim resulting from
57 payment or delivery of the property to the administrator.

58 (g) Property removed from a safe deposit box or other
59 safekeeping depository is received by the administrator

60 subject to the holder's right to be reimbursed for the cost
61 of the opening and to any valid lien or contract providing
62 for the holder to be reimbursed for unpaid rent or storage
63 charges. The administrator shall reimburse the holder out
64 of the proceeds remaining after deducting the expense
65 incurred by the administrator in selling the property.

§36-8-11. Crediting of dividends, interest and increments to owner's account.

1 (a) If property other than money is delivered to the
2 administrator under this article, the owner is entitled to
3 receive from the administrator any income or gain
4 realized or accruing on the property at or before
5 liquidation or conversion of the property into money only
6 as provided in this subsection:

7 (1) If the property was an interest bearing demand,
8 savings or time deposit, including a deposit that is
9 automatically renewable, the administrator shall pay
10 interest at a rate of four percent per year or any lesser rate
11 the property earned at the time the property was delivered
12 to the administrator.

13 (2) If the property is any property other than an
14 interest bearing demand, savings or time deposit, the
15 administrator shall pay the owner four percent per year on
16 the market value of the property at the time it was
17 delivered to the administrator or any lesser annualized rate
18 of income or gain the property earned from the time the
19 property was delivered to the administrator to the time the
20 owner established a claim to the property.

21 (3) In no event shall the administrator be required to
22 pay the owner any income or gain realized or accruing on
23 the property after the third anniversary of the delivery of
24 the property to the administrator.

25 (b) Nothing in this section shall be construed to entitle
26 an owner to interest on property which did not realize or
27 accrue income or gain at the time it was delivered to the
28 administrator.

§36-8-12. Public sale of abandoned property.

1 (a) Except as otherwise provided in this section, the
2 administrator, within three years after the receipt of
3 abandoned property, shall sell it to the highest bidder at
4 public sale at a location in the state which in the judgment
5 of the administrator affords the most favorable market for
6 the property. The administrator may decline the highest
7 bid and reoffer the property for sale if the administrator
8 considers the bid to be insufficient. The administrator
9 need not offer the property for sale if the administrator
10 considers that the probable cost of sale will exceed the
11 proceeds of the sale. A sale held under this section must
12 be preceded by a single publication of notice, at least three
13 weeks before sale, in a newspaper of general circulation in
14 the county in which the property is to be sold.

15 (b) Securities listed on an established stock exchange
16 must be sold at prices prevailing on the exchange at the
17 time of sale. Other securities may be sold over the counter
18 at prices prevailing at the time of sale or by any
19 reasonable method selected by the administrator. If
20 securities are sold by the administrator before the
21 expiration of three years after their delivery to the
22 administrator, a person making a claim under this article
23 before the end of the three-year period is entitled to the
24 proceeds of the sale of the securities less any deduction
25 for expenses of sale. A person making a claim under this
26 article after the expiration of the three-year period is
27 entitled to receive the securities delivered to the
28 administrator by the holder, if they still remain in the
29 custody of the administrator, or the net proceeds received
30 from sale, and is not entitled to receive any appreciation in
31 the value of the property occurring after delivery to the
32 administrator, except in a case of intentional misconduct
33 or malfeasance by the administrator.

34 (c) A purchaser of property at a sale conducted by the
35 administrator pursuant to this article takes the property
36 free of all claims of the owner or previous holder and of
37 all persons claiming through or under them. The
38 administrator shall execute all documents necessary to
39 complete the transfer of ownership.

§36-8-13. Deposit of funds.

1 (a) Except as otherwise provided by this section, the
2 administrator shall promptly deposit in the general
3 revenue fund of this state all funds received under this
4 article, including the proceeds from the sale of abandoned
5 property under section twelve of this article. The
6 administrator shall retain in a separate trust fund at least
7 one hundred thousand dollars from which the
8 administrator shall pay claims duly allowed. The
9 administrator shall record the name and last known
10 address of each person appearing from the holders'
11 reports to be entitled to the property and the name and last
12 known address of each insured person or annuitant and
13 beneficiary and with respect to each policy or annuity
14 listed in the report of an insurance company, its number,
15 the name of the company and the amount due.

16 (b) Before making a deposit to the credit of the
17 general revenue fund, the administrator may deduct:

18 (1) Expenses of sale of abandoned property;

19 (2) Costs of mailing and publication in connection
20 with abandoned property;

21 (3) Reasonable service charges; and

22 (4) Expenses incurred in examining records of
23 holders of property and in collecting the property from
24 those holders.

§36-8-14. Claim of another state to recover property.

1 (a) After property has been paid or delivered to the
2 administrator under this article, another state may recover
3 the property if:

4 (1) The property was paid or delivered to the custody
5 of this state because the records of the holder did not
6 reflect a last known location of the apparent owner within
7 the borders of the other state and the other state establishes
8 that the apparent owner or other person entitled to the
9 property was last known to be located within the borders
10 of that state and under the laws of that state the property
11 has escheated or become subject to a claim of
12 abandonment by that state;

13 (2) The property was paid or delivered to the custody
14 of this state because the laws of the other state did not
15 provide for the escheat or custodial taking of the property,
16 and under the laws of that state subsequently enacted the
17 property has escheated or become subject to a claim of
18 abandonment by that state;

19 (3) The records of the holder were erroneous in that
20 they did not accurately identify the owner of the property
21 and the last known location of the owner within the
22 borders of another state and under the laws of that state
23 the property has escheated or become subject to a claim of
24 abandonment by that state;

25 (4) The property was subjected to custody by this state
26 under subdivision (6), section four of this article and
27 under the laws of the state of domicile of the holder the
28 property has escheated or become subject to a claim of
29 abandonment by that state; or

30 (5) The property is a sum payable on a traveler's
31 check, money order or similar instrument that was
32 purchased in the other state and delivered into the custody
33 of this state under subdivision (7), section four of this
34 article, and under the laws of the other state the property
35 has escheated or become subject to a claim of
36 abandonment by that state.

37 (b) A claim of another state to recover escheated or
38 abandoned property must be presented in a form
39 prescribed by the administrator, who shall decide the claim
40 within ninety days after it is presented. The administrator
41 shall allow the claim upon determining that the other state
42 is entitled to the abandoned property under subsection (a)
43 of this section.

44 (c) The administrator shall require another state,
45 before recovering property under this section, to agree to
46 indemnify this state and its officers and employees against
47 any liability on a claim to the property.

**§36-8-15. Filing claim with administrator; handling of claims
by administrator.**

1 (a) A person, excluding another state, claiming
2 property paid or delivered to the administrator may file a
3 claim on a form prescribed by the administrator and
4 verified by the claimant.

5 (b) Within ninety days after a claim is filed, the
6 administrator shall allow or deny the claim and give
7 written notice of the decision to the claimant. If the claim
8 is denied, the administrator shall inform the claimant of
9 the reasons for the denial and specify what additional
10 evidence is required before the claim will be allowed. The
11 claimant may then file a new claim with the administrator
12 or maintain an action under section sixteen of this article.

13 (c) Within thirty days after a claim is allowed, the
14 property or the net proceeds of a sale of the property must
15 be delivered or paid by the administrator to the claimant.

§36-8-16. Action to establish claim.

1 A person aggrieved by a decision of the administrator
2 or whose claim has not been acted upon within ninety
3 days after its filing may maintain an original action to
4 establish the claim in the circuit court of Kanawha County,
5 naming the administrator as a defendant. If the aggrieved
6 person establishes the claim in an action against the
7 administrator, the court may award the claimant
8 reasonable attorney's fees.

§36-8-17. Election to take payment or delivery.

1 (a) The administrator may decline to receive property
2 reported under this article which the administrator
3 considers to have a value less than the expenses of notice
4 and sale.

5 (b) A holder, with the written consent of the
6 administrator and upon conditions and terms prescribed
7 by the administrator, may report and deliver property
8 before the property is presumed abandoned. Property so
9 delivered must be held by the administrator and is not
10 presumed abandoned until it otherwise would be
11 presumed abandoned under this article.

§36-8-18. Destruction or disposition of property having no substantial commercial value; immunity from liability.

1 If the administrator determines after investigation that
2 property delivered under this article has no substantial
3 commercial value, the administrator may destroy or
4 otherwise dispose of the property at any time. An action
5 or proceeding may not be maintained against the state or
6 any officer or against the holder for or on account of an
7 act of the administrator under this section, except for
8 intentional misconduct or malfeasance.

§36-8-19. Periods of limitation.

1 (a) The expiration, before or after the effective date of
2 this article, of a period of limitation on the owner's right
3 to receive or recover property, whether specified by
4 contract, statute or court order, does not preclude the
5 property from being presumed abandoned or affect a
6 duty to file a report or to pay or deliver or transfer
7 property to the administrator as required by this article.

8 (b) An action or proceeding may not be maintained
9 by the administrator to enforce this article in regard to the
10 reporting, delivery or payment of property more than ten
11 years after the holder specifically identified the property
12 in a report filed with the administrator or gave express
13 notice to the administrator of a dispute regarding the
14 property. In the absence of such a report or other express
15 notice, the period of limitation is tolled. The period of
16 limitation is also tolled by the filing of a report that is
17 fraudulent.

§36-8-20. Requests for reports and examination of records.

1 (a) The administrator, or the administrator's
2 designated agent, may require a person who has not filed a
3 report, or a person who the administrator believes has filed
4 an inaccurate, incomplete or false report, to file a verified
5 report in a form specified by the administrator. The
6 report must state whether the person is holding property
7 reportable under this article, describe property not
8 previously reported or as to which the administrator has

9 made inquiry and specifically identify and state the
10 amounts of property that may be in issue.

11 (b) The administrator, or the administrator's
12 designated agent, at reasonable times and upon reasonable
13 notice, may examine the records of any person to
14 determine whether the person has complied with this
15 article. The administrator may conduct the examination
16 even if the person believes it is not in possession of any
17 property that must be reported, paid or delivered under
18 this article. The administrator may contract with any other
19 person to conduct the examination on behalf of the
20 administrator. However, this subsection shall not be
21 construed to grant the administrator the right to examine
22 the records of a national banking association to an extent
23 greater than permitted by applicable federal law, nor shall
24 this subsection permit the records of any bank chartered
25 or incorporated under the laws of any state to be subject to
26 examination to an extent greater than the examination
27 permitted of the records of a national banking association
28 under applicable federal law.

29 (c) The administrator, or the administrator's agent, at
30 reasonable times may examine the records of an agent,
31 including a dividend disbursing agent or transfer agent, of
32 a business association or financial association that is the
33 holder of property presumed abandoned if the
34 administrator, or the administrator's agent, has given the
35 notice required by subsection (b) of this section to both
36 the association or organization and the agent at least
37 ninety days before the examination.

38 (d) Documents and working papers obtained or
39 compiled by the administrator, or the administrator's
40 agents, employees or designated representatives, in the
41 course of conducting an examination are confidential and
42 are not public records, but the documents and papers may
43 be:

44 (1) Used by the administrator or the administrator's
45 attorney in the course of an action to collect unclaimed
46 property or otherwise enforce this article;

47 (2) Used in joint examinations conducted with or
48 pursuant to an agreement with another state, the federal
49 government or any other governmental subdivision,
50 agency or instrumentality;

51 (3) Produced pursuant to subpoena or court order; or

52 (4) Disclosed to the abandoned property office of
53 another state for that state's use in circumstances
54 equivalent to those described in this subdivision, if the
55 other state is bound to keep the documents and papers
56 confidential.

57 (e) If an examination of the records of a person results
58 in the disclosure of property reportable under this article,
59 the administrator may assess the cost of the examination
60 against the holder at the rate of two hundred dollars a day
61 for each examiner, or a greater amount that is reasonable
62 and was incurred, but the assessment may not exceed the
63 value of the property found to be reportable. The cost of
64 an examination made pursuant to subsection (c) of this
65 section may be assessed only against the business
66 association or financial organization.

67 (f) If, after the effective date of this article, a holder
68 does not maintain the records required by section twenty-
69 one of this article and the records of the holder available
70 for the periods subject to this article are insufficient to
71 permit the preparation of a report, the administrator may
72 require the holder to report and pay to the administrator
73 the amount the administrator reasonably estimates, on the
74 basis of any available records of the holder or by any
75 other reasonable method of estimation, should have been
76 but was not reported.

§36-8-21. Retention of records.

1 (a) Except as otherwise provided in subsection (b) of
2 this section, a holder required to file a report under section
3 seven of this article shall maintain the records containing
4 the information required to be included in the report for
5 ten years after the holder files the report, unless a shorter
6 period is provided by rule of the administrator.

7 (b) A business association or financial organization
8 that sells, issues or provides to others for sale or issue in
9 this state, traveler's checks, money orders or similar
10 instruments other than third-party bank checks, on which
11 the business association or financial organization is
12 directly liable, shall maintain a record of the instruments
13 while they remain outstanding, indicating the state and
14 date of issue, for three years after the holder files the
15 report.

§36-8-22. Enforcement.

1 The administrator may maintain an action in this or
2 another state to enforce this article. The court may award
3 reasonable attorney's fees to the prevailing party.

§36-8-23. Interstate agreements and cooperation; joint and reciprocal actions with other states.

1 (a) The administrator may enter into an agreement
2 with another state to exchange information relating to
3 abandoned property or its possible existence. The
4 agreement may permit the other state, or another person
5 acting on behalf of a state, to examine records as
6 authorized in section twenty of this article. The
7 administrator by rule may require the reporting of
8 information needed to enable compliance with an
9 agreement made under this section and prescribe the
10 form.

11 (b) The administrator may join with another state to
12 seek enforcement of this article against any person who is
13 or may be holding property reportable under this article.

14 (c) At the request of another state, the administrator's
15 attorney may maintain an action on behalf of the other
16 state to enforce, in this state, the unclaimed property laws
17 of the other state against a holder of property subject to
18 escheat or a claim of abandonment by the other state, if
19 the other state has agreed to pay expenses incurred by the
20 attorney general in maintaining the action.

21 (d) The administrator may request that the attorney
22 general of another state or another attorney commence an
23 action in the other state on behalf of the administrator.

24 The administrator may retain any other attorney to
25 commence an action in this state on behalf of the
26 administrator. This state shall pay all expenses, including
27 attorney's fees, in maintaining an action under this
28 subsection. With the administrator's approval, the
29 expenses and attorney's fees may be paid from money
30 received under this article. The administrator may agree
31 to pay expenses and attorney's fees based, in whole or in
32 part, on a percentage of the value of any property
33 recovered in the action. Any expenses or attorney's fees
34 paid under this subsection may not be deducted from the
35 amount that is subject to the claim by the owner under this
36 article.

§36-8-24. Interest and penalties.

1 (a) A holder who fails to report, pay or deliver
2 property within the time prescribed by this article shall
3 pay to the administrator interest at the annual rate of
4 twelve percent on the property or value thereof from the
5 date the property should have been reported, paid or
6 delivered.

7 (b) Except as otherwise provided in subsection (c) of
8 this section, a holder who fails to report, pay or deliver
9 property within the time prescribed by this article, or fails
10 to perform other duties imposed by this article, shall pay
11 to the administrator, in addition to interest as provided in
12 subsection (a) of this section, a civil penalty of two
13 hundred dollars for each day the report, payment or
14 delivery is withheld, or the duty is not performed, up to a
15 maximum of five thousand dollars.

16 (c) A holder who willfully fails to report, pay or
17 deliver property within the time prescribed by this article,
18 or willfully fails to perform other duties imposed by this
19 article, shall pay to the administrator, in addition to interest
20 as provided in subsection (a) of this section, a civil penalty
21 of one thousand dollars for each day the report, payment
22 or delivery is withheld, or the duty is not performed, up to
23 a maximum of twenty-five thousand dollars, plus twenty-
24 five percent of the value of any property that should have
25 been but was not reported.

26 (d) A holder who makes a fraudulent report shall pay
 27 to the administrator, in addition to interest as provided in
 28 subsection (a) of this section, a civil penalty of one
 29 thousand dollars for each day from the date a report
 30 under this article was due, up to a maximum of twenty-five
 31 thousand dollars, plus twenty-five percent of the value of
 32 any property that should have been but was not reported.

33 (e) The administrator for good cause may waive, in
 34 whole or in part, interest under subsection (a) of this
 35 section and penalties under subsections (b) and (c) of this
 36 section, and shall waive penalties if the holder acted in
 37 good faith and without negligence.

§36-8-25. Records of abandoned property.

1 Records of abandoned property kept by the
 2 administrator are available for inspection and copying
 3 only by an owner of such property as to the particular
 4 property he or she owns, or by his or her personal
 5 representative, next of kin, attorney at law or such person
 6 entitled to inherit from the owner conducting a legal audit
 7 thereof. These records are exempt from the provisions of
 8 chapter twenty-nine-b of this code.

§36-8-26. Foreign transactions.

1 This article does not apply to property held, due and
 2 owing in a foreign country and arising out of a foreign
 3 transaction.

§36-8-27. Transitional provisions.

1 (a) An initial report filed under this article for
 2 property that was not required to be reported before the
 3 effective date of this article but which is subject to this
 4 article must include all items of property that would have
 5 been presumed abandoned during the ten-year period
 6 next preceding the effective date of this article as if this
 7 article had been in effect during that period.

8 (b) This article does not relieve a holder of a duty that
 9 arose before the effective date of this article to report, pay
 10 or deliver property. Except as otherwise provided in
 11 subsection (b), section nineteen of this article, a holder

12 who did not comply with the law in effect before the
13 effective date of this article is subject to the applicable
14 provisions for enforcement and penalties which then
15 existed, which are continued in effect for the purpose of
16 this section.

§36-8-28. Rules.

1 On or before the first day of July, one thousand nine
2 hundred ninety-seven, the administrator shall promulgate
3 emergency legislative rules in accordance with the
4 provisions of section fifteen, article three, chapter twenty-
5 nine-a of this code. The administrator shall propose
6 legislative rules for promulgation in accordance with the
7 requirements of the secretary of state and the provisions of
8 chapter twenty-nine-a of this code to otherwise effectuate
9 the purposes of this article.

§36-8-29. Uniformity of application and construction.

1 This article shall be applied and construed to
2 effectuate its general purpose to make uniform the law
3 with respect to the subject of this article among states
4 enacting it.

§36-8-30. Short title.

1 This article may be cited as the "Uniform Unclaimed
2 Property Act".

§36-8-31. Severability clause.

1 If any provision of this article or the application
2 thereof to any person or circumstance is held invalid, the
3 invalidity does not affect other provisions or applications
4 of this article which can be given effect without the invalid
5 provision or application, and to this end the provisions of
6 this article are severable.

§36-8-32. Effective date.

1 This article shall take effect on the first day of July,
2 one thousand nine hundred ninety-seven.

**ARTICLE 8A. UNCLAIMED STOLEN PROPERTY HELD BY LAW-
ENFORCEMENT AGENCIES.**

- §36-8A-1. Definitions.
- §36-8A-2. Unclaimed stolen property reports.
- §36-8A-3. Treasurer's response to unclaimed stolen property report.
- §36-8A-4. Disposition of unclaimed stolen property other than firearms and ammunition.
- §36-8A-5. Trade-in or appropriation of unclaimed stolen firearms and ammunition.
- §36-8A-6. Deposit of funds.
- §36-8A-7. Immunity of law-enforcement agencies.

§36-8A-1. Definitions.

1 For purposes of this article, unless a different meaning
2 clearly appears in the context:

3 (a) "Chief executive" means the superintendent of
4 the state police; the chief conservation officer of the
5 division of natural resources; the sheriff of any West
6 Virginia county; or the chief of any West Virginia
7 municipal law-enforcement agency.

8 (b) "Item" means any item of unclaimed stolen
9 property or any group of similar items considered
10 together for purposes of reporting, donation, sale or
11 destruction under this article.

12 (c) "Law-enforcement agency" means any duly
13 authorized state, county or municipal organization of the
14 state of West Virginia employing one or more persons
15 whose responsibility is the enforcement of laws of the state
16 or any county or municipality thereof: *Provided*, That
17 neither the Hatfield-McCoy regional recreation authority
18 nor any state institution of higher education may be
19 deemed a law-enforcement agency.

20 (d) "Nonprofit organization" means: (i) Any
21 nonprofit charitable organization; or (ii) any agency of
22 the state of West Virginia the purpose of which is to
23 provide health, recreational or educational services to
24 citizens of the state of West Virginia.

25 (e) "Stolen property" means any tangible personal
26 property, including cash and coins, which is confiscated
27 by or otherwise comes into the custody of a law-
28 enforcement agency during the course of a criminal

29 investigation or the performance of any other authorized
30 law-enforcement activity, whether or not the property was
31 or can be proven to have been stolen.

32 (f) "Treasurer" means the state treasurer or his or her
33 authorized designee for purposes of the administration of
34 this article.

35 (g) "Unclaimed stolen property" is stolen property:

36 (1) Which has been held by a law-enforcement agency
37 for at least six months, during which time the rightful
38 owner has not claimed it;

39 (2) For which the chief executive determines that there
40 is no reasonable likelihood of its being returned to its
41 rightful owner; and

42 (3) Which the chief executive determines to have no
43 evidentiary value.

§36-8A-2. Unclaimed stolen property reports.

1 (a) Prior to the first day of September, one thousand
2 nine hundred ninety-seven, and on or before the first day
3 of September of each succeeding year, each law-
4 enforcement agency which has unclaimed stolen property
5 in its possession shall file an unclaimed stolen property
6 report with the treasurer which identifies all unclaimed
7 stolen property in its possession at the time the report is
8 filed.

9 (b) An unclaimed stolen property report shall include
10 the following information with respect to all unclaimed
11 stolen property in the possession of the law-enforcement
12 agency filing it:

13 (1) A description of each item;

14 (2) An estimated value for each item;

15 (3) Whether any nonprofit organization has requested
16 that any item be donated to it and whether any nonprofit
17 organization might be considered to receive the item as a
18 donation;

19 (4) Whether the law-enforcement agency could use the
20 item for any legitimate and authorized law-enforcement or
21 educational purpose;

22 (5) The chief executive's recommendation for the
23 disposition of each item; and

24 (6) If any unclaimed stolen property in the law-
25 enforcement agency's possession consists of firearms or
26 ammunition, the chief executive's determination of
27 whether the firearms or ammunition are of a sufficient
28 quality to be traded in on new weapons or ammunition for
29 the law-enforcement agency or appropriated for the law-
30 enforcement agency's use.

§36-8A-3. Treasurer's response to unclaimed stolen property report.

1 Within thirty days of the receipt of an unclaimed
2 stolen property report, the treasurer shall send a response
3 to the law-enforcement agency submitting it. For each
4 item identified in the unclaimed stolen property report
5 except firearms and ammunition which the chief executive
6 determined to be of sufficient quality to trade in on new
7 weapons or ammunition or to appropriate for the law-
8 enforcement agency's use, the treasurer shall either
9 require that it be delivered to the treasurer, authorize the
10 law-enforcement agency to sell it at a public sale,
11 authorize the law-enforcement agency to donate it to a
12 nonprofit organization, authorize the law-enforcement
13 agency to use it for any legitimate and authorized law-
14 enforcement or educational purpose, or authorize the law-
15 enforcement agency either to sell it at a public sale, to
16 donate it to a nonprofit organization, or to use it for any
17 legitimate and authorized law-enforcement or educational
18 purpose. However, the treasurer may not authorize the
19 law-enforcement agency to sell or donate any firearms or
20 ammunition. If the treasurer determines that any item
21 identified in an unclaimed stolen property report is of
22 such value that it should be processed by the treasurer's
23 office, the treasurer shall have the authority to require that
24 the item be delivered to the treasurer.

§36-8A-4. Disposition of unclaimed stolen property other than firearms and ammunition.

1 (a) Within ninety days of receipt of the treasurer's
2 response required by section three of this article, the law-
3 enforcement agency shall dispose of all items identified in
4 the treasurer's response in the manner set forth in this
5 section.

6 (b) If the treasurer's report requires the law-
7 enforcement agency to deliver any item to the treasurer,
8 the chief executive shall cause the item to be so delivered.
9 Within three years after receiving the item from the law-
10 enforcement agency, the treasurer shall sell it to the
11 highest bidder at public sale at a location in the state which
12 in the judgment of the treasurer affords the most favorable
13 market for the property. The treasurer may decline the
14 highest bid and reoffer the property for sale if the
15 treasurer considers the bid to be insufficient. The
16 treasurer need not offer the property for sale if the
17 treasurer considers that the probable cost of sale will
18 exceed the proceeds of the sale. A sale held under this
19 subsection must be preceded by a single publication of
20 notice, at least three weeks before sale, in a newspaper of
21 general circulation in the county in which the property is
22 to be sold.

23 (c) If the treasurer's response authorizes the law-
24 enforcement agency to sell any item at a public sale, the
25 chief executive shall retain an auctioneer licensed by the
26 state of West Virginia to conduct the sale. The costs or
27 fees incurred will be paid from a fund generated from
28 revenues gained by the sale of such property. The
29 licensed auctioneer shall sell the item to the highest bidder
30 at a location which in the judgment of the chief executive
31 affords the most favorable market for the items. A sale
32 under this subsection must be preceded by a single
33 publication of notice, at least three weeks before the sale,
34 in a newspaper of general circulation in the county in
35 which the property is to be sold. The chief executive shall
36 retain the proceeds of any public sale under this
37 subsection for the use of the law-enforcement agency.

38 (d) If the treasurer's response authorizes the law-
39 enforcement agency to donate any item to a nonprofit
40 organization, the chief executive shall cause the item to be
41 so donated.

42 (e) If the treasurer's report authorizes the law-
43 enforcement agency to use any item for any legitimate
44 and authorized law-enforcement or educational purpose,
45 the chief executive shall cause the item to be used for that
46 purpose. However, if the law-enforcement agency ever
47 discontinues its use of the item, it must again report the
48 item to the treasurer as provided in section two of this
49 article.

50 (f) If the treasurer's response authorizes the law-
51 enforcement agency either to sell any item at a public sale,
52 to donate it to a nonprofit organization or to use it for any
53 legitimate and authorized law-enforcement or educational
54 purpose, the chief executive may cause the item either to
55 be sold, donated or used as provided in this section.
56 However, the chief executive shall first attempt to donate
57 the item as provided in subsection (d) of this section or to
58 use it as provided in subsection (e) of this section before
59 selling it at a public sale as provided in subsection (c) of
60 this section.

**§36-8A-5. Trade-in or appropriation of unclaimed stolen
firearms and ammunition.**

1 (a) If the chief executive determined in the law-
2 enforcement agency's unclaimed stolen property report
3 that any firearms or ammunition in the law-enforcement
4 agency's possession are not of a sufficient quality to be
5 traded in on new weapons or ammunition for the agency
6 or appropriated for the agency's use, the chief executive
7 shall cause the firearms or ammunition to be delivered to
8 the treasurer for destruction.

9 (b) If the chief executive determined in the law-
10 enforcement agency's unclaimed stolen property report
11 that any firearms or ammunition in the law-enforcement
12 agency's possession are of a sufficient quality to be traded
13 in on new weapons or ammunition for the agency or
14 appropriated for the agency's use, the chief executive
15 shall cause the firearms or ammunition to be traded in on
16 new weapons or ammunition or appropriated for the

17 agency's use. After any trade-in or appropriation under
 18 this subsection, the law-enforcement agency shall file a
 19 report with the treasurer and the state tax department on
 20 the trade-in or appropriation.

§36-8A-6. Deposit of funds.

1 (a) The treasurer shall promptly deposit in the general
 2 revenue fund of this state all proceeds of any public sale
 3 of unclaimed stolen property conducted by the treasurer
 4 under subsection (b), section four of this article.

5 (b) Before making a deposit to the credit of the
 6 general revenue fund, the treasurer may deduct the
 7 expenses of the related public sale conducted by the
 8 treasurer.

9 (c) The treasurer may deduct the accumulated
 10 expenses incurred in the destruction of unclaimed stolen
 11 firearms and ammunition under this article from any
 12 deposit made under subsection (a) of this section.

§36-8A-7. Immunity of law-enforcement agencies.

1 If a law-enforcement agency delivers, sells or donates
 2 any item of unclaimed stolen property in good faith and
 3 in accordance with the provisions of this article, the law-
 4 enforcement agency and its chief executive, officers and
 5 employees involved in the delivery, sale or donation shall
 6 be immune from any subsequent claim of a person who
 7 purports to be the true owner of the item and who did not
 8 claim the item prior to the delivery, sale or donation.

CHAPTER 42. DESCENT AND DISTRIBUTION.

ARTICLE 1. DESCENT.

§42-1-3c. No taker.

1 If there is no taker under the provisions of this article,
 2 the intestate estate passes to the state. Any real property
 3 shall pass to the state auditor. Any personal property shall
 4 pass to the state treasurer for disposition by public sale in
 5 accordance with the provisions of section twelve, article
 6 eight, chapter thirty-six of this code. The proceeds of the
 7 sale of any such real property shall be deposited to the
 8 credit of the general school fund. The proceeds of the
 9 sale of any such personal property shall be deposited to
 10 the credit of the general revenue fund.

CHAPTER 2

(Com. Sub. for S. B. 61—By Senators Bowman, White, Wooton,
Snyder, Kimble and Anderson)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-a; to amend and reenact sections one, three, four, five, six, seven, eight, nine, twelve and sixteen, article four, chapter forty-eight of said code; to further amend said article by adding thereto five new sections, designated sections three-a, three-b, three-c, eight-a and eight-b; and to amend and reenact section one, article three, chapter forty-nine of said code, all relating generally to adoption proceedings; creating a tax credit for nonfamily adoptions; defining and redefining terms; establishing persons whose consent or relinquishment is required; setting forth requirements for the execution of consents or relinquishments; establishing required contents of consents or relinquishments; establishing conduct constituting abandonment by birth parent; providing for consent by parents under eighteen years of age; providing for the revocation of consent or relinquishment for adoption; requiring disclosure of certain information upon delivery of child for adoption; establishing when adoption petition may be filed; expanding required contents of adoption petition; expanding and revising notice provisions; setting forth persons entitled to notice; changing the information required for notice; providing for notice to unknown fathers; establishing hearing procedures; setting forth evaluation requirements when discreet inquiries are conducted; setting forth procedures and limitations on challenges to adoption decrees; authorizing the payment of certain fees and expenses of the birth mother subject to approval by the circuit court; establishing criminal penalties; providing for agency adoptions and relinquishment requirements; requiring department to consider grandparents

as adoptive parents; and requiring the department to offer certain counseling services.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 11. Taxation.**
- 48. Domestic Relations.**
- 49. Child Welfare.**

CHAPTER 11. TAXATION.

PART I. GENERAL.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-10a. Credit for nonfamily adoption.

1 A one time credit against the tax imposed by the
2 provisions of this article shall be allowed as follows:

3 *Nonfamily adoptions.* — For nonfamily adoptions, the
4 credit is equal to two thousand dollars which may be taken
5 in the year of the adoption of each nonfamily child, whose
6 age at adoption is under eighteen years. This credit may,
7 at the option of the taxpayer, be taken over a period of
8 three years.

9 For the purpose of this section and credit “nonfamily
10 adoptions” means adoptions of a child or children by a
11 taxpayer or taxpayers which child or children are not
12 related to the taxpayer or taxpayers by blood or marriage.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 4. ADOPTION.

- §48-4-1. Definitions.
- §48-4-3. Persons whose consent or relinquishment is required; exceptions.
- §48-4-3a. Timing and execution of consent or relinquishment.
- §48-4-3b. Content of consent or relinquishment.
- §48-4-3c. Conduct presumptively constituting abandonment.
- §48-4-4. Consent or relinquishment by infants.
- §48-4-5. Revocation of consent or relinquishment for adoption.
- §48-4-6. Delivery of child for adoption; filing of petition.
- §48-4-7. Petition and appendix.
- §48-4-8. Who shall receive notice.
- §48-4-8a. How notice is to be served.
- §48-4-8b. Notice to an unknown father.
- §48-4-9. Proceedings.
- §48-4-12. Finality of order; challenges to order of adoption.
- §48-4-16. Prohibition of purchase or sale of child; penalty; definitions; exceptions.

§48-4-1. Definitions.

1 As used in this article, unless the context otherwise
2 requires:

3 (a) "Abandonment" means any conduct by the birth
4 mother, legal father, determined father, outsider father,
5 unknown father or putative father that demonstrates a
6 settled purpose to forego all duties and relinquish all
7 parental claims to the child;

8 (b) "Adoptive parents" or "adoptive mother" or
9 "adoptive father" means those persons who, after adoption,
10 are the mother and father of the child;

11 (c) "Agency" means a public or private entity,
12 including the department of health and human resources,
13 that is authorized by law to place children for adoption;

14 (d) "Birth father" means the biological father of the
15 child;

16 (e) "Birth mother" means the biological mother of
17 the child;

18 (f) "Birth parents" mean both the biological father
19 and the biological mother of the child;

20 (g) "Consent" means the voluntary surrender to an
21 individual, not an agency, by a minor child's parent or
22 guardian, for purposes of the child's adoption, of the
23 rights of the parent or guardian with respect to the child,
24 including the legal and physical custody of the child;

25 (h) "Determined father" means, before adoption, a
26 person: (1) In whom paternity has been established
27 pursuant to the provisions of article six, chapter forty-
28 eight-a of this code, whether by adjudication or
29 acknowledgment as set forth therein; or (2) who has been
30 otherwise judicially determined to be the biological father
31 of the child entitled to parental rights; or (3) who has
32 asserted his paternity of the child in an action commenced
33 pursuant to the provisions of article six, chapter forty-
34 eight-a of this code, that is pending at the time of the
35 filing of the adoption petition;

36 (i) "Legal father" means, before adoption, the male
37 person having the legal relationship of parent to a child:
38 (1) Who is married to its mother at the time of conception;
39 or (2) who is married to its mother at the time of birth of
40 the child; or (3) who is the biological father of the child
41 and who marries the mother before an adoption of the
42 child;

43 (j) "Marital child" means a child born or conceived
44 during marriage;

45 (k) "Nonmarital child" means a child not born or
46 conceived during marriage;

47 (l) "Outsider father" means the biological father of a
48 child born to or conceived by the mother while she is
49 married to another man who is not the biological father of
50 the child;

51 (m) "Putative father" means, before adoption, any
52 man named by the mother as a possible biological father
53 of the child pursuant to the provisions of section seven of
54 this article, who is not a legal or determined father;

55 (n) "Relinquishment" means the voluntary surrender
56 to an agency by a minor child's parent or guardian, for
57 purposes of the child's adoption, of the rights of the

58 parent or guardian with respect to the child, including the
59 legal and physical custody of the child;

60 (o) "Stepparent adoption" means an adoption in
61 which the petitioner for adoption is married to one of the
62 birth parents of the child or to an adoptive parent of the
63 child; and

64 (p) "Unknown father" means a biological father whose
65 identity the biological mother swears is unknown to her
66 before adoption, pursuant to the provisions of section
67 seven of this article.

**§48-4-3. Persons whose consent or relinquishment is required;
exceptions.**

1 (a) Subject to the limitations hereinafter set forth,
2 consent to or relinquishment for adoption of a minor
3 child is required of:

4 (1) The parents or surviving parent, whether adult or
5 infant, of a marital child;

6 (2) The outsider father of a marital child who has been
7 adjudicated to be the father of the child or who has filed a
8 paternity action which is pending at the time of the filing
9 of the petition for adoption;

10 (3) The birth mother, whether adult or infant, of a
11 nonmarital child; and

12 (4) The determined father.

13 (b) Consent or relinquishment shall not be required of
14 a parent or of any other person having custody of the
15 adoptive child:

16 (1) Whose parental rights have been terminated
17 pursuant to the provisions of article three, chapter forty-
18 nine of this code;

19 (2) Whom the court finds has abandoned the child as
20 set forth in section three-c of this article; or

21 (3) Who, in a stepparent adoption, is the birth parent
22 or adoptive parent of the child and is married to the
23 petitioning adoptive parent. In such stepparent adoption,

24 the parent must assent to the adoption by joining as a
25 party to the petition for adoption.

26 (c) If the mother, legal father or determined father is
27 under disability, the court may order the adoption if it
28 finds:

29 (1) The parental rights of the person are terminated,
30 abandoned or permanently relinquished;

31 (2) The person is incurably insane; or

32 (3) The disability arises solely because of age and an
33 otherwise valid consent or relinquishment has been given.

34 (d) If all persons entitled to parental rights of the child
35 sought to be adopted are deceased or have been deprived
36 of the custody of the child by law, then consent or
37 relinquishment is required of the legal guardian or of any
38 other person having legal custody of the child at the time.
39 If there is no legal guardian nor any person who has legal
40 custody of the child, then consent or relinquishment is
41 required from some discreet and suitable person
42 appointed by the court to act as the next friend of the
43 child in the adoption proceedings.

44 (e) If one of the persons entitled to parental rights of
45 the child sought to be adopted is deceased, only the
46 consent or relinquishment of the surviving person entitled
47 to parental rights is required.

48 (f) If the child to be adopted is twelve years of age or
49 over, the consent of the child is required to be given in the
50 presence of a judge of a court of competent jurisdiction,
51 unless for extraordinary cause, the requirement of such
52 consent is waived by the court.

53 (g) Any consent to adoption or relinquishment of
54 parental rights shall have the effect of authorizing the
55 prospective adoptive parents or the agency to consent to
56 medical treatment for the child, whether or not such
57 authorization is expressly stated in the consent or
58 relinquishment.

§48-4-3a. Timing and execution of consent or relinquishment.

1 (a) No consent or relinquishment may be executed
2 before the expiration of seventy-two hours after the birth
3 of the child to be adopted.

4 (b) A consent or relinquishment executed by a parent
5 or guardian as required by the provisions of section three
6 of this article must be signed and acknowledged in the
7 presence of one of the following:

8 (1) A judge of a court of record;

9 (2) A person whom a judge of a court of record
10 designates to take consents or relinquishments;

11 (3) A notary public;

12 (4) A commissioned officer on active duty in the
13 military service of the United States, if the person
14 executing the consent or relinquishment is in military
15 service; or

16 (5) An officer of the foreign service or a consular
17 officer of the United States in another country, if the
18 person executing the consent or relinquishment is in that
19 country.

§48-4-3b. Content of consent or relinquishment.

1 (a) A consent or relinquishment as required by the
2 provisions of section three of this article must be written in
3 plain English or, if the person executing the consent or
4 relinquishment does not understand English, in the
5 person's primary language. The form of the consent or
6 relinquishment shall include the following, as appropriate:

7 (1) The date, place and time of the execution of the
8 consent or relinquishment;

9 (2) The name, date of birth and current mailing
10 address of the person executing the consent or
11 relinquishment;

12 (3) The date, place of birth and the name or
13 pseudonym ("Baby Boy _____ or Baby Girl _____") of
14 the minor child;

- 15 (4) The fact that the document is being executed more
16 than seventy-two hours after the birth of the child;
- 17 (5) If a consent, that the person executing the
18 document is voluntarily and unequivocally consenting to
19 the transfer of legal and physical custody to, and the
20 adoption of the child by, an adoptive parent or parents
21 whose name or names may, but need not be, specified;
- 22 (6) If a relinquishment, that the person executing the
23 relinquishment voluntarily consents to the permanent
24 transfer of legal and physical custody of the child to the
25 agency for the purposes of adoption;
- 26 (7) If a consent, that it authorizes the prospective
27 adoptive parents, or if a relinquishment, that it authorizes
28 the agency, to consent to medical treatment of the child
29 pending any adoption proceeding;
- 30 (8) That after the consent or relinquishment is signed
31 and acknowledged, it is final and, unless revoked in
32 accordance with the provisions of section five of this
33 article, it may not be revoked or set aside for any other
34 reason;
- 35 (9) That the adoption will forever terminate all
36 parental rights, including any right to visit or
37 communicate with the child and any right of inheritance;
- 38 (10) That the adoption will forever terminate all
39 parental obligations of the person executing the consent
40 or relinquishment;
- 41 (11) That the termination of parental rights and
42 obligations is permanent whether or not any agreement
43 for visitation or communication with the child is
44 subsequently performed;
- 45 (12) That the person executing the consent or
46 relinquishment does so of his or her own free will and the
47 consent or relinquishment has not been obtained by fraud
48 or duress;
- 49 (13) That the person executing the consent or
50 relinquishment has:

51 (i) Received a copy of the consent or relinquishment;

52 (ii) Been provided the information and afforded the
53 opportunity to participate in the voluntary adoption
54 registry, pursuant to the provisions of article four-a of this
55 chapter;

56 (iii) Been advised of the availability of counseling;

57 (iv) Been advised of the consequences of
58 misidentifying the other birth parent; and

59 (v) If a birth mother, been advised of the obligation to
60 provide the information required by the provisions of
61 section seven of this article in the case of an unknown
62 father;

63 (14) That the person executing the consent or
64 relinquishment has not received or been promised any
65 money or anything of value for the consent or
66 relinquishment, other than payments authorized by the
67 provisions of section sixteen of this article;

68 (15) Whether the child is an "Indian child" as
69 defined in the Indian Child Welfare Act, 25 U.S.C. §1903;

70 (16) That the person believes the adoption of the child
71 is in the child's best interest; and

72 (17) That the person who is consenting or
73 relinquishing expressly waives notice of any proceeding
74 for adoption unless the adoption is contested, appealed or
75 denied.

76 (b) A consent or relinquishment may provide
77 explicitly for its conditional revocation if:

78 (1) Another person whose consent or relinquishment
79 is required does not execute the same within a specified
80 period;

81 (2) A court determines not to terminate another
82 person's parental relationship to the child; or

83 (3) In a direct placement for adoption, a petition for
84 adoption by a prospective adoptive parent, named or
85 described in the consent, is denied or withdrawn.

86 (c) A consent or relinquishment shall also include:

87 (1) If a consent, the name, address, telephone and
88 facsimile numbers of the lawyer representing the
89 prospective adoptive parents; or

90 (2) If a relinquishment, the name, address, telephone
91 and facsimile numbers of the agency to which the child is
92 being relinquished; and

93 (3) Specific instructions on how to revoke the consent
94 or relinquishment.

§48-4-3c. Conduct presumptively constituting abandonment.

1 (a) Abandonment of a child over the age of six
2 months shall be presumed when the birth parent:

3 (1) Fails to financially support the child within the
4 means of the birth parent; and

5 (2) Fails to visit or otherwise communicate with the
6 child when he or she knows where the child resides, is
7 physically and financially able to do so and is not
8 prevented from doing so by the person or authorized
9 agency having the care or custody of the child: *Provided*,
10 That such failure to act continues uninterrupted for a
11 period of six months immediately preceding the filing of
12 the adoption petition.

13 (b) Abandonment of a child under the age of six
14 months shall be presumed when the birth father:

15 (1) Denounces the child's paternity any time after
16 conception;

17 (2) Fails to contribute within his means toward the
18 expense of the prenatal and postnatal care of the mother
19 and the postnatal care of the child;

20 (3) Fails to financially support the child within
21 father's means; and

22 (4) Fails to visit the child when he or she knows where
23 the child resides: *Provided*, That such denunciations and
24 failure to act continue uninterrupted from the time that the

25 birth father was told of the conception of the child until
26 the time the petition for adoption was filed.

27 (c) Abandonment of a child shall be presumed when
28 the unknown father fails, prior to the entry of the final
29 adoption order, to make reasonable efforts to discover that
30 a pregnancy and birth have occurred as a result of his
31 sexual intercourse with the birth mother.

32 (d) Notwithstanding any provision in this section to
33 the contrary, any birth parent shall have the opportunity to
34 demonstrate to the court the existence of compelling
35 circumstances preventing said parent from supporting,
36 visiting or otherwise communicating with the child:
37 *Provided*, That in no event may incarceration provide such
38 a compelling circumstance if the crime resulting in the
39 incarceration involved a rape in which the child was
40 conceived.

§48-4-4. Consent or relinquishment by infants.

1 If a person who has executed a consent to or
2 relinquishment for adoption is under eighteen years of
3 age at the time of the filing of the petition, and such infant
4 parent is a resident of the state, the consent or
5 relinquishment shall be specifically reviewed and
6 approved by the court and a guardian ad litem may be
7 appointed to represent the interests of the infant parent.
8 The guardian ad litem shall conduct a discreet inquiry
9 regarding the consent or relinquishment given, and may
10 inquire of any person having knowledge of the consent or
11 relinquishment. If the guardian ad litem finds reasonable
12 cause to believe that the consent or relinquishment was
13 obtained by fraud or duress, the court may request the
14 infant parent to appear before the court or at a deposition,
15 so that inquiry may be made regarding the circumstances
16 surrounding the execution of the consent or
17 relinquishment. The failure of the court to appoint a
18 guardian ad litem is not grounds for setting aside a decree
19 of adoption.

§48-4-5. Revocation of consent or relinquishment for adoption.

1 (a) Parental consent or relinquishment, whether given
2 by an adult or minor, may be revoked only if:

3 (1) The person who executed the consent or
4 relinquishment and the prospective adoptive parent named
5 or described in the consent or the lawyer for said adoptive
6 parent, or the agency in case of relinquishment, agree to
7 its revocation prior to the entry of an adoption order; or

8 (2) The person who executed the consent or
9 relinquishment proves by clear and convincing evidence,
10 in an action filed either within six months of the date of
11 the execution of the consent or relinquishment or prior to
12 the date an adoption order is final, whichever date is later,
13 that the consent or relinquishment was obtained by fraud
14 or duress; or

15 (3) The person who executed the consent or
16 relinquishment proves by a preponderance of the
17 evidence, prior to the entry of an adoption order, that a
18 condition allowing revocation as expressly set forth in the
19 consent or relinquishment has occurred; or

20 (4) The person who executed the consent or
21 relinquishment proves by clear and convincing evidence,
22 prior to the entry of an adoption order, that the consent or
23 relinquishment does not comply with the requirements set
24 forth in this article.

25 (b) If the custody of a child during the pendency of a
26 petition to revoke a consent or relinquishment is in issue,
27 the court shall conduct a hearing, within thirty days of
28 service of notice upon the respondent, to determine the
29 issue of temporary custody. The court shall award such
30 custody based upon the best interests of the child.

§48-4-6. Delivery of child for adoption; filing of petition.

1 (a) Whenever a person delivers a child for adoption
2 the person first receiving such child and the prospective
3 adopting parent or parents shall be entitled to receive from
4 such person a written recital of all known circumstances
5 surrounding the birth, medical and family medical history
6 of the child, and an itemization of any facts or
7 circumstances unknown concerning the child's parentage

8 or that may require further development in the form of an
9 affidavit from the birth mother consistent with the
10 provisions of section seven of this article.

11 (b) The petition for adoption may be filed at any time
12 after the child who is the subject of the adoption is born,
13 the adoptive placement determined and all consents or
14 relinquishments that can be obtained have been executed.
15 The hearing on the petition may be held no sooner than
16 forty-five days after the filing of the petition and only
17 after the child has lived with the adoptive parent or parents
18 for a period of six months, proper notice of the petition
19 has been given and all necessary consents or
20 relinquishments have been executed and submitted or the
21 rights of all nonconsenting birth parents have otherwise
22 been terminated.

§48-4-7. Petition and appendix.

1 (a) The petition shall be verified and set forth:

2 (1) The name, age and place of residence of the
3 petitioner or petitioners, and of the child, and the name by
4 which the child shall be known;

5 (2) Whether such child is possessed of any property
6 and a full description of the same, if any;

7 (3) Whether the petitioner or petitioners know the
8 identity of the persons entitled to parental rights or, that
9 the same are unknown to the petitioner or petitioners; and

10 (4) Whether and on what basis the parental rights of
11 any birth parents should be terminated during the
12 pendency of the adoption petition.

13 (b) In the case of an unknown father, an affidavit
14 signed by the birth mother setting forth the following
15 information must be attached to the petition:

16 (1) Whether the birth mother was married at the
17 probable time of conception of the child, or at a later time,
18 and if so, the identity and last known address of such man;

19 (2) Whether the birth mother was cohabiting with a
20 man at the probable time of conception of the child, and if

21 so, the identity of such man, his last known address and
22 why the woman contends that such man is not the
23 biological father of the child;

24 (3) Whether the birth mother has received payments or
25 promise of support from any man with respect to the child
26 or her pregnancy, and if so, the identity of such man, his
27 last known address and why the birth mother contends that
28 such man is not the biological father of the child;

29 (4) Whether the birth mother has named any man as
30 the father on the birth certificate of the child or in
31 connection with applying for or receiving public
32 assistance, and if so, the identity of such man, his last
33 known address and why the birth mother contends such
34 man is not the biological father of the child;

35 (5) Whether the birth mother identified any man as the
36 father to any hospital personnel, and if so, the identity of
37 such man, his last known address, the name and address of
38 the hospital and why the birth mother now contends such
39 man is not the biological father of the child;

40 (6) Whether the birth mother has informed any man
41 that he may be the biological father of the child, and if so,
42 the identity of such man, his last known address and why
43 the birth mother now contends such man is not the
44 biological father of the child;

45 (7) Whether any man has formally or informally
46 acknowledged or claimed paternity of the child in any
47 jurisdiction at the time of the inquiry, and if so, the
48 identity of such man, his last known address and why the
49 birth mother contends such man is not the biological
50 father of the child;

51 (8) That the birth mother has been advised that the
52 failure to identify or the misidentification of the birth
53 father can result in delays and disruptions in the
54 processing of the adoption petition;

55 (9) That the birth mother has been informed that her
56 statement concerning the identity of the father will be used
57 only for the limited purposes of adoption and that once
58 the adoption is complete, such identity will be sealed; and

59 (10) That the birth mother has been advised of the
60 remedies available to her for protection against domestic
61 violence pursuant to the provisions of article two-a of this
62 chapter.

63 (c) In the event the birth mother is deceased or her
64 identity or whereabouts are unknown, no such affidavit
65 shall be required.

66 (d) The affidavit of the birth mother in the case of an
67 unknown father shall be executed before any person
68 authorized to witness a consent or relinquishment pursuant
69 to the provisions of section three-a of this article. Any
70 affidavit filed with the petition pursuant to the provisions
71 of this section shall be sealed in the court file and may not
72 be opened except by court order upon a showing of good
73 cause.

74 (e) If the person petitioning for adoption is less than
75 fifteen years older than the child sought to be adopted,
76 such fact shall be set forth specifically in the petition. In
77 such case, the court shall grant the adoption only upon a
78 specific finding that notwithstanding the differences in age
79 of the petitioner and the child, such adoption is in the best
80 interest of the child: *Provided*, That in the case of a
81 stepparent adoption, such specific finding shall not be
82 required and an adoption shall not be denied on the sole
83 basis of proximity in age.

84 (f) The petition shall set forth any facts concerning the
85 circumstances of the birth of the child known to the
86 petitioner or petitioners. An effort shall be made to obtain
87 medical and social information, which information, along
88 with all nonidentifying information about the birth, shall
89 accompany the petition and be made a part of the
90 nonidentifying information to be sealed in the court file.

91 (g) Either the petition, the various consents or
92 relinquishments attached thereto or filed in the cause, the
93 affidavit of the birth mother as set forth herein and/or an
94 appendix signed by counsel or other credible persons
95 shall fully disclose all that is known about the parentage of
96 the child.

§48-4-8. Who shall receive notice.

1 (a) Unless notice has been waived, notice of a
2 proceeding for adoption of a child must be served, within
3 twenty days after a petition for adoption is filed, upon:

4 (1) Any person whose consent to the adoption is
5 required pursuant to the provisions of section three of this
6 article, but notice need not be served upon a person whose
7 parental relationship to the child or whose status as a
8 guardian has been terminated;

9 (2) Any person whom the petitioner knows is claiming
10 to be the father of the child and whose paternity of the
11 child has been established pursuant to the provisions of
12 article six, chapter forty-eight-a of this code;

13 (3) Any person other than the petitioner who has legal
14 or physical custody of the child or who has visitation
15 rights with the child under an existing court order issued
16 by a court in this or another state;

17 (4) The spouse of the petitioner if the spouse has not
18 joined in the petition; and

19 (5) A grandparent of the child if the grandparent's
20 child is a deceased parent of the child and, before death,
21 the deceased parent had not executed a consent or
22 relinquishment or the deceased parent's parental
23 relationship to the child had not been otherwise
24 terminated.

25 (b) The court shall require notice of a proceeding for
26 adoption to be served upon any person the court finds, at
27 any time during the proceeding, is:

28 (1) A person described in subsection (a) of this section
29 who has not been given notice;

30 (2) A person who has revoked consent or
31 relinquishment pursuant to the provisions of section five
32 of this article; or

33 (3) A person who, on the basis of a previous
34 relationship with the child, a parent, an alleged parent or

35 the petitioner, can provide relevant information that the
36 court, in its discretion, wants to hear.

§48-4-8a. How notice is to be served.

1 (a) Notice shall be served on each person as required
2 under the provisions of section eight of this article, in
3 accordance with rule 4 of the West Virginia rules of civil
4 procedure for trial courts of record, except as otherwise
5 provided in this article.

6 (b) The notice shall inform the person, in plain
7 language, that his or her parental rights, if any, may be
8 terminated in the proceeding and that such person may
9 appear and defend any such rights within the required
10 time after such service. The notice shall also provide that
11 if the person upon whom notice is properly served fails to
12 respond within the required time after its service, said
13 person may not appear in or receive further notice of the
14 adoption proceedings.

15 (c) In the case of any person who is a nonresident or
16 whose whereabouts are unknown, service shall be
17 achieved: (1) By personal service; (2) by registered or
18 certified mail, return receipt requested, postage prepaid, to
19 the person's last known address, with instructions to
20 forward; or (3) by publication. If personal service is not
21 achieved and the person giving notice has any knowledge
22 of the whereabouts of the person to be served, including a
23 last known address, service by mail shall be first attempted
24 as provided herein. Any service achieved by mail shall be
25 complete upon mailing and shall be sufficient service
26 without the need for notice by publication. In the event
27 that no return receipt is received giving adequate evidence
28 of receipt of the notice by the addressee or of receipt of
29 the notice at the address to which the notice was mailed or
30 forwarded, or if the whereabouts of the person is
31 unknown, then the person required to give notice shall
32 cause service of notice by publication as a Class II
33 publication in compliance with the provisions of article
34 three, chapter fifty-nine of this code, and the publication
35 area shall be the county where the proceedings are had,
36 and in the county where the person to be served was last
37 known to reside, except in cases of foreign adoptions

38 where the child is admitted to this country for purposes of
39 adoptive placement and the United States immigration and
40 naturalization service has issued the foreign-born child a
41 visa or unless good cause is shown for not publishing in
42 the county where the person was last known to reside. The
43 notice shall state the court and its address but not the
44 names of the adopting parents or birth mother, unless the
45 court so orders.

46 (d) In the case of a person under disability, service
47 shall be made on the person and his or her personal
48 representative, or if there be none, on a guardian ad litem.

49 (e) In the case of service by publication or mail or
50 service on a personal representative or a guardian ad litem,
51 the person shall be allowed thirty days from the date of
52 the first publication or mailing or of such service on a
53 personal representative or guardian ad litem in which to
54 appear and defend his or her parental rights.

§48-4-8b. Notice to an unknown father.

1 (a) In the case of an unknown father, the court shall
2 inspect the affidavit submitted pursuant to the provisions
3 of section seven of this article, consider any additional
4 evidence that the court, in its discretion, determines should
5 be produced, and determine whether said father can be
6 identified. The inspection and consideration of
7 any additional evidence by the court shall be
8 accomplished as soon as practicable after the filing of the
9 petition, but no later than sixty days before the final
10 hearing on the adoption petition.

11 (b) If the court identifies a father pursuant to the
12 provisions of subsection (a) of this section, then notice of
13 the proceeding for adoption shall be served on the father
14 so identified in accordance with the provisions of section
15 eight-a of this article.

16 (c) If after consideration of the affidavit and/or the
17 consideration of further evidence, the court finds that
18 proper service cannot be made upon the father because his
19 identity is unknown, the court shall order publication of
20 the notice only if, on the basis of all information available,

21 the court determines that publication is likely to lead to
22 receipt of notice by the father. If the court determines
23 that publication or posting is not likely to lead to receipt
24 of notice, the court may dispense with the publication or
25 posting of a notice.

§48-4-9. Proceedings.

1 (a) When the cause has matured for hearing but not
2 sooner than six months after the child has resided
3 continuously in the home of the petitioner or petitioners,
4 the court shall decree the adoption if:

5 (1) It determines that no person retains parental rights
6 in such child except the petitioner and the petitioner's
7 spouse, or the joint petitioners;

8 (2) That all applicable provisions of this article have
9 been complied with;

10 (3) That the petitioner is, or the petitioners are, fit
11 persons to adopt the child; and

12 (4) That it is in the best interests of the child to order
13 such adoption.

14 (b) The court or judge thereof may adjourn the
15 hearing of such petition or the examination of the parties
16 in interest from time to time, as the nature of the case may
17 require. Between the time of the filing of the petition for
18 adoption and the hearing thereon, the court or judge
19 thereof shall, unless the court or judge otherwise directs,
20 cause a discreet inquiry to be made to determine whether
21 such child is a proper subject for adoption and whether
22 the home of the petitioner or petitioners is a suitable home
23 for such child. Any such inquiry, if directed, shall be
24 made by any suitable and discreet person not related to
25 either the persons previously entitled to parental rights or
26 the adoptive parents, or by an agency designated by the
27 court, or judge thereof, and the results thereof shall be
28 submitted to the court or judge thereof prior to or upon
29 the hearing on the petition and shall be filed with the
30 records of the proceeding and become a part thereof.
31 The report shall include, but not be limited to, the
32 following:

33 (1) A description of the family members, including
34 medical and employment histories;

35 (2) A physical description of the home and
36 surroundings;

37 (3) A description of the adjustment of the child and
38 family;

39 (4) Personal references; and

40 (5) Other information deemed necessary by the court,
41 which may include a criminal background investigation.

42 (c) If it shall be necessary, under the provisions of this
43 article, that a discreet and suitable person shall be
44 appointed to act as the next friend of the child sought to
45 be adopted, then and in that case the court or judge
46 thereof shall order a notice of the petition and of the time
47 and place when and where the appointment of next friend
48 will be made, to be published as a Class II legal
49 advertisement in compliance with the provisions of article
50 three, chapter fifty-nine of this code, and the publication
51 area for such publication shall be the county where such
52 court is located. At the time and place so named and upon
53 due proof of the publication of such notice, the court or
54 judge thereof shall make such appointment, and shall
55 thereupon assign a day for the hearing of such petition
56 and the examination of the parties interested.

57 (d) Upon the day so assigned, the court or judge
58 thereof shall proceed to a final hearing of the petition and
59 examination of the parties in interest, under oath, and of
60 such other witnesses as the court or judge thereof may
61 deem necessary to develop fully the standing of the
62 petitioners and their responsibility, and the status of the
63 child sought to be adopted; and if the court or judge
64 thereof shall be of the opinion from the testimony that the
65 facts stated in the petition are true, and if upon
66 examination the court or judge thereof is satisfied that the
67 petitioner is, or the petitioners are, of good moral
68 character, and of respectable standing in the community,
69 and are able properly to maintain and educate the child
70 sought to be adopted, and that the best interests of the

71 child would be promoted by such adoption, then and in
72 such case the court or judge thereof shall make an order
73 reciting the facts proved and the name by which the child
74 shall thereafter be known, and declaring and adjudging
75 that from the date of such order, the rights, duties,
76 privileges and relations, theretofore existing between the
77 child and those persons previously entitled to parental
78 rights, shall be in all respects at an end, and that the rights,
79 duties, privileges and relations between the child and his or
80 her parent or parents by adoption shall thenceforth in all
81 respects be the same, including the rights of inheritance, as
82 if the child had been born to such adopting parent or
83 parents in lawful wedlock, except only as otherwise
84 provided in this article: *Provided*, That no such order
85 shall disclose the names or addresses of those persons
86 previously entitled to parental rights.

§48-4-12. Finality of order; challenges to order of adoption.

1 (a) An order or decree of adoption is a final order for
2 purposes of appeal to the supreme court of appeals on the
3 date when the order is entered. An order or decree of
4 adoption for any other purpose is final upon the
5 expiration of the time for filing an appeal when no appeal
6 is filed or when an appeal is not timely filed, or upon the
7 date of the denial or dismissal of any appeal which has
8 been timely filed.

9 (b) An order or decree of adoption may not be
10 vacated, on any ground, if a petition to vacate the
11 judgment is filed more than six months after the date the
12 order is final.

13 (c) If a challenge is brought within the six-month
14 period by an individual who did not receive proper notice
15 of the proceedings pursuant to the provisions of this
16 chapter, the court shall deny the challenge, unless the
17 individual proves by clear and convincing evidence that
18 the decree or order is not in the best interest of the child.

19 (d) A decree or order entered under this chapter may
20 not be vacated or set aside upon application of a person
21 who waived notice, or who was properly served with notice
22 pursuant to this chapter and failed to respond or appear,

23 file an answer or file a claim of paternity within the time
24 allowed.

25 (e) A decree or order entered under this chapter may
26 not be vacated or set aside upon application of a person
27 alleging there is a failure to comply with an agreement for
28 visitation or communication with the adopted child:
29 *Provided*, That the court may hear a petition to enforce
30 the agreement, in which case the court shall determine
31 whether enforcement of the agreement would serve the
32 best interests of the child. The court may, in its sole
33 discretion, consider the position of a child of the age and
34 maturity to express such position to the court.

35 (f) The supreme court of appeals shall consider and
36 issue rulings on any petition for appeal from an order or
37 decree of adoption and petitions for appeal from any
38 other order entered pursuant to the provisions of this
39 article as expeditiously as possible. The circuit court shall
40 consider and issue rulings on any petition filed to vacate
41 an order or decree of adoption and any other pleadings or
42 petitions filed in connection with any adoption proceeding
43 as expeditiously as possible.

44 (g) When any minor has been adopted, he or she may,
45 within one year after becoming of age, sign, seal and
46 acknowledge before proper authority, in the county in
47 which the order of adoption was made, a dissent from such
48 adoption, and file such instrument of dissent in the office
49 of the clerk of the circuit court which granted said
50 adoption. The clerk of the county commission of such
51 county and the circuit clerk shall record and index the
52 same. The adoption shall be vacated upon the filing of
53 such instrument of dissent.

**§48-4-16. Prohibition of purchase or sale of child; penalty;
definitions; exceptions.**

1 (a) Any person or agency who knowingly offers, gives
2 or agrees to give to another person money, property,
3 service or other thing of value in consideration for the
4 recipient's locating, providing or procuring a minor child
5 for any purpose which entails a transfer of the legal or
6 physical custody of said child, including, but not limited

7 to, adoption or placement, is guilty of a felony and subject
8 to fine and imprisonment as provided herein.

9 (b) Any person who knowingly receives, accepts or
10 offers to accept money, property, service or other thing of
11 value to locate, provide or procure a minor child for any
12 purpose which entails a transfer of the legal or physical
13 custody of said child, including, but not limited to,
14 adoption or placement, is guilty of a felony and subject to
15 fine and imprisonment as provided herein.

16 (c) Any person who violates the provisions of this
17 section is guilty of a felony and, upon conviction thereof,
18 may be imprisoned in the penitentiary for not less than
19 one year nor more than five years or, in the discretion of
20 the court, be confined in jail not more than one year and
21 fined not less than one hundred dollars nor more than two
22 thousand dollars.

23 (d) A child whose parent, guardian or custodian has
24 sold or attempted to sell said child in violation of the
25 provisions of this article may be deemed an abused child
26 as defined by section three, article one, chapter forty-nine
27 of this code. The court may place such a child in the
28 custody of the department of health and human resources
29 or with such other responsible person as the best interests
30 of the child dictate.

31 (e) This section does not prohibit the payment or
32 receipt of the following:

33 (1) Fees paid for reasonable and customary services
34 provided by the department of health and human
35 resources or any licensed or duly authorized adoption or
36 child-placing agency.

37 (2) Reasonable and customary legal, medical, hospital
38 or other expenses incurred in connection with the
39 pregnancy, birth and adoption proceedings.

40 (3) Fees and expenses included in any agreement in
41 which a woman agrees to become a surrogate mother.

42 (4) Any fees or charges authorized by law or
43 approved by a court in a proceeding relating to the

44 placement plan, prospective placement or placement of a
45 minor child for adoption.

46 (f) At the final hearing on the adoption, an affidavit of
47 any fees and expenses paid or promised by the adoptive
48 parents shall be submitted to the court.

CHAPTER 49. CHILD WELFARE.

ARTICLE 3. CHILD WELFARE AGENCIES.

§49-3-1. Consent by agency or department to adoption of child; statement of relinquishment by parent; petition to terminate parental rights.

1 (a) (1) Whenever a child welfare agency licensed to
2 place children for adoption or the department of health
3 and human resources has been given the permanent legal
4 and physical custody of any child and the rights of the
5 mother and the rights of the legal, determined, putative,
6 outside or unknown father of the child have been
7 terminated by order of a court of competent jurisdiction
8 or by a legally executed relinquishment of parental rights,
9 the child welfare agency or the department may consent to
10 the adoption of the child pursuant to the provisions of
11 article four, chapter forty-eight of this code.

12 (2) Relinquishment for an adoption to an agency or to
13 the department is required of the same persons whose
14 consent or relinquishment is required under the provisions
15 of section three, article four, chapter forty-eight of this
16 code. The form of any relinquishment so required shall
17 conform as nearly as practicable to the requirements
18 established in section three-b of said article and all other
19 provisions of said article providing for relinquishment for
20 adoption shall govern the proceedings herein.

21 (3) For purposes of any placement of a child for
22 adoption by the department, the department shall first
23 consider the suitability and willingness of any known
24 grandparent or grandparents to adopt the child. Once any
25 such grandparents who are interested in adopting the child
26 have been identified, the department shall conduct a home
27 study evaluation, including home visits and individual
28 interviews by a licensed social worker. If the department

29 determines, based on the home study evaluation, that the
30 grandparents would be suitable adoptive parents, it shall
31 assure that the grandparents are offered the placement of
32 the child prior to the consideration of any other
33 prospective adoptive parents.

34 (4) The department shall make available, upon request,
35 for purposes of any private or agency adoption
36 proceeding, preplacement and post-placement counseling
37 services by persons experienced in adoption counseling, at
38 no cost, to any person whose consent or relinquishment is
39 required pursuant to the provision of article four, chapter
40 forty-eight of this code.

41 (b) (1) Whenever the mother has executed a
42 relinquishment pursuant to this section, and the legal,
43 determined, putative, outsider or unknown father, as those
44 terms are defined pursuant to the provisions of section
45 one, article four, chapter forty-eight of this code, has not
46 executed a relinquishment, the child welfare agency or the
47 department may, by verified petition, seek to have the
48 father's rights terminated based upon the grounds of
49 abandonment or neglect of said child. Abandonment may
50 be established in accordance with the provisions of section
51 three-a, article four, chapter forty-eight of this code.

52 (2) Unless waived by a writing acknowledged as in the
53 case of deeds or by other proper means, notice of the
54 petition shall be served on any person entitled to parental
55 rights of a child prior to its adoption who has not signed a
56 relinquishment of custody of the child.

57 (3) In addition, notice shall be given to any putative,
58 outsider or unknown father who has asserted or exercised
59 parental rights and duties to and with the child and who
60 has not relinquished any parental rights and such rights
61 have not otherwise been terminated, or who has not had
62 reasonable opportunity before or after the birth of the
63 child to assert or exercise such rights: *Provided*, That if
64 such child is more than six months old at the time such
65 notice would be required and such father has not asserted
66 or exercised his parental rights and he knew the
67 whereabouts of the child, then such father shall be

68 presumed to have had reasonable opportunity to assert or
69 exercise such rights.

70 (c) (1) Upon the filing of the verified petition seeking
71 to have the parental rights terminated, the court shall set a
72 hearing on the petition. A copy of the petition and notice
73 of the date, time and place of the hearing on said petition
74 shall be personally served on any respondent at least
75 twenty days prior to the date set for the hearing.

76 (2) Such notice shall inform the person that his
77 parental rights, if any, may be terminated in the
78 proceeding and that such person may appear and defend
79 any such rights within twenty days of such service. In the
80 case of any such person who is a nonresident or whose
81 whereabouts are unknown, service shall be achieved: (1)
82 By personal service; (2) by registered or certified mail,
83 return receipt requested, postage prepaid, to the person's
84 last known address, with instructions to forward; or (3) by
85 publication. If personal service is not acquired, then if the
86 person giving notice shall have any knowledge of the
87 whereabouts of the person to be served, including a last
88 known address, service by mail shall be first attempted as
89 herein provided. Any such service achieved by mail shall
90 be complete upon mailing and shall be sufficient service
91 without the need for notice by publication. In the event
92 that no return receipt is received giving adequate evidence
93 of receipt of the notice by the addressee or of receipt of
94 the notice at the address to which the notice was mailed or
95 forwarded, or if the whereabouts of the person are
96 unknown, then the person required to give notice shall file
97 with the court an affidavit setting forth the circumstances
98 of any attempt to serve the notice by mail, and the diligent
99 efforts to ascertain the whereabouts of the person to be
100 served. If the court determines that the whereabouts of the
101 person to be served cannot be ascertained and that due
102 diligence has been exercised to ascertain such person's
103 whereabouts, then the court shall order service of such
104 notice by publication as a Class II publication in
105 compliance with the provisions of article three, chapter
106 fifty-nine of this code, and the publication area shall be
107 the county where such proceedings are had, and in the
108 county where the person to be served was last known to

109 reside. In the case of a person under disability, service
110 shall be made on the person and his personal
111 representative, or if there be none, on a guardian ad litem.

112 (3) In the case of service by publication or mail or
113 service on a personal representative or a guardian ad litem,
114 the person shall be allowed thirty days from the date of
115 the first publication or mailing of such service on a
116 personal representative or guardian ad litem in which to
117 appear and defend such parental rights.

118 (d) A petition under this section may be instituted in
119 the county where the child resides or where the child is
120 living.

121 (e) If the court finds that the person certified to
122 parental rights is guilty of the allegations set forth in the
123 petition, the court shall enter an order terminating his
124 parental rights and shall award the legal and physical
125 custody and control of said child to the petitioner.

CHAPTER 3

(H. B. 2441—By Delegates Williams, Beach, Facemyer,
Seacrist, Everson, Henderson and Stainaker)

[Passed April 10, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article two-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the commissioner of agriculture to inspect any meat product, poultry product or any other agricultural commodity sold to a state institution; and prohibitions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2B. INSPECTION OF MEAT AND POULTRY.**§19-2B-10. Additional prohibitions.**

1 In addition to any other prohibitions contained in this
2 article, it shall be unlawful:

3 (a) For any person to operate any establishment under
4 state inspection which is not clean and sanitary;

5 (b) To slaughter any adulterated animal or poultry
6 intended to be sold or offered for sale through a
7 commercial outlet or distributor;

8 (c) To sell or offer for sale through a commercial
9 outlet or distributor any carcass, meat product or poultry
10 product for human consumption which is adulterated;

11 (d) To slaughter for human consumption any animal
12 or poultry tagged or permanently identified as "W. Va.
13 condemned," or abbreviation thereof;

14 (e) To process, sell or offer for sale for human
15 consumption any carcass, meat product or poultry product
16 which is mislabeled with intent to deceive or which is
17 marked "W. Va. inspected and condemned," or
18 abbreviation thereof;

19 (f) To process in an establishment under state
20 inspection for sale through any commercial outlet or
21 distributor any carcass, meat product or poultry product
22 intended for human consumption and derived in whole or
23 in part from any calf, pig, kid, lamb, chicken or turkey
24 which is so immature as to be lacking in nutritional value;

25 (g) To knowingly or intentionally expose any carcass,
26 meat product and poultry product in any establishment
27 under state inspection to insects, live animals or any
28 contamination;

29 (h) To add kangaroo meat, horse meat, mule meat or
30 other equine meat to any animal meat, meat product or
31 poultry product to be sold or offered for sale through
32 commercial outlets or distributors for human con-
33 sumption;

34 (i) To remove any hide, skin or any other part of an
35 unborn or stillborn animal in the confines of a room in an
36 establishment where any animals or poultry, carcasses,
37 meat products or poultry products are slaughtered or
38 processed, as the case may be, or to be sold or offered for
39 sale through a commercial outlet or distributor;

40 (j) To process for human consumption in any
41 establishment subject to state inspection any carcass, meat
42 product and poultry product derived from any animal or
43 poultry which died other than by slaughter;

44 (k) To transport to any commercial outlet or
45 distributor for the purpose of being sold or offered for
46 sale therein, any carcass, meat product or poultry product
47 which is not marked, branded or stamped as having been
48 inspected and passed by the commissioner or by the
49 United States department of agriculture;

50 (l) For any commercial outlet or distributor to receive,
51 for the purpose of being sold or offered for sale therein,
52 any carcass, meat product or poultry product which is not
53 marked, branded or stamped as having been inspected and
54 passed by the commissioner or by the United States
55 department of agriculture;

56 (m) To slaughter any horse, mule or other equine in
57 any establishment under state inspection in which animals
58 or poultry are slaughtered for human consumption for the
59 purpose of being sold or offered for sale through
60 commercial outlets;

61 (n) To bring any kangaroo meat, horse meat, mule
62 meat or other equine meat into any establishment under
63 state inspection where animal or poultry carcasses, meat
64 products or poultry products are processed for human
65 consumption for the purpose of being sold or offered for
66 sale through commercial outlets;

67 (o) To transport, process, sell or offer for sale any
68 kangaroo meat, horse meat, mule meat or other equine
69 meat within this state for human consumption unless it is
70 conspicuously and plainly identified or stamped as such;

71 (p) For any person to use an establishment number not
72 assigned to him or her or to use an establishment number
73 in connection with operations concerning which a
74 different establishment number was assigned by the
75 commissioner;

76 (q) To remove from any article any retained tag
77 affixed by the commissioner, unless such removal is
78 authorized by him or her;

79 (r) To remove from any room, compartment,
80 equipment or utensil any rejection tag or rejection notice
81 affixed by the commissioner, unless such removal is
82 authorized by him or her;

83 (s) For a licensee to use any container bearing an
84 official inspection mark unless it contains the exact
85 carcass, meat product or poultry product which was in the
86 container at the time such contents were inspected and
87 passed: *Provided*, That such a container may be otherwise
88 used if such official inspection mark thereon is removed,
89 obliterated or destroyed, and such other use is authorized
90 by reasonable rules promulgated by the commissioner;

91 (t) For any person, other than the commissioner, to
92 possess, keep or use, except as authorized by the
93 commissioner, any label or device for the affixing of a
94 mark, brand or stamp prescribed for inspection purposes
95 hereunder;

96 (u) For any person, with intent to deceive, to possess,
97 keep or use any label, mark, brand or stamp similar in
98 character or import to an official label, mark, brand or
99 stamp prescribed by the commissioner hereunder or to an
100 official label, mark, brand or stamp used by the United
101 States department of agriculture;

102 (v) To falsely make, falsely issue, falsely publish, alter,
103 forge, simulate or counterfeit any inspection certificate,
104 memorandum, label, mark, brand, or stamp, or device for
105 making an inspection mark, brand or stamp, or to possess,
106 keep or use the same, with intent to deceive;

107 (w) For any person to refuse to permit the
108 commissioner to enter and inspect at any time, upon

109 presentation of appropriate credentials, an establishment
110 under state inspection, or to interfere with any such lawful
111 entry or inspection;

112 (x) For any person to refuse to permit the
113 commissioner, upon presentation of appropriate
114 credentials, to examine and copy the records described in
115 section five of this article;

116 (y) For a person to prevent or fail to decharacterize or
117 denature carcasses, meat products or poultry products as
118 prescribed by reasonable rules promulgated by the
119 commissioner;

120 (z) For a person to transport offal, blood, or inedible
121 and condemned parts of animal and poultry carcasses
122 from slaughterhouses, processing plants or other related
123 industries: *Provided*, That such products may be trans-
124 ported if placed in suitable containers with tight covers, or
125 watertight tanks so as not to contaminate the public
126 highways or private roadways while going to or from the
127 points of pickup;

128 (aa) For a person to store offal, blood, or inedible and
129 condemned parts of animal and poultry carcasses from
130 slaughterhouses, processing plants or other related
131 industries during interim transit movement in refrigerated
132 warehouses, food lockers or other related industries:
133 *Provided*, That such products may be otherwise stored if
134 properly marked "NOT FOR HUMAN FOOD" "FOR
135 ANIMAL FOOD ONLY" and identified as approved
136 products to be used for animal food;

137 (bb) For a person knowingly to deliver a dead or
138 dying animal or poultry to an establishment in this state;

139 (cc) For any person to transport carcasses, meat
140 products and poultry products that are intended for
141 human consumption in a manner which would permit the
142 products to become adulterated;

143 (dd) For any person to forcibly assault, resist, oppose,
144 impede, intimidate or interfere with the commis-
145 sioner or his or her representative while engaged

146 in or on account of the performances of his or her official
147 duties;

148 (ee) For any person to deliver, with intent to deceive,
149 any graded meat product, poultry product or any other
150 agricultural commodity to a state institution that does not
151 meet the grade specifications for that grade when a
152 specified grade is required in a contract. In addition to
153 any other powers conveyed in this article, the
154 commissioner may inspect any meat product, poultry
155 product or any other agricultural commodity sold to a
156 state institution to enforce the provisions of this
157 subdivision.

CHAPTER 4

(S. B. 464—By Senator Tomblin, Mr. President)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article seven, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the sale and service of alcoholic beverages in state parks; and removing language requiring sleeping accommodations for issuance of a license to a private club in a state park.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-5. Investigation by commissioner; issuance or refusal of license; special requirements for clubs at parks and airports; form of license; license valid at one location only; expiration and renewal; transferability.

1 (a) Upon receipt of the application referred to in
2 section four of this article, together with the
3 accompanying fee and bond, the commissioner shall
4 conduct an investigation to determine the accuracy of the
5 matters contained in such application and whether
6 applicant is a bona fide private club of good reputation in
7 the community in which it shall operate. For the purpose
8 of conducting such investigation, the commissioner may
9 withhold the granting or refusal to grant such license for a
10 period not to exceed thirty days. If it shall appear that
11 such applicant is a bona fide private club, of good
12 reputation in the community in which it shall operate and
13 that there is no false statement contained in such
14 application, the commissioner shall issue a license
15 authorizing the applicant to sell alcoholic liquors as
16 provided in section three of this article, and otherwise shall
17 refuse to issue such license, except that in the case of an
18 application by a corporation or association to operate a
19 private club in connection with:

20 (1) A state park, the director of the department of
21 natural resources must grant his or her approval before the
22 license can be issued; or

23 (2) A county or municipal park, or an airport, the
24 authority governing the park or airport must grant its
25 approval before the license can be issued.

26 A license may not be issued for a private club in any
27 state park unless a dining facility comparable to the dining
28 facility for the proposed private club will be available to
29 serve meals to the general public. A license may not be
30 issued for a private club in any county or municipal park,
31 or an airport, unless a dining facility comparable to the
32 dining facility for the proposed private club will be
33 available to serve meals to the general public.

34 (b) Upon refusal to issue such license the
35 commissioner shall make and enter an order denying such
36 application, which denial and refusal shall be final unless a
37 hearing is requested in accordance with the provisions of
38 section thirteen of this article. When such refusal or denial
39 becomes final the commissioner shall forthwith refund to

40 the applicant his or her fees and bond accompanying the
41 application.

42 (c) Such license shall be of such form and design as
43 the commissioner may prescribe by reasonable rule or
44 regulation, and shall authorize the licensee to sell alcoholic
45 liquors at only one location.

46 (d) Such license shall expire on the thirtieth day of
47 June next following the date of issue and may be renewed
48 upon the same showing as required for the issuance of the
49 initial license, together with the payment of fees and filing
50 of the bond as required by this article.

51 (e) A license issued under the provisions of this article
52 may not be transferable.

CHAPTER 5

(H. B. 2050—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed April 20, 1997; in effect from passage. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

Title

- I. General Provisions.**
- II. Appropriations.**
- III. Administration.**

TITLE I—GENERAL PROVISIONS.

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

TITLE I—GENERAL PROVISIONS.

1 **Sec. 1. General policy.**—The purpose of this bill is to
2 appropriate money necessary for the economical and
3 efficient discharge of the duties and responsibilities of the
4 state and its agencies during the fiscal year one thousand
5 nine hundred ninety-eight.

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

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

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

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

9 The “fiscal year one thousand nine hundred ninety-
10 eight” shall mean the period from the first day of July,
11 one thousand nine hundred ninety-seven, through the
12 thirtieth day of June, one thousand nine hundred ninety-
13 eight.

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

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

23 “From collections” shall mean that part of the total
24 appropriation which must be collected by the spending
25 unit to be available for expenditure. If the authorized
26 amount of collections is not collected, the total
27 appropriation for the spending unit shall be reduced
28 automatically by the amount of the deficiency in the
29 collections. If the amount collected exceeds the amount
30 designated “from collections”, the excess shall be set
31 aside in a special surplus fund and may be expended for

32 the purpose of the spending unit as provided by article
33 two, chapter five-a of the code.

1 **Sec. 3. Classification of appropriations.**—An appro-
2 priation for:

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

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

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

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

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

34 Each spending unit shall be responsible for all
35 contributions, payments or other costs related to coverage
36 and claims of its employees for unemployment

37 compensation. Such expenditures shall be considered an
38 employee benefit.

39 "Current expenses" shall mean operating costs other
40 than personal services and shall not include equipment,
41 repairs and alterations, buildings or lands.

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

47 "Equipment" shall mean equipment items which have
48 an appreciable and calculable period of usefulness in
49 excess of one year.

50 "Repairs and alterations" shall mean routine
51 maintenance and repairs to structures and minor
52 improvements to property which do not increase the
53 capital assets.

54 "Buildings" shall include new construction and major
55 alteration of existing structures and the improvement of
56 lands and shall include shelter, support, storage, protection
57 or the improvement of a natural condition.

58 "Lands" shall mean the purchase of real property or
59 interest in real property.

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

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

68 Appropriations classified in any of the above
69 categories shall be expended only for the purposes as
70 defined above and only for the spending units herein
71 designated: *Provided*, That the secretary of each
72 department shall have the authority to transfer within the
73 department those general revenue funds appropriated to

74 the various agencies of the department: *Provided,*
75 *however,* That no more than five percent of the general
76 revenue funds appropriated to any one agency or board
77 may be transferred to other agencies or boards within the
78 department: *Provided further,* That the secretary of each
79 department and the director, commissioner, executive
80 secretary, superintendent, chairman or any other agency
81 head not governed by a departmental secretary as
82 established by chapter five-f of the code shall have the
83 authority to transfer funds appropriated to "personal
84 services" and "employee benefits" to other lines within
85 the same account and no funds from other lines shall be
86 transferred to the "personal services" line: *And provided*
87 *further,* That if the Legislature by subsequent enactment
88 consolidates agencies, boards or functions, the secretary
89 may transfer the funds formerly appropriated to such
90 agency, board or function in order to implement such
91 consolidation. No funds may be transferred from a
92 special revenue account, dedicated account, capital
93 expenditure account or any other account or fund
94 specifically exempted by the Legislature from transfer,
95 except that the use of the appropriations from the state
96 road fund transferred to the office of the secretary of the
97 department of transportation is not a use other than the
98 purpose for which such funds were dedicated and is
99 permitted.

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

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

7 Funds of the state of West Virginia not heretofore
8 classified as to purpose and existing within the funds of

9 the treasury shall be determined by the governor and
 10 transferred to a special account for the purpose of
 11 expenditure as part of the general fund of the state.

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

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§16. Appropriations for local governments.

§17. Total appropriations.

§18. General school fund.

TITLE II—APPROPRIATIONS.

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- SECTION 2. Appropriations from state road fund.
- SECTION 3. Appropriations from other funds.
- SECTION 4. Appropriations from lottery net profits.
- SECTION 5. Appropriations of federal funds.
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- SECTION 11. Special revenue appropriations.
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- SECTION 15. Sinking fund deficiencies.
- SECTION 16. Appropriations for local governments.
- SECTION 17. Total appropriations.
- SECTION 18. General school fund.

1 **Section 1. Appropriations from general reve-**
 2 **nue.**—From the state fund, general revenue, there are
 3 hereby appropriated conditionally upon the fulfillment of
 4 the provisions set forth in article two, chapter five-a of the
 5 code the following amounts, as itemized, for expenditure
 6 during the fiscal year one thousand nine hundred ninety-
 7 eight.

LEGISLATIVE

1—Senate

Account No.

Fund 0165 FY 1998 Org 2100

		Activity		General Revenue Fund
1	Compensation of Members (R)	003	\$	816,200
2	Compensation and Per Diem of			
3	Officers and Employees (R) . . .	005		1,816,000
4	Employee Benefits (R)	010		360,000
5	Current Expenses and Contingent			
6	Fund (R)	021		560,000
7	Repairs and Alterations (R)	064		40,000
8	Computer Supplies (R)	101		15,000
9	Computer Systems (R)	102		80,000
10	Printing Blue Book (R)	103		150,000
11	Expenses of Members (R)	399		<u>445,000</u>
12	Total		\$	4,282,200

13 The appropriations for the senate for the fiscal year
 14 1996-97 are to remain in full force and effect and are
 15 hereby reappropriated to June 30, 1998. Any balances so
 16 reappropriated may be transferred and credited to the
 17 1997-98 accounts.

18 Upon the written request of the clerk of the senate, the

19 auditor shall transfer amounts between items of the total
20 appropriation in order to protect or increase the efficiency
21 of the service.

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

33 The clerk of the senate, with the written approval of the
34 president, or the president of the senate shall have
35 authority to employ such staff personnel during any
36 session of the Legislature as shall be needed in addition to
37 staff personnel authorized by the senate resolution
38 adopted during any such session. The clerk of the senate,
39 with the written approval of the president, or the president
40 of the senate shall have authority to employ such staff
41 personnel between sessions of the Legislature as shall be
42 needed, the compensation of all staff personnel during
43 and between sessions of the Legislature, notwithstanding
44 any such senate resolution, to be fixed by the president of
45 the senate. The clerk is hereby authorized to draw his or
46 her requisitions upon the auditor for the payment of all
47 such staff personnel for such services, payable out of the
48 appropriation for Compensation and Per Diem of Officers
49 and Employees or Current Expenses and Contingent Fund
50 of the senate.

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

58 The distribution of the blue book shall be by the office

59 of the clerk of the senate and shall include seventy-five
 60 copies for each member of the Legislature and two copies
 61 for each classified and approved high school and junior
 62 high school and one copy for each elementary school
 63 within the state.

2—House of Delegates

Account No.

Fund 0170 FY 1998 Org 2200

1	Compensation of Members (R)	003	\$ 2,200,000
2	Compensation and Per Diem of		
3	Officers and Employees (R) . . .	005	521,162
4	Current Expenses and Contingent		
5	Fund (R)	021	3,000,000
6	Expenses of Members (R)	399	<u>1,120,000</u>
7	Total		\$ 6,841,162

8 The appropriations for the house of delegates for the
 9 fiscal year 1996-97 are to remain in full force and effect
 10 and are hereby reappropriated to June 30, 1998. Any
 11 balances so reappropriated may be transferred and
 12 credited to the 1997-98 accounts.

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

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

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

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

3—Joint Expenses

(WV Code Chapter 4)

Account No.

Fund 0175 FY 1998 Org 2300

1	Joint Committee on Government		
2	and Finance (R)	104	\$ 4,590,155
3	Legislative Printing (R)	105	940,000
4	Legislative Rule-Making Review		
5	Committee (R)	106	232,600
6	Legislative Computer System (R) ..	107	950,000

7	Joint Standing Committee on		
8	Education (R)	108	55,916
9	Joint Commission on Vocational-		
10	Technical-Occupational		
11	Education (R)	109	50,000
12	Southern Legislative		
13	Conference (R)	377	20,000
14	Work Force Development		
15	Council (R)	529	-0-
16	Tax Reduction and Federal Funding		
17	Increased Compliance		
18	(TRAFFIC)	642	<u>5,000,000</u>
19	Total		\$ 11,838,671

20 The appropriations for the joint expenses for the fiscal
21 year 1996-97 are to remain in full force and effect and
22 are hereby reappropriated to June 30, 1998. Any
23 balances so reappropriated may be transferred and
24 credited to the 1997-98 accounts.

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

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

JUDICIAL

*4—Supreme Court—
General Judicial*

Account No.

Fund <u>0180</u> FY <u>1998</u> Org <u>2400</u>			
1	Personal Services (R)	001	\$ 27,832,636
2	Annual Increment (R)	004	400,650
3	Social Security Matching (R)	011	2,159,846
4	Public Employees' Insurance		
5	Matching (R)	012	2,889,310
6	Public Employees' Retirement		
7	Matching (R)	016	2,680,163
8	Other Expenses (R)	029	3,766,825
9	Judges' Retirement System (R)	110	5,209,830
10	Other Court Costs (R)	111	2,533,200
11	Judicial Training Program (R)	112	250,000
12	Mental Hygiene Fund (R)	113	975,000
13	Family Law Master Program (R)	190	1,229,380
14	Guardianship Attorney Fees (R)	588	<u>150,000</u>
15	Total		\$ 50,076,840

16 The appropriations to the supreme court of appeals
 17 for the fiscal years 1994-95, 1995-96 and 1996-97 are to
 18 remain in full force and effect and are hereby
 19 reappropriated to June 30, 1998. Any balances so
 20 reappropriated may be transferred and credited to the
 21 1997-98 accounts.

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

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

EXECUTIVE

5—*Governor's Office*

(WV Code Chapter 5)

Account No.

Fund 0101 FY 1998 Org 0100

1	Personal Services	001	\$ 1,669,111
2	Salary of Governor	002	90,000
3	Annual Increment	004	17,250
4	Employee Benefits	010	401,611
5	Unclassified	099	633,110
6	National Governors' Association ..	123	64,900
7	Southern States Energy Board	124	38,732
8	Office of Technology	736	<u>500,000</u>
9	Total		\$ 3,414,714

6—*Governor's Office—
Custodial Fund*

(WV Code Chapter 5)

Account No.

Fund 0102 FY 1998 Org 0100

1	Unclassified—Total	096	\$ 410,258
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2 Any unexpended balance remaining in the appro-

3 priation for Unclassified-Surplus-Total (fund 0102,

4 activity 098) at the close of the fiscal year 1996-97 is

5 hereby reappropriated for expenditure during the fiscal

6 year 1997-98.

7 To be used for current general expenses, including

8 compensation of employees, household maintenance, cost

9 of official functions and additional household expenses

10 occasioned by such official functions.

*7—Governor's Office—
Governor's Cabinet on Children and Families*

(WV Code Chapter 5)

Account No.

Fund 0104 FY 1998 Org 0100

1 Governor's Cabinet on Children
2 and Families—Total (R) 116 \$ 300,000

3 Any unexpended balance remaining in the appro-
4 priation (fund 0104, activity 116) at the close of the fiscal
5 year 1996-97 is hereby reappropriated for expenditure
6 during the fiscal year 1997-98.

*8—Governor's Office—
Civil Contingent Fund*

(WV Code Chapter 5)

Account No.

Fund 0105 FY 1998 Org 0100

1 Civil Contingent Fund—Total (R) . . 114 \$ 150,000

2 Any unexpended balances remaining in the
3 appropriations for Civil Contingent Fund-Total (fund
4 0105, activity 114) and Civil Contingent Fund-Surplus
5 (fund 0105, activity 263) at the close of the fiscal year
6 1996-97 are hereby reappropriated for expenditure
7 during the fiscal year 1997-98.

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

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

9—Governor’s Office

(WV Code Chapter 5)

Account No.

Fund 0558 FY 1998 Org 0100

1 Restore Positions—Total 569 \$ -0-

2 Any or all of the appropriation for Restore
3 Positions—Total may be transferred to any other fund
4 within the general revenue fund in order to restore
5 funding to re-establish deleted positions.

6 Any agency receiving funds must file a report within
7 thirty days of receipt of transfer with the joint committee
8 on government and finance detailing the restored
9 positions by title and salary with a justification for each.

10—Auditor’s Office—

General Administration

(WV Code Chapter 12)

Account No.

Fund 0116 FY 1998 Org 1200

1	Personal Services	001	\$ 1,703,463
2	Salary of Auditor	002	70,000
3	Annual Increment	004	50,523
4	Employee Benefits	010	573,318
5	Unclassified (R)	099	605,733
6	Office Automation (R)	117	790,000
7	Encoding System and Printer		
8	Replacement	594	<u>-0-</u>
9	Total		\$ 3,793,037

10 Any unexpended balances remaining in the appro-
11 priations for Unclassified (fund 0116, activity 099), Office
12 Automation (fund 0116, activity 117) and Image

13 Processing and Printer Replacement (fund 0116, activity
 14 240) at the close of the fiscal year 1996-97 are hereby
 15 reappropriated for expenditure during the fiscal year
 16 1997-98.

*11—Auditor's Office—
 Family Law Masters
 Administration Fund*

(WV Code Chapter 48A)

Account No.

Fund 0117 FY 1998 Org 1200

1	Unclassified—Total	096	\$	450,000
2	The above appropriation shall be expended for the			
3	administrative expenses of the family law masters			
4	program, excluding personal services and employee			
5	benefits.			

12—Treasurer's Office

(WV Code Chapter 12)

Account No.

Fund 0126 FY 1998 Org 1300

1	Personal Services	001	\$	1,539,316
2	Salary of Treasurer	002		65,000
3	Annual Increment	004		34,856
4	Employee Benefits	010		499,318
5	Unclassified	099		1,246,101
6	Abandoned Property Program	118		437,167
7	Hardware/Software Upgrade	518		54,000
8	Tuition Trust Fund	692		150,000
9	School Building Sinking Fund			
10	Debt Service	310		9,839,000

11	Debt Payment on Morris Street—		
12	Workers Compensation		
13	Building	290	2,000,000
14	Debt Payment—Regional Jails and		
15	Correctional Facilities	736	<u>10,000,000</u>
16	Total		\$25,864,758
17	Any unexpended balances remaining in the appro-		
18	priation for Unclassified (fund 0126, activity 099) and		
19	Imaging System (fund 0126, activity 006) at the close of		
20	the fiscal year 1996-97 are hereby reappropriated for		
21	expenditure during the fiscal year 1997-98.		

13—Department of Agriculture

(WV Code Chapter 19)

Account No.

Fund 0131 FY 1998 Org 1400

1	Personal Services	001	\$ 3,082,859
2	Salary of Commissioner	002	70,000
3	Annual Increment	004	69,950
4	Employee Benefits	010	1,089,141
5	Unclassified (R)	099	1,027,526
6	Gypsy Moth Program (R).	119	784,383
7	Mingo County Surface Mine		
8	Project (R)	296	150,000
9	Predator Control	470	90,000
10	Charleston Farmers Market	476	150,000
11	Moorefield Field Office		
12	Furnishings	637	<u>-0-</u>
13	Total		\$ 6,513,859

14 Any unexpended balances remaining in the appro-
 15 priations for Unclassified (fund 0131, activity 099);
 16 Gypsy Moth Program (fund 0131, activity 119); Mingo

17 County Surface Mine Development Project-Total -
 18 Surplus (fund 0131, activity 657) and Mingo County
 19 Surface Mine Project (fund 0131, activity 296) at the close
 20 of the fiscal year 1996-97 are hereby reappropriated for
 21 expenditure during the fiscal year 1997-98.

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

*14—Department of Agriculture—
 State Soil Conservation Committee*

(WV Code Chapter 19)

Account No.

Fund 0132 FY 1998 Org 1400

1	Personal Services	001	\$	404,236
2	Annual Increment	004		10,550
3	Employee Benefits	010		129,454
4	Unclassified (R)	099		280,855
5	Soil Conservation Projects (R)	120		2,500,000
6	Maintenance of Flood Control			
7	Projects (R)	522		<u>1,686,548</u>
8	Total		\$	5,011,643

9 Any unexpended balances remaining in the appro-
 10 priations for Unclassified (fund 0132, activity 099),
 11 Infrastructure Projects—Total (fund 0538, activity 516),
 12 Maintenance of Flood Control Projects (fund 0132,
 13 activity 522), Soil Conservation Projects (fund 0132,
 14 activity 120), and Soil Conservation Projects - Surplus
 15 (fund 0132, activity 269) at the close of the fiscal year
 16 1996-97 are hereby reappropriated for expenditure
 17 during the fiscal year 1997-98.

*15—Department of Agriculture—
Meat Inspection*

(WV Code Chapter 19)

Account No.

Fund 0135 FY 1998 Org 1400

1	Personal Services	001	\$ 338,629
2	Annual Increment	004	8,696
3	Employee Benefits	010	118,500
4	Unclassified	099	76,317
5	Total		\$ 542,142

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

*16—Department of Agriculture—
Agricultural Awards*

(WV Code Chapter 19)

Account No.

Fund 0136 FY 1998 Org 1400

1	Agricultural Awards	121	\$ 66,066
2	Fairs and Festivals	122	381,598
3	Total		\$ 447,664

17—Attorney General

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

Account No.

Fund 0150 FY 1998 Org 1500

1	Personal Services (R)	001	\$ 1,995,790
2	Salary of Attorney General	002	75,000
3	Annual Increment (R)	004	34,900

4	Employee Benefits (R)	010	561,533
5	Unclassified (R)	099	608,598
6	Better Government Bureau	740	<u>230,000</u>
7	Total		\$ 3,505,821

8 Any unexpended balance remaining in the appro-
 9 priation at the close of the fiscal year 1996-97 is hereby
 10 reappropriated for expenditure during the fiscal year
 11 1997-98.

12 When legal counsel or secretarial help is appointed by
 13 the attorney general for any state spending unit, this
 14 account shall be reimbursed from such spending unit's
 15 specifically appropriated account or from accounts
 16 appropriated by general language contained within this
 17 bill: *Provided*, That the spending unit shall reimburse at a
 18 rate and upon terms agreed to by the state spending unit
 19 and the attorney general: *Provided, however*, That if the
 20 spending unit and the attorney general are unable to agree
 21 on the amount and terms of the reimbursement, the
 22 spending unit and the attorney general shall submit their
 23 proposed reimbursement rates and terms to the joint
 24 committee on government and finance for final
 25 determination.

18—Secretary of State

(WV Code Chapters 3, 5 and 59)

Account No.

Fund 0155 FY 1998 Org 1600

1	Personal Services	001	\$ 547,001
2	Salary of Secretary of State	002	65,000
3	Annual Increment	004	11,670
4	Employee Benefits	010	199,679
5	Unclassified (R)	099	298,109
6	Technology Improvements	599	<u>137,200</u>
7	Total		\$ 1,258,659

8 Any unexpended balances remaining in the appro-
 9 priations for Unclassified (fund 0155, activity 099)
 10 Administrative Law Improvements (fund 0155, activity
 11 617) and Imaging and Computerization Upgrade -
 12 Surplus (fund 0155, activity 244) at the close of the fiscal
 13 year 1996-97 are hereby reappropriated for expenditure
 14 during the fiscal year 1997-98.

19—State Election Commission

(WV Code Chapter 3)

Account No.

Fund 0160 FY 1998 Org 1601

1	Unclassified	099	\$	12,000
2	Electronic Filing and Information			
3	for Elections	616		<u>15,000</u>
4	Total		\$	27,000

DEPARTMENT OF ADMINISTRATION

*20—Department of Administration—
Office of the Secretary*

(WV Code Chapter 5F)

Account No.

Fund 0186 FY 1998 Org 0201

1	Unclassified—Total	096	\$	238,261
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21—Consolidated Public Retirement Board

(WV Code Chapter 5)

Account No.

Fund 0195 FY 1998 Org 0205

1 The division of highways, division of motor vehicles,
 2 bureau of employment programs, public service com-
 3 mission and other departments or divisions operating from
 4 special revenue funds and/or federal funds shall pay their
 5 proportionate share of the retirement costs for their

6 respective divisions. When specific appropriations are not
 7 made, such payments may be made from the balances in
 8 the various special revenue funds in excess of specific
 9 appropriations.

22—*Division of Finance*

(WV Code Chapter 5A)

Account No.

Fund 0203 FY 1998 Org 0209

1	Personal Services	001	\$	512,554
2	Annual Increment	004		11,090
3	Employee Benefits	010		142,770
4	Unclassified	099		549,176
5	GAAP Project (R)	125		<u>1,251,095</u>
6	Total		\$	2,466,685

7 Any unexpended balance remaining in the appro-
 8 priation for GAAP Project (fund 0203, activity 125) at the
 9 close of the fiscal year 1996-97 is hereby reappropriated
 10 for expenditure during the fiscal year 1997-98.

23—*Division of General Services*

(WV Code Chapter 5A)

Account No.

Fund 0230 FY 1998 Org 0211

1	Personal Services	001	\$	452,028
2	Annual Increment	004		20,300
3	Employee Benefits	010		196,238
4	Unclassified	099		706,441
5	Fire Service Fee	126		13,440
6	Chilled Water Plant - Phase III	291		500,000
7	Capitol Complex Capital			
8	Outlay (R)	417		<u>-0-</u>
9	Total		\$	1,888,447

10 Any unexpended balances remaining in the appro-
 11 priations for Capitol Building Preservation (fund 0230,
 12 activity 503), Capitol Building Preservation - Surplus
 13 (fund 0230, activity 675), Capital Improvements-Capitol
 14 Complex - Surplus (fund 0230, activity 676), Capitol
 15 Complex - Capital Outlay (fund 0230, activity 417),
 16 Capitol Complex - Capital Outlay - Surplus (fund 0230,
 17 activity 526) and Capitol Complex Master Plan-Total -
 18 Surplus (fund 0230, activity 606) at the close of the fiscal
 19 year 1996-97 are hereby reappropriated for expenditure
 20 during the fiscal year 1997-98.

24—*Division of Purchasing*

(WV Code Chapter 5A)

Account No.

Fund 0210 FY 1998 Org 0213

1	Personal Services	001	\$	555,184
2	Annual Increment	004		14,329
3	Employee Benefits	010		162,158
4	Unclassified	099		51,557
5	Purchasing Card Program	711		<u>120,000</u>
6	Total		\$	903,228

7 The division of highways shall reimburse the
 8 Unclassified appropriation (fund 2031, activity 099)
 9 within the division of purchasing for all actual expenses
 10 incurred pursuant to the provisions of section thirteen,
 11 article two-a, chapter seventeen of the code.

25—*Commission on Uniform State Laws*

(WV Code Chapter 29)

Account No.

Fund 0214 FY 1998 Org 0217

1	Unclassified—Total	096	\$	22,000
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2 To pay expenses of members of the commission on
3 uniform state laws.

26—Board of Risk and Insurance Management

(WV Code Chapter 29)

Account No.

Fund 0217 FY 1998 Org 0218

1	Unclassified	099	\$ 10,454,116
2	Retro Payments	523	<u>4,850,000</u>
3	Total		\$ 15,304,116

4 The above appropriation includes funding for the
5 purpose of paying premiums, self-insurance losses, loss
6 adjustment expenses and loss prevention engineering fees
7 for property, casualty and fidelity insurance for the
8 various state agencies, except those operating from special
9 revenue funds, with such special revenue fund agencies to
10 be billed by the board of risk and insurance management
11 and with such costs to be a proper charge against such
12 spending units.

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

27—Education and State Employees' Grievance Board

(WV Code Chapter 18)

Account No.

Fund 0220 FY 1998 Org 0219

1	Personal Services	001	\$ 647,970
2	Annual Increment	004	7,683
3	Employee Benefits	010	180,505
4	Unclassified	099	<u>169,678</u>
5	Total		\$ 1,005,836

28—Ethics Commission

(WV Code Chapter 6B)

Account No.

Fund 0223 FY 1998 Org 0220

1	Personal Services	001	\$	187,238
2	Annual Increment	004		1,450
3	Employee Benefits	010		51,139
4	Unclassified	099		<u>122,284</u>
5	Total		\$	362,111

29—Public Defender Services

(WV Code Chapter 29)

Account No.

Fund 0226 FY 1998 Org 0221

1	Personal Services	001	\$	246,747
2	Annual Increment	004		4,050
3	Employee Benefits	010		78,552
4	Unclassified (R)	099		95,540
5	Appointed Counsel Fees and Public			
6	Defender Corporations (R)	127		<u>18,210,905</u>
7	Total		\$	18,635,794

8 Any unexpended balances remaining in the appro-
 9 priations for Unclassified (fund 0226, activity 099) and
 10 Appointed Counsel Fees and Public Defender
 11 Corporations (fund 0226, activity 127) at the close of the
 12 fiscal year 1996-97 are hereby reappropriated for
 13 expenditure during the fiscal year 1997-98.

*30—Committee for the Purchase of
Commodities and Services from the Handicapped*

(WV Code Chapter 5A)

Account No.

Fund 0233 FY 1998 Org 0224

1 Unclassified—Total 096 \$ 4,656

31—Public Employees Insurance Agency

(WV Code Chapter 5)

Account No.

Fund 0200 FY 1998 Org 0225

1 The division of highways, division of motor vehicles,
2 bureau of employment programs, public service
3 commission and other departments or divisions operating
4 from special revenue funds and/or federal funds shall pay
5 their proportionate share of the public employees health
6 insurance cost for their respective divisions. When specific
7 appropriations are not made, such payments may be made
8 from the balances in the various special revenue funds in
9 excess of specific appropriations.

32—West Virginia Prosecuting Attorneys' Institute

Account No.

Fund 0557 FY 1998 Org 0228

1 Forensic Medical Examinations—
2 Total 681 \$ 250,000

DEPARTMENT OF EDUCATION

*33—State Department of Education—
School Lunch Program*

(WV Code Chapters 18 and 18A)

Account No.

Fund 0303 FY 1998 Org 0402

1 Personal Services 001 \$ 159,500
2 Annual Increment 004 3,127
3 Employee Benefits 010 50,222

4	Unclassified	099	<u>1,781,908</u>
5	Total		\$ 1,994,757

34—State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

Account No.

Fund 0306 FY 1998 Org 0402

1	Personal Services	001	\$ 134,096
2	Annual Increment	004	4,150
3	Employee Benefits	010	55,270
4	Unclassified	099	<u>161,460</u>
5	Total		\$ 354,976

6 Any unexpended balance remaining in the surplus
 7 appropriation for Cedar Lakes-Total - Surplus (fund
 8 0306, activity 638) at the close of the fiscal year 1996-97
 9 is hereby reappropriated for expenditure during the fiscal
 10 year 1997-98.

35—State Department of Education

(WV Code Chapters 18 and 18A)

Account No.

Fund 0313 FY 1998 Org 0402

1	Personal Services	001	\$ 2,285,816
2	Annual Increment	004	41,659
3	Employee Benefits	010	739,140
4	Unclassified	099	3,328,000
5	WV Education Information		
6	System (WVEIS)	138	2,915,000
7	34/1000 Waiver	139	500,000
8	Increased Enrollment	140	2,000,000

9	Coordinator—Educational		
10	Medical Services	141	-0-
11	National Science Foundation		
12	Match	142	139,500
13	Safe Schools	143	2,000,000
14	Implementation of Norm Refer-		
15	enced Testing Program	297	1,455,762
16	Technology Repair and		
17	Modernization	298	650,000
18	Curriculum Technology		
19	Resource Center	300	250,400
20	County Boards of Education—Tax		
21	Assessment Error	430	-0-
22	Upshur County Board of		
23	Education—Tax		
24	Assessment Error	694	211,000
25	Webster County Board of		
26	Education—Tax		
27	Assessment Error	741	100,000
28	Clay County Board of Education—		
29	Tax Assessment Error	742	17,000
30	Lincoln County Board of Education		
31	—Tax Assessment Error	743	27,000
32	Governor’s Honors Academy	478	190,000
33	WVGC Writing Project	482	25,000
34	Micro Computer Network	506	150,000
35	Technology and Telecom-		
36	munications Initiative (R)	596	-0-
37	Professional Certification	615	25,000
38	Adult Advisory Council	621	265,550
39	Pickens School Support and Hacker		
40	Valley School	622	-0-

APPROPRIATIONS

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41	Pickens School Support	758	150,000
42	Foreign Student Education	636	100,000
43	Technology Demonstration Project	639	150,000
44	State Teacher of the Year	640	33,266
45	Principals Mentorship	649	60,000
46	Educational Enhancements	695	1,776,700
47	Allowance for Work		
48	Based Learning	744	50,000
49	Computer Basic Skills	145	<u>6,300,000</u>
50	Total		\$25,935,793

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

53 Any unexpended balances remaining in the appro-
54 priations for Computer Basic Skills (fund 0313, activity
55 145), Computer Basic Skills-Surplus (fund 0313, activity
56 674), Technology and Telecommunications Initiative
57 (fund 0313, activity 596) and Foreign Student Education
58 (fund 0313, activity 636) at the close of the fiscal year
59 1996-97 are hereby reappropriated for expenditure
60 during the fiscal year 1997-98.

*36—State Department of Education—
Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Account No.

Fund 0314 FY 1998 Org 0402

1	Special Education—Counties	159	\$ 7,336,561
2	Special Education—Institutions	160	2,760,150
3	Education of Juveniles Held in		
4	Predispositional Juvenile		
5	Detention Centers	302	150,000

6	Education of Institutionalized		
7	Juveniles and Adults	472	<u>4,325,258</u>
8	Total		\$14,571,969

*37—State Department of Education—
State Aid to Schools*

(WV Code Chapters 18 and 18A)

Account No.

Fund 0317 FY 1998 Org 0402

1	Other Current Expenses	022	\$ 102,918,696
2	Professional Educators	151	682,769,541
3	Service Personnel	152	209,629,055
4	Fixed Charges	153	78,977,275
5	Transportation	154	31,555,264
6	Administration	155	7,586,213
7	Improve Instructional Programs . .	156	<u>32,520,994</u>
8	Basic Foundation Allowances		1,145,957,038
9	Less Local Share	332	<u>(243,695,199)</u>
10	Total Basic State Aid		902,261,839
11	Public Employees		
12	Insurance Match	012	125,604,529
13	Teachers' Retirement System	019	218,573,984
14	School Building Authority	453	<u>17,664,420</u>
15	Total		\$1,264,104,772

*38—State Board of Education—
Vocational Division*

(WV Code Chapters 18 and 18A)

Account No.

Fund 0390 FY 1998 Org 0402

1	Personal Services	001	\$ 701,500
2	Annual Increment	004	14,951
3	Employee Benefits	010	239,313
4	Unclassified	099	548,021
5	Wood Products—Forestry		
6	Vocational Program (R)	146	63,024
7	Albert Yanni Vocational Program ..	147	139,300
8	Vocational Aid	148	11,749,324
9	Adult Basic Education	149	2,425,358
10	Equipment Replacement	150	1,019,750
11	Program Modernization (R)	305	600,000
12	Aquaculture Support	307	<u>100,000</u>
13	Total		\$17,600,541

14 Any unexpended balances remaining in the appro-
 15 priations for Wood Products—Forestry Vocational
 16 Program (fund 0390, activity 146), Program
 17 Modernization (fund 0390, activity 305) and Program
 18 Modernization—Total-Surplus (fund 0390, activity 598)
 19 at the close of the fiscal year 1996-97 are hereby
 20 reappropriated for expenditure during the fiscal year
 21 1997-98.

39—West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

Account No.

Fund 0320 FY 1998 Org 0403

1	Personal Services	001	\$ 5,552,966
2	Annual Increment	004	4,050
3	Employee Benefits	010	2,043,132
4	Unclassified	099	1,390,216

5	Fire and Smoke Alarm System	641	<u>-0-</u>
6	Total		\$ 8,990,364

DEPARTMENT OF EDUCATION AND THE ARTS

*40—Department of Education and the Arts—
Office of the Secretary*

(WV Code Chapter 5F)

Account No.

Fund 0294 FY 1998 Org 0431

1	Unclassified (R)	099	\$ 1,397,151
2	Center for Professional		
3	Development (R)	115	-0-
4	Center for Professional		
5	Development	115	600,000
6	WV Humanities Council	168	250,000
7	Center for Professional Development-		
8	Principals Academy	415	500,000
9	Technical Preparation		
10	Program (R)	440	932,397
11	Arts Programs	500	40,000
12	Community Schools/Mini		
13	Grants (R)	530	800,000
14	Marshall and West Virginia University		
15	Faculty and Course		
16	Development International		
17	Study Project	549	-0-
18	Hospitality Training	600	550,000
19	Hospitality Training—		
20	Southern WV		
21	Community College	698	<u>175,000</u>
22	Total		\$ 5,244,548

23 Any unexpended balances remaining in the appro-
 24 priations for Unclassified (fund 0294, activity 099), Center
 25 for Professional Development (fund 0294, activity 115),
 26 Technical Preparation Program (fund 0294, activity 440)
 27 Community Schools/Mini Grants (fund 0294, activity
 28 530), Community Schools/Mini Grants - Surplus (fund
 29 0294, activity 531) and Rural Health Initiative Site
 30 Support (fund 0294, activity 295) at the close of the fiscal
 31 year 1996-97 are hereby reappropriated for expenditure
 32 during the fiscal year 1997-98.

*41—Office of the Secretary
 Higher Education Efficiency Fund
 Control Account*

(WV Code Chapter 18B)

Fund 0556 FY 1998 Org 0431

1	Strategic Planning and Compliance		
2	Institutions—Total	447	\$ 10,194,879

42—Division of Culture and History

(WV Code Chapter 29)

Account No.

Fund 0293 FY 1998 Org 0432

1	Personal Services	001	\$ 1,564,132
2	Annual Increment	004	38,825
3	Employee Benefits	010	528,476
4	Unclassified	099	540,251
5	Fairs and Festivals	122	1,053,000
6	Historical Preservation Grants	311	101,889
7	West Virginia Public Theater	312	100,000
8	Theater Arts of West Virginia	464	330,000
9	Capitol Tourism Programs	601	-0-
10	Grants for Competitive Arts		
11	Programs	624	1,000,000

12	Culture and History Programming .	732	<u>308,217</u>
13	Total		\$ 5,564,790

14 Any unexpended balances remaining in the appro-
 15 priations for Capital Outlay, Repairs and Equipment (fund
 16 0293, activity 589) and Capital Outlay, Repairs and
 17 Equipment - Surplus (fund 0293, activity 677) at the close
 18 of the fiscal year 1996-97 are hereby reappropriated for
 19 expenditure during the fiscal year 1997-98.

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

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

43—Library Commission

(WV Code Chapter 10)

Account No.

Fund 0296 FY 1998 Org 0433

1	Personal Services	001	\$ 1,026,382
2	Annual Increment	004	34,150
3	Employee Benefits	010	350,107
4	Unclassified	099	238,358
5	Books and Films	179	150,000
6	Services to State Institutions	180	156,310
7	Services to Blind and		
8	Handicapped	181	42,729

9	Grants to Public Libraries	182	6,838,884
10	Libraries—Special Projects	625	<u>500,000</u>
11	Total		\$ 9,336,920

44—Educational Broadcasting Authority

(WV Code Chapter 10)

Account No.

Fund 0300 FY 1998 Org 0439

1	Personal Services	001	\$ 3,027,630
2	Annual Increment	004	71,250
3	Employee Benefits	010	913,150
4	Unclassified	099	1,230,402
5	Capital Improvements—		
6	600 Capitol Street	313	<u>-0-</u>
7	Total		\$ 5,242,432

8 Any unexpended balances remaining in the appro-
 9 priations for Capital Improvements-Total - Surplus (fund
 10 0300, activity 672) and Capital Improvements - 600
 11 Capitol Street (fund 0300, activity 313) are hereby
 12 reappropriated for expenditure during the fiscal year
 13 1997-98.

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

*45—Board of Trustees of the University System
 of West Virginia and
 Board of Directors of the State College System
 Central Office
 Control Account*

(WV Code Chapters 18B and 18C)

Account No.

Fund 0333 FY 1998 Org 0452

1	Unclassified	099	\$ 1,293,613
2	Higher Education Grant		
3	Program (R)	164	8,912,050
4	Tuition Contract Program (R)	165	703,540
5	Minority Doctoral Fellowship	166	100,000
6	Underwood-Smith		
7	Scholarship Program—		
8	Student Awards	167	150,000
9	WVNET	169	2,326,059
10	Strategic Planning and		
11	Compliance	659	<u> -0-</u>
12	Total		\$ 13,485,262

13 Any unexpended balances remaining in the appro-
 14 priation for Higher Education Grant Program (fund 0333,
 15 activity 164), Tuition Contract Program (fund 0333,
 16 activity 165), Higher Education Technology Initiative -
 17 Surplus (fund 0333, activity 508) and Higher Education
 18 Grant Program (fund 4055, activity 164) at the close of
 19 the fiscal year 1996-97 are hereby reappropriated for
 20 expenditure during the fiscal year 1997-98.

*46—Board of Trustees of the
 University System of West Virginia
 Control Account*

(WV Code Chapter 18B)

Account No.

Fund 0327 FY 1998 Org 0461

1	Unclassified	099	\$167,413,152
2	Marshall University—Southern		
3	WV Community and		
4	Technical College 2+2		
5	Program (R)	170	350,000
6	Marshall University—Autism		
7	Training Center	548	475,000

8	Marshall University—Forensic Lab .	572	450,000
9	WVU College of		
10	Engineering and Mineral		
11	Resources—Diesel Study	699	100,000
12	Marshall and West Virginia University		
13	Faculty and Course		
14	Development International		
15	Study Project	549	35,000
16	Strategic Planning Compliance	659	714,808
17	WVU Law School—Skills Program .	745	<u>100,000</u>
18	Total		\$169,637,960

19 Any unexpended balances remaining in the appro-
 20 priations for Marshall University-Southern WV Com-
 21 munity and Technical College 2+2 Program (fund 0327,
 22 activity 170), Colin Anderson Childrens Center - Surplus
 23 (fund 0327, activity 435), Jackson's Mill (fund 0327,
 24 activity 461), and Marshall University—Forensic Lab
 25 (fund 0327, activity 572) at the close of the fiscal year
 26 1996-97 are hereby reappropriated for expenditure
 27 during the fiscal year 1997-98.

*47—Board of Trustees of the
 University System of West Virginia—
 University of West Virginia
 Health Sciences Account
 Control Account*

(WV Code Chapter 18B)

Account No.

Fund 0323 FY 1998 Org 0478

1	School of Osteopathic Medicine . . .	172	\$ 5,987,759
2	Marshall School of Medicine	173	10,779,519
3	WVU—Health Sciences	174	38,481,761
4	WVU—School of Health Sciences—		
5	Charleston Division	175	3,787,416
6	WVU Charleston Division—		

7	Poison Control		
8	Hot Line	510	350,000
9	Health Sciences Scholarship		
10	Fund (R)	176	148,500
11	Primary Health Education Program		
12	Support (R)	177	4,460,000
13	Medical Education	178	-0-
14	Rural Health Initiative		
15	Site Support (R)	295	2,980,000
16	Vice Chancellor for		
17	Health Sciences	473	254,389
18	WVU—Health Career		
19	Opportunities (R)	474	75,000
20	MA Public Health		
21	Program and Health		
22	Science Technology	623	<u>75,000</u>
23	Total		\$ 67,379,344

24 Any unexpended balances remaining in the appro-
 25 priations for Primary Health Education Program Support
 26 (fund 0323, activity 177), Rural Health Initiative Site
 27 Support (fund 0323, activity 295), Health Sciences
 28 Scholarship Fund (fund 0323, activity 176), and WVU -
 29 Health Career Opportunities (fund 0323, activity 474) at
 30 the close of the fiscal year 1996-97 are hereby
 31 reappropriated for expenditure during the fiscal year
 32 1997-98.

*48—Board of Directors of the
 State College System
 Control Account*

(WV Code Chapter 18B)

Account No.

Fund 0330 FY 1998 Org 0481

1 Unclassified 099 \$ 76,805,396

2	West Virginia University		
3	Institute of Technology		
4	Transfer to Board of Trustees -		
5	West Virginia University Institute		
6	of Technology Resource		
7	Allocation Policy		
8	Adjustment	454	<u>284,526</u>
9	Total		\$ 77,089,922

*49—State Board of Rehabilitation—
Division of Rehabilitation Services*

(WV Code Chapter 18)

Account No.

Fund 0310 FY 1998 Org 0932

1	Personal Services	001	\$ 4,087,653
2	Annual Increment	004	124,961
3	Employee Benefits	010	1,392,449
4	Case Services	162	2,826,365
5	Workshop Development	163	<u>1,449,000</u>
6	Total		\$ 9,880,428

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

*50—Department of Health and Human Resources—
Office of the Secretary*

(WV Code Chapter 5F)

Account No.

Fund 0400 FY 1998 Org 0501

1	Unclassified—Total	096	\$ 116,674
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*51—Division of Health—
Central Office*

(WV Code Chapter 16)

Account No.

		Fund <u>0407</u>	FY <u>1998</u>	Org <u>0506</u>	
1	Personal Services	001	\$	5,770,475	
2	Annual Increment	004		131,907	
3	Employee Benefits	010		2,350,519	
4	Unclassified	099		4,109,035	
5	Corporate Nonprofit				
6	Community Health Centers -				
7	F.M.H.A. Mortgage Finance ...	184		167,968	
8	Appalachian State Low				
9	Level Radioactive				
10	Waste Commission	185		48,000	
11	Safe Drinking Water Program	187		451,710	
12	State Aid to Local Agencies	209		-0-	
13	State Aid to Local				
14	Health Departments	702		7,880,684	
15	Women, Infants and Children	210		45,000	
16	Early Intervention	223		2,018,357	
17	Cancer Registry	225		192,487	
18	Black Lung Clinics	467		200,000	
19	Pediatric Dental Services	550		150,000	
20	Vaccine for Children	551		431,480	
21	Adult Influenza Vaccine	552		65,000	
22	Tuberculosis Control	553		248,534	
23	EMS Area Entity	554		-0-	
24	State EMS Coordinator	738		756,320	
25	Regional EMS Entities	557		630,000	
26	Maternal and Child Health Clinics,				
27	Clinicians and Medical				
28	Contracts and Fees	575		4,673,043	

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29	Epidemiology Support	626	408,914
30	Rural EMS Equipment		
31	and Training	627	560,000
32	EMS Training for Children	739	50,000
33	Primary Care Support	628	7,242,084
34	Computer Equipment	680	-0-
35	Radon and Carbon		
36	Dioxide Testing	746	<u>100,000</u>
37	Total		\$ 38,681,517
38	Any unexpended balance remaining in the appro-		
39	priation for Maternal and Child Health Clinics, Clinicians		
40	and Medical Contracts and Fees (fund 0407, activity 575)		
41	at the close of the fiscal year 1996-97 is hereby		
42	reappropriated for expenditure during the fiscal year		
43	1997-98.		

52—Consolidated Medical Service Fund

(WV Code Chapter 16)

Account No.

Fund 0525 FY 1998 Org 0506

1	Personal Services	001	\$ 564,666
2	Annual Increment	004	10,300
3	Employee Benefits	010	13,674,025
4	Special Olympics	208	26,074
5	Behavioral Health Program -		
6	Unclassified	219	15,449,313
7	Family Support Act	221	1,088,605
8	Institutional Facilities Operations ..	335	<u>28,729,045</u>
9	Total		\$ 59,542,028

10 The secretary of the department of health and human
11 resources, prior to the beginning of the fiscal year, shall

12 file with the legislative auditor and the department of
 13 administration an expenditure schedule for each formerly
 14 separate spending unit which has been consolidated into
 15 the above account and which receives a portion of the
 16 above appropriation for Institutional Facilities Operations.
 17 The secretary shall also, within fifteen days after the close
 18 of the six-month period of said fiscal year, file with the
 19 legislative auditor and the department of administration an
 20 itemized report of expenditures made during the
 21 preceding six-month period.

22 Additional funds have been appropriated in fund
 23 5156, fiscal year 1998, organization 0506, for the
 24 operation of the institutional facilities. The secretary of
 25 the department of health and human resources is
 26 authorized to utilize up to ten percent of the funds from
 27 the Institutional Facilities Operations line item to facilitate
 28 cost effective and cost saving services at the community
 29 level.

30 From the above appropriation to Institutional Facilities
 31 Operations, together with available funds from the division
 32 of health—hospital services revenue account (fund 5156,
 33 activity 335), on July 1, 1997, the sum of one hundred
 34 fifty thousand dollars shall be transferred to the
 35 department of agriculture—land division as advance
 36 payment for the purchase of food products; actual
 37 payments for such purchases shall not be required until
 38 such credits have been completely expended.

*53—Division of Health—
 West Virginia Drinking Water Treatment*

(WV Code Chapter 16)

Account No.

Fund 0561 FY 1998 Org 0506

1 West Virginia Drinking Water Treatment
 2 Revolving Fund—Transfer 689 \$ 700,000

3 The above appropriation for Drinking Water Treat-
 4 ment Revolving Fund—Transfer shall be transferred to the

5 West Virginia Drinking Water Treatment Revolving Fund
6 as provided by chapter sixteen of the code.

54—Commission on Aging

(WV Code Chapter 29)

Account No.

Fund 0420 FY 1998 Org 0508

1	Personal Services	001	\$	-0-
2	Annual Increment	004		-0-
3	Employee Benefits	010		-0-
4	Unclassified	099		-0-
5	Local Programs Service			
6	Delivery Costs	200		-0-
7	Silver Haired Legislature	202		-0-
8	Area Agencies Administration	203		-0-
9	Foster Grandparents Stipends			
10	and Travel	205		-0-
11	In-Home Services for			
12	Senior Citizens	224		<u>-0-</u>
13	Total		\$	-0-

14 Any unexpended balance remaining in the appro-
15 priation for Senior Citizens Centers—Land Acquisition,
16 Construction and Repairs and Alterations (fund 0420,
17 activity 201) at the close of the fiscal year 1996-97 is
18 hereby reappropriated for expenditure during the fiscal
19 year 1997-98 except fiscal year 1991-92 which shall
20 expire on June 30, 1997.

55—Human Rights Commission

(WV Code Chapter 5)

Account No.

Fund 0416 FY 1998 Org 0510

1	Personal Services	001	\$	471,056
2	Annual Increment	004		10,831
3	Employee Benefits	010		169,820
4	Unclassified	099		159,335
5	Automated Management			
6	Information System	528		-0-
7	Human Rights Retreat/Workshop			
8	and Summit	703		<u>21,750</u>
9	Total		\$	832,792

56—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Account No.

Fund 0403 FY 1998 Org 0511

1	Personal Services	001	\$	17,515,367
2	Annual Increment	004		469,711
3	Employee Benefits	010		6,190,886
4	Unclassified	099		15,100,000
5	Child Care Development	144		1,381,976
6	Medical Services Contracts			
7	and Office of			
8	Managed Care	183		1,491,717
9	Medicaid Management Information			
10	Technology	186		1,200,000
11	Medical Services	189		162,045,670
12	Women's Commission	191		80,351
13	Commission on			
14	Hearing Impaired	192		-0-
15	Commission for the Deaf			
16	and Hard of Hearing	704		150,702

17	Social Services	195	31,700,348
18	Family Preservation Program	196	1,565,000
19	OSCAR and RAPIDS	515	3,123,501
20	Child Protective Services		
21	Case Workers	468	6,083,307
22	Child Advocate	602	-0-
23	Child Support Enforcement	705	657,867
24	Child Welfare System	603	2,506,923
25	Child Protective Services and		
26	Medicaid Auditing	604	-0-
27	Medicaid Auditing	706	538,499
28	Grants for Domestic		
29	Violence Shelters	629	280,000
30	Welfare Reform	643	-0-
31	Temporary Assistance		
32	for Needy Families'		
33	Maintenance of Effort	707	29,689,373
34	Child Care—Maintenance of Effort		
35	and Match	708	<u>4,409,643</u>
36	Total		\$286,180,841

37 Notwithstanding the provisions of Title I, section two
38 of this bill, the secretary of the department of health and
39 human resources shall have the authority to transfer funds
40 within the above account: *Provided*, That no more than
41 ten percent of the funds appropriated to one line item may
42 be transferred to other line items: *Provided, however*,
43 That no funds from other line items shall be transferred to
44 the personal services line item.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

57—*Department of Military Affairs and Public Safety—
Office of the Secretary*

(WV Code Chapter 5F)

Account No.

Fund 0430 FY 1998 Org 0601

1 Unclassified—Total 096 \$ 171,702

58—*Adjutant General—
State Militia*

(WV Code Chapter 15)

Account No.

Fund 0433 FY 1998 Org 0603

1	Personal Services	001	\$	324,477
2	Annual Increment	004		9,150
3	Employee Benefits	010		108,360
4	Unclassified	099		3,756,724
5	College Education Fund	232		1,798,400
6	Mountaineer Challenge Academy . .	709		<u>357,600</u>
7	Total		\$	6,354,711

8 Any unexpended balance remaining in the appro-
9 priations for Armory Construction-Capital Outlay-Total -
10 Surplus (fund 0433, activity 669) and Armory Capital
11 Improvements (fund 0433, activity 325) at the close of the
12 fiscal year 1996-97 are hereby reappropriated for
13 expenditure during the fiscal year 1997-98.

14 The College Education Fund line item above shall be
15 the total annual appropriation for awarding scholarships.
16 The secretary of the department of military affairs and
17 public safety shall devise a method to equitably reimburse
18 all eligible participants on a pro rata basis should the
19 appropriation be insufficient to cover total annual eligible
20 expenses.

59—West Virginia Parole Board

(WV Code Chapter 62)

Account No.

Fund 0440 FY 1998 Org 0605

1	Personal Services	001	\$	48,348
2	Annual Increment	004		1,100
3	Employee Benefits	010		72,122
4	Unclassified	099		56,675
5	Salaries of Members of West			
6	Virginia Parole Board	227		<u>200,000</u>
7	Total		\$	378,245

60—Office of Emergency Services

(WV Code Chapter 15)

Account No.

Fund 0443 FY 1998 Org 0606

1	Personal Services	001	\$	170,482
2	Annual Increment	004		5,300
3	Employee Benefits	010		67,482
4	Unclassified	099		31,751
5	Federal Emergency Management			
6	Agency Match	188		<u>237,610</u>
7	Total		\$	512,625

*61—Division of Corrections—
Central Office*

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

Account No.

Fund 0446 FY 1998 Org 0608

1	Personal Services	001	\$	327,878
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2	Annual Increment	004	8,260
3	Employee Benefits	010	107,458
4	Unclassified	099	<u>111,004</u>
5	Total		\$ 554,600

62—Division of Corrections—
Correctional Units

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

Account No.

Fund 0450 FY 1998 Org 0608

1	Personal Services	001	\$ 12,130,887
2	Annual Increment	004	229,088
3	Employee Benefits	010	4,618,727
4	Unclassified	099	6,320,228
5	Payment to Counties and/or		
6	Regional Jails	229	3,916,250
7	Denmar Facility	448	2,402,991
8	Mt. Olive Correctional Complex . . .	533	15,442,911
9	Northern Correctional Facility	534	5,154,519
10	Inmate Medical Expense	535	<u>4,779,100</u>
11	Total		\$ 54,994,701

12 Any unexpended balances remaining in the appro-
 13 priations for Capital Improvements (fund 0450, activity
 14 338) and Capital Improvements - Surplus (fund 0450,
 15 activity 661) at the close of the fiscal year 1996-97 are
 16 hereby reappropriated for expenditure during the fiscal
 17 year 1997-98.

18 The commissioner of corrections, prior to the
 19 beginning of the fiscal year, shall file with the legislative
 20 auditor and the department of administration an
 21 expenditure schedule for each formerly separate spending

22 unit which has been consolidated into the above account
 23 and which receives a portion of the above appropriation.
 24 The Commissioner shall also, within fifteen days after the
 25 close of each six-month period of said fiscal year, file with
 26 the legislative auditor and the department of adminis-
 27 tration an itemized report of expenditures made during
 28 the preceding six-month period. Such report shall include
 29 the total of expenditures made for personal services,
 30 annual increment, current expenses (inmate medical
 31 expenses and other), repairs and alterations and
 32 equipment.

33 From the above appropriation to Unclassified, on July
 34 1, 1997, the sum of two hundred thousand dollars shall be
 35 transferred to the department of agriculture — land
 36 division as advance payment for the purchase of food
 37 products; actual payments for such purchases shall not be
 38 required until such credits have been completely
 39 expended.

63—West Virginia State Police

(WV Code Chapter 15)

Account No.

Fund 0453 FY 1998 Org 0612

1	Personal Services	001	\$ 21,900,498
2	Annual Increment	004	148,550
3	Employee Benefits	010	3,697,692
4	Unclassified	099	5,582,653
5	COPS Program-Federal Match	327	258,924
6	Vehicle Purchase	451	1,000,000
7	Barracks Maintenance and		
8	Construction (R)	494	713,947
9	Communications and Other		
10	Equipment	558	2,415,000
11	Overtime and Wage Court Awards ..	568	2,000,000

12	Trooper Retirement Fund	605	11,070,353
13	Handgun Administration Expense	747	<u>100,000</u>
14	Total		\$ 48,887,617

15 Any unexpended balance remaining in the appro-
 16 priation for Barracks Maintenance and Construction (fund
 17 0453, activity 494) at the close of the fiscal year 1996-97
 18 is hereby reappropriated for expenditure during the fiscal
 19 year 1997-98.

20 Any unexpended balance remaining in the
 21 appropriation for Communications and Other Equipment
 22 (fund 0453, activity 558), at the close of the fiscal year
 23 1996-1997 is hereby reappropriated for expenditure
 24 during the fiscal year 1997-98.

64—Division of Veterans' Affairs

(WV Code Chapter 9A)

Account No.

Fund 0456 FY 1998 Org 0613

1	Personal Services	001	\$ 671,639
2	Annual Increment	004	21,250
3	Employee Benefits	010	296,821
4	Unclassified	099	15,919
5	Veterans' Field Offices	228	129,692
6	Veterans' Toll Free Assistance		
7	Line (R)	328	25,000
8	Veterans' Reeducation Assistance	329	270,000
9	Veterans' Field Office		
10	Improvements (R)	331	44,064
11	Veterans' Grant Program (R)	342	150,000
12	Barboursville Veterans' Home		
13	Improvements (R)	466	<u>-0-</u>
14	Total		\$ 1,624,385

15 Any unexpended balances remaining in the appro-
 16 priations for Veterans' Toll Free Assistance Line (fund
 17 0456, activity 328), Veterans' Reeducation Assistance
 18 (fund 0456, activity 329), Veterans' Field Office
 19 Improvements (fund 0456, activity 331), Barboursville
 20 Veterans' Home Improvements (fund 0456, activity 466)
 21 and Veterans' Grant Program (fund 0456, activity 342) at
 22 the close of the fiscal year 1996-97 are hereby
 23 reappropriated for expenditure during the fiscal year
 24 1997-98.

65—Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)

Account No.

Fund 0536 FY 1998 Org 0615

1 Any unexpended balance remaining in the appro-
 2 priation for Regional Jail-Capital Outlay—Total (fund
 3 0536, activity 577) at the close of the fiscal year 1996-97
 4 is hereby reappropriated for expenditure during the fiscal
 5 year 1997-98.

*66—Division of Veterans' Affairs—
 Veterans' Home*

(WV Code Chapter 9A)

Account No.

Fund 0460 FY 1998 Org 0618

1	Personal Services	001	\$	610,043
2	Annual Increment	004		15,250
3	Employee Benefits	010		294,791
4	Unclassified	099		160,234
5	Barboursville Veterans' Home			
6	Improvements (R)	466		<u>450,000</u>
7	Total		\$	1,530,318

67—Fire Commission
(WV Code Chapter 29)

Account No.

Fund 0436 FY 1998 Org 0619

1	Personal Services	001	\$	533,000
2	Annual Increment	004		11,800
3	Employee Benefits	010		160,799
4	Unclassified	099		<u>140,601</u>
5	Total		\$	846,200

68—Division of Criminal Justice and Highway Safety

(Executive Order)

Account No.

Fund 0546 FY 1998 Org 0620

1	Personal Services	001	\$	111,367
2	Annual Increment	004		2,425
3	Employee Benefits	010		39,170
4	Unclassified	099		107,227
5	Statistical Analysis Program	597		<u>50,000</u>
6	Total		\$	310,189

DEPARTMENT OF TAX AND REVENUE

*69—Department of Tax and Revenue—
Office of the Secretary*

(WV Code Chapter 5F)

Account No.

Fund 0465 FY 1998 Org 0701

1	Unclassified—Total	096	\$	163,017
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70—Tax Division

(WV Code Chapter 11)

Account No.

Fund 0470 FY 1998 Org 0702

1	Personal Services	001	\$	9,467,057
2	Annual Increment	004		229,150
3	Employee Benefits	010		3,091,197
4	Unclassified	099		6,360,538
5	Remittance Processor	570		<u>325,000</u>
6	Total		\$	19,472,942

7 Any unexpended balances remaining in the appro-
 8 priations for Automation Project (fund 0470, activity 442)
 9 and Automation Project-Total- Surplus (fund 0470,
 10 activity 673) at the close of the fiscal year 1996-97 are
 11 hereby reappropriated for expenditure during the fiscal
 12 year 1997-98.

*71—Division of Professional and Occupational Licenses—
State Athletic Commission*

(WV Code Chapter 29)

Account No.

Fund 0523 FY 1998 Org 0933

1	Unclassified—Total	096	\$	4,719
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DEPARTMENT OF TRANSPORTATION

*72—Department of Transportation—
Office of the Secretary*

(WV Code Chapter 5F)

Account No.

Fund 0500 FY 1998 Org 0801

1	Unclassified	099	\$	505,272
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2	Civil Air Patrol	234	106,952
3	Port Authority (R)	443	491,925
4	Potomac Highlands		
5	Airport Authority	444	<u>90,000</u>
6	Total		\$ 1,194,149
7	Any unexpended balances remaining in the appro-		
8	priations for Port Authority (fund 0500, activity 443) and		
9	Aeronautics Commission - Surplus (fund 0500, activity		
10	450) at the close of the fiscal year 1996-97 are hereby		
11	reappropriated for expenditure during the fiscal year		
12	1997-98.		

73—State Rail Authority

(WV Code Chapter 29)

Account No.

Fund 0506 FY 1998 Org 0804

1	Unclassified—Total	096	\$ 704,346
2	Any unexpended balances remaining in the appro-		
3	priations for Capital Improvement and Equipment (fund		
4	0506, activity 632), Capital Outlay-Railroad Maintenance		
5	Authority (fund 0506, activity 309), Hampshire County		
6	Railroad Siding (fund 0506, activity 497) and Duffield		
7	Station (fund 0506, activity 559) at the close of the fiscal		
8	year 1996-97 are hereby reappropriated for expenditure		
9	during the fiscal year 1997-98.		

74—Division of Public Transit

(WV Code Chapter 17)

Account No.

Fund 0510 FY 1998 Org 0805

1	Unclassified—Total	096	\$ 872,680
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BUREAU OF COMMERCE

75—Division of Forestry

(WV Code Chapter 19)

Account No.

Fund 0250 FY 1998 Org 0305

1	Personal Services	001	\$	1,308,956
2	Annual Increment	004		32,550
3	Employee Benefits	010		467,783
4	Unclassified	099		<u>397,123</u>
5	Total		\$	2,206,412

6 Out of the above appropriation a sum may be used to
 7 match federal funds for cooperative studies or other funds
 8 for similar purposes.

76—Geological and Economic Survey

(WV Code Chapter 29)

Account No.

Fund 0253 FY 1998 Org 0306

1	Personal Services	001	\$	1,158,066
2	Annual Increment	004		28,258
3	Employee Benefits	010		352,934
4	Unclassified	099		151,859
5	Mineral Mapping System (R)	207		1,167,500
6	Geographic Information			
7	System (R)	214		312,500
8	Computer Upgrade	349		<u>6,125</u>
9	Total		\$	3,177,242

10 Any unexpended balances remaining in the appro-
 11 priations for Mineral Mapping System - Surplus (fund

12 0253, activity 610), Capital Outlay and Equipment -
 13 Surplus (fund 0253, activity 679), Mineral Mapping
 14 System (fund 0253, activity 207) and Geographic
 15 Information System (fund 0253, activity 214) at the close
 16 of the fiscal year 1996-97 are hereby reappropriated for
 17 expenditure during the fiscal year 1997-98.

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

77—*West Virginia Development Office*

(WV Code Chapter 5B)

Account No.

Fund 0256 FY 1998 Org 0307

1	Personal Services	001	\$	2,040,895
2	Annual Increment	004		32,612
3	Employee Benefits	010		564,350
4	Unclassified	099		2,473,776
5	Partnership Grants (R)	131		4,300,000
6	National Youth Science Camp	132		200,000
7	Local Economic Development			
8	Partnerships (R)	133		1,650,000
9	ARC Assessment	136		167,308
10	Guaranteed Work			
11	Force Grant (R)	242		2,000,000
12	Guaranteed Work			
13	Force Grant/Small			
14	Business Programs (R)	354		-0-
15	Small Business Work Force	735		370,000
16	Small Business Financial			
17	Assistance (R)	360		283,860

18	Robert C. Byrd Institute for		
19	Advanced / Flexible		
20	Manufacturing—Manufacturing		
21	Technology Outreach		
22	and Programs for		
23	Environmental and Advanced		
24	Technologies	367	500,000
25	Industrial Park Assistance (R)	480	1,000,000
26	WV Film Development Office	498	100,351
27	Leverage Technology		
28	and Small Business		
29	Development Program (R)	525	800,000
30	WV Partnership for Industrial		
31	Modernization	592	200,000
32	International Offices	593	<u>526,004</u>
33	Total		\$ 17,209,156

34 Any unexpended balances remaining in the appro-
 35 priations for Partnership Grants (fund 0256, activity 131),
 36 Guaranteed Work Force Grant (fund 0256, activity 242),
 37 Local Economic Development Partnerships (fund 0256,
 38 activity 133), Empowerment Zone/Enterprise Community
 39 (fund 0256, activity 218), Guaranteed Work Force Grant -
 40 Surplus (fund 0256, activity 496), Guaranteed Work Force
 41 Grant/Small Business Programs (fund 0256, activity 354),
 42 Small Business Financial Assistance (fund 0256, activity
 43 360), Industrial Park Assistance (fund 0256, activity 480)
 44 and Leverage Technology and Small Business Develop-
 45 ment Program (fund 0256, activity 525) at the close of the
 46 fiscal year 1996-97 are hereby reappropriated for
 47 expenditure during the fiscal year 1997-98.

48 The above appropriation to Local Economic
 49 Development Partnerships shall be used by the West
 50 Virginia development office for the award of funding
 51 assistance to county and regional economic development
 52 corporations or authorities participating in the certified
 53 development community program developed under the
 54 provisions of section three, article two, chapter five-b of

55 the code. The West Virginia development office shall
 56 award the funding assistance through a matching grant
 57 program, based upon a formula whereby funding
 58 assistance may not exceed thirty thousand dollars per
 59 county served by an economic development corporation
 60 or authority.

78—Division of Labor

(WV Code Chapters 21 and 47)

Account No.

Fund 0260 FY 1998 Org 0308

1	Personal Services	001	\$	1,310,479
2	Annual Increment	004		20,369
3	Imaging System	006		50,000
4	Employee Benefits	010		445,256
5	Unclassified	099		682,821
6	Weights and Measures Program ...	483		<u>363,000</u>
7	Total		\$	2,871,925

79—Division of Natural Resources

(WV Code Chapter 20)

Account No.

Fund 0265 FY 1998 Org 0310

1	Personal Services	001	\$	7,462,197
2	Annual Increment	004		250,844
3	Employee Benefits	010		3,198,704
4	Unclassified	099		107,883
5	Nongame Wildlife	527		550,000
6	West Virginia Stream Partners Fund	637		100,000
7	Upper Mud River Flood Control ...	654		<u>200,000</u>
8	Total		\$	11,869,628

9 Any revenue derived from mineral extraction at any
 10 state park shall be deposited in a special revenue account
 11 of the division of natural resources, first for bond debt

12 payment purposes and with any remainder to be for park
13 operation and improvement purposes.

80—Division of Miners' Health, Safety and Training

(WV Code Chapter 22)

Account No.

Fund 0277 FY 1998 Org 0314

1	Personal Services	001	\$	3,062,607
2	Annual Increment	004		52,700
3	Employee Benefits	010		1,046,267
4	Unclassified	099		316,810
5	West Virginia Diesel Equipment			
6	Commission	712		<u>50,000</u>
7	Total		\$	4,528,384

81—Board of Coal Mine Health and Safety

(WV Code Chapter 22)

Account No.

Fund 0280 FY 1998 Org 0319

1	Personal Services	001	\$	94,600
2	Annual Increment	004		1,250
3	Employee Benefits	010		25,102
4	Unclassified	099		<u>17,430</u>
5	Total		\$	138,382

82—Coal Mine Safety and Technical Review Committee

(WV Code Chapter 22)

Account No.

Fund 0285 FY 1998 Org 0320

1	Unclassified—Total	096	\$	71,303
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BUREAU OF ENVIRONMENT

83—Environmental Quality Board

(WV Code Chapter 20)

Account No.

Fund 0270 FY 1998 Org 0311

1	Personal Services	001	\$	62,324
2	Annual Increment	004		207
3	Employee Benefits	010		19,062
4	Unclassified	099		<u>32,786</u>
5	Total		\$	114,379

84—Interstate Commission on Potomac River Basin

(WV Code Chapter 29)

Account No.

Fund 0263 FY 1998 Org 0313

1	West Virginia's Contribution to the			
2	Interstate Commission			
3	on Potomac River Basin—			
4	Total	134	\$	41,064

85—Ohio River Valley Water Sanitation Commission

(WV Code Chapter 29)

Account No.

Fund 0264 FY 1998 Org 0313

1	West Virginia's Contribution to the			
2	Ohio River Valley Water			
3	Sanitation Commission—			
4	Total	135	\$	117,100

86—Division of Environmental Protection

(WV Code Chapter 22)

Account No.

Fund 0273 FY 1998 Org 0313

1	Personal Services	001	\$	4,065,513
2	Annual Increment	004		78,983

3	Employee Benefits	010	1,266,424
4	Unclassified	099	675,372
5	Black Fly Control	137	240,148
6	Dam Safety	607	<u>123,351</u>
7	Total		\$ 6,449,791

87—Air Quality Board

(WV Code Chapter 16)

Account No.

Fund 0550 FY 1998 Org 0325

1	Unclassified—Total	096	\$ 75,786
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BUREAU OF SENIOR SERVICES

88—Bureau of Senior Services—

(WV Code Chapter 29)

Account No.

Fund 0420 FY 1998 Org 0508

1	Personal Services	001	\$ 114,507
2	Annual Increment	004	2,667
3	Employee Benefits	010	51,696
4	Unclassified	099	437,767
5	Local Programs Service		
6	Delivery Costs	200	2,475,250
7	Silver Haired Legislature	202	14,400
8	Area Agencies Administration	203	87,428
9	Foster Grandparents Stipends		
10	and Travel	205	57,734
11	In-Home Services for		
12	Senior Citizens	224	<u>700,000</u>
13	Total		\$ 3,941,449
14	Any unexpended balance remaining in the appro-		
15	priation for Senior Citizens Centers—Land Acquisition,		
16	Construction and Repairs and Alterations (fund 0420,		

17 activity 201) at the close of the fiscal year 1996-97 is
 18 hereby reappropriated for expenditure during the fiscal
 19 year 1997-98 except fiscal year 1991-92 which shall
 20 expire on June 30, 1997.

MISCELLANEOUS BOARDS AND COMMISSIONS

89—Board of Investments

(WV Code Chapter 12)

Account No.

Fund 0513 FY 1998 Org 0920

1	Personal Services	001	\$	-0-
2	Annual Increment	004		-0-
3	Employee Benefits	010		-0-
4	Unclassified	099		<u>-0-</u>
5	Total		\$	-0-

90—Board of Investments—

School Building Sinking Fund

(WV Code Chapter 12)

Account No.

Fund 0526 FY 1998 Org 0920

1	Debt Service—Total (R)	310	\$	-0-
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2 Any unexpended balance remaining in the above
 3 appropriation for Board of Investments—School Building
 4 Sinking Fund-Debt Service-Total (fund 0526, activity
 5 310) at the close of the fiscal year 1996-97 is hereby
 6 reappropriated for expenditure during the fiscal year
 7 1997-98.

91—Board of Investments

(WV Code Chapter 12)

Account No.

Fund 0559 FY 1998 Org 0920

1	Debt Service — Total	310	\$	<u>-0-</u>
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2 The above appropriation is intended to repay the loan
 3 obligation to the Consolidated Loan Fund in the amount
 4 of \$2,000,000 for the Morris Street Workers' Compens-
 5 ation Building and \$10,000,000 for the construction of
 6 Regional Jails and Correctional Facilities.

7 Upon repayment of any loan obligations made
 8 pursuant to section nineteen, article six, chapter twelve of
 9 the code, the balance of the \$10,000,000 appropriation
 10 shall be transferred to the Regional Jail and Correctional
 11 Facility Authority for expenditure on the projects
 12 specified in the list certified to the State Building
 13 Commission and the Joint Committee on Government and
 14 Finance.

1 Total TITLE II, Section 1—

2 ' Revenue \$ 2,449,862,218

3 **Appropriations from state road fund.**—From
 4 fund there are hereby appropriated
 5 upon the fulfillment of the provisions set
 6 forth in section two, chapter five-a of the code the
 amounts, as itemized, for expenditure during the
 one thousand nine hundred ninety-eight.

DEPARTMENT OF TRANSPORTATION

92—Division of Motor Vehicles

(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)

Account No.

Fund 9007 FY 1998 Org 0802

			State Road Fund
		Activity	
1	Personal Services	001	\$ 4,796,776
2	Annual Increment	004	85,800
3	Employee Benefits	010	1,752,675
4	Unclassified	099	14,760,400
5	Capital Outlay-Building	222	2,840,000
6	International Fuel Tax Agreement	536	<u>620,000</u>
7	Total		<u>\$ 24,855,651</u>

93—Division of Highways

(WV Code Chapters 17 and 17C)

Account No.

Fund 9017 FY 1998 Org 0803

1	Debt Service	040	\$ 29,000,000
2	ARC Assessment	136	794,000
3	Maintenance, Expressway, Trunkline		
4	and Feeder	270	85,000,000
5	Maintenance, State Local Services ..	271	126,000,000
6	Maintenance, Contract Paving and		
7	Secondary Road Maintenance ..	272	50,000,000
8	Bridge Repair and Replacement ...	273	30,000,000
9	Inventory Revolving	275	1,250,000
10	Equipment Revolving	276	15,000,000
11	General Operations	277	35,175,647
12	Interstate Construction	278	20,000,000
13	Other Federal Aid Programs	279	55,000,000
14	Appalachian Programs	280	20,000,000
15	Nonfederal Aid Construction	281	35,000,000
16	Highway Litter Control	282	<u>1,775,000</u>
17	Total	\$	503,994,647

18 The above appropriations are to be expended in
 19 accordance with the provisions of chapters seventeen and
 20 seventeen-c of the code.

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

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

32 It is the intent of the Legislature to capture and match
 33 all federal funds available for expenditure on the
 34 Appalachian highway system at the earliest possible time.
 35 Therefore, should amounts in excess of those appropriated
 36 be required for the purposes of Appalachian programs,
 37 funds in excess of the amount appropriated may be made
 38 available upon recommendation of the commissioner and
 39 approval of the governor. Further, for the purpose of
 40 Appalachian programs, funds appropriated to line items
 41 may be transferred to other line items upon recom-
 42 mendation of the commissioner and approval of the
 43 governor.

*94—Division of Highways—
 Federal Aid Highway Matching Fund*

(WV Code Chapters 17 and 17C)

Account No.

Fund 9018 FY 1998 Org 0803

1	Interstate Construction	278	\$ 35,000,000
2	Other Federal Aid Programs	279	170,000,000
3	Appalachian Programs	280	<u>80,000,000</u>
4	Total		\$285,000,000

1 Total TITLE II, Section 2—

2	State Road Fund		<u>\$ 813,850,298</u>
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1 **Sec. 3. Appropriations from other funds.**—From the
 2 funds designated there are hereby appropriated
 3 conditionally upon the fulfillment of the provisions set
 4 forth in article two, chapter five-a of the code the
 5 following amounts, as itemized, for expenditure during the
 6 fiscal year one thousand nine hundred ninety-eight.

LEGISLATIVE

95—Crime Victims Compensation Fund

(WV Code Chapter 14)

Account No.

Fund 1731 FY 1998 Org 2300

		Activity	Other Funds
1	Personal Services	001	\$ 145,096
2	Annual Increment	004	1,625
3	Employee Benefits	010	49,282
4	Unclassified	099	32,000
5	Economic Loss Claim		
6	Payment Fund (R)	334	<u>2,000,000</u>
7	Total		\$ 2,228,003
8	Any unexpended balance remaining in the appro-		
9	priation for Economic Loss Claim Payment Fund (fund		
10	1731, activity 334) at the close of the fiscal year 1996-97		
11	is hereby reappropriated for expenditure during the fiscal		
12	year 1997-98.		

EXECUTIVE

*96—Auditor's Office—**Land Operating Fund*

(WV Code Chapters 11A, 12 and 36)

Account No.

Fund 1206 FY 1998 Org 1200

1	Personal Services	001	\$ 92,753
2	Annual Increment	004	4,400
3	Employee Benefits	010	28,276
4	Unclassified	099	<u>98,994</u>
5	Total		\$ 224,423

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

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

*97—Auditor's Office—
 Securities Regulation Fund*

(WV Code Chapter 32)

Account No.

Fund 1225 FY 1998 Org 1200

1	Personal Services	001	\$	298,700
2	Annual Increment	004		4,722
3	Employee Benefits	010		86,116
4	Unclassified	099		<u>404,862</u>
5	Total		\$	794,400

98—Department of Agriculture

(WV Code Chapter 19)

Account No.

Fund 1401 FY 1998 Org 1400

1	Personal Services	001	\$	378,491
2	Annual Increment	004		4,300
3	Employee Benefits	010		121,812
4	Unclassified	099		<u>831,241</u>
5	Total		\$	1,335,844

99—*Department of Agriculture—
West Virginia Rural Rehabilitation Program*

(WV Code Chapter 19)

Account No.

Fund 1408 FY 1998 Org 1400

1 Student and Farm Loans—Total . 235 \$ 536,076

100—*Department of Agriculture—
General John McCausland Memorial Farm*

(WV Code Chapter 19)

Account No.

Fund 1409 FY 1998 Org 1400

1 Personal Services 001 \$ 20,684

2 Employee Benefits 010 13,736

3 Unclassified 099 51,493

4 Total \$ 85,913

5 The above appropriation shall be expended in
6 accordance with article twenty-six, chapter nineteen of the
7 code.

101—*Department of Agriculture—
Farm Operating Fund*

(WV Code Chapter 19)

Account No.

Fund 1412 FY 1998 Org 1400

1 Unclassified—Total 096 \$ 960,611

102—*Attorney General—
Anti-Trust Enforcement*

(WV Code Chapter 47)

Account No.

Fund 1507 FY 1998 Org 1500

APPROPRIATIONS

[Ch. 5

1	Personal Services	001	\$	210,400
2	Annual Increment	004		935
3	Employee Benefits	010		61,882
4	Unclassified	099		<u>177,882</u>
5	Total		\$	451,099

*103—Attorney General—
Preneed Funeral Regulation Fund*

(WV Code Chapter 47)

Account No.

Fund 1513 FY 1998 Org 1500

1	Unclassified—Total	096	\$	138,197
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*104—Attorney General—
Preneed Funeral Guarantee Fund*

(WV Code Chapter 47)

Account No.

Fund 1514 FY 1998 Org 1500

1	Unclassified—Total	096	\$	275,000
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*105—Secretary of State—
Trademark Registration*

(WV Code Chapters 3, 5, and 59)

Account No.

Fund 1610 FY 1998 Org 1600

1	Unclassified—Total	096	\$	7,000
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DEPARTMENT OF ADMINISTRATION

*106—Office of the Secretary—
Natural Gas Contract Refund Fund*

(WV Code Chapter 5A)

Account No.

Fund 2040 FY 1998 Org 0201

1 Unclassified—Total 096 \$ 200,000

*107—Division of Information
Services and Communications*

(WV Code Chapter 5A)

Account No.

Fund 2220 FY 1998 Org 0210

1 Personal Services 001 \$ 4,554,430

2 Annual Increment 004 87,675

3 Employee Benefits 010 1,368,455

4 Unclassified 099 1,868,879

5 Total \$ 7,879,439

6 The total amount of this appropriation shall be paid
7 from a special revenue fund out of collections made by
8 the division of information services and communications
9 as provided by law.

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

17 Each spending unit operating from the general revenue
18 fund, from special revenue funds or receiving reim-
19 bursement for postage from the federal government shall
20 be charged monthly for all postage meter service and shall
21 reimburse the revolving fund monthly for all such
22 amounts.

108—Chief Technology Officer Administration Fund—

(WV Code Chapter 5)

Account No.

Fund 2222 FY 1998 Org 0200

1 Unclassified—Total 096 \$ 2,000,000

*109—Division of Purchasing—
Revolving Fund*

(WV Code Chapter 5A)

Account No.

Fund 2320 FY 1998 Org 0216

1	Personal Services	001	\$	706,686
2	Annual Increment	004		35,277
3	Employee Benefits	010		278,567
4	Unclassified	099		<u>595,519</u>
5	Total		\$	1,616,049

6 The total amount of this appropriation shall be paid
7 from a special revenue fund out of collections made by
8 the division of purchasing as provided by law.

9 There is hereby appropriated from this fund, in
10 addition to the above appropriation, the necessary amount
11 for the expenditure of funds other than personal services
12 or employee benefits to enable the division to provide
13 printing, publishing and document services and for the
14 purchase of supplies for resale to user agencies. These
15 services include, but are not limited to, offset printing,
16 electronic duplication/copying, microfilming, records
17 storage and the sale of general office supplies.

110—Division of Personnel

(WV Code Chapter 29)

Account No.

Fund 2440 FY 1998 Org 0222

1	Personal Services	001	\$	2,060,908
2	Annual Increment	004		60,100
3	Employee Benefits	010		598,689

4	Unclassified	099	<u>762,121</u>
5	Total		\$ 3,481,818

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

111—WV Prosecuting Attorneys' Institute

(WV Code Chapter 7)

Account No.

Fund 2521 FY 1998 Org 0228

1	Unclassified—Total	096	\$ 155,568
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DEPARTMENT OF EDUCATION

*112—State Department of Education—
 School Building Authority*

(WV Code Chapter 18)

Account No.

Fund 3959 FY 1998 Org 0402

1	Personal Services	001	\$ 420,813
2	Annual Increment	004	5,450
3	Employee Benefits	010	128,759
4	Unclassified	099	<u>237,819</u>
5	Total		\$ 792,841

6 The above appropriation for the administrative
 7 expenses of the school building authority shall be paid
 8 from the interest earnings on debt service reserve accounts
 9 maintained on behalf of said authority.

*113—State Department of Education—
 FFA-FHA Camp and Conference Center*

(WV Code Chapter 18)

Account No.

Fund <u>3960</u> FY <u>1998</u> Org <u>0402</u>			
1	Personal Services	001	\$ 694,039
2	Annual Increment	004	13,800
3	Employee Benefits	010	327,684
4	Unclassified	099	<u>903,918</u>
5	Total		\$ 1,939,441

DEPARTMENT OF EDUCATION AND THE ARTS

*114—State College and University Systems—
State Systems Registration Fee—
Revenue Bond Construction Fund*

(WV Code Chapters 18 and 18B)

Account No.

Fund 4033 FY 1998 Org 0453

1 Any unexpended balances remaining in the prior
2 years' and the 1996-97 appropriations are hereby
3 reappropriated for expenditure during the fiscal year
4 1997-98.

5 The total amount of this appropriation shall be paid
6 from the proceeds of revenue bonds issued pursuant to
7 section eight, article ten, chapter eighteen-b of the code.

*115—State College and University Systems—
State Systems Tuition Fee—
Revenue Bond Construction Fund*

(WV Code Chapters 18 and 18B)

Account No.

Fund 4041 FY 1998 Org 0453

1	Marshall University - New Library		
2	Construction - Total	644	\$ 1,000,000
3	Marshall University—Campus Facilities		
4	Improvements	756	12,000,000

5	WVU—Campus Projects	757	55,000,000
6	Fairmont State College—		
7	Clarksburg Center	715	3,500,000
8	Fairmont State College—		
9	Campus Fiber Optics Network	716	1,000,000
10	Glenville State College—Ramp and		
11	Personnel Lift, Health Building	717	75,000
12	Glenville State College—Elevator,		
13	Science Hall	718	323,000
14	Glenville State College—Elevator,		
15	Louis Bennett Hall	719	340,000
16	Glenville State College—		
17	Roof Replacement,		
18	Administration Building	720	700,000
19	West Liberty State College—		
20	Academic, Sports and		
21	Recreation Center	721	<u>3,500,000</u>
22	Total		\$ 77,438,000

23 Any unexpended balances remaining in the prior
 24 years' and the 1996-97 appropriations are hereby
 25 reappropriated for expenditure during the fiscal year
 26 1997-98.

27 The total amount of this appropriation shall be paid
 28 from the proceeds of revenue bonds issued pursuant to
 29 section eight, article twelve-b, chapter eighteen of the
 30 code.

*116—State University System—
 State System Registration Fee—
 Special Capital Improvement Fund
 (Capital Improvement and Bond Retirement Fund)
 Control Account*

(WV Code Chapters 18 and 18B)

Account No.

Fund 4007 FY 1998 Org 0461

1	Debt Service (R)	040	\$	4,231,079
2	Capital Repairs and Alterations (R)	251		2,690,400
3	Miscellaneous Projects (R)	252		400,000
4	Computer and Telecommunications			
5	Technology (R)	438		<u>690,748</u>
6	Total		\$	8,012,227
7	Any unexpended balances remaining in the prior			
8	years' and the 1996-97 appropriations are hereby			
9	reappropriated for expenditure during the fiscal year			
10	1997-98.			

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

16 The above appropriations, except for debt service, may
 17 be transferred to special revenue funds for capital
 18 improvement projects at university system institutions.

*117—State University System—
 State System Tuition Fee—
 Special Capital Improvement Fund
 (Capital Improvement and Bond Retirement Fund)
 Control Account*

(WV Code Chapters 18 and 18B)

Account No.

Fund 4008 FY 1998 Org 0461

1	Debt Service (R)	040	\$	7,032,936
2	Building and Campus Renewal (R)	258		9,263,300
3	Facilities Planning and			
4	Administration (R)	386		190,000

5	Computer and Telecommuni-		
6	cations Technology (R)	438	<u>690,752</u>
7	Total		\$ 17,176,988

8 Any unexpended balances remaining in the prior
 9 years' and the 1996-97 appropriations are hereby
 10 reappropriated for expenditure during the fiscal year
 11 1997-98.

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

17 The above appropriations, except for debt service, may
 18 be transferred to special revenue funds for capital
 19 improvement projects at university system institutions.

*118—State University System—
 West Virginia University Health Sciences Center
 Spending Authority*

(WV Code Chapters 18 and 18B)

Account No.

Fund 4179 FY 1998 Org 0463

1	Unclassified—Total (R)	096	\$ 14,974,000
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2 Any unexpended balance remaining in the fiscal year
 3 1996-97 appropriation for the West Virginia University
 4 Health Sciences Center is hereby reappropriated for
 5 expenditure during the fiscal year 1997-98.

*119—State College System—
 State System Registration Fee—
 Special Capital Improvement Fund
 (Capital Improvement and Bond Retirement Fund)
 Control Account*

(WV Code Chapters 18 and 18B)

Account No.

Fund 4289 FY 1998 Org 0481

1	Debt Service (R)	040	\$	2,167,883
2	Capital Repairs and Alterations (R)	251		<u>1,406,400</u>
3	Total		\$	3,574,283

4 Any unexpended balances remaining in the prior
5 years' and 1996-97 appropriations are hereby
6 reappropriated for expenditure during the fiscal year
7 1997-98.

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

13 The above appropriations, except for debt service, may
14 be transferred to special revenue funds for capital
15 improvement projects at college system institutions.

*120—State College System—
State System Tuition Fee—
Special Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)
Control Account*

(WV Code Chapters 18 and 18B)

Account No.

Fund 4290 FY 1998 Org 0481

1	Debt Service (R)	040	\$	3,282,317
2	Capital Improvements (New) (R) .	259		1,052,000
3	Capital Contingencies and			
4	Emergencies (R)	537		250,000
5	Building and Campus			
6	Renewal and Facilities			

7	Planning and		
8	Administration (R)	538	<u>2,404,700</u>
9	Total		\$ 6,989,017

10 Any unexpended balances remaining in the prior
 11 years' and 1996-97 appropriations are hereby
 12 reappropriated for expenditure during the fiscal year
 13 1997-98.

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

19 The above appropriations, except for debt service, may
 20 be transferred to special revenue funds for capital
 21 improvement projects at college system institutions.

*121—State Board of Rehabilitation—
 Division of Rehabilitation Services—
 West Virginia Rehabilitation Center
 Special Account*

(WV Code Chapter 18)

Account No.

Fund 8664 FY 1998 Org 0932

1	Personal Services	001	\$ 350,000
2	Workshop Development	163	450,000
3	Workshop-Supported Employment	484	50,000
4	Medical Services Trust		
5	Fund-Transfer	512	<u>2,000,000</u>
6	Total		\$ 2,850,000

DEPARTMENT OF HEALTH
 AND HUMAN RESOURCES

122—Board of Barbers and Cosmetologists

(WV Code Chapters 16 and 30)

Account No.

Fund 5425 FY 1998 Org 0505

1	Personal Services	001	\$	181,520
2	Annual Increment	004		4,661
3	Employee Benefits	010		58,734
4	Unclassified	099		<u>103,550</u>
5	Total		\$	348,465

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

*123—Division of Health—
 Vital Statistics*

(WV Code Chapter 16)

Account No.

Fund 5144 FY 1998 Org 0506

1	Personal Services	001	\$	205,300
2	Annual Increment	004		8,203
3	Employee Benefits	010		101,950
4	Unclassified.	099		<u>82,650</u>
5	Total		\$	398,103

*124—Division of Health—
 Hospital Services Revenue Account
 (Special Fund)*

(Capital Improvement, Renovation and Operations)

(WV Code Chapter 16)

Account No.

Fund 5156 FY 1998 Org 0506

1	Debt Service (R)	040	\$ 2,740,000
2	Institutional Facilities		
3	Operations (R)	335	37,216,400
4	Medical Services Trust Fund—		
5	Transfer (R)	512	23,300,000
6	Broad Based Provider Tax (R) ..	566	<u>2,750,000</u>
7	Total		\$ 66,006,400

8 Any unexpended balance remaining in the
9 appropriation for hospital services revenue account at the
10 close of the fiscal year 1996-97 is hereby reappropriated
11 for expenditure during the fiscal year 1997-98, except for
12 fund 5156, activity 335 (fiscal year 1994-95), fund 5156,
13 activity 040, activity 512 and activity 566 (fiscal year
14 1995-96), and fund 5156, activity 512 (fiscal year 1996-
15 97), which shall expire on June 30, 1997.

16 The total amount of this appropriation shall be paid
17 from the hospital services revenue account special fund
18 created by section fifteen-a, article one, chapter sixteen of
19 the code, and shall be used for operating expenses and for
20 improvements in connection with existing facilities and
21 bond payments.

22 The secretary of the department of health and human
23 resources is authorized to utilize up to ten percent of the
24 funds from the above appropriation for Institutional
25 Facilities Operations line to facilitate cost effective and
26 cost saving services at the community level.

27 Necessary funds from the above appropriation may be
28 used for medical facilities operations, either in connection
29 with this account or in connection with the line item
30 designated Institutional Facilities Operations in the
31 consolidated medical service fund (fund 0525, fiscal year
32 1998, organization 0506).

33 From the above appropriation to Institutional Facilities
34 Operations, together with available funds from the
35 consolidated medical services fund (fund 0525, activity
36 335), on July 1, 1997, the sum of one hundred fifty
37 thousand dollars shall be transferred to the department of

38 agriculture—land division as advance payment for the
 39 purchase of food products; actual payments for such
 40 purchases shall not be required until such credits have
 41 been completely expended.

*125—Division of Health—
 Laboratory Services*

(WV Code Chapter 16)

Account No.

Fund 5163 FY 1998 Org 0506

1	Personal Services	001	\$	424,568
2	Annual Increment	004		9,450
3	Employee Benefits	010		143,195
4	Unclassified	099		<u>450,000</u>
5	Total		\$	1,027,213

*126—Division of Health—
 Health Facility Licensing*

(WV Code Chapter 16)

Account No.

Fund 5172 FY 1998 Org 0506

1	Personal Services	001	\$	162,952
2	Annual Increment	004		2,250
3	Employee Benefits	010		58,664
4	Unclassified	099		<u>102,904</u>
5	Total		\$	326,770

*127—Division of Health—
 Hepatitis B Vaccine*

(WV Code Chapter 16)

Account No.

Fund 5183 FY 1998 Org 0506

1	Personal Services	001	\$	49,300
2	Annual Increment	004		900
3	Employee Benefits	010		15,900
4	Unclassified.	099		2,050,000
5	Vaccine for Volunteer Squads ..	565		<u>-0-</u>
6	Total		\$	2,116,100

128—West Virginia Health Care Authority—

(WV Code Chapter 16)

Account No.

Fund 5375 FY 1998 Org 0507

1	Personal Services	001	\$	1,441,755
2	Annual Increment	004		12,578
3	Employee Benefits	010		487,379
4	Unclassified	099		<u>1,605,231</u>
5	Total		\$	3,546,943

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

*129—Division of Human Services—
Health Care Provider Tax*

(WV Code Chapter 11)

Account No.

Fund 5090 FY 1998 Org 0511

1	Unclassified	099	\$	128,001,177
2	Office Code Enhancements	389		<u>-0-</u>
3	Total		\$	128,001,177

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

*130—Division of Human Services—
 Child Support Enforcement*

(WV Code Chapter 48A)

Account No.

Fund 5094 FY 1998 Org 0511

1 Unclassified — Total 096 \$ 22,307,572

*131—Division of Human Services—
 Medical Services Trust Fund*

(WV Code Chapter 9)

Account No.

Fund 5185 FY 1998 Org 0511

1	Eligibility Expansion	582	\$ 5,420,911
2	State Institutions DPSH Payments	583	6,566,355
3	Hospice Services	584	340,115
4	Match Drop	585	<u>10,472,000</u>
5	Total		\$ 22,799,381

6 The Match Drop line item above shall be used in
 7 conjunction with funds appropriated to the division of
 8 human services in the Medical Services line item (fund
 9 0403, activity 189). The remainder of all moneys
 10 deposited in the fund shall be transferred to the division of
 11 human services accounts.

DEPARTMENT OF MILITARY AFFAIRS
 AND PUBLIC SAFETY

132—State Armory Board—

General Armory Fund

(WV Code Chapter 15)

Account No.

Fund 6102 FY 1998 Org 0604

1	Unclassified—Total	096	\$	330,000
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*133—West Virginia Division of Corrections—
Parolee Supervision Fees*

(WV Code Chapter 62)

Account No.

Fund 6362 FY 1998 Org 0608

1	Personal Services	.....	001	\$	82,928
2	Employee Benefits	.....	010		35,664
3	Current Expenses	.....	020		<u>115,408</u>
4	Total	.....		\$	234,000

*134—West Virginia State Police—
Motor Vehicle Inspection Fund*

(WV Code Chapter 17C)

Account No.

Fund 6501 FY 1998 Org 0612

1	Personal Services	.....	001	\$	628,879
2	Annual Increment	.....	004		2,900
3	Employee Benefits	.....	010		186,467
4	Unclassified	.....	099		<u>635,131</u>
5	Total	.....		\$	1,453,377

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

9 Any unexpended balance remaining in the
 10 appropriation for Unclassified (fund 6501, activity 099) at
 11 the close of the fiscal year 1996-97 is hereby
 12 reappropriated for expenditure during the fiscal year
 13 1997-98.

*135—West Virginia State Police—
 Drunk Driving Prevention Fund*

(WV Code Chapter 15)

Account No.

Fund 6513 FY 1998 Org 0612

1 Unclassified—Total 096 \$ 810,000

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

*136—West Virginia State Police—
 Surplus Real Property Proceeds Fund*

(WV Code Chapter 15)

Account No.

Fund 6516 FY 1998 Org 0612

1 Unclassified—Total 096 \$ 500,000

*137—West Virginia State Police—
 Surplus Transfer Account*

(WV Code Chapter 15)

Account No.

Fund 6519 FY 1998 Org 0612

1 Unclassified—Total 096 \$ 214,500

*138—Division of Public Safety—
 Central Abuse Registry Fund*

(WV Code Chapter 15)

Fund 6527 FY 1998 Org 0612

1	Unclassified—Total	096	\$	60,000
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*139—Regional Jail and Correctional
Facility Authority*

(WV Code Chapter 31)

Account No.

Fund 6675 FY 1998 Org 0615

1	Personal Services	.....	001	\$	454,213
2	Annual Increment	.....	004		6,750
3	Employee Benefits	.....	010		153,250
4	Debt Service	.....	040		10,000,000
5	Unclassified	.....	099		<u>253,289</u>
6	Total	.....		\$	10,867,502

*140—Division of Veterans' Affairs—
Veterans' Home*

(WV Code Chapter 19A)

Account No.

Fund 6754 FY 1998 Org 0618

1	Unclassified—Total	096	\$	240,000
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*141—Criminal Justice & Highway Safety—
Court Security Fund*

(Executive Order)

Account No.

Fund 6804 FY 1998 Org 0620

1	Unclassified—Total	096	\$	1,000,000
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*142—Fire Commission—
Fire Marshal Fees*

(WV Code Chapter 29)

Account No.

Fund 6152 FY 1998 Org 0619

1	Personal Services	001	\$	391,785
2	Annual Increment	004		5,200
3	Employee Benefits	010		117,609
4	Unclassified	099		<u>546,080</u>
5	Total		\$	1,060,674

6 Any unexpended cash balance remaining in fund 6152
 7 at the close of the fiscal year 1996-97 is hereby available
 8 for expenditure as part of the fiscal year 1997-98
 9 appropriation.

DEPARTMENT OF TAX AND REVENUE

*143—Division of Banking—
 Lending and Credit Rate Board*

(WV Code Chapter 47A)

Account No.

Fund 3040 FY 1998 Org 0303

1	Personal Services	001	\$	10,500
2	Employee Benefits	010		1,978
3	Unclassified	099		<u>5,000</u>
4	Total		\$	17,478

144—Division of Banking

(WV Code Chapter 31A)

Account No.

Fund 3041 FY 1998 Org 0303

1	Personal Services	001	\$	1,110,253
2	Annual Increment	004		12,500
3	Employee Benefits	010		346,535

4	Unclassified	099	<u>625,540</u>
5	Total		\$ 2,094,828

*145—Tax Division—
Office of Chief Inspector*

(WV Code Chapter 6)

Account No.

Fund 7067 FY 1998 Org 0702

1	Personal Services	001	\$ 1,331,014
2	Annual Increment	004	24,050
3	Employee Benefits	010	398,785
4	Unclassified	099	<u>478,576</u>
5	Total		\$ 2,232,425

*146—Tax Division—
Cemetery Company Account*

(WV Code Chapter 35)

Account No.

Fund 7071 FY 1998 Org 0702

1	Personal Services	001	\$ 16,116
2	Employee Benefits	010	5,047
3	Unclassified	099	<u>10,918</u>
4	Total		\$ 32,081

*147—Tax Division—
Special Audit and Investigative Unit*

(WV Code Chapter 11)

Account No.

Fund 7073 FY 1998 Org 0702

1	Personal Services	001	\$ 645,846
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2	Annual Increment	004		5,050
3	Employee Benefits	010		210,977
4	Unclassified	099		<u>352,949</u>
5	Total		\$	1,214,822

*148—Insurance Commissioner—
Examination Revolving Fund*

(WV Code Chapter 33)

Account No.

Fund 7150 FY 1998 Org 0704

1	Personal Services	001	\$	409,390
2	Annual Increment	004		350
3	Employee Benefits	010		99,549
4	Unclassified	099		<u>313,500</u>
5	Total		\$	822,789

*149—Insurance Commissioner—
Consumer Advocate*

(WV Code Chapter 33)

Account No.

Fund 7151 FY 1998 Org 0704

1	Personal Services	001	\$	197,180
2	Annual Increment	004		450
3	Employee Benefits	010		67,301
4	Unclassified	099		<u>199,537</u>
5	Total		\$	464,468

150—Insurance Commissioner

(WV Code Chapter 33)

Account No.

Fund 7152 FY 1998 Org 0704

1	Personal Services	001	\$	1,581,988
2	Annual Increment	004		29,950
3	Employee Benefits	010		498,765
4	Unclassified	099		<u>928,300</u>
5	Total		\$	3,039,003

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

*151—Racing Commission—
 Relief Fund*

(WV Code Chapter 19)

Account No.

Fund 7300 FY 1998 Org 0707

1	Medical Expenses—Total	245	\$	57,000
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2 The total amount of this appropriation shall be paid
 3 from the special revenue fund out of collections of license
 4 fees and fines as provided by law.

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

*152—Racing Commission—
 Administration and Promotion*

(WV Code Chapter 19)

Account No.

Fund 7304 FY 1998 Org 0707

1	Personal Services	001	\$	53,700
2	Annual Increment	004		850
3	Employee Benefits	010		23,083

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4	Unclassified	099	<u>47,408</u>
5	Total		\$ 125,041

*153—Racing Commission—
General Administration*

(WV Code Chapter 19)

Account No.

Fund 7305 FY 1998 Org 0707

1	Personal Services	001	\$ 1,016,300
2	Annual Increment	004	16,150
3	Employee Benefits	010	296,713
4	Unclassified	099	<u>290,817</u>
5	Total		\$ 1,619,980

*154—Racing Commission—
Administration, Promotion and Education Fund*

(WV Code Chapter 19)

Account No.

Fund 7307 FY 1998 Org 0707

1	Unclassified—Total	096	\$ 35,000
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*155—Alcohol Beverage Control Administration—
Wine License Special Fund*

(WV Code Chapter 60)

Account No.

Fund 7351 FY 1998 Org 0708

1	Personal Services	001	\$ 200,408
2	Annual Increment	004	3,750
3	Employee Benefits	010	79,861
4	Unclassified	099	<u>150,337</u>

5 Total \$ 434,356

156—Alcohol Beverage Control Administration

(WV Code Chapter 60)

Account No.

Fund 7352 FY 1998 Org 0708

1	Personal Services	001	\$ 2,455,256
2	Annual Increment	004	73,251
3	Employee Benefits	010	1,387,720
4	Unclassified	099	<u>2,023,296</u>
5	Total		\$ 5,939,523

6 The total amount of this appropriation shall be paid
7 from a special revenue fund out of liquor revenues.

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

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

DEPARTMENT OF TRANSPORTATION

*157—Division of Motor Vehicles
Driver's License Reinstatement Fund*

(WV Code Chapter 17B)

Account No.

Fund 8213 FY 1998 Org 0802

1 Unclassified—Total \$ 445,940

*158—Division of Motor Vehicles
Driver Rehabilitation*

(WV Code Chapter 17C)

Account No.

Fund 8214 FY 1998 Org 0802

1	Unclassified—Total	096	\$	890,619
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*159—Division of Motor Vehicles
Insurance Certificate Fees*

(WV Code Chapter 20)

Account No.

Fund 8215 FY 1998 Org 0802

1	Personal Services	001	\$	-0-
2	Annual Increment	004		-0-
3	Employee Benefits	010		-0-
4	Unclassified	099		<u>-0-</u>
5	Unclassified—Total	096	\$	854,788

*160—Division of Motor Vehicles
Motorboat Licenses*

(WV Code Chapter 20)

Account No.

Fund 8216 FY 1998 Org 0802

1	Unclassified—Total	096	\$	146,573
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*161—Division of Motor Vehicles
Returned Check Fees*

(WV Code Chapter 17)

Account No.

Fund 8217 FY 1998 Org 0802

1	Unclassified—Total	096	\$	21,559
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BUREAU OF COMMERCE

162—Division of Forestry

(WV Code Chapter 19)

Account No.

		Fund <u>3081</u> FY <u>1998</u> Org <u>0305</u>	
1	Personal Services	001	\$ 300,141
2	Annual Increment	004	3,200
3	Employee Benefits	010	79,176
4	Unclassified	099	<u>363,252</u>
5	Total		\$ 745,769

*163—Division of Forestry
Timberland Enforcement Operations*

(WV Code Chapter 19)

Account No.

		Fund <u>3082</u> FY <u>1998</u> Org <u>0305</u>	
1	Unclassified—Total	096	\$ 250,000

*164—Division of Forestry
Severance Tax Operations*

(WV Code Chapter 11)

Account No.

		Fund <u>3084</u> FY <u>1998</u> Org <u>0305</u>	
1	Unclassified—Total	096	\$ 2,825,334

165—Geological and Economic Survey

(WV Code Chapter 29)

Account No.

		Fund <u>3100</u> FY <u>1998</u> Org <u>0306</u>	
1	Personal Services	001	\$ 40,432
2	Annual Increment	004	508
3	Employee Benefits	010	7,112
4	Unclassified	099	<u>177,983</u>

5 Total \$ 226,035

6 The above appropriation shall be used in accordance
7 with section four, article two, chapter twenty-nine of the
8 code.

*166—West Virginia Development Office—
Energy Assistance*

(WV Code Chapter 5B)

Account No.

Fund 3144 FY 1998 Org 0307

1 Any unexpended balances remaining in the
2 appropriations for Unclassified (fund 3144, activity 099),
3 and Energy Assistance-Total (fund 3144, activity 647) at
4 the close of the fiscal year 1996-97 are hereby
5 reappropriated for expenditure during the fiscal year
6 1997-98.

*167—Division of Labor
Contractor Licensing Board Fund*

(WV Code Chapter 21)

Account No.

Fund 3187 FY 1998 Org 0308

1	Personal Services	001	\$	723,969
2	Annual Increment	004		10,590
3	Employee Benefits	010		272,205
4	Unclassified	099		<u>794,792</u>
5	Total		\$	1,801,556

*168—Division of Labor
Elevator Safety Act*

(WV Code Chapter 21)

Account No.

Fund 3188 FY 1998 Org 0308

1 Unclassified—Total 096 \$ 6,000

*171—Division of Natural Resources
Nongame Fund*

(WV Code Chapter 20)

Account No.

Fund 3203 FY 1998 Org 0310

1	Personal Services	001	\$	83,522
2	Annual Increment	004		1,100
3	Employee Benefits	010		27,974
4	Unclassified	099		<u>31,603</u>
5	Total		\$	144,199

*172—Division of Natural Resources
Planning and Development Division*

(WV Code Chapter 20)

Account No.

Fund 3205 FY 1998 Org 0310

1	Personal Services	001	\$	208,148
2	Annual Increment	004		5,250
3	Employee Benefits	010		80,061
4	Unclassified	099		<u>352,550</u>
5	Total		\$	646,009

*173—Division of Natural Resources—
Whitewater Study and Improvement Fund*

(WV Code Chapter 20)

Account No.

Fund 3253 FY 1998 Org 0310

1 Unclassified—Total 096 \$ 130,000

*174—Division of Natural Resources
Recycling Assistance Fund*

(WV Code Chapter 20)

Account No.

Fund 3254 FY 1998 Org 0310

1	Personal Services	001	\$	121,186
2	Annual Increment	004		4,450
3	Employee Benefits	010		49,109
4	Unclassified (R)	099		<u>2,629,770</u>
5	Total		\$	2,804,515
6	Any unexpended balance remaining in the			
7	appropriation for Unclassified (fund 3254, activity 099) at			
8	the close of the fiscal year 1996-97 is hereby			
9	reappropriated for expenditure during the fiscal year			
10	1997-98.			

*175—Division of Natural Resources
Whitewater Advertising and Promotion Fund*

(WV Code Chapter 20)

Account No.

Fund 3256 FY 1998 Org 0310

1	Unclassified—Total	096	\$	20,000
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BUREAU OF EMPLOYMENT PROGRAMS

*176—Bureau of Employment Programs
Workers' Compensation Fund*

(WV Code Chapter 23)

Account No.

Fund 3440 FY 1998 Org 0322

1	Personal Services	001	\$	17,419,956
2	Annual Increment	004		357,553

3	Employee Benefits	010	6,242,036
4	Unclassified (R)	099	13,176,878
5	Employer Excess Liability Fund .	226	112,798
6	Contractual Services—TQI	748	<u>16,000,000</u>
7	Total		\$ 53,309,221

8 Any unexpended balance remaining in the
 9 appropriation for Unclassified (fund 3440, activity 099) at
 10 the close of the fiscal year 1996-97 is hereby
 11 reappropriated for expenditure during the fiscal year
 12 1997-98.

13 There is hereby authorized to be paid out of the above
 14 appropriation the amount necessary for the premiums on
 15 bonds given by the treasurer as bond custodian for the
 16 protection of the workers' compensation fund. This sum
 17 shall be transferred to the board of risk and insurance
 18 management.

BUREAU OF ENVIRONMENT

177—Solid Waste Management Board

(WV Code Chapter 20)

Account No.

Fund 3288 FY 1998 Org 0312

1	Personal Services	001	\$ 555,702
2	Annual Increment	004	3,200
3	Employee Benefits	010	117,779
4	Unclassified	099	1,943,275
5	Landfill Assistance	488	<u>-0-</u>
6	Total		\$ 2,619,956

178—Division of Environmental Protection Special Reclamation Fund

(WV Code Chapter 22A)

Account No.

Fund 3321 FY 1998 Org 0313

1	Personal Services	001	\$	184,687
2	Annual Increment	004		6,900
3	Employee Benefits	010		68,540
4	Unclassified	099		<u>9,596,302</u>
5	Total		\$	9,856,429

*179—Division of Environmental Protection
Oil and Gas Reclamation Trust*

(WV Code Chapter 22B)

Account No.

Fund 3322 FY 1998 Org 0313

1	Unclassified—Total	096	\$	465,000
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*180—Division of Environmental Protection
Oil and Gas Operating Permits*

(WV Code Chapter 22B)

Account No.

Fund 3323 FY 1998 Org 0313

1	Personal Services	001	\$	203,704
2	Annual Increment	004		3,600
3	Employee Benefits	010		71,243
4	Unclassified	099		<u>483,398</u>
5	Total		\$	761,945

*181—Division of Environmental Protection
Mines and Minerals Operations Fund*

(WV Code Chapter 22)

Account No.

Fund 3324 FY 1998 Org 0313

1	Personal Services	001	\$	2,245,000
2	Annual Increment	004		31,150
3	Employee Benefits	010		674,511
4	Unclassified	099		<u>768,031</u>
5	Total		\$	3,718,692

*182—Division of Environmental Protection
Underground Storage Tanks
Administrative Fund*

(WV Code Chapter 20)

Account No.

Fund 3325 FY 1998 Org 0313

1	Personal Services	001	\$	285,186
2	Annual Increment	004		4,450
3	Employee Benefits	010		98,853
4	Unclassified	099		<u>146,356</u>
5	Total		\$	534,845

*183—Division of Environmental Protection
Hazardous Waste Emergency and Response Fund*

(WV Code Chapter 20)

Account No.

Fund 3331 FY 1998 Org 0313

1	Personal Services	001	\$	366,442
2	Annual Increment	004		7,350
3	Employee Benefits	010		118,099
4	Unclassified	099		<u>976,164</u>
5	Total		\$	1,468,055

*184—Division of Environmental Protection
Solid Waste Reclamation and*

Environmental Response Fund

(WV Code Chapter 20)

Account No.

Fund 3332 FY 1998 Org 0313

1	Personal Services	001	\$	155,584
2	Annual Increment	004		3,300
3	Employee Benefits	010		49,223
4	Unclassified	099		981,720
5	Sludge Study	432		<u>-0-</u>
6	Total		\$	1,189,827

*185—Division of Environmental Protection**Solid Waste Enforcement Fund*

(WV Code Chapter 20)

Account No.

Fund 3333 FY 1998 Org 0313

1	Personal Services	001	\$	1,727,328
2	Annual Increment	004		30,025
3	Employee Benefits	010		536,006
4	Unclassified	099		961,250
5	Litter Control-			
6	Conservation Officers	564		<u>200,000</u>
7	Total		\$	3,454,609

*186—Division of Environmental Protection**Fees and Operating Expenses*

(WV Code Chapter 16)

Account No.

Fund 3336 FY 1998 Org 0313

APPROPRIATIONS

[Ch. 5

1	Personal Services	001	\$	2,567,300
2	Annual Increment	004		7,400
3	Employee Benefits	010		757,866
4	Unclassified	099		<u>1,209,360</u>
5	Total		\$	4,541,926

*187—Division of Environmental Protection—
Environmental Laboratory
Certification Fund*

(WV Code Chapter 22)

Account No.

Fund 3340 FY 1998 Org 0313

1	Personal Services	001	\$	108,077
2	Annual Increment	004		1,400
3	Employee Benefits	010		33,534
4	Unclassified	099		<u>71,720</u>
5	Total		\$	214,731

188—Oil and Gas Conservation Commission

(WV Code Chapter 22)

Account No.

Fund 3371 FY 1998 Org 0315

1	Personal Services	001	\$	149,235
2	Annual Increment	004		1,300
3	Employee Benefits	010		27,337
4	Unclassified	099		<u>49,074</u>
5	Total		\$	226,946

MISCELLANEOUS BOARDS AND COMMISSIONS

189—Hospital Finance Authority

(WV Code Chapter 16)

Account No.

Fund 5475 FY 1998 Org 0509

1	Personal Services	001	\$	50,219
2	Annual Increment	004		350
3	Employee Benefits	010		18,551
4	Unclassified.	099		<u>65,681</u>
5	Total		\$	134,801

6 The total amount of this appropriation shall be paid
 7 from the special revenue fund out of fees and collections
 8 as provided by article twenty-nine-a, chapter sixteen of the
 9 code.

190—Municipal Bond Commission

(WV Code Chapter 13)

Account No.

Fund 7253 FY 1998 Org 0706

1	Personal Services	001	\$	107,470
2	Annual Increment	004		2,850
3	Employee Benefits	010		38,124
4	Unclassified	099		<u>58,185</u>
5	Total		\$	206,629

*191—WV State Board of Examiners
for Licensed Practical Nurses*

(WV Code Chapter 30)

Account No.

Fund 8517 FY 1998 Org 0906

1	Unclassified—Total	096	\$	330,877
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192—WV Board of Examiners for

Registered Professional Nurses

(WV Code Chapter 30)

Account No.

Fund 8520 FY 1998 Org 0907

1	Unclassified—Total	096	\$	837,237
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*193—West Virginia Cable Television
Advisory Board*

(WV Code Chapter 5)

Account No.

Fund 8609 FY 1998 Org 0924

1	Personal Services	.....	001	\$	151,640
2	Annual Increment	.....	004		4,000
3	Employee Benefits	.....	010		42,975
4	Unclassified	.....	099		<u>68,000</u>
5	Total	.....		\$	266,615

194—Public Service Commission

(WV Code Chapter 24)

Account No.

Fund 8623 FY 1998 Org 0926

1	Personal Services	.....	001	\$	6,178,316
2	Annual Increment	.....	004		120,000
3	Employee Benefits	.....	010		1,935,935
4	Unclassified	.....	099		2,452,000
5	Sewage Plant Assistance	.....	400		<u>-0-</u>
6	Total	.....		\$	10,686,251

7 The total amount of this appropriation shall be paid
8 from a special revenue fund out of collections for special

9 license fees from public service corporations as provided
10 by law.

11 The Public Service Commission is authorized to spend
12 up to \$250,000 from surplus funds in this account, to meet
13 the expected deficiencies in the Motor Carrier Division
14 account due to passage of H. B. 2715.

*195—Public Service Commission—
Gas Pipeline Division*

(WV Code Chapter 24B)

Account No.

Fund 8624 FY 1998 Org 0926

1	Personal Services	001	\$	133,750
2	Annual Increment	004		5,556
3	Employee Benefits	010		40,780
4	Unclassified	099		<u>98,500</u>
5	Total		\$	278,586

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

*196—Public Service Commission—
Motor Carrier Division*

(WV Code Chapter 24A)

Account No.

Fund 8625 FY 1998 Org 0926

1	Personal Services	001	\$	1,337,796
2	Annual Increment	004		34,723
3	Employee Benefits	010		412,499
4	Unclassified	099		<u>670,500</u>

5 Total \$ 2,455,518

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

*197—Public Service Commission—
Consumer Advocate*

(WV Code Chapter 24)

Account No.

Fund 8627 FY 1998 Org 0926

1	Personal Services	001	\$	368,595
2	Annual Increment	004		4,350
3	Employee Benefits	010		116,346
4	Unclassified	099		<u>327,985</u>
5	Total		\$	817,276

6 The total amount of this appropriation shall be paid
7 from a special revenue fund out of collections made by
8 the public service commission.

198—Real Estate Commission

(WV Code Chapter 47)

Account No.

Fund 8635 FY 1998 Org 0927

1	Personal Services	001	\$	289,132
2	Annual Increment	004		3,900
3	Employee Benefits	010		93,670
4	Unclassified	099		<u>269,400</u>
5	Total		\$	656,102

6 The total amount of this appropriation shall be paid
7 out of collections of license fees as provided by law.

*199—WV Board of Examiners for Speech-Language
Pathology and Audiology*

(WV Code Chapter 30)

Account No.

Fund 8646 FY 1998 Org 0930

1 Unclassified—Total 096 \$ 50,000

200—WV Board of Respiratory Care

(WV Code Chapter 30)

Account No.

Fund 8676 FY 1998 Org 0935

1 Unclassified—Total 096 \$ 96,350

201—Board of Licensed Dietitians

Account No.

Fund 8680 FY 1998 Org 0936

1 Unclassified—Total 096 \$ 105,000

202—Massage Therapists Board

(WV Code Chapter 37)

Fund 8671 FY 1998 Org 0938

1 Unclassified—Total 096 \$ 8,000

1 Total TITLE II, Section 3—

2 Other Funds \$ 561,008,784

1 **Sec. 4. Appropriations from lottery net profits.**—Net
2 profits of the lottery, not to exceed sixty-one million five
3 hundred thousand dollars, are to be deposited by the
4 lottery director to the following accounts in the amounts
5 indicated. The auditor shall prorate each deposit of net
6 profits by the lottery director among fund numbers 2252,

7 3067, 3267, 3951, 3963, 4030, 4800 and 5405 in the
8 proportion the appropriation for each account bears to the
9 total of the appropriations for the eight accounts.

203—*West Virginia Development Office—
Tourism Commission*

(WV Code Chapter 5B)

Account No.

Fund 3067 FY 1998 Org 0304

		Activity	Lottery Funds
1	Tourism—Telemarketing Center .	463	\$ 100,000
2	Tourism—Advertising (R)	618	2,240,000
3	State Parks and Recreation		
4	Advertising (R)	619	560,000
5	Tourism—Unclassified (R)	662	<u>2,906,092</u>
6	Total		\$ 5,806,092

7 Any unexpended balances remaining in the
8 appropriations for Tourism-Advertising (fund 3067,
9 activity 618), State Parks and Recreation Advertising (fund
10 3067, activity 619), Tourism-Unclassified (fund 3067,
11 activity 662) and Advertising-Total (fund 3073, activity
12 541) are hereby reappropriated for expenditure during
13 the fiscal year 1997-98.

204—*Division of Natural Resources*

(WV Code Chapter 20)

Account No.

Fund 3267 FY 1998 Org 0310

1	Coopers Rock—Land Acquisition	439	\$ -0-
2	Parks Operations—		
3	Unclassified (R)	645	1,473,908

4	Canaan Valley—Land Acquisition	710	<u>200,000</u>
5	Total		\$ 1,673,908
6	Any unexpended balances remaining in the		
7	appropriations for Unclassified (fund 3267, activity 099),		
8	Parks Operations — Unclassified (fund 3267, activity 645)		
9	and Capital Outlay — Parks (fund 3267, activity 288) at		
10	the close of the fiscal year 1996-97 are hereby		
11	reappropriated for expenditure during the fiscal year		
12	1997-98.		

205—*State Department of Education*

(WV Code Chapters 18 and 18A)

Account No.

Fund 3951 FY 1998 Org 0402

1 Computer Basic Skills—Total (R) 567 \$ 10,000,000

2 Any unexpended balances remaining in the
3 appropriation for Elementary Computer Education—Total
4 (fund 3951, activity 285), Computer Basic Skills — Total
5 (fund 3951, activity 567) and Computer Basic Skills —
6 Total (fund 3964, activity 567) at the close of the fiscal
7 year 1996-97 are hereby reappropriated for expenditure
8 during the fiscal year 1997-98.

206—*State Department of Education—*

School Building Authority — Debt Service Fund

(WV Code Chapter 18)

Account No.

Fund 3963 FY 1998 Org 0402

1 Debt Service—Total 310 \$ 18,000,000

207—*Board of Trustees of the*

University System of West Virginia and

Board of Directors of the

State College System

Control Account

(WV Code Chapter 18B)

Account No.

Fund 4030 FY 1998 Org 0453

1 Unclassified—Total 096 \$ -0-

*208—Department of Education and the Arts—
Central Office—State College and University Systems
Control Account*

(WV Code Chapter 5F)

Account No.

Fund 4800 FY 1998 Org 0478

1 Strategic Planning and Compliance-
2 Health Sciences 489 -0-
3 Unclassified 099 -0-
4 Unclassified—Total 096 \$ 3,520,000

5 Any unexpended balance remaining in the
6 appropriation for Unclassified (fund 4800, activity 099) at
7 the close of fiscal year 1996-97 is hereby reappropriated
8 for expenditure during the fiscal year 1997-98.

209—Bureau of Senior Services

(WV Code Chapter 29)

Account No.

Fund 5405 FY 1998 Org 0508

1 Senior Citizen Centers
2 and Programs 462 \$ 1,200,000
3 Direct Services 481 2,800,000
4 Transfer to Division of
5 Human Services for
6 Health Care and Title XIX
7 Waiver for Senior Citizens . . . 539 8,500,000
8 Total \$ 12,500,000

9 The above appropriation for Health Care and Title XIX
 10 Waiver for Senior Citizens shall be used to expand the
 11 Title XIX waiver program statewide but not to increase the
 12 rate of reimbursement for services provided by Title XIX
 13 providers.

*210—Education, Arts, Sciences and Tourism
 Debt Service Fund*

(WV Code Chapter 5)

Account No.

Fund 2252 FY 1998 Org 0211

1 Debt Service—Total 310 \$ 10,000,000

2 Any unexpended balance remaining in the
 3 appropriation for Debt Service - Total (fund 2252, activity
 4 310) at the close of the fiscal year 1996-97 is hereby
 5 reappropriated for expenditure during the fiscal year
 6 1997-98.

1 Total TITLE II, Section 4—

2 Lottery Funds \$ 61,500,000

1 **Sec. 5. Appropriations of federal funds.**—In
 2 accordance with article eleven, chapter four of the code,
 3 from federal funds there are hereby appropriated
 4 conditionally upon the fulfillment of the provisions set
 5 forth in article two, chapter five-a of the code the
 6 following amounts, as itemized, for expenditure during the
 7 fiscal year one thousand nine hundred ninety-eight.

LEGISLATIVE

211—Crime Victims Compensation Fund

(WV Code Chapter 14)

Account No.

Fund 8738 FY 1998 Org 2300

	Activity	Federal Funds
1 Unclassified—Total	096	\$ 920,000

JUDICIAL

212—*Supreme Court—
General Judicial*

Account No.

Fund 8805 FY 1998 Org 2400

1	Unclassified—Total	096	\$	125,019
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EXECUTIVE

213—*Governor's Office—
Governor's Cabinet on Children and Families*

(WV Code Chapter 5)

Account No.

Fund 8792 FY 1998 Org 0100

1	Unclassified—Total	096	\$	610,202
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214—*Governor's Office—
Governor's Cabinet on Children and Families—
Office of Economic Opportunity*

(WV Code Chapter 5)

Account No.

Fund 8797 FY 1998 Org 0100

1	Unclassified—Total	096	\$	11,459,262
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215—*Governor's Office—
Commission for National and Community Service*

(WV Code Chapter 5)

Account No.

Fund 8800 FY 1998 Org 0100

1	Unclassified—Total	096	\$	892,501
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216—Auditor's Office

(WV Code Chapter 12)

Account No.

Fund 8807 FY 1998 Org 1200

1 Unclassified—Total 096 \$ 10,000,000

217—Department of Agriculture

(WV Code Chapter 19)

Account No.

Fund 8735 FY 1998 Org 1400

1 Unclassified—Total 096 \$ 20,000

218—Department of Agriculture

(WV Code Chapter 19)

Account No.

Fund 8736 FY 1998 Org 1400

1 Unclassified—Total 096 \$ 2,818,142

219—Department of Agriculture—
Meat Inspection

(WV Code Chapter 19)

Account No.

Fund 8737 FY 1998 Org 1400

1 Unclassified—Total 096 \$ 642,235

DEPARTMENT OF EDUCATION

220—State Department of Education

(WV Code Chapters 18 and 18A)

Account No.

Fund 8712 FY 1998 Org 0402

1 Unclassified—Total 096 \$ 14,403,503

221—*State Department of Education—
School Lunch Program*

(WV Code Chapters 18 and 18A)

Account No.

Fund 8713 FY 1998 Org 0402

1 Unclassified—Total 096 \$ 58,518,851

222—*State Board of Education—
Vocational Division*

(WV Code Chapters 18 and 18A)

Account No.

Fund 8714 FY 1998 Org 0402

1 Unclassified—Total 096 \$ 16,882,900

223—*State Department of Education—
Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Account No.

Fund 8715 FY 1998 Org 0402

1 Unclassified—Total 096 \$ 35,003,859

DEPARTMENT OF EDUCATION AND THE ARTS

224—*Division of Culture and History*

(WV Code Chapter 29)

Account No.

Fund 8718 FY 1998 Org 0432

1 Unclassified—Total 096 \$ 1,234,030

225—*Library Commission*

(WV Code Chapter 10)

Account No.

Fund 8720 FY 1998 Org 0433

1 Unclassified—Total 096 \$ 1,513,422

226—Educational Broadcasting Authority

(WV Code Chapter 10)

Account No.

Fund 8721 FY 1998 Org 0439

1 Unclassified—Total 096 \$ 157,500

*227—State Board of Rehabilitation—
Division of Rehabilitation Services*

(WV Code Chapter 18)

Account No.

Fund 8734 FY 1998 Org 0932

1 Unclassified—Total 096 \$ 41,153,015

DEPARTMENT OF HEALTH
AND HUMAN RESOURCES*228—Consolidated Medical Service Fund*

(WV Code Chapter 16)

Account No.

Fund 8723 FY 1998 Org 0506

1 Unclassified—Total 096 \$ 3,301,367

*229—Division of Health—
Central Office*

(WV Code Chapter 16)

Account No.

Fund 8802 FY 1998 Org 0506

1 Unclassified—Total 096 \$ 51,319,185

230—Bureau of Senior Services

(WV Code Chapter 29)

Account No.

Fund 8724 FY 1998 Org 0508

1 Unclassified—Total 096 \$ 11,283,866

231—Human Rights Commission

(WV Code Chapter 5)

Account No.

Fund 8725 FY 1998 Org 0510

1 Unclassified—Total 096 \$ 151,686

232—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Account No.

Fund 8722 FY 1998 Org 0511

1 Unclassified—Total 096 \$1,162,461,254

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY*233—Adjutant General—State Militia*

(WV Code Chapter 15)

Account No.

Fund 8726 FY 1998 Org 0603

1 Unclassified—Total 096 \$ 26,042,886

234—Office of Emergency Services

(WV Code Chapter 15)

Account No.

Fund 8727 FY 1998 Org 0606

1 Unclassified—Total 096 \$ 1,445,587

235—*West Virginia State Police*

(WV Code Chapter 15)

Account No.

Fund 8741 FY 1998 Org 0612

1 Unclassified—Total 096 \$ 1,107,241

236—*Division of Veterans' Affairs—
Veterans' Home*

(WV Code Chapter 9A)

Account No.

Fund 8728 FY 1998 Org 0618

1 Unclassified—Total 096 \$ 496,367

237—*Division of Criminal Justice
and Highway Safety*

(Executive Order)

Account No.

Fund 8803 FY 1998 Org 0620

1 Unclassified—Total 096 \$ 19,426,474

238—*Fire Commission*

(WV Code Chapter 29)

Account No.

Fund 8804 FY 1998 Org 0619

1 Unclassified—Total 096 \$ 27,000

DEPARTMENT OF TAX AND REVENUE

239—*Tax Division*

(WV Code Chapter 11)

Account No.

Fund 7069 FY 1998 Org 0702

1 Unclassified—Total 096 \$ 75,000

DEPARTMENT OF TRANSPORTATION

*240—Department of Transportation—
Office of the Secretary*

(WV Code Chapter 5F)

Account No.

Fund 8782 FY 1998 Org 0801

1 Unclassified—Total 096 \$ 897,435

241—State Rail Authority

(WV Code Chapter 29)

Account No.

Fund 8733 FY 1998 Org 0804

1 Unclassified—Total 096 \$ 300,000

242—Division of Public Transit

(WV Code Chapter 17)

Account No.

Fund 8745 FY 1998 Org 0805

1 Unclassified—Total 096 \$ 6,171,739

243—Division of Motor Vehicles

(WV Code Chapter 17B)

Account No.

Fund 8787 FY 1998 Org 0802

1 Unclassified—Total 096 \$ 116,794

BUREAU OF COMMERCE

244—Division of Forestry

(WV Code Chapter 19)

Account No.

Fund 8703 FY 1998 Org 0305

1 Unclassified—Total 096 \$ 1,196,951

245—Geological and Economic Survey

(WV Code Chapter 29)

Account No.

Fund 8704 FY 1998 Org 0306

1 Unclassified—Total 096 \$ 670,444

246—West Virginia Development Office

(WV Code Chapter 5B)

Account No.

Fund 8705 FY 1998 Org 0307

1 Unclassified—Total 096 \$ 10,656,904

247—Division of Labor

(WV Code Chapters 21 and 47)

Account No.

Fund 8706 FY 1998 Org 0308

1 Unclassified—Total 096 \$ 343,773

248—Division of Natural Resources

(WV Code Chapter 20)

Account No.

Fund 8707 FY 1998 Org 0310

1 Unclassified—Total 096 \$ 7,764,757

*249—Division of Miners' Health,
Safety and Training*

(WV Code Chapter 22)

Account No.

Fund 8709 FY 1998 Org 0314

1 Unclassified—Total 096 \$ 532,075

BUREAU OF ENVIRONMENT

250—Solid Waste Management Board

(WV Code Chapter 20)

Account No.

Fund 8820 FY 1998 Org 0312

1 Unclassified—Total 096 \$ 100,330

251—Division of Environmental Protection

(WV Code Chapter 22)

Account No.

Fund 8708 FY 1998 Org 0313

1 Unclassified—Total 096 \$ 102,025,802

MISCELLANEOUS BOARDS AND COMMISSIONS

*252—Public Service Commission—
Motor Carrier Division*

(WV Code Chapter 24A)

Account No.

Fund 8743 FY 1998 Org 0926

1 Unclassified—Total 096 \$ 891,438

*253—Public Service Commission—
Gas Pipeline Division*

(WV Code Chapter 24B)

Account No.

Fund 8744 FY 1998 Org 0926

1 Unclassified—Total 096 \$ 256,310

1 Total TITLE II, Section 5—

2 Federal Funds \$1,605,417,106

- 1 **Sec. 6. Appropriations from federal block grants.**
 2 — The following items are hereby appropriated from
 3 federal block grants to be available for expenditure during
 4 the fiscal year 1997-98.

*254—Governor's Office—
 Governor's Cabinet on Children and Families*

Account No.

Fund 8799 FY 1998 Org 0100

- 1 Unclassified—Total 096 \$ 7,137,268

*255—West Virginia Development Office—
 Community Development*

Account No.

Fund 8746 FY 1998 Org 0307

- 1 Unclassified—Total 096 \$ 21,326,300

*256—Bureau of Employment Programs—
 Job Training Partnership Act*

Account No.

Fund 8749 FY 1998 Org 0323

- 1 Unclassified—Total 096 \$ 55,009,965

*257—State Department of Education—
 Education Grant*

Account No.

Fund 8748 FY 1998 Org 0402

- 1 Unclassified—Total 096 \$ 95,001,963

*258—Division of Health—
 Maternal and Child Health*

Account No.

Fund 8750 FY 1998 Org 0506

- 1 Unclassified—Total 096 \$ 7,505,544

*259—Division of Health—
Preventive Health*

Account No.

Fund 8753 FY 1998 Org 0506

1 Unclassified—Total 096 \$ 2,151,512

*260—Division of Health—
Substance Abuse Prevention and Treatment*

Account No.

Fund 8793 FY 1998 Org 0506

1 Unclassified—Total 096 \$ 9,501,411

*261—Division of Health—
Community Mental Health Services*

Account No.

Fund 8794 FY 1998 Org 0506

1 Unclassified—Total 096 \$ 2,801,512

*262—Division of Human Services—
Energy Assistance*

Account No.

Fund 8755 FY 1998 Org 0511

1 Unclassified—Total 096 \$ 11,400,192

*263—Division of Human Services—
Child Care and Development*

Account No.

Fund 8756 FY 1998 Org 0511

1 Unclassified—Total 096 \$ 6,900,000

*264—Division of Human Services—
Social Services*

Account No.

Fund 8757 FY 1998 Org 0511

1 Unclassified—Total 096 \$ 17,036,712

*265—Division of Human Services—
Empowerment Zone and Enterprise Community Program*

Account No.

Fund 8806 FY 1998 Org 0511

1 Unclassified—Total 096 \$ 2,000,000

*266—Division of Human Services—
Temporary Assistance Needy Families*

Account No.

Fund 8816 FY 1998 Org 0511

1 Unclassified—Total 096 \$ 111,078,781

*267—Division of Human Services—
Child Care and Development*

Account No.

Fund 8817 FY 1998 Org 0511

1 Unclassified — Total 096 \$ 12,500,000

1 Total TITLE II, Section 6—

2 Federal Block Grants \$ 361,351,160

1 **Sec. 7. Awards for claims against the state.**—There
2 are hereby appropriated, for the remainder of the fiscal
3 year 1996-1997 and to remain in effect until June 30
4 1998, from the fund as designated, in the amounts as
5 specified and for the claimants named in enrolled senate
6 bill 284, regular session 1997—crime victims
7 compensation funds of \$73,000.00 for payment of claims
8 against the state.

9 There are hereby appropriated for the remainder of the
10 fiscal year 1996-1997 and to remain in effect until June
11 30, 1998, from the fund as designated, in the amounts as
12 specified and for the claimants named in enrolled senate
13 bill no. 311, regular session 1997, and enrolled house bill

14 no. 2535, regular session 1997—general revenue funds of
15 \$1,462,134.00 for payment of claims against the state.

16 The total of general revenue funds above do not
17 include payment for claims in the amount of \$2,003.83
18 from the supreme court—general judicial, fund 0180,
19 specifically made payable from the appropriation for the
20 current fiscal year 1996-1997.

21 There are hereby appropriated for the remainder of
22 fiscal year 1996-1997 and to remain in effect until June
23 30, 1998, from the funds as designated, in the amounts as
24 specified and for the claimants as named in enrolled house
25 bill no. 2535, regular session 1997—special revenue funds
26 of \$171,957.36, state road funds of \$127,690.06, workers'
27 compensation funds of \$51,502.59 and federal funds of
28 \$15,631.25 for payment of claims against the state.

1 **Sec. 8. Appropriation from surplus accrued.**—The
2 following items are hereby appropriated from the state
3 fund, general revenue, and are to be available for
4 expenditure during the fiscal year 1997-98 out of surplus
5 funds only, subject to the terms and conditions set forth in
6 this section.

7 It is the intent and mandate of the Legislature that the
8 following appropriations be payable only from surplus
9 accrued as of the thirty-first day of July, one thousand
10 nine hundred ninety-seven.

11 In the event that surplus revenues available on the
12 thirty-first day of July, one thousand nine hundred ninety-
13 seven, are not sufficient to meet all the appropriations
14 made pursuant to this section, then the appropriations shall
15 be made to the extent that surplus funds are available as of
16 the date mandated, and shall be allocated first to provide
17 the necessary funds to meet the first appropriation of this
18 section; next, to provide the funds necessary for the
19 second appropriation of this section; and subsequently to
20 provide the funds necessary for each appropriation in
21 succession before any funds are provided for the next
22 subsequent appropriation.

268—State Department of Education

(WV Code Chapters 18 and 18A)

Account No.

Fund 0313 FY 1998 Org 0402

1	Technology and Telecom-		
2	munications Initiative	596	\$ 2,000,000
3	Three Tier Funding	749	1,000,000
4	Employment Programs		
5	Rate Relief	471	<u>1,100,000</u>
6	Total		\$ 4,100,000

269—Division of General Services

(WV Code Chapter 5A)

Account No.

Fund 0230 FY 1998 Org 0211

1	Capitol Complex—		
2	Capital Outlay—Total	750	\$ 500,000

270—State Department of Education

(WV Code Chapters 18 and 18A)

Account No.

Fund 0313 FY 1998 Org 0402

1	Mingo County Board of		
2	Education—Tax		
3	Assessment Error—Total	693	\$ 400,000

271—State Department of Education
Vocational Division

(WV Code Chapters 18 and 18A)

Account No.

Fund 0390 FY 1998 Org 0402

1 Aquaculture Support—Total 751 \$ 100,000

*272—Board of Trustees of the University System—
Control Account*

(WV Code Chapters 18B and 18C)

Account No.

Fund 0327 FY 1998 Org 0461

1 Chestnut Blight Project—Total . . 752 \$ 50,000

*273—Governor’s Office—
Civil Contingent Fund*

(WV Code Chapter 5)

Account No.

Fund 0105 FY 1998 Org 0100

1 Unclassified—Total 096 \$ 3,000,000

1 Total TITLE II, Section 8—

2 Surplus Accrued \$ 8,150,000

1 **Section 9. Appropriations from lottery net profit**
 2 **surplus.**—The following items are hereby appropriated
 3 from lottery net profits, and are to be made available for
 4 expenditure during the fiscal year ending the thirtieth day
 5 of June, one thousand nine hundred ninety-eight, only out
 6 of surplus lottery net profits accrued as of the thirty-first
 7 day of July, one thousand nine hundred ninety-seven. In
 8 the event that surplus revenue available on the thirty-first
 9 day of July, one thousand nine hundred ninety-seven, are
 10 not sufficient to meet all the appropriations made pursuant
 11 to this section, then the appropriations shall be made to the
 12 extent that surplus funds are available as of the date
 13 mandated and shall be allocated first to provide the
 14 necessary funds to meet the first appropriation of this
 15 section; next, to provide the funds necessary for the
 16 second appropriation of this section; and subsequently to
 17 provide the funds necessary for each appropriation in
 18 succession before any funds are provided for the next
 19 subsequent appropriation.

274—*Board of Directors of the State College System
Control Account*

(WV Code Chapter 18B)

Account No.

Fund 4291 FY 1997 Org 0481

1	Shepherd College—			
2	Capital Improvements	759	\$	1,200,000
3	West Virginia Northern			
4	Community College—			
5	Capital Improvements	760		<u>400,000</u>
6	Total		\$	1,600,000

275—*State Department of Education*

(WV Code Chapters 18 and 18A)

Account No.

Fund 3971 FY 1997 Org 0402

1	Pendleton County Schools—			
2	Capital Improvements—Total	761	\$	400,000

276—*Department of Education and the Arts—
Office of the Secretary*

(WV Code Chapter 5F)

Account No.

Fund 3505 FY 1997 Org 0431

1	Capital Outlay and Improvements	762	\$	1,500,000
2	Educational Broadcasting			
3	Authority—600 Capitol Street	313		<u>600,000</u>
4	Total		\$	2,100,000

277—*Bureau of Senior Services—*

(WV Code Chapter 29)

Account No.

Fund 5405 FY 1997 Org 0508

1	Senior Citizens Centers			
2	and Programs	462	\$	500,000
3	Holly Grove Mansion Restoration	765		<u>50,000</u>
4	Total		\$	550,000
1	Total TITLE II, Section 9—			
2	Lottery Net Profit Surplus . . .		\$	<u><u>4,650,000</u></u>

1 **Section 10. Appropriations from lottery net profit**
2 **surplus for the fiscal year one thousand nine hundred**
3 **ninety-eight.**—The following items are hereby
4 appropriated from lottery net profits, and are to be made
5 available for expenditure during the fiscal year ending the
6 thirtieth day of June, one thousand nine hundred ninety-
7 eight, only out of surplus lottery net profits after meeting
8 the appropriation set forth in section four of this bill and
9 accrued as of the fifteenth day of June through the
10 thirtieth day of June, one thousand nine hundred ninety-
11 eight. In the event that surplus revenue available on the
12 thirty-first day of July, one thousand nine hundred ninety-
13 eight, are not sufficient to meet all the appropriations
14 made pursuant to this section, then the appropriations shall
15 be made to the extent that surplus funds are available as of
16 the date mandated and shall be allocated first to provide
17 the necessary funds to meet the first appropriation of this
18 section; next, to provide the funds necessary for the
19 second appropriation of this section; and subsequently to
20 provide the funds necessary for each appropriation in
21 succession before any funds are provided for the next
22 subsequent appropriation.

278—*Board of Directors of the State College System*
Control Account

(WV Code Chapter 18B)

Account No.

Fund 4291 FY 1998 Org 0481

- | | | | | |
|---|------------------------------|-----|----|-----------|
| 1 | Shepherd College—Capital | | | |
| 2 | Improvements—Total | 764 | \$ | 1,100,000 |

*279—West Virginia Development Office—
Tourism Commission*

(WV Code Chapter 5B)

Account No.

Fund 3067 FY 1998 Org 0304

- | | | | | |
|---|-------------------------------|-----|----|---------|
| 1 | Raleigh County Meeting and | | | |
| 2 | Convention Center—Total . . . | 763 | \$ | 900,000 |

*280—Department of Education and the Arts—
Office of the Secretary*

(WV Code Chapter 5F)

Account No.

Fund 3505 FY 1998 Org 0431

- | | | | | |
|---|---------------------------------|-----|----|-----------|
| 1 | Capital Outlay and Improvements | 762 | \$ | 1,000,000 |
|---|---------------------------------|-----|----|-----------|

281—Bureau of Senior Services—

(WV Code Chapter 29)

Account No.

Fund 5405 FY 1998 Org 0508

- | | | | | |
|---|-------------------------|-----|----|---------|
| 1 | Senior Citizens Centers | | | |
| 2 | and Programs | 462 | \$ | 500,000 |

*282—WV Development Office—
Tourism Commission*

(WV Code Chapter 5B)

Account No.

Fund 3067 FY 1998 Org 0304

1	Tourism—Unclassified (R)	662	\$	500,000
1	Total, TITLE II, Section 10—			
2	Appropriations from Lottery			
3	Net Profit Surplus for the fiscal			
4	year one thousand nine hundred			
5	ninety-eight		\$	<u>4,000,000</u>

1 **Sec. 11. Special revenue appropriations.**—There are
2 hereby appropriated for expenditure during the fiscal year
3 one thousand nine hundred ninety-eight, appropriations
4 made by general law from special revenue which are not
5 paid into the state fund as general revenue under the
6 provisions of section two, article two, chapter twelve of the
7 code: *Provided*, That none of the money so appropriated
8 by this section shall be available for expenditure except in
9 compliance with and in conformity to the provisions of
10 articles two and three, chapter twelve and article two,
11 chapter five-a of the code, with due consideration to the
12 digest of legislative intent of the budget bill prepared
13 pursuant to article one, chapter four, unless the spending
14 unit has filed with the director of the budget, the auditor
15 and the legislative auditor prior to the beginning of each
16 fiscal year:

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

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

1 **Sec. 12. State improvement fund appropri-**
2 **ations.**—Bequests or donations of nonpublic funds,
3 received by the governor on behalf of the state during the
4 fiscal year one thousand nine hundred ninety-eight, for
5 the purpose of making studies and recommendations
6 relative to improvements of the administration and
7 management of spending units in the executive branch of
8 state government, shall be deposited in the state treasury in
9 a separate account therein designated state improvement
10 fund.

11 There are hereby appropriated all moneys so deposited
12 during the fiscal year one thousand nine hundred

13 ninety-eight, to be expended as authorized by the
14 governor, for such studies and recommendations which
15 may encompass any problems of organization,
16 procedures, systems, functions, powers or duties of a state
17 spending unit in the executive branch, or the betterment of
18 the economic, social, educational, health and general
19 welfare of the state or its citizens.

1 **Sec. 13. Specific funds and collection accounts.**—A
2 fund or collection account which by law is dedicated to a
3 specific use is hereby appropriated in sufficient amount to
4 meet all lawful demands upon the fund or collection
5 account and shall be expended according to the provisions
6 of article three, chapter twelve of the code.

1 **Sec. 14. Appropriations for refunding erroneous**
2 **payment.**—Money that has been erroneously paid into the
3 state treasury is hereby appropriated out of the fund into
4 which it was paid, for refund to the proper person.

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

1 **Sec. 15. Sinking fund deficiencies.**—There is hereby
2 appropriated to the governor a sufficient amount to meet
3 any deficiencies that may arise in the mortgage finance
4 bond insurance fund of the West Virginia housing
5 development fund which is under the supervision and
6 control of the municipal bond commission as provided by
7 section twenty-b, article eighteen, chapter thirty-one of the
8 code, or in the funds of the municipal bond commission
9 because of the failure of any state agency for either
10 general obligation or revenue bonds or any local taxing
11 district for general obligation bonds to remit funds
12 necessary for the payment of interest and sinking fund
13 requirements. The governor is authorized to transfer from
14 time to time such amounts to the municipal bond
15 commission as may be necessary for these purposes.

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

1 **Sec. 16. Appropriations for local governments.**

2 —There are hereby appropriated for payment to counties,
 3 districts and municipal corporations such amounts as will
 4 be necessary to pay taxes due counties, districts and
 5 municipal corporations and which have been paid into the
 6 treasury:

7 (a) For redemption of lands;

8 (b) By public service corporations;

9 (c) For tax forfeitures.

1 **Sec. 17. Total appropriations.**—Where only a total
 2 sum is appropriated to a spending unit, the total sum shall
 3 include personal services, annual increment, employee
 4 benefits, current expenses, repairs and alterations,
 5 equipment and capital outlay, where not otherwise
 6 specifically provided and except as otherwise provided in
 7 TITLE I—GENERAL PROVISIONS, Sec. 3.

1 **Sec. 18. General school fund.**—The balance of the
 2 proceeds of the general school fund remaining after the
 3 payment of the appropriations made by this act is
 4 appropriated for expenditure in accordance with section
 5 sixteen, article nine-a, chapter eighteen of the code.

TITLE III—ADMINISTRATION.

TITLE III—ADMINISTRATION.

§1. Appropriations conditional.

§2. Constitutionality.

1 **Section 1. Appropriations conditional.**—The expend-
 2 iture of the appropriations made by this act, except those
 3 appropriations made to the legislative and judicial
 4 branches of the state government, are conditioned upon

5 the compliance by the spending unit with the requirements
6 of article two, chapter five-a of the code.

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

1 **Sec. 2. Constitutionality.**—If any part of this act is
2 declared unconstitutional by a court of competent
3 jurisdiction, its decision shall not affect any portion of this
4 act which remains, but the remaining portion shall be in
5 full force and effect as if the portion declared
6 unconstitutional had never been a part of the act.

CHAPTER 6

(S. B. 245—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson,
Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie,
Minear and Sprouse)

[Passed March 21, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the governor's office, account no. fund 0101, fiscal year 1997, organization 0100, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated February 12, 1997, which included the statement of the state fund, general revenue, setting forth therein the cash balances and investments as of July 1, 1996, and further included the estimate of revenues for the fiscal

year 1996-97, less net appropriation balances forwarded and regular appropriations for fiscal year 1996-97.

WHEREAS, It thus appears from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 0101, fiscal year 1997, organization 0100, be supplemented and amended by increasing the total appropriation by two hundred thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 EXECUTIVE

4 5—Governor's Office

5 (WV Code Chapter 5)

6 Account No.

7 Fund 0101 FY 1997 Org 0100

8			General
9		Act-	Revenue
10		ivity	Fund
11	7	Unclassified	099 \$ 200,000

12 The purpose of this bill is to supplement this account
 13 in the budget act for the fiscal year ending the thirtieth
 14 day of June, one thousand nine hundred ninety-seven, by
 15 adding two hundred thousand dollars to the existing
 16 appropriation for expenditure during the fiscal year one
 17 thousand nine hundred ninety-seven.

CHAPTER 7

(S. B. 231—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 3, 1997; 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, one thousand nine hundred ninety-seven, in the amount of two million dollars from the revenue shortfall reserve fund, account no. fund 2038, organization 0201, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1997, organization 0100.

WHEREAS, The Legislature finds that it anticipates that the funds available to assist flood victims and to fund other needed infrastructure and other community development projects throughout the state will fall short of that needed during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; and

WHEREAS, The revenue shortfall reserve fund has a sufficient balance available for appropriation in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; and

WHEREAS, By the provisions of this legislation there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the revenue shortfall reserve fund, account no. fund 2038, organization 0201, 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 fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 0105, fiscal year 1997, organization 0100, be supplemented and amended by increasing the total appropriation by two million dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 8—Governor's Office—
4 Civil Contingent Fund

5 (WV Code Chapter 5A)

6 Account No.

7 Fund 0105 FY 1997 Org 0100

8		Act-	General
9		ivity	Revenue
10			Fund
11	1 Civil Contingent Fund-Surplus (R) . 263		\$2,000,000

12 The purpose of this bill is to expire the sum of two
13 million dollars from the revenue shortfall reserve fund,
14 account no. fund 2038, organization 0201, and to
15 supplement the governor's office, civil contingent fund,
16 account no. fund 0105, fiscal year 1997, organization
17 0100, in the budget act for the fiscal year ending the
18 thirtieth day of June, one thousand nine hundred ninety-
19 seven, by adding two million dollars to the existing
20 appropriation.



CHAPTER 8

(S. B. 565—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Plymale, Prezioso, Macnaughtan, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, in the amount of one hundred thousand dollars from the joint expenses, account no. fund 0175, fiscal year 1997, organization 2300, activity 529, and making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the governor's office - civil contingent fund, account no. fund 0105, fiscal year 1997, organization 0100.

WHEREAS, The Legislature finds that the account balance in the joint expenses, account no. fund 0175, fiscal year 1997, organization 2300, activity 529, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, There now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; 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, one thousand nine hundred ninety-seven, to the joint expenses, account no. fund 0175, fiscal year 1997, organization 2300, activity 529, be

amended and decreased by expiring the amount of one hundred thousand dollars to the unappropriated balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 0105, fiscal year 1997, organization 0100, be supplemented and amended by increasing the total appropriation by one hundred thousand dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	EXECUTIVE		
4	8—Governor's Office—		
5	Civil Contingent Fund		
6	(WV Code Chapter 5)		
7	Account No.		
8	Fund <u>0105</u> FY <u>1997</u> Org <u>0100</u>		
9			General
10		Act-	Revenue
11		ivity	Fund
12	1	Civil Contingent Fund—Total (R) . . 114	\$100,000
13	The purpose of this bill is to expire the sum of one		
14	hundred thousand dollars from the joint expenses, account		
15	no. fund 0175, fiscal year 1997, organization 2300,		
16	activity 529, and supplement account no. fund 0105, fiscal		
17	year 1997, organization 0100, in the budget act for the		
18	fiscal year ending the thirtieth day of June, one thousand		
19	nine hundred ninety-seven, by adding one hundred		
20	thousand dollars to the existing appropriation for the		
21	governor's office - civil contingent fund.		



CHAPTER 9

(S. B. 398—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed April 8, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the treasurer's office, account no. fund 0126, fiscal year 1997, organization 1300, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated February 12, 1997, which included the statement of the state fund, general revenue, setting forth therein the cash balances and investments as of July 1, 1996, and further included the estimate of revenues for the fiscal year 1996-97, less net appropriation balances forwarded and regular appropriations for fiscal year 1996-97; and

WHEREAS, It thus appears from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 0126, fiscal year 1997, organization 1300, be supplemented and amended by increasing the total appropriation by three hundred eighty-five thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 EXECUTIVE

4 12—*Treasurer's Office*

5 (WV Code Chapter 12)

6 Account No.

7 Fund 0126 FY 1997 Org 1300

8			General
9		Act-	Revenue
10		ivity	Fund
11	5	Unclassified	099 \$385,000

12 The purpose of this bill is to supplement this account
 13 in the budget act for the fiscal year ending the thirtieth
 14 day of June, one thousand nine hundred ninety-seven, by
 15 adding three hundred eighty-five thousand dollars to the
 16 existing appropriation for expenditure during the fiscal
 17 year one thousand nine hundred ninety-seven.

CHAPTER 10

(S. B. 556—By Senators Anderson, White, Ball, Dittmar, Dugan,
 Minear and Ross)

[Passed April 10, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of agriculture, account no. fund 0131, fiscal year 1997, organization 1400, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor submitted to the Legislature the

executive budget document, dated February 12, 1997, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1996, and further included the estimate of revenues for the fiscal year 1996-97 less net appropriation balances forwarded and regular appropriations for the fiscal year 1996-97.

WHEREAS, It thus appearing from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriations for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 0131, fiscal year 1997, organization 1400, be supplemented and amended by increasing the total appropriation by forty thousand dollars as follows:

1	TITLE II — APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	13—Department of Agriculture		
4	(WV Code Chapter 9)		
5	Account No.		
6	Fund <u>0131</u> FY <u>1997</u> Org <u>1400</u>		
7		Act-	General
8		ivity	Revenue
9			Fund
10	10a Bee Research	691	\$40,000
11	Any unexpended balance remaining in the		
12	appropriation for bee research (fund 0131, activity 691) at		
13	the close of the fiscal year 1996-97 is hereby		
14	reappropriated for expenditure during the fiscal year		
15	1997-98.		
16	The purpose of this bill is to supplement this account		
17	in the budget act for the fiscal year ending the thirtieth		
18	day of June, one thousand nine hundred ninety-seven, by		
19	adding forty thousand dollars to the existing		
20	appropriation for expenditure during the fiscal year one		
21	thousand nine hundred ninety-seven.		

CHAPTER 11

(H. B. 2603—By Delegates Michael, Doyle and Seacrist)

[Passed April 1, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the secretary of state, account no. fund 0155, fiscal year 1997, organization 1600, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated February 12, 1997, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1996, and further included the estimate of revenues for fiscal year 1996-97, less net appropriation balances forwarded and regular appropriations for fiscal year 1996-97; and

WHEREAS, It thus appearing from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 0155, fiscal year 1997, organization 1600, be supplemented and amended by increasing the total appropriation by fifty thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 1. Appropriations from general revenue.

3 EXECUTIVE

4 18—Secretary of State

5 (WV Code Chapters 3, 5 and 59)

6 Account No.

7 Fund 0155 FY 1997 Org 1600

8			General
9		Act-	Revenue
10		ivity	Fund
11	5	Unclassified (R)	099 \$50,000

12 The purpose of this bill is to supplement this account
 13 in the budget act for the fiscal year ending the thirtieth
 14 day of June, one thousand nine hundred ninety-seven, by
 15 adding fifty thousand dollars to the existing appropriation
 16 for expenditure during fiscal year one thousand nine
 17 hundred ninety-seven.

CHAPTER 12

(H. B. 2564—By Delegates Michael, Doyle, Campbell, Pettit,
 Warner and Farris)

[Passed March 31, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of administration, public defender services, account no. fund 0226, fiscal year 1997, organization 0221, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated the twelfth day of February,

one thousand nine hundred ninety-seven, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of the first day of July, one thousand nine hundred ninety-six, and further included the estimate of revenues for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, less net appropriation balances forwarded and regular appropriations for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; and

WHEREAS, It thus appearing from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 0226, fiscal year 1997, organization 0221, be supplemented and amended by increasing the total appropriation by three million four hundred thousand dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 1. Appropriations from general revenue.		
3	DEPARTMENT OF ADMINISTRATION		
4	29—Public Defender Services		
5	(WV Code Chapter 29)		
6	Account No.		
7	Fund	<u>0226</u>	FY <u>1997</u> Org <u>0221</u>
8			General
9		Act-	Revenue
10		ivity	Fund
11	5	Appointed Counsel Fees and	
12	6	Public Defender	
13		Corporations (R)	127 \$3,400,000

14 The purpose of this bill is to increase the appropria-
 15 tion for appointed counsel fees and public defender
 16 corporations by adding three million four hundred
 17 thousand dollars to the existing appropriation for expen-
 18 diture during the fiscal year one thousand nine hundred
 19 ninety-seven.

CHAPTER 13

(H. B. 2907—By Delegates Compton, Leggett, Clements,
Campbell, Michael, Doyle and Farris)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of administration, division of general services, account no. fund 0230, fiscal year 1997, organization 0211, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated the twelfth day of February, one thousand nine hundred ninety-seven, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of the first day of July, one thousand nine hundred ninety-six, and further included the estimate of revenues for the fiscal year 1996-97, less net appropriation balances forwarded and regular appropriations for fiscal year 1996-97; and

WHEREAS, It thus appearing from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 0230, fiscal year 1997, organization 0211, be supplemented and amended by increasing the total appropriation by five hundred thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.
 2 Section 1. Appropriations from general revenue.
 3 DEPARTMENT OF ADMINISTRATION
 4 23—*Division of General Services*
 5 (WV Code Chapter 5A)
 6 Account No.
 7 Fund 0230 FY 1997 Org 0211
 8
 9 Act- General
 10 ivity Revenue
 11 6 Capitol Complex Fund
 12 Capital Outlay 417 \$ 500,000
 13 Any unexpended balance remaining in the
 14 appropriation for capitol complex capital outlay (fund
 15 0230, activity 417) at the close of the fiscal year 1996-97
 16 is hereby reappropriated for expenditure during the fiscal
 17 year 1997-98.
 18 The purpose of this bill is to supplement this account
 19 in the budget act for the fiscal year ending the thirtieth
 20 day of June, one thousand nine hundred ninety-seven, by
 21 adding five hundred thousand dollars to the existing
 22 appropriation for expenditure during the fiscal year one
 23 thousand nine hundred ninety-seven.

CHAPTER 14

(H. B. 2868—By Delegates Michael, Doyle, Kelley,
 Jenkins, Farris, Walters and Facemyer)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public
 moneys out of the treasury from the balance of moneys

remaining as an unappropriated balance in the state fund, general revenue, to the department of education and the arts, division of culture and history, account no. fund 0293, fiscal year 1997, organization 0432, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated February 12, 1997, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1996, and further included the estimate of revenues for fiscal year 1996-97, less net appropriation balances forwarded and regular appropriations for fiscal year 1996-97; and

WHEREAS, It thus appearing from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 0293, fiscal year 1997, organization 0432, be supplemented and amended by increasing the total appropriation by forty-two thousand nine hundred seventy-eight dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 1. Appropriations from general revenue.		
3	DEPARTMENT OF EDUCATION AND THE ARTS		
4	42—Division of Culture and History		
5	(WV Code Chapter 29)		
6	Account No.		
7	Fund <u>0293</u> FY <u>1997</u> Org <u>0432</u>		
8			General
9		Act-	Revenue
10		ivity	Fund
11	5	Fairs and Festivals	122 \$42,978

12 The purpose of this bill is to supplement this account
 13 in the budget act for the fiscal year ending the thirtieth
 14 day of June, one thousand nine hundred ninety-seven, by
 15 adding forty-two thousand nine hundred seventy-eight
 16 dollars to the existing appropriation for expenditure
 17 during fiscal year one thousand nine hundred ninety-
 18 seven.

CHAPTER 15

(H. B. 2910—By Delegates Kelley, Michael, Warner, Compton, Walters,
 Clements and Leggett)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring an item of the existing appropriation to the department of health and human resources, division of health, central office, account no. 0407, fiscal year 1997, organization 0506, to the department of education and the arts, state board of rehabilitation—division of rehabilitation services, account no. fund 0310, fiscal year 1997, organization 0932, as originally appropriated by chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-six, known as the “Budget Bill”.

Be it enacted by the Legislature of West Virginia:

That the items of appropriation from the department of health and human resources, division of health, central office, account no. 0407, fiscal year 1997, organization 0506, be amended and reduced in the line item as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 1. Appropriations from general revenue.**
- 3 DEPARTMENT OF HEALTH AND HUMAN
- 4 RESOURCES

5	<i>51—Division of Health</i>		
6	<i>Central Office</i>		
7	(WV Code Chapter 16)		
8	Account No.		
9	Fund <u>0407</u> FY <u>1997</u> Org <u>0506</u>		
10			General
11		Act-	Revenue
12		ivity	Fund
13	20	Revolving Loan and Funds	
14	21	Assistance Technology 323	\$ 100,000

15 And, that the items of appropriation to the
 16 department of education and the arts, state board of
 17 rehabilitation—division of rehabilitation services, account
 18 no. fund 0310, fiscal year 1997, organization 0932, be
 19 amended and increased by adding a new line item as
 20 follows:

21 TITLE II—APPROPRIATIONS.

22 **Sec. 2. Appropriations from general revenue.**

23 DEPARTMENT OF EDUCATION AND THE ARTS

24 *49—State Board of Rehabilitation*
 25 *Division of Rehabilitation Services*

26 (WV Code Chapter 18)

27 Account No.

28 Fund 0310 FY 1997 Org 0932

29			General
30		Act-	Revenue
31		ivity	Fund
32	4a	Technology-Related Assistance	
33		Revolving Loan Fund for	
34		Individuals with Disabilities . . . 323	\$ 100,000

35 Any unexpended balance remaining in the
 36 appropriations for technology-related assistance revolving

37 loan fund for individuals with disabilities (fund 0310,
38 activity 323) at the close of the fiscal year 1996-97 are
39 hereby reappropriated for expenditure during the fiscal
40 year 1997-98.

41 The purpose of this supplementary appropriation bill
42 is to supplement, amend, reduce and transfer between
43 appropriations in the aforesaid accounts for the designated
44 spending units. The item for revolving loan fund
45 assistance technology, department of health and human
46 resources, division of health, central office, is reduced in
47 its entirety by one hundred thousand dollars and
48 transferred to the new item for technology-related
49 assistance revolving loan fund for individuals with
50 disabilities, department of education and the arts, state
51 board of rehabilitation, division of rehabilitation services.
52 The total appropriations to the aforesaid accounts are
53 respectively reduced and increased accordingly. The
54 amounts as itemized for expenditure in the fiscal year
55 ending the thirtieth day of June, one thousand nine
56 hundred ninety-seven, shall be available for expenditure
57 immediately upon the effective date of this bill.

CHAPTER 16

(H. B. 2563—By Delegates Michael, Doyle, Farris, Leach,
Mezzatesta, Pettit and Facemyer)

[Passed March 28, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of health and human resources, division of human services, account no. fund 0403, fiscal year 1997, organization 0511, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor submitted to the Legislature the governor's executive budget document, dated the twelfth day of February, one thousand nine hundred ninety-seven, which

included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of the first day of July, one thousand nine hundred ninety-six, and further included the estimate of revenues for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, less net appropriation balances forwarded and regular appropriations for the fiscal year 1996-1997; and

WHEREAS, It thus appearing from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 0403, fiscal year 1997, organization 0511, be supplemented and amended by increasing the total appropriation by seven million two hundred fifty thousand dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 1. Appropriations from general revenue.		
3	DEPARTMENT OF HEALTH AND HUMAN		
4	RESOURCES		
5	<i>55—Division of Human Services</i>		
6	(WV Code Chapters 9, 48 and 49)		
7	Account No.		
8	Fund <u>0403</u> FY <u>1997</u> Org <u>0511</u>		
9			General
10		Act-	Revenue
11		ivity	Fund
12	19 Social Services	195	\$7,250,000

13 The purpose of this bill is to supplement this account
 14 in the budget act for the fiscal year ending the thirtieth
 15 day of June, one thousand nine hundred ninety-seven, by
 16 adding seven million two hundred fifty thousand dollars
 17 to the existing appropriation for expenditure during the
 18 fiscal year one thousand nine hundred ninety-seven.

CHAPTER 17

(H. B. 2899—By Delegates Michael, Doyle, Compton,
Facemyer and Leggett)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the division of health, central office, account no. fund 0407, fiscal year 1997, organization 0506, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated the twelfth day of February, one thousand nine hundred ninety-seven, which included the statement of the state fund, general revenue, setting forth therein the cash balances and investments as of the first day of July, one thousand nine hundred ninety-six, and further included the estimate of revenues for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, less net appropriation balances forwarded and regular appropriations for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; and

WHEREAS, It thus appears from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 0407, fiscal year 1997, organization 0506, be supplemented and amended by increasing the total appropriation by one hundred ninety thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF HEALTH AND
4 HUMAN RESOURCES

5 51—*Division of Health*
6 *Central Office*

7 (WV Code Chapter 6)

8 Account No.

9 Fund 0407 FY 1997 Org 0506

10			General
11		Act-	Revenue
12		ivity	Fund
13	30a	Computer Equipment	680 \$190,000

14 Any unexpended balance remaining in the appropri-
15 ation for computer equipment (fund 0407, activity 680) at
16 the close of the fiscal year 1996-97 is hereby reappropri-
17 ated for expenditure during the fiscal year 1997-98.

18 The purpose of this bill is to supplement this account
19 in the budget act for the fiscal year ending the thirtieth
20 day of June, one thousand nine hundred ninety-seven, by
21 adding one hundred ninety thousand dollars to the exist-
22 ing appropriation for expenditure during the fiscal year
23 one thousand nine hundred ninety-seven.

CHAPTER 18

(H. B. 2898—By Delegates Warner, Compton, Pettit, Michael,
Doyle, Leach and Farris)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the human rights commission, account no. fund 0416, fiscal year 1997, organization 0510, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated the twelfth day of February, one thousand nine hundred ninety-seven, which included the statement of the state fund, general revenue, setting forth therein the cash balances and investments as of the first day of July, one thousand nine hundred ninety-six, and further included the estimate of revenues for the fiscal year ending the thirtieth day of July, one thousand nine hundred ninety-six, less net appropriation balances forwarded and regular appropriations for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; and

WHEREAS, It thus appears from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 0416, fiscal year 1997, organization 0510, be supplemented and amended by increasing the total appropriation by one hundred thirty-nine thousand five hundred dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	<i>54—Human Rights Commission</i>		
4	(WV Code Chapter 5)		
5	Account No.		
6	Fund <u>0416</u> FY <u>1997</u> Org <u>0510</u>		
7			General
8		Act-	Revenue
9		ivity	Fund
10	5a	Automated Management Information	
11	5b	System	528 \$139,500
12	Any unexpended balance remaining in the appropri-		
13	ation for Automated Management Information System		
14	(fund 0416, activity 528) at the close of the fiscal year		
15	1996-97 is hereby reappropriated for expenditure during		
16	the fiscal year 1997-98.		
17	The purpose of this bill is to supplement this account		
18	in the budget act for the fiscal year ending the thirtieth		
19	day of June, one thousand nine hundred ninety-seven, by		
20	adding one hundred thirty-nine thousand five hundred		
21	dollars to the existing appropriation for expenditure dur-		
22	ing the fiscal year one thousand nine hundred ninety-		
23	seven.		

CHAPTER 19

(H. B. 2900—By Delegates Warner, Kelley, Cann, Compton,
Seacrist, Miller and Clements)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from the state fund, general revenue, to the department of military affairs

and public safety, adjutant general, state militia, account no. fund 0433, fiscal year 1997, organization 0603, as originally appropriated by chapter eight, acts of the Legislature, first regular session, one thousand nine hundred ninety-six, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state fund, general revenue, to the department of military affairs and public safety, adjutant general, state militia, account no. fund 0433, fiscal year 1997, organization 0603, be amended and reduced in the line items as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 1. Appropriations from general revenue.		
3	DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC		
4	SAFETY		
5	<i>57—Adjutant General—State Militia</i>		
6	(WV Code Chapter 15)		
7	Fund <u>0433</u> FY <u>1997</u> Org <u>0603</u>		
8			General
9		Act-	Revenue
10		ivity	Fund
11	5 College Education Fund	232	\$ 198,000

12 And, that the items of the total appropriations from
 13 the state fund, general revenue, to the department of mili-
 14 tary affairs and public safety, adjutant general, state militia,
 15 account no. fund 0433, fiscal year 1997, organization
 16 0603, be amended and increased in a new line item as
 17 follows:

18	TITLE II—APPROPRIATIONS.		
19	Sec. 1. Appropriations from general revenue.		
20	DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC		
21	SAFETY		
22	<i>57—Adjutant General—State Militia</i>		
23	(WV Code Chapter 15)		
24	Fund <u>0433</u> FY <u>1997</u> Org <u>0603</u>		

		Act- ivity	General Revenue Fund
25			
26			
27			
28	5a Mountaineer Challenge		
29	Academy	709	\$ 198,000

30 Any unexpended balance remaining in the appropri-
31 ation for the mountaineer challenge academy (fund 0433,
32 activity 709) at the close of the fiscal year 1996-97 is
33 hereby reappropriated for expenditure during the fiscal
34 year 1997-98.

35 The purpose of this supplementary appropriation bill
36 is to supplement, amend, reduce and transfer between
37 existing items in the aforesaid account for the designated
38 spending unit. The item for college education fund is
39 reduced by one hundred ninety-eight thousand dollars. A
40 new item for mountaineer challenge academy is added
41 with an appropriation of one hundred ninety-eight thou-
42 sand dollars. The amounts as itemized for expenditure in
43 the fiscal year ending the thirtieth day of June, one thou-
44 sand nine hundred ninety-six, shall be available for expen-
45 diture immediately upon the effective date of this bill.

CHAPTER 20

(S. B. 536—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson,
Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie,
Minear and Sprouse)

[Passed April 9, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public mon-
eys out of the treasury from the balance of moneys remain-
ing as an unappropriated balance in the state fund, general
revenue, to the department of military affairs and public
safety, division of corrections - correctional units, account
no. fund 0450, fiscal year 1997, organization 0608, all sup-
plementing and amending the appropriation for the fiscal
year ending the thirtieth day of June, one thousand nine
hundred ninety-seven.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated February 12, 1997, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1996, and further included the estimate of revenues for the fiscal year 1996-97, less net appropriation balances forwarded and regular appropriations for fiscal year 1996-97.

WHEREAS, It thus appearing from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 0450, fiscal year 1997, organization 0608, be supplemented and amended by increasing the total appropriation by three million three hundred fifty thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC
4 SAFETY

5 61—Division of Corrections—
6 Correctional Units

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

8 Account No.

9 Fund 0450 FY 1997 Org 0608

			Act- ivity	General Revenue Fund
10				
11				
12				
13	5	Payment to Counties and/or		
14	6	Regional Jails	229	\$2,250,000
15	10	Inmate Medical Expense	535	1,100,000

16 The purpose of this bill is to supplement this account
17 in the budget act for the fiscal year ending the thirtieth
18 day of June, one thousand nine hundred ninety-seven, by
19 adding three million three hundred fifty thousand dollars
20 to the existing appropriation for expenditure during the
21 fiscal year one thousand nine hundred ninety-seven.

CHAPTER 21

(H. B. 2501—By Delegates Michael, Doyle, Compton, Farris,
Leach, Seacrist and Clements)

[Passed March 31, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of tax and revenue, tax division, account no. fund 0470, fiscal year 1997, organization 0702, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated the twelfth day of February, one thousand nine hundred ninety-seven, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of the first day of July, one thousand nine hundred ninety-six, and further included the estimate of revenues for fiscal year 1996-1997, less net appropriation balances forwarded and regular appropriations for fiscal year 1996-1997.

WHEREAS, It thus appearing from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 0470, fiscal year 1997, organization 0702, be supplemented and amended by increasing the total appropriation by two hundred fifty thousand dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 1. Appropriations from general revenue.		
3	DEPARTMENT OF TAX AND REVENUE		
4	<i>69—Tax Division—</i>		
5	(WV Code Chapter 11)		
6	Account No.		
7	Fund <u>0470</u> FY <u>1997</u> Org <u>0702</u>		
8			General
9			Revenue
10		Act- ivity	Fund
11	5a Office of Chief Inspector	682	\$250,000
12	The above appropriation for the Office of Chief		
13	Inspector may be transferred to special revenue fund 7067		
14	for disbursement.		
15	The purpose of this supplementary appropriation bill		
16	is to supplement this account in the budget act for the		
17	fiscal year ending the thirtieth day of June, one thousand		
18	nine hundred ninety-seven, by adding two hundred fifty		
19	thousand dollars to the existing appropriation for expen-		
20	diture by the office of chief inspector during the fiscal		
21	year one thousand nine hundred ninety-seven.		

CHAPTER 22

(S. B. 543—By Senators Craig, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed April 8, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary transfer of public moneys out

of the treasury from the unappropriated surplus balance in other funds, by transferring an amount not to exceed three hundred thousand dollars which has accrued or will accrue from the treasurer's office, tobacco company settlement proceeds, account no. fund 1316, organization 1300, to the department of administration, public employees insurance agency, nonstate health claims fund, account no. fund 2183, organization 0225.

WHEREAS, The money has or may be recovered from a settlement with the Ligget group, one of the tobacco companies sued by the public employees insurance agency. The lawsuit seeks to recover moneys expended by the public employees insurance agency for treatment of members in its plan for illness related to tobacco use. This money will be used by the public employees insurance agency to pay for medical treatment of public employees insurance agency insureds and legal fees associated with the settlement with the Ligget group; and

WHEREAS, The governor has established that there now remains an unappropriated surplus balance in the treasurer's office, tobacco company settlement proceeds, account no. fund 1316, organization 1300, available for transfer; therefore

Be it enacted by the Legislature of West Virginia:

1 That an amount not to exceed three hundred thousand
2 dollars which has accrued or will accrue in the unappro-
3 priated surplus balance of the treasurer's office, tobacco
4 company settlement proceeds, account no. fund 1316,
5 organization 1300, be decreased and expired by transfer-
6 ring an amount not to exceed three hundred thousand
7 dollars to the department of administration, public em-
8 ployees insurance agency, nonstate health claims fund,
9 account no. fund 2183, organization 0225.

10 The purpose of this bill is to decrease and expire a
11 sum not to exceed three hundred thousand dollars which
12 has accrued or will accrue in the unappropriated surplus
13 balance in other funds, account no. fund 1316, organiza-
14 tion 1300, by transferring an amount not to exceed three
15 hundred thousand dollars to account no. fund 2183, orga-
16 nization 0225, to pay for medical treatment of public
17 employees insurance agency insureds and legal fees asso-
18 ciated with the settlement with the Ligget group.

CHAPTER 23

(S. B. 246—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 21, 1997; 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, one thousand nine hundred ninety-seven, in the department of administration, West Virginia prosecuting attorneys institute, account no. fund 2521, fiscal year 1997, organization 0228, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor has established that there now remains an unappropriated balance in the West Virginia prosecuting attorneys institute, account no. fund 2521, fiscal year 1997, organization 0228, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 2521, fiscal year 1997, organization 0228, be supplemented and amended by increasing the total appropriation by four thousand five hundred eighty-six dollars in the line items as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 3. Appropriations from other funds.**
- 3 DEPARTMENT OF ADMINISTRATION
- 4 *106—WV Prosecuting Attorneys Institute*
- 5 (WV Code Chapter 7)
- 6 Account No.
- 7 Fund 2521 FY 1997 Org 0228

		Act- ivity	Other Funds
8			
9			
10	1	099	\$ 4,586
11	The purpose of this supplementary appropriation bill		
12	is to supplement this account in the budget act for the		
13	fiscal year ending the thirtieth day of June, one thousand		
14	nine hundred ninety-seven, by adding four thousand five		
15	hundred eighty-six dollars to the existing appropriation.		

CHAPTER 24

(S. B. 319—By Senators Craig, Anderson, Bailey, Chaffin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed April 9, 1997; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from other funds to the department of education, state department of education - school building authority, account no. fund 3959, fiscal year 1997, organization 0402, as originally appropriated by chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-six, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from other funds to account no. fund 3959, fiscal year 1997, organization 0402, be amended and reduced in the line items as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 3. Appropriations from other funds.**
- 3 DEPARTMENT OF EDUCATION
- 4 *107—State Department of Education—*
- 5 *School Building Authority*
- 6 (WV Code Chapter 18)

		Account No.		
		Fund <u>3959</u>	FY <u>1997</u>	Org <u>0402</u>
			Act- ivity	Other Funds
11	2	Annual Increment	004	\$ 100
12	4	Unclassified	099	46,391

13 And, that the items of the total appropriations from
14 other funds to account no. fund 3959, fiscal year 1997,
15 organization 0402, be amended and increased in the line
16 items as follows:

17 TITLE II—APPROPRIATIONS.

18 **Sec. 3. Appropriations from other funds.**

19 DEPARTMENT OF EDUCATION

20 *107—State Department of Education—*
21 *School Building Authority*

22 (WV Code Chapter 18)

23 Account No.

		Account No.		
		Fund <u>3959</u>	FY <u>1997</u>	Org <u>0402</u>
			Act- ivity	Other Funds
27	1	Personal Services	001	\$ 26,768
28	3	Employee Benefits	010	19,723

29 The purpose of this supplementary appropriation bill
30 is to supplement, amend, reduce and transfer between
31 existing items in the aforesaid account for the designated
32 spending unit. The item for annual increment is reduced
33 by one hundred dollars; the item for unclassified is re-
34 duced by forty-six thousand three hundred ninety-one
35 dollars; the item for personal services is increased by twen-
36 ty-six thousand seven hundred sixty-eight dollars and the
37 item for employee benefits is increased by nineteen thou-
38 sand seven hundred twenty-three dollars. The amounts as
39 itemized for expenditure in the fiscal year ending the
40 thirtieth day of June, one thousand nine hundred ninety-
41 seven, shall be available for expenditure immediately upon
42 the effective date of this bill.

CHAPTER 25

(S. B. 539—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed April 8, 1997; 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, one thousand nine hundred ninety-seven, in the department of health and human resources, division of human services - child support enforcement, account no. fund 5094, fiscal year 1997, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources, division of human services - child support enforcement, account no. fund 5094, fiscal year 1997, organization 0511, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 5094, fiscal year 1997, organization 0511, be supplemented and amended by increasing the total appropriation by one million seventy-one thousand three hundred fifty dollars in the line item as follows:

- | | |
|---|---|
| 1 | TITLE II—APPROPRIATIONS. |
| 2 | Sec. 3. Appropriations from other funds. |
| 3 | DEPARTMENT OF HEALTH AND |
| 4 | HUMAN RESOURCES |

5 126—Division of Human Services—
6 Child Support Enforcement

7 (WV Code Chapter 48A)

8 Account No.

9 Fund 5094 FY 1997 Org 0511

10			Act-	Other
11			ivity	Funds
12	4	Unclassified	099	\$ 1,071,350

13 The purpose of this supplementary appropriation bill
14 is to supplement this account in the budget act for the
15 fiscal year ending the thirtieth day of June, one thousand
16 nine hundred ninety-seven, by adding one million
17 seventy-one thousand three hundred fifty dollars to the
18 existing appropriation.

CHAPTER 26

(S. B. 540—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

{Passed April 8, 1997; 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, one thousand nine hundred ninety-seven, in the department of health and human resources, division of human services - medical services trust fund, account no. fund 5185, fiscal year 1997, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources, division of human services - medical services trust fund, account no. fund 5185, fiscal year 1997, organization 0511, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 5185, fiscal year 1997, organization 0511, be supplemented and amended by increasing the total appropriation by two million two hundred ninety-eight thousand three hundred nineteen dollars in the line items as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 3. Appropriations from other funds.		
3	DEPARTMENT OF HEALTH AND		
4	HUMAN RESOURCES		
5	<i>127—Human Services—</i>		
6	<i>Medical Services Trust Fund</i>		
7	(WV Code Chapter 9)		
8	Account No.		
9	Fund <u>5185</u> FY <u>1997</u> Org <u>0511</u>		
10		Act-	Other
11		ivity	Funds
12	2	State Institutions	
13		DPSH Payments	583 \$ 2,298,319

14 The purpose of this supplementary appropriation bill
 15 is to supplement this account in the budget act for the
 16 fiscal year ending the thirtieth day of June, one thousand
 17 nine hundred ninety-seven, by adding two million two
 18 hundred ninety-eight thousand three hundred nineteen
 19 dollars to the existing appropriation for disproportionate
 20 share payments to eligible state institutions.

CHAPTER 27

(S. B. 152—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 21, 1997; 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, one thousand nine hundred ninety-seven, in the department of military affairs and public safety, West Virginia state police - surplus transfer account, account no. fund 6519, fiscal year 1997, organization 0612, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of military affairs and public safety, West Virginia state police - surplus transfer account, account no. fund 6519, fiscal year 1997, organization 0612, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 6519, fiscal year 1997, organization 0612, be supplemented and amended by increasing the total appropriation by two hundred eighty-six thousand eight hundred ninety-three dollars in the line items as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 3. Appropriations from other funds.**
- 3 DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC
- 4 SAFETY
- 5 133—West Virginia State Police—
- 6 Surplus Transfer Account

7	(WV Code Chapter 15)		
8	Account No.		
9	Fund <u>6519</u> FY <u>1997</u> Org <u>0612</u>		
10		Act-	Other
11		ivity	Funds
12	1	Unclassified—Total	096 \$ 286,893
13	The purpose of this supplementary appropriation bill		
14	is to supplement this account in the budget act for fiscal		
15	year ending the thirtieth day of June, one thousand nine		
16	hundred ninety-seven, by adding two hundred eighty-six		
17	thousand eight hundred ninety-three dollars to the exist-		
18	ing appropriation for aircraft related improvements.		

CHAPTER 28

(S. B.154—By Senators Craig, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 21, 1997; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from other funds to the department of military affairs and public safety - regional jail and correctional facility authority, account no. fund 6675, fiscal year 1997, organization 0615, as originally appropriated by chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-six, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from other funds to account no. fund 6675, fiscal year 1997, organization 0615, be amended and reduced in the line items as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 3. Appropriations from other funds.**3 DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC
4 SAFETY5 *134—Regional Jail and Correctional Facility Authority*

6 (WV Code Chapter 31)

7 Account No.

8 Fund 6675 FY 1997 Org 0615

9		Act-	Other
10		ivity	Funds
11	5	Unclassified	099 \$ 23,806

12 And, that the items of the total appropriations from
13 other funds to account no. fund 6675, fiscal year 1997,
14 organization 0615, be amended and increased in the line
15 items as follows:

16 TITLE II—APPROPRIATIONS.

17 **Sec. 3. Appropriations from other funds.**18 DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC
19 SAFETY20 *134—Regional Jail and Correctional Facility Authority*

21 (WV Code Chapter 31)

22 Account No.

23 Fund 6675 FY 1997 Org 0615

24		Act-	Other
25		ivity	Funds
26	1	Personal Services	001 \$ 20,000
27	3	Employee Benefits	010 3,806

28 The purpose of this supplementary appropriation bill
29 is to supplement, amend, reduce and transfer between
30 existing items in the aforesaid account for the designated

31 spending unit. The item for unclassified is reduced by
32 twenty-three thousand eight hundred six dollars. The item
33 for personal services is increased by twenty thousand dol-
34 lars. The item for employee benefits is increased by three
35 thousand eight hundred six dollars. The amounts as item-
36 ized for expenditure in fiscal year ending the thirtieth day
37 of June, one thousand nine hundred ninety-seven, shall be
38 available for expenditure immediately upon the effective
39 date of this bill.

CHAPTER 29

(S. B. 153—By Senators Craig, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 21, 1997; 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, one thousand nine hundred ninety-seven, in the West Virginia board of examiners for speech-language pathology and audiology, account no. fund 8646, fiscal year 1997, organization 0930, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor has established that there now remains an unappropriated balance in the West Virginia board of examiners for speech-language pathology and audiology, account no. fund 8646, fiscal year 1997, organization 0930, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-six, known as the "Budget Bill", be supplemented and amended by adding to title II, section three thereof, the following:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 MISCELLANEOUS BOARDS AND COMMISSIONS

4 192a—*West Virginia Board of Examiners for Speech-*
5 *Language*
6 *Pathology and Audiology*

7 (WV Code Chapter 30)

8 Account No.

9 Fund 8646 FY 1997 Org 0930

10		Act-	
11		ivity	Other
			Funds
12	1	Unclassified—Total	096 \$ 70,000

13 The purpose of this supplementary appropriation bill
14 is to supplement this account in the budget act for fiscal
15 year ending the thirtieth day of June, one thousand nine
16 hundred ninety-seven, by providing for a new item of
17 appropriation to be established therein to appropriate
18 other funds in the amount of seventy thousand dollars for
19 the operation of the West Virginia board of examiners for
20 speech-language pathology and audiology.

CHAPTER 30

(H. B. 2294—By Delegates Cann, Frederick, Jenkins, Laird, Pettit,
Warner and Facemyer)

[Passed March 26, 1997; 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, one thousand nine hundred ninety-

seven, to the department of military affairs and public safety, West Virginia state police, account no. fund 8741, fiscal year 1997, organization 0612, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 8741, fiscal year 1997, organization 0612, be supplemented and amended by increasing the total appropriation by one hundred fifty-three thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 5. Appropriations of federal funds.

3 DEPARTMENT OF MILITARY AFFAIRS AND

4 PUBLIC SAFETY

5 230—West Virginia State Police

6 (WV Code Chapter 15)

7 Account No.

8 Fund 8741 FY 1997 Org 0612

9 10			Act- ivity	Federal Funds
11	1	Unclassified—Total	096	\$153,000

12 The purpose of this supplementary appropriation bill
13 is to supplement this account in the budget act for the
14 fiscal year ending the thirtieth day of June, one thousand
15 nine hundred ninety-seven, by adding one hundred fifty-
16 three thousand dollars to the existing appropriation for a
17 DNA testing program.

CHAPTER 31

(H. B. 2297—By Delegates Campbell, Compton, Frederick,
Jenkins, Kelley, Seacrist and Facemyer)

[Passed March 26, 1997; 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, one thousand nine hundred ninety-seven, to the West Virginia development office - community development, account no. fund 8746, fiscal year 1997, organization 0307, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 8746, fiscal year 1997, organization 0307, be supplemented and amended by increasing the total appropriation by six million dollars as follows:

- | | |
|---|--|
| 1 | TITLE II—APPROPRIATIONS. |
| 2 | Sec. 6. Appropriations from federal block grants. |
| 3 | 247— <i>West Virginia Development Office</i> |
| 4 | <i>Community Development</i> |
| 5 | Account No. |
| 6 | Fund <u>8746</u> FY <u>1997</u> Org <u>0307</u> |

		Act- ivity	Federal Funds
7			
8			
9	1	Unclassified—Total	096 \$6,000,000
10		The purpose of this supplementary appropriation bill	
11		is to supplement this account in the budget act for the	
12		fiscal year ending the thirtieth day of June, one thousand	
13		nine hundred ninety-seven, by adding six million dollars	
14		to the existing appropriation for the Small Cities Block	
15		Grant Program.	

CHAPTER 32

(H. B. 2869—By Delegates Jenkins, Kelley, Farris, Pettit,
Miller, Facemyer and Walters)

[Passed April 9, 1997; 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, one thousand nine hundred ninety-seven, to the division of health - preventive health, account no. fund 8753, fiscal year 1997, organization 0506, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 8753, fiscal year 1997, organization 0506, be supplemented and amended by increasing the total appropriation by five hundred thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 5. Appropriations from federal block grants.**3 *251—Division of Health—*
4 *Preventive Health*

5 Account No.

6 Fund 8753 FY 1997 Org 0506

7		Act-	Federal
8		ivity	Funds
9	1	Unclassified—Total	096 \$500,000

10 The purpose of this supplementary appropriation bill
11 is to supplement this account in the budget act for the
12 fiscal year ending the thirtieth day of June, one thousand
13 nine hundred ninety-seven, by adding the amount of five
14 hundred thousand dollars to the existing appropriation for
15 the preventive health block grant.

CHAPTER 33

(H. B. 2290—By Delegates Seacrist, Kelley, Proudfoot, Clements,
Facemyer, Leggett and Miller)

[Passed March 26, 1997; 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, one thousand nine hundred ninety-seven, to the department of transportation, office of the secretary, account no. fund 8782, fiscal year 1997, organization 0801, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 8782, fiscal year 1997, organization 0801, be supplemented and amended by increasing the total appropriation by five hundred twenty-five thousand dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 5. Appropriations of federal funds.		
3	DEPARTMENT OF TRANSPORTATION		
4	234—Department of Transportation—		
5	Office of the Secretary		
6	(WV Code Chapter 5F)		
7	Account No.		
8	Fund	<u>8782</u>	FY <u>1997</u> Org <u>0801</u>
9			Act-
10			ivity
			Federal
			Funds
11	1	Unclassified—Total	096 \$525,000

12 The purpose of this supplementary appropriation bill
 13 is to supplement this account in the budget act for the
 14 fiscal year ending the thirtieth day of June, one thousand
 15 nine hundred ninety-seven, by adding five hundred
 16 twenty-five thousand dollars to the existing appropriation
 17 for further development of the Western West Virginia
 18 Regional Airport/Transpark.

CHAPTER 34

(H. B. 2295—By Delegates Doyle, Cann, Proudfoot, Warner,
Clements, Leggett and Walters)

[Passed March 26, 1997; 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, one thousand nine hundred ninety-seven, to the department of transportation, division of motor vehicles, account no. fund 8787, fiscal year 1997, organization 0802, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-six, known as the "Budget Bill", be supplemented and amended by adding to Title II, section five thereof, the following:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 5. Appropriations of federal funds.**
- 3 DEPARTMENT OF TRANSPORTATION
- 4 *234a—Division of Motor Vehicles*
- 5 (WV Code Chapter 20)
- 6 Account No.
- 7 Fund 8787 FY 1997 Org 0802

1		Act-	Federal
2		ivity	Funds
3	1 Unclassified—Total	096	\$134,990
4	The purpose of this supplementary appropriation bill		
5	is to supplement this account in the budget act for the		
6	fiscal year ending the thirtieth day of June, one thousand		
7	nine hundred ninety-seven, by providing for a new item of		
8	appropriation to be established therein to appropriate		
9	federal funds in the amount of one hundred thirty-four		
10	thousand nine hundred ninety dollars for implementation		
11	of the International Fuel Tax Agreement.		

CHAPTER 35

(H. B. 2293—By Delegates Leach, Beane, Compton, Frederick,
Kelley, Laird and Proudfoot)

[Passed March 31, 1997; 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, one thousand nine hundred ninety-seven, to the governor's office - governor's cabinet on children and families, account no. fund 8792, fiscal year 1997, organization 0100, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 8792, fiscal year 1997, organization 0100, be supplemented and amended by increasing the total appropriation by one hundred thirty-seven thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 5. Appropriations of federal funds.**

3 EXECUTIVE

4 207—*Governor's Office—*
5 *Governor's Cabinet on Children and Families*

6 (WV Code Chapter 5)

7 Account No.

8 Fund 8792 FY 1997 Org 0100

9		Act-	Federal
0		ivity	Funds
1	1 Unclassified—Total	096	\$137,000

12 The purpose of this supplementary appropriation bill
13 is to supplement this account in the budget act for the
14 fiscal year ending the thirtieth day of June, one thousand
15 nine hundred ninety-seven, by adding one hundred thirty-
16 seven thousand dollars to the existing appropriation for
17 the Governor's Cabinet on Children and Families.

CHAPTER 36

(H. B. 2291—By Delegates Beane, Campbell, Compton,
Farris, Frederick, Leach and Warner)

[Passed March 31, 1997; 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, one thousand nine hundred ninety-seven, to the governor's office - governor's cabinet on children and families - office of economic opportunity, account no. fund 8797, fiscal year 1997, organization 0100, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 8797, fiscal year 1997, organization 0100, be supplemented and amended by increasing the total appropriation by two million dollars as follows:

1	TITLE II—APPROPRIATIONS.			
2	Sec. 5. Appropriations of federal funds.			
3	EXECUTIVE			
4	208—Governor's Office—			
5	<i>Governor's Cabinet on Children and Families</i>			
6	<i>Office of Economic Opportunity</i>			
7	(WV Code Chapter 5)			
8	Account No.			
9	Fund	<u>8797</u>	FY <u>1997</u>	Org <u>0100</u>
10			Act-	Federal
11			ivity	Funds
12	1	Unclassified—Total	096	\$2,000,000

13 The purpose of this supplementary appropriation bill
 14 is to supplement this account in the budget act for the
 15 fiscal year ending the thirtieth day of June, one thousand
 16 nine hundred ninety-seven, by adding two million dollars
 17 to the existing appropriation for the Supportive Housing
 18 Program.

CHAPTER 37

(H. B. 2292—By Delegates Cann, Compton, Jenkins, Warner, Evans,
Leggett and Miller)

[Passed March 26, 1997; 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, one thousand nine hundred ninety-seven, to the department of military affairs and public safety, division of criminal justice and highway safety, account no. fund 8803, fiscal year 1997, organization 0620, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 8803, fiscal year 1997, organization 0620, be supplemented and amended by increasing the total appropriation by one hundred eight thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 5. Appropriations of federal funds.**

3 DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC
4 SAFETY

5 232—*Division of Criminal Justice and Highway Safety*

6 (EXECUTIVE ORDER)

1		Account No.		
2		Fund <u>8803</u>	FY <u>1997</u>	Org <u>0620</u>
3			Act-	Federal
4			ivity	Funds
5	1	Unclassified—Total	098	\$108,000
6		The purpose of this supplementary appropriation bill		
7		is to supplement this account in the budget act for the		
8		fiscal year ending the thirtieth day of June, one thousand		
9		nine hundred ninety-seven, by adding one hundred eight		
10		thousand dollars to the existing appropriation for a new		
11		federal grant for Rural Domestic Violence and Child		
12		Abuse Enforcement Assistance.		

CHAPTER 38

(H. B. 2904—By Delegates Kelley, Laird, Compton,
Frederick, Farris, Miller and Clements)

[Passed April 12, 1997; 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, one thousand nine hundred ninety-seven, to the department of military affairs and public safety, division of criminal justice and highway safety, account no. fund 8803, fiscal year 1997, organization 0620, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expen-

diture in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 8803, fiscal year 1997, organization 0620, be supplemented and amended by increasing the total appropriation by two million three hundred eighty-two thousand nine hundred eighty-five dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 5. Appropriations of federal funds.

3 DEPARTMENT OF MILITARY AFFAIRS
4 AND PUBLIC SAFETY

5 232—Division of Criminal Justice and Highway Safety

6 (EXECUTIVE ORDER)

7 Account No.

8 Fund 8803 FY 1997 Org 0620

9			Act-	Federal
10			ivity	Funds

11	1	Unclassified—Total	098	\$2,382,985
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12 The purpose of this supplementary appropriation bill
13 is to supplement this account in the budget act for the
14 fiscal year ending the thirtieth day of June, one thousand
15 nine hundred ninety-seven, by adding two million three
16 hundred eighty-two thousand nine hundred eighty-five
17 dollars to the existing appropriation for a new federal
18 grant for Residential Substance Abuse Treatment, Violent
19 Offender Incarceration and a Local Law Enforcement
20 Block Grant.

CHAPTER 39

(H. B. 2901—By Delegates Doyle, Michael, Compton,
Kelley and Leggett)

[Passed April 12, 1997; 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, one thousand nine hundred ninety-seven, to a new item of appropriation designated to the department of military affairs and public safety, fire commission, account no. fund 8804, fiscal year 1997, organization 0619, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor has established the availability of federal funds for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-six, known as the "Budget Bill", be supplemented and amended by adding to Title II, section five thereof, the following:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 5. Appropriations of federal funds.**
- 3 DEPARTMENT OF MILITARY AFFAIRS
- 4 AND PUBLIC SAFETY
- 5 *231a—Fire Commission*
- 6 (WV Code Chapter 29)
- 7 Account No.
- 8 Fund 8804 FY 1997 Org 0619

		Act-	Federal
		ivity	Funds
9			
10			
11	1	096	\$ 15,000
12			
13			
14			
15			
16			
17			
18			

12 The purpose of this supplementary appropriation
 13 bill is to supplement this account in the budget act for the
 14 fiscal year ending the thirtieth day of June, one thousand
 15 nine hundred ninety-seven, by providing for a new item of
 16 appropriation to be established therein to appropriate
 17 federal funds in the amount of fifteen thousand dollars for
 18 "Energy Conservation Code" seminars.

CHAPTER 40

(H. B. 2500—By Delegates Campbell, Kelley, Pettit, Warner, Border,
 Miller and Walters)

[Passed March 26, 1997; 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, one thousand nine hundred ninety-seven, to a new item of appropriation designated to the department of military affairs and public safety, division of corrections - correctional units, account no. fund 8818, fiscal year 1997, organization 0608, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor has established the availability of federal funds for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-six, known as the "Budget Bill", be supplemented and amended by adding to Title II, section five thereof, the following:

1 TITLE II—APPROPRIATIONS.

2 Sec. 5. Appropriations of federal funds.

3 DEPARTMENT OF MILITARY AFFAIRS
4 AND PUBLIC SAFETY

5 229a—*Division of Corrections—Correctional Units*

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

7 Account No.

8 Fund 8818 FY 1997 Org 0608

9			Act-	Federal
10			ivity	Funds
11	1	Unclassified—Total	096	\$ 50,788

12 The purpose of this supplementary appropriation bill
13 is to supplement this account in the budget act for the
14 fiscal year ending the thirtieth day of June, one thousand
15 nine hundred ninety-seven, by providing for a new item of
16 appropriation to be established therein to appropriate
17 federal funds in the amount of thirty-three thousand six
18 hundred sixty-five dollars for a boot camp at the Anthony
19 Center, and seventeen thousand one hundred twenty-three
20 dollars for the criminal alien assistance program.

CHAPTER 41

(H. B. 2296—By Delegates Michael, Doyle, Proudfoot, Seacrist,
Evans, Leggett and Walters)

[Passed March 28, 1997; 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, one thousand nine hundred ninety-seven, to the bureau of environment, solid waste management board, account no. fund 8820, fiscal year 1997, organization 0312, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-six, known as the "Budget Bill", be supplemented and amended by adding to Title II, section five thereof, the following:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 5. Appropriations of federal funds.		
3	BUREAU OF ENVIRONMENT		
4	<i>242a—Solid Waste Management Board</i>		
5	(WV Code Chapter 20)		
6	Account No.		
7	Fund <u>8820</u> FY <u>1997</u> Org <u>0312</u>		
8		Act-	Federal
9		ivity	Funds
10	1	Unclassified—Total	096 \$100,000

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by providing for a new item of appropriation to be established therein to appropriate federal funds in the amount of one hundred thousand dollars for implementation of an Environmental Protection Agency grant.

CHAPTER 42

(S. B. 244—By Senators Craig, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 24, 1997; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from the state road fund to the department of transportation, division of motor vehicles, account no. fund 9007, fiscal year 1997, organization 0802, as originally appropriated by chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-six, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state road fund to account no. fund 9007, fiscal year 1997, organization 0802, be amended and reduced in the line items as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 2. Appropriations from state road fund.		
3	DEPARTMENT OF TRANSPORTATION		
4	89—Division of Motor Vehicles		
5	(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)		
6	Account No.		
7	Fund	<u>9007</u>	FY <u>1997</u> Org <u>0802</u>
8			State
9		Act-	Road
10		ivity	Fund
11	6	Capital Outlay — Building	222 \$ 500,000

12 And, that the items of the total appropriations from the
 13 state road fund to account no. fund 9007, fiscal year
 14 1997, organization 0802, be amended and increased in the
 15 line items as follows:

16 TITLE II—APPROPRIATIONS.

17 Sec. 2. Appropriations from state road fund.

18 DEPARTMENT OF TRANSPORTATION

19 89—*Division of Motor Vehicles*

20 (WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)

21 Account No.

22 Fund 9007 FY 1997 Org 0802

23			State
24		Act-	Road
25		ivity	Fund
26	4	Unclassified 099	\$ 500,000

27 The purpose of this supplementary appropriation bill
 28 is to supplement, amend, reduce and transfer between
 29 existing items in the aforesaid account for the designated
 30 spending unit. The item for capital outlay-building is
 31 reduced by five hundred thousand dollars. The item for
 32 unclassified is increased by five hundred thousand dollars.
 33 The amounts as itemized for expenditure in the fiscal
 34 year ending the thirtieth day of June, one thousand nine
 35 hundred ninety-seven, shall be available for expenditure
 36 immediately upon the effective date of this bill.

CHAPTER 43

(S. B. 399—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson,
 Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie,
 Minear and Sprouse)

[Passed April 8, 1997; 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, one thousand nine hundred

ninety-seven, in the department of transportation, division of motor vehicles, account no. fund 9007, fiscal year 1997, organization 0802, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of transportation, division of motor vehicles, account no. fund 9007, fiscal year 1997, organization 0802, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 9007, fiscal year 1997, organization 0802, be supplemented and amended by increasing the total appropriation by ninety-eight thousand dollars in the line items as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 2. Appropriations from state road fund.

3 DEPARTMENT OF TRANSPORTATION

4 89—Division of Motor Vehicles

5 (WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)

6 Account No.

7 Fund 9007 FY 1997 Org 0802

			Act-	Other
			ivity	Funds
10	1	Personal Services	001	\$ 75,000
11	3	Employee Benefits	010	23,000

12 The purpose of this supplementary appropriation
13 bill is to supplement this account in the budget act for the
14 fiscal year ending the thirtieth day of June, one thousand
15 nine hundred ninety-seven, by adding ninety-eight thou-
16 sand dollars to the existing appropriation to add three
17 inspections investigators.

CHAPTER 44

(S. B. 150—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 27, 1997; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from the state road fund to the department of transportation, division of highways, account no. fund 9017, fiscal year 1997, organization 0803, as originally appropriated by chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-six, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state road fund to account no. fund 9017, fiscal year 1997, organization 0803, be amended and reduced in the line items as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 2. Appropriations from state road fund.		
3	DEPARTMENT OF TRANSPORTATION		
4	90—Division of Highways		
5	(WV Code Chapters 17 and 17C)		
6	Account No.		
7	Fund <u>9017</u> FY <u>1997</u> Org <u>0803</u>		
8			State
9		Act-	Road
10		ivity	Fund
11	3	Maintenance, Expressway,	
12	4	Truckline and Feeder	270 \$ 4,000,000
13	15	Other Federal Aid Programs	279 30,000,000
14	16	Appalachian Programs	280 53,000,000
15	And, that the items of the total appropriations from the		
16	state road fund to account no. fund 9017, fiscal year		

17 1997, organization 0803, be amended and increased in the
18 line items as follows:

19 TITLE II—APPROPRIATIONS.

20 Sec. 2. Appropriations from state road fund.

21 DEPARTMENT OF TRANSPORTATION

22 90—Division of Highways

23 (WV Code Chapters 17 and 17C)

24 Account No.

25 Fund 9017 FY 1997 Org 0803

		Act-	State
		ivity	Road
			Fund
29	5 Maintenance, State		
30	6 Local Services	271	\$13,000,000
31	7 Maintenance, Contract Paving		
32	8 and Secondary Road		
33	9 Maintenance	272	3,000,000
34	10 Bridge Repair and Replacement .	273	12,500,000
35	12 Equipment Revolving	276	2,700,000
36	17 Nonfederal Aid Construction . . .	281	14,000,000

37 The purpose of this supplementary appropriation bill
38 is to supplement, amend, reduce and transfer between
39 existing items in the aforesaid account for the designated
40 spending unit. The item for maintenance, expressway,
41 truckline and feeder is reduced by four million dollars,
42 other federal aid programs is reduced by thirty million
43 dollars and Appalachian programs is reduced by fifty-
44 three million dollars. The item for maintenance, state
45 local services is increased by thirteen million dollars,
46 maintenance, contract paving and secondary road mainte-
47 nance is increased by three million dollars, bridge repair
48 and replacement is increased by twelve million five hun-
49 dred thousand dollars, equipment revolving is increased
50 by two million seven hundred thousand dollars and non-
51 federal aid construction is increased by fourteen million
52 dollars. The amounts as itemized for expenditure in fiscal
53 year ending the thirtieth day of June, one thousand nine
54 hundred ninety-seven, shall be available for expenditure
55 immediately upon the effective date of this bill.

CHAPTER 45

(S. B. 151—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 27, 1997; in effect from passage. Approved by the Governor.]

AN ACT supplementing and amending items of the existing appropriations from the state road fund to the department of transportation, division of highways, account no. fund 9018, fiscal year 1997, organization 0803, as originally appropriated by chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-six, known as the “Budget Bill”.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state road fund to account no. fund 9018, fiscal year 1997, organization 0803, be amended and increased in the line items as follows:

1			TITLE II—APPROPRIATIONS.	
2			Sec. 2. Appropriations from state road fund.	
3			DEPARTMENT OF TRANSPORTATION	
4			<i>91—Division of Highways</i>	
5			<i>Federal Aid Highway Matching Fund</i>	
6			(WV Code Chapters 17 and 17C)	
7			Account No.	
8			Fund <u>9018</u> FY <u>1997</u> Org <u>0803</u>	
9				State
10				Road
11				Fund
12	2	Appalachian Program	280	\$14,000,000
13	3	Other Federal Aid Programs	279	10,000,000

14 The purpose of this supplementary appropriation bill
15 is to supplement and amend existing items in the aforesaid
16 account for the designated spending unit. The item for
17 Appalachian program is increased by fourteen million
18 dollars and other federal aid programs is increased by ten
19 million dollars. The amounts as itemized for expenditure
20 in fiscal year ending the thirtieth day of June, one
21 thousand nine hundred ninety-seven, shall be available for
22 expenditure immediately upon the effective date of this
23 bill.

CHAPTER 46

(S. B. 71—By Senators Helmick, Snyder, Chafin, Craigo, Dittmar, Fanning,
Prezioso, Sharpe, Wiedebusch, Wooton, Deem, Kimble and Scott)

[Passed March 11, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections ten and fifteen, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, four, five, nine and eleven, article seventeen, chapter thirty-one of said code; to amend and reenact sections four, six and eight, article two, chapter thirty-one-a of said code; to amend and reenact section three, article three of said chapter; to amend and reenact sections nine, fourteen, fourteen-a, fifteen, thirty and thirty-a, article four of said chapter; to amend and reenact sections twelve, twelve-a and twelve-b, article eight of said chapter; to amend and reenact section five, article one, chapter thirty-one-c of said code; to amend and reenact section one hundred four, article three, chapter forty-six-a of said code; to amend and reenact sections one hundred four, one hundred seven and one hundred eleven, article four of said chapter; and to amend and reenact section eight, article twenty-four, chapter forty-seven of said code, all relating to second mortgage companies; banks and banking; credit unions; regulated consumer lenders; reverse mortgages; defining terms; correcting code cite references;

deleting conflicting reporting requirements; ending report on effect to credit availability of business franchise tax; clarifying the assignment and securitization of second mortgages; secondary mortgage broker bond requirements; permitting second mortgage lenders to be brokers; conforming provision of account statements and release of second mortgage liens with other code sections; provision of payoff statements upon request in second mortgage loans; sharing and acceptance of out-of-state bank agency reports; deleting obsolete provisions on interest rate restrictions; notification requirements for ATM placement and parity of out-of-state bank terminals; bank messenger services; financing certain loan processing fees; loan disclosure requirements; credit union exam schedule; and reverse mortgage exemptions.

Be it enacted by the Legislature of West Virginia:

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

Chapter

31. Corporations.

31A. Banks and Banking.

31C. Credit Unions.

46A. West Virginia Consumer Credit and Protection Act.

47. Regulation of Trade.

CHAPTER 31. CORPORATIONS.**ARTICLE 17. SECONDARY MORTGAGE LOANS.**

§31-17-1. Definitions and general provisions.

§31-17-2. License required for lender or broker; exemptions.

§31-17-4. Applications for licenses; requirements; bonds; fees; renewals.

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

§31-17-9. Disclosure; closing statements; other records required.

§31-17-11. Records and reports; examination of records; analysis.

§31-17-1. Definitions and general provisions.

1 As used in this article:

2 (1) "Secondary mortgage loan" means a loan made
3 to an individual or partnership which is secured in whole
4 or in part by a mortgage or deed of trust upon any interest
5 in real property used as a dwelling with accommodations
6 for not more than four families, which property is subject
7 to the lien of one or more prior recorded mortgages or
8 deeds of trust.

9 (2) "Person" means an individual, partnership, associ-
10 ation, trust, corporation or any other legal entity, or any
11 combination thereof.

12 (3) "Lender" means any person who makes or offers
13 to make or accepts or offers to accept any secondary
14 mortgage loan in the regular course of business. A person
15 shall be deemed to be acting in the regular course of busi-
16 ness if he or she makes or accepts, or offers to make or
17 accept, more than five secondary mortgage loans in any
18 one calendar year.

19 (4) "Broker" means any person acting in the regular
20 course of business who, for a fee or commission or other
21 consideration, negotiates or arranges, or who offers to
22 negotiate or arrange, a secondary mortgage loan between
23 a lender and a borrower. A person shall be deemed to be
24 acting in the regular course of business if he or she nego-
25 tiates or arranges, or offers to negotiate or arrange, more
26 than five secondary mortgage loans in any one calendar
27 year; or if he or she seeks to charge a borrower or receive
28 from a borrower money or other valuable consideration in

29 any second mortgage transaction before completing per-
30 formance of all broker services that he or she has agreed
31 to perform for the borrower.

32 (5) "Brokerage fee" means the fee or commission or
33 other consideration charged by a broker for the services
34 described in subdivision (4) of this section.

35 (6) "Principal" or "principal sum" means the total
36 of:

37 (a) The net amount paid to, receivable by or paid or
38 payable for the account of the debtor;

39 (b) The amount of any discount excluded from the
40 loan finance charge; and

41 (c) To the extent that payment is deferred:

42 (i) Amounts actually paid or to be paid by the lender
43 for registration, certificate of title or license fees if not
44 included in paragraph (a) of this subdivision; and

45 (ii) Additional charges permitted by this article.

46 (7) "Additional charges" means every type of charge
47 arising out of the making or acceptance of a secondary
48 mortgage loan, except finance charges, including, but not
49 limited to, official fees and taxes, reasonable closing costs
50 and certain documentary charges and insurance premiums
51 and other charges which definition is to be read in con-
52 junction with, and permitted by section one hundred nine,
53 article three, chapter forty-six-a of this code.

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

60 (9) "Commissioner" means the commissioner of
61 banking of this state.

62 (10) "Applicant" means a person who has applied for
63 a lender's or broker's license.

64 (11) "Licensee" means any person duly licensed by
65 the commissioner under the provisions of this article as a
66 lender or broker.

67 (12) "Amount financed" means the total of the fol-
68 lowing items to the extent that payment is deferred:

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

72 (b) The amount actually paid or to be paid by the
73 seller pursuant to an agreement with the buyer to dis-
74 charge a security interest in or a lien on property traded
75 in; and

76 (c) If not included in the cash price:

77 (i) Any applicable sales, use, privilege, excise or docu-
78 mentary stamp taxes;

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

81 (iii) Additional charges permitted by this article.

§31-17-2. License required for lender or broker; exemptions.

1 (a) No person shall engage in this state in the business
2 of lender or broker unless and until he or she shall first
3 obtain a license to do so from the commissioner, which
4 license remains unexpired, unsuspended and unrevoked,
5 and no foreign corporation shall, notwithstanding the
6 provisions of section seventy-nine-a, article one of this
7 chapter, engage in such business in this state unless it shall
8 qualify to hold property and transact business in this state.

9 (b) The provisions of this article do not apply to loans
10 made by federally insured depository institutions, regulat-
11 ed consumer lender licensees, insurance companies, or to
12 loans made by any other lender licensed by and under the
13 supervision of any agency of the federal government, or
14 to loans made by, or on behalf of, any agency or instru-
15 mentality of this state or federal government or by a non-
16 profit community development organization which loans
17 are subject to federal or state government supervision and

18 oversight. Loans made subject to this exemption may be
19 assigned, transferred, sold or otherwise securitized to any
20 person and shall remain exempt from the provisions of
21 this article, except as to reporting requirements in the
22 discretion of the commissioner where the person is a li-
23 censee under this article.

24 (c) A person or entity designated in subsection (b) of
25 this section may take assignments of a secondary mort-
26 gage loan from a licensed lender, and the assignments of
27 said loans that they themselves could have lawfully made
28 as exempt from the provisions of this article under this
29 section do not make that person or entity subject to the
30 licensing, bonding, reporting or other provisions of this
31 article, except as such defense or claim would be preserved
32 pursuant to section one hundred two, article two, chapter
33 forty-six-a of this code.

34 (d) The placement or sale for securitization of a sec-
35 ond mortgage loan into a secondary market by a licensee
36 shall not subject the secondary market holder to the provi-
37 sions of this article: *Provided*, That either the trustee under
38 such an arrangement is a licensee, or person or entity
39 entitled to make exempt loans of that type under this sec-
40 tion, or the loan is held with right of recourse to a licensee,
41 or person or entity entitled to make exempt loans of that
42 type, who also either retains the servicing rights to the loan
43 or otherwise has the servicing done in its name by an
44 agent or third party.

§31-17-4. Applications for licenses; requirements; bonds; fees; renewals.

1 (a) Application for a lender's or broker's license shall
2 each year be submitted in writing under oath, in the form
3 prescribed by the commissioner, and shall contain the full
4 name and address of the applicant and, if the applicant is a
5 partnership or association, of every member thereof, and,
6 if a corporation, of each officer, director and owner of five
7 percent or more of the capital stock thereof, and such
8 further information as the commissioner may reasonably
9 require. Any application shall also disclose the location at
10 which the business of lender or broker is to be conducted.

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

13 (1) If a foreign corporation, submit a certificate from
14 the secretary of state certifying that such applicant has
15 qualified to hold property and transact business in this
16 state;

17 (2) Submit proof that he or she has available for the
18 operation of the business at the location specified in the
19 application net assets of at least two hundred fifty thou-
20 sand dollars;

21 (3) File with the commissioner a bond in favor of the
22 state in the amount of one hundred thousand dollars, in
23 such form and with such conditions as the commissioner
24 may prescribe, and executed by a surety company autho-
25 rized to do business in this state;

26 (4) Pay to the commissioner a license fee of one thou-
27 sand dollars and an investigation fee of two hundred fifty
28 dollars. If the commissioner shall determine that an inves-
29 tigation outside this state is required to ascertain facts or
30 information relative to the applicant or information set
31 forth in the application, the applicant may be required to
32 advance sufficient funds to pay the estimated cost of the
33 investigation. An itemized statement of the actual cost of
34 the investigation outside this state shall be furnished to the
35 applicant by the commissioner, and the applicant shall pay
36 or shall have returned to him or her, as the case may be,
37 the difference between his or her payment in advance of
38 the estimated cost and the actual cost of the investigation;
39 and

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

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

49 (1) If a foreign corporation, submit a certificate from
50 the secretary of state certifying that the applicant has qual-
51 ified to hold property and transact business in this state;

52 (2) Submit proof that he or she has available for the
53 operation of the business at the location specified in the
54 application net assets of at least ten thousand dollars;

55 (3) File with the commissioner a bond in favor of the
56 state in the amount of twenty-five thousand dollars, in
57 such form and with such conditions as the commissioner
58 may prescribe, and executed by a surety company autho-
59 rized to do business in this state;

60 (4) Pay to the commissioner a license fee of one hun-
61 dred dollars and an investigation fee of fifty dollars; and

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

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

72 (e) Nonresident lenders and brokers licensed under
73 this article by their acceptance of such license acknowl-
74 edge that they are subject to the jurisdiction of the courts
75 of West Virginia and the service of process pursuant to
76 section one hundred thirty-seven, article two, chapter for-
77 ty-six-a of this code and section thirty-three, article three,
78 chapter fifty-six of this code.

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

1 (a) Upon an applicant's full compliance with the pro-
2 visions of section four of this article, the commissioner
3 shall investigate the relevant facts with regard to the appli-
4 cant and his or her application for a lender's or broker's
5 license, as the case may be. Upon the basis of the applica-
6 tion and all other information before him or her, the com-

7 commissioner shall make and enter an order denying the ap-
8 plication and refusing the license sought if the commis-
9 sioner finds that:

10 (1) The applicant does not have available the net assets
11 required by the provisions of section four of this article;

12 (2) The applicant, individually, if an individual, or the
13 partners, if a partnership, or the officers and directors, if a
14 corporation, is of such character and reputation as reason-
15 ably to warrant the belief that the business will not be
16 operated lawfully and properly in accordance with the
17 provisions of this article;

18 (3) The applicant has habitually defaulted on financial
19 obligations; or

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

24 Otherwise, the commissioner shall issue to the appli-
25 cant a lender's or broker's license which shall entitle the
26 applicant to engage in the business of lender or broker, as
27 the case may be, during the period, unless sooner suspend-
28 ed or revoked, for which the license is issued.

29 (b) Every application for a lender's or broker's li-
30 cense shall be passed upon and the license issued or re-
31 fused within forty-five days after the applicant therefor
32 has fully complied with the provisions of section four of
33 this article. Under no circumstances whatever shall a per-
34 son or licensee act as a broker and lender in the same
35 transaction. Whenever an application for a lender's or
36 broker's license is denied and the license sought is re-
37 fused, which refusal has become final, the commissioner
38 shall retain the investigation fee or fees but shall return the
39 license fee to the applicant.

**§31-17-9. Disclosure; closing statements; other records re-
quired.**

1 (a) Any licensee or person making on his own behalf,
2 or as agent, broker or in other representative capacity on

3 behalf of any other person, a secondary mortgage loan,
4 whether lawfully or unlawfully, shall at the time of the
5 closing furnish to the borrower a complete and itemized
6 closing statement which shall show in detail:

7 (1) The amount and date of the note or secondary
8 mortgage loan contract and the date of maturity;

9 (2) The nature of the security;

10 (3) The finance charge rate per annum and the item-
11 ized amount of finance charges and additional charges;

12 (4) The amount financed and total of payments;

13 (5) Disposition of the principal;

14 (6) A description of the payment schedule;

15 (7) The terms on which additional advances, if any,
16 will be made;

17 (8) The charge to be imposed for past-due install-
18 ments;

19 (9) A description and the cost of insurance required
20 by the lender or purchased by the borrower in connection
21 with the secondary mortgage loan;

22 (10) The name and address of the borrower and of the
23 lender; and

24 (11) That the borrower may prepay the secondary
25 mortgage loan in whole or in part on any installment date,
26 and that the borrower will receive a rebate in full for any
27 unearned finance charge.

28 Such detailed closing statement shall be signed by the
29 lender or his representative, and a completed and signed
30 copy thereof shall be retained by the lender and made
31 available at all reasonable times to the borrower, the bor-
32 rower's successor in interest to the residential property, or
33 the authorized agent of the borrower or the borrower's
34 successor, until the time as the indebtedness shall be satis-
35 fied in full.

36 The commissioner may, from time to time, by rules
37 prescribe additional information to be included in a clos-
38 ing statement.

39 (b) Upon written request from the borrower, the hold-
40 er of a secondary mortgage loan instrument shall deliver
41 to the borrower, within ten days from and after receipt of
42 the written request, a statement of the borrower's account
43 showing the date and amount of all payments made or
44 credited to the account and the total unpaid balance.
45 Charges for providing an account statement may be as-
46 sessed only where permitted as set forth by subsection two,
47 section one hundred fourteen, article two, chapter forty-
48 six-a of this code.

49 (c) Upon satisfaction of a secondary mortgage loan
50 obligation in full, the holder of the instrument evidencing
51 or securing the obligation shall comply with the require-
52 ments of section one, article twelve, chapter thirty-eight of
53 this code in the prompt release of the lien which had se-
54 cured the secondary mortgage loan obligation.

55 (d) Upon written request or authorization from the
56 borrower, the holder of a secondary mortgage loan instru-
57 ment shall send or otherwise provide to the borrower or
58 his or her designee, within two business days after receipt
59 of the written request or authorization, a payoff statement
60 of the borrower's account. Except as provided by this
61 subsection, no charge may be made for providing the
62 payoff statement. Charges for the actual expenses associ-
63 ated with using a third-party courier delivery or expedited
64 mail delivery service may be assessed when this type of
65 delivery is requested and authorized by the borrower,
66 following disclosure to the borrower of its cost. The pay-
67 off information shall be provided by mail, telephone,
68 courier, facsimile, or other transmission as requested by
69 the borrower or his or her designee.

**§31-17-11. Records and reports; examination of records;
analysis.**

1 (a) Every licensee shall maintain at his or her place of
2 business in this state, if any, or if he or she has no place of
3 business in this state at his or her principal place of busi-
4 ness outside this state, such books, accounts and records
5 relating to all transactions within this article as are neces-
6 sary to enable the commissioner to enforce the provisions
7 of this article. All the books, accounts and records shall be
8 preserved, exhibited to the commissioner and kept avail-
9 able as provided herein for the reasonable period of time
10 as the commissioner may by rules require. The commis-
11 sioner is hereby authorized to prescribe by rules the mini-
12 mum information to be shown in the books, accounts and
13 records.

14 (b) Each licensee shall file with the commissioner on
15 or before the fifteenth day of March of each year a report
16 under oath or affirmation concerning his or her business
17 and operations in this state for the preceding license year
18 in the form prescribed by the commissioner, which shall
19 show the annual volume and outstanding amounts of sec-
20 ondary mortgage loans, the classification of the secondary
21 mortgage loans by size and by security, and the gross
22 income from, and expenses properly chargeable to, such
23 secondary mortgage loans.

24 (c) The commissioner may, at his or her discretion,
25 make or cause to be made an examination of the books,
26 accounts and records of every licensee pertaining to sec-
27 ondary mortgage loans made in this state under the provi-
28 sions of this article, for the purpose of determining wheth-
29 er each licensee is complying with the provisions hereof
30 and for the purpose of verifying each licensee's annual
31 report. If the examination is made outside this state, the
32 licensee shall pay the cost thereof in like manner as appli-
33 cants are required to pay the cost of investigations outside
34 this state.

35 (d) The commissioner shall publish annually an analy-
36 sis of the information furnished in accordance with the
37 provisions of subsection (b) of this section, but the indi-
38 vidual reports shall not be public records and shall not be
39 open to public inspection.

CHAPTER 31A. BANKS AND BANKING.

Article

- 2. **Division of Banking.**
- 3. **Board of Banking and Financial Institutions.**
- 4. **Banking Institutions and Services Generally.**
- 8. **Hearings; Administrative Procedures; Judicial Review; Unlawful Acts; Penalties.**

ARTICLE 2. DIVISION OF BANKING.

§31A-2-4. Jurisdiction of commissioner; powers, etc., of department transferred to commissioner; powers and duties of commissioner.

§31A-2-6. Commissioner's examinations of financial institution; reports; records; communications from commissioner to institution; examination by federal or out-of-state agency in lieu of commissioner's examination.

§31A-2-8. Commissioner's assessments and examination fund; assessments, costs and expenses of examinations; collection.

§31A-2-4. Jurisdiction of commissioner; powers, etc., of department transferred to commissioner; powers and duties of commissioner.

1 (a) Subject to the powers vested in the board by article
 2 three of this chapter, the commissioner shall have supervi-
 3 sion and jurisdiction over state banks, regulated consumer
 4 lenders, second mortgage lenders and brokers, credit un-
 5 ions, and all other persons now or hereafter made subject
 6 to his supervision or jurisdiction. All powers, duties, rights
 7 and privileges vested in the department are hereby vested
 8 in the commissioner. He shall be the chief executive offi-
 9 cer of the department of banking and shall be responsible
 10 for the department's organization, services and personnel,
 11 and for the orderly and efficient administration, enforce-
 12 ment and execution of the provisions of this chapter and
 13 all laws vesting authority or powers in or prescribing du-
 14 ties or functions for the department or the commissioner.

15 (b) The commissioner shall:

16 (1) Maintain the office for the department at the state
 17 capitol, and there keep a complete record of all the depart-
 18 ment's transactions, of the financial conditions of all fi-
 19 nancial institutions and such records of the activities of
 20 other persons as the commissioner may deem important.

21 Notwithstanding any other provision of the code of West
22 Virginia, heretofore or hereafter enacted, the records relat-
23 ing to the financial condition of any financial institution
24 and any information contained therein shall be confiden-
25 tial for the use of the commissioner and authorized per-
26 sonnel of the department of banking. No person shall
27 divulge any information contained in any such records
28 except as hereafter authorized in response to a valid sub-
29 poena or subpoena duces tecum issued pursuant to law in
30 a criminal proceeding or in a civil enforcement action
31 brought by the state or federal regulatory authorities.
32 Subpoenas shall first be directed to the commissioner, who
33 shall authorize disclosure of relevant records and informa-
34 tion therefrom for good cause, upon imposing terms and
35 conditions as are deemed necessary to protect the confi-
36 dential nature of the records, the financial integrity of the
37 financial institution or the person to which the records
38 relate, and the legitimate privacy interests of any individu-
39 al named in such records. Conformity with federal proce-
40 dures shall be sought where the institution maintains fed-
41 eral deposit insurance. The commissioner shall have and
42 may exercise reasonable discretion as to the time, manner
43 and extent the other records in his office and the informa-
44 tion contained therein shall be available for public exami-
45 nation;

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

50 (3) Investigate all alleged violations of this chapter and
51 all other laws which he is required to enforce and of any
52 rule and regulation promulgated or order issued thereun-
53 der.

54 (c) In addition to all other authority and powers vested
55 in the commissioner by provisions of this chapter and
56 other applicable laws, the commissioner is authorized and
57 empowered:

58 (1) To provide for the organization of the department
59 and the procedures and practices thereof and implement
60 the same by the promulgation of rules and regulations and

61 forms as appropriate, which rules and regulations shall be
62 promulgated in accordance with article three, chapter
63 twenty-nine-a of this code;

64 (2) To employ, direct, discipline, discharge and estab-
65 lish qualifications and duties for all personnel for the
66 department, including, but not limited to, examiners, assis-
67 tant examiners, conservators and receivers, to establish the
68 amount and condition of bonds for such thereof as he
69 deems appropriate and to pay the premiums thereon, and
70 if he so elects, to have all such personnel subject to and
71 under the classified service of the state personnel depart-
72 ment;

73 (3) To cooperate with organizations, agencies, com-
74 mittees and other representatives of financial institutions
75 of the state in connection with schools, seminars, confer-
76 ences and other meetings to improve the responsibilities,
77 services and stability of the financial institutions;

78 (4) In addition to the examinations required by sec-
79 tion six of this article, to inspect, examine and audit the
80 books, records, accounts and papers of all financial institu-
81 tions at such times as circumstances in his opinion may
82 warrant;

83 (5) To call for and require all such data, reports and
84 information from financial institutions under his jurisdic-
85 tion, at such times and in such form, content and detail,
86 deemed necessary by him in the faithful discharge of his
87 duties and responsibilities in the supervision of the finan-
88 cial institutions;

89 (6) Subject to the powers vested in the board by article
90 three of this chapter, to supervise the location, organiza-
91 tion, practices and procedures of financial institutions and,
92 without limitation on the general powers of supervision
93 thereof, to require financial institutions to:

94 (A) Maintain their accounts consistent with such regu-
95 lations as he may prescribe and in accordance with gener-
96 ally accepted accounting practices;

97 (B) Observe methods and standards which he may
98 prescribe for determining the value of various types of
99 assets;

100 (C) Charge off the whole or any part of an asset which
101 at the time of his action could not lawfully be acquired;

102 (D) Write down an asset to its market value;

103 (E) Record or file writings creating or evidencing liens
104 or other interests in property;

105 (F) Obtain financial statements from prospective and
106 existing borrowers;

107 (G) Obtain insurance against damage and loss to real
108 estate and personal property taken as security;

109 (H) Maintain adequate insurance against such other
110 risks as he may deem and determine to be necessary and
111 appropriate for the protection of depositors and the pub-
112 lic;

113 (I) Maintain an adequate fidelity bond or bonds on its
114 officers and employees;

115 (J) Take such other action as may in his judgment be
116 required of the institution in order to maintain its stability,
117 integrity and security as required by law and all rules and
118 regulations promulgated by him; and

119 (K) Verify any or all asset or liability accounts;

120 (7) Subject to the powers vested in the board by article
121 three of this chapter, to receive from any person or per-
122 sons and to consider any request, petition or application
123 relating to the organization, location, conduct, services,
124 policies and procedures of any financial institution and to
125 act thereupon in accordance with any provisions of law
126 applicable thereto;

127 (8) In connection with the investigations required by
128 subdivision (3), subsection (b) of this section, to issue
129 subpoenas and subpoenas duces tecum, administer oaths,
130 examine persons under oath, and hold and conduct hear-
131 ings, any such subpoenas or subpoenas duces tecum to be

132 issued, served and enforced in the manner provided in
133 section one, article five, chapter twenty-nine-a of this code.
134 Any person appearing and testifying at such a hearing
135 may be accompanied by an attorney employed by him;

136 (9) To issue declaratory rulings in accordance with the
137 provisions of section one, article four, chapter twenty-
138 nine-a of this code;

139 (10) To study and survey the location, size and servic-
140 es of financial institutions, the geographic, industrial, eco-
141 nomic and population factors affecting the agricultural,
142 commercial and social life of the state, and the needs for
143 reducing, expanding or otherwise modifying the services
144 and facilities of financial institutions in the various parts of
145 the state, and to compile and keep current data thereon to
146 aid and guide him in the administration of the duties of
147 his office;

148 (11) To implement all of the provisions of this chapter
149 (except the provisions of article three) and all other laws
150 which he is empowered to administer and enforce by the
151 promulgation of rules and regulations in accordance with
152 the provisions of article three, chapter twenty-nine-a of
153 this code;

154 (12) To implement the provisions of chapter forty-six-
155 a of this code applicable to consumer loans and consumer
156 credit sales by the promulgation of rules and regulations
157 in accordance with the provisions of article three, chapter
158 twenty-nine-a of this code so long as said rules and regu-
159 lations do not conflict with any rules and regulations pro-
160 mulgated by the state's attorney general;

161 (13) To foster and encourage a working relationship
162 between the department of banking and financial institu-
163 tions, credit, consumer, mercantile and other commercial
164 and finance groups and interests in the state in order to
165 make current appraisals of the quality, stability and avail-
166 ability of the services and facilities of financial institutions;

167 (14) To provide to financial institutions and the public
168 copies of the West Virginia statutes relating to financial
169 institutions, suggested drafts of bylaws commonly used by

170 financial institutions, and such other forms and printed
171 materials as may be found by him to be helpful to finan-
172 cial institutions, their shareholders, depositors and patrons,
173 and to make reasonable charges therefor;

174 (15) To delegate the powers and duties of his office,
175 other than the powers and duties in this subsection herein-
176 after excepted, to qualified department personnel, who
177 shall act under the direction and supervision of the com-
178 missioner and for whose acts he shall be responsible, but
179 the commissioner may delegate to the deputy commis-
180 sioner of banking and to no other department personnel
181 the following powers, duties and responsibilities, all of
182 which are hereby granted to and vested in the commis-
183 sioner and for all of which the commissioner shall likewise
184 be responsible:

185 (A) To order any person to cease violating any provi-
186 sion or provisions of this chapter or other applicable law
187 or any rule and regulation promulgated or order issued
188 thereunder;

189 (B) To order any person to cease engaging in any
190 unsound practice or procedure which may detrimentally
191 affect any financial institution or depositor thereof;

192 (C) To revoke the certificate of authority, permit or
193 license of any financial institution except a banking insti-
194 tution in accordance with the provisions of section thirteen
195 of this article; and

196 (D) To accept an assurance in writing that the person
197 will not in the future engage in the conduct alleged by the
198 commissioner to be unlawful, which conduct could be
199 subject to an order under the provisions of this chapter.
200 Such assurance of voluntary compliance shall not be con-
201 sidered an admission of violation for any purpose, except
202 that if a person giving such assurance fails to comply with
203 its terms, the assurance is prima facie evidence that prior to
204 such assurance the person engaged in conduct described
205 in such assurance;

206 (16) To seek and obtain from courts, civil penalties
207 against any person who violates this chapter, the rules

208 issued pursuant thereto, or any orders lawfully entered by
209 the commissioner or board of banking and financial insti-
210 tutions in an amount not less than fifty dollars nor more
211 than five thousand dollars for each violation;

212 (17) To receive from state banking institutions appli-
213 cations to change the locations of their principal offices
214 and to approve or disapprove such applications; and

215 (18) To take such other action as he may deem neces-
216 sary to enforce and administer the provisions of this chap-
217 ter (except the provisions of article three) and all other
218 laws which he is empowered to administer and enforce,
219 and to apply to any court of competent jurisdiction for
220 appropriate orders, writs, processes and remedies.

**§31A-2-6. Commissioner's examinations of financial institu-
tion; reports; records; communications from
commissioner to institution; examination by
federal or out-of-state agency in lieu of commis-
sioner's examination.**

1 The commissioner of banking shall make, at least once
2 every eighteen months, a thorough examination of all the
3 books, accounts, records and papers of every depository
4 financial institution. He or she shall carefully examine all
5 of the assets of each such institution, including its notes,
6 drafts, checks, mortgages, securities deposited to assure the
7 payment of debts unto it, and all papers, documents and
8 records showing, or in any manner relating to, its business
9 affairs, and shall ascertain the full amount and the nature
10 in detail of all of its assets and liabilities. The commis-
11 sioner may also, at his or her discretion, make or cause to be
12 made, an annual or periodic examination of the books,
13 accounts, records and papers of other financial institutions
14 under his or her supervision for the purposes of determin-
15 ing compliance with applicable consumer and credit
16 lending laws, and verifying information provided in any
17 license application or annual report submitted to the
18 commissioner. The commissioner may also make such
19 examination of any subsidiaries or affiliates of a financial
20 institution as he or she may deem necessary to ascertain
21 the financial condition of the financial institution, the
22 relations between the financial institution and its subsidiar-
23 ies and affiliates and the effect of the relations upon the
24 affairs of such financial institution. A full report of every

25 examination shall be made and filed and preserved in the
26 office of the commissioner and a copy thereof forthwith
27 mailed to the institution examined. Every institution shall
28 retain all of its records of final entry for the period of time
29 as required in section thirty-five, article four of this
30 chapter for banking institutions. Unless otherwise covered
31 by assessments or a specific provision of this code, the cost
32 of examinations made pursuant to this section shall be
33 borne by the financial institution at a rate of fifty dollars
34 per each examiner hour expended.

35 Every official communication from the commissioner
36 to any institution, or to any officer thereof, relating to an
37 examination or an investigation of the affairs of the
38 institution conducted by the commissioner or containing
39 suggestions or recommendations as to the manner of
40 conducting the business of the institution, shall be read by
41 the board of directors at the next meeting after the receipt
42 thereof, and the president, or other executive officer, of
43 the institution shall forthwith notify the commissioner in
44 writing of the presentation and reading of the communica-
45 tion and of any action taken thereon by the institution.

46 The commissioner of banking, in his or her discretion,
47 may: (a) Accept a copy of a reasonably current examina-
48 tion of any banking institution made by the federal
49 deposit insurance corporation or the federal reserve
50 system in lieu of an examination of the banking institution
51 required or authorized to be made by the laws of this state,
52 and the commissioner may furnish to the federal deposit
53 insurance corporation or the federal reserve system or to
54 any official or examiner thereof, any copy or copies of
55 the commissioner's examinations of and reports on the
56 banking institutions; (b) accept a copy of a reasonably
57 current examination of any out-of-state bank or any West
58 Virginia state bank's out-of-state activities made by
59 another state's banking regulatory authority in lieu of an
60 examination of the banking institution required or
61 authorized to be made by the laws of this state, and the
62 commissioner may furnish to such other state's banking
63 regulatory authority or to any official or examiner
64 thereof, any copy or copies of the commissioner's
65 examinations of and reports on such banking institutions;
66 but nothing herein shall be construed to limit the duty and
67 responsibility of banking institutions to comply with all
68 provisions of law relating to examinations and reports, nor
69 to limit the powers and authority of the commissioner of

70 banking with reference to examinations and reports under
71 existing laws. The provision or exchange of examination
72 reports and other records of financial condition and
73 individuals pursuant to cooperative, coordinating or
74 information-sharing agreements with other bank supervi-
75 sory agencies and persons as permitted by this chapter
76 under an agreement of confidentiality shall not constitute
77 a violation of section four of this article.

**§31A-2-8. Commissioner's assessments and examination fund;
assessments, costs and expenses of examina-
tions; collection.**

1 (a) All moneys collected by the commissioner from
2 financial institutions and bank holding companies for
3 assessments, examination fees, investigation fees or other
4 necessary expenses incurred by the commissioner in
5 administering such duties shall be paid to the commission-
6 er and paid by the commissioner to the treasurer of the
7 state to the credit of a special revenue account to be
8 known as the "Commissioner's Assessment and Examina-
9 tion Fund" which is hereby established. The assessments
10 and fees paid into this account shall be appropriated by
11 law and used to pay the costs and expenses of the division
12 of banking and all incidental costs and expenses necessary
13 for its operations. At the end of each fiscal year, if the
14 fund contains a sum of money in excess of twenty percent
15 of the appropriated budget of the division of banking, the
16 amount of the excess shall be transferred to the general
17 revenue fund of the state. The Legislature may appropri-
18 ate money to start the special revenue account.

19 (b) The commissioner of banking shall charge and
20 collect from each state banking institution or other
21 financial institution or bank holding company and pay
22 into a special revenue account in the state treasury for the
23 division of banking assessments as follows:

24 (1) For each state banking institution, a semiannual
25 assessment payable on the first day of January and the
26 first day of July, each year, computed upon the total assets
27 of the banking institution shown on the report of condi-
28 tion of the banking institution filed as of the preceding

29 thirtieth day of June and the thirty-first day of December,
30 respectively, as follows:

31	Total Assets				
32		But Not			Of Excess
33	Over	Over	This		Over
34	Million	Million	Amount	Plus	Million
35	\$ 0	\$ 2	\$ 0	.001645020	\$ 0
36	2	20	3,290	.000205628	2
37	20	100	6,991	.000164502	20
38	100	200	20,151	.000106926	100
39	200	1,000	30,844	.000090476	200
40	1,000	2,000	103,225	.000074026	1,000
41	2,000	6,000	177,251	.000065801	2,000
42	6,000	20,000	440,454	.000055988	6,000
43	20,000	40,000	1,224,292	.000052670	20,000

44 (2) For each regulated consumer lender an annual
45 assessment payable on the first day of July, each year,
46 computed upon the total outstanding gross loan balances
47 and installment sales contract balances net of unearned
48 interest of the regulated consumer lender shown on the
49 report of condition of the regulated consumer lender as of
50 the preceding thirty-first day of December, respectively, as
51 follows:

52	Total Outstanding Balances				
53		But Not	This		Of Excess
54	Over	Over	Amount	Plus	Over
55	\$ 0	\$ 1,000,000	\$ 800	-	\$ -
56	1,000,000	5,000,000	800	.000400	1,000,000
57	5,000,000	10,000,000	2,400	.000200	5,000,000
58	10,000,000	-	4,200	.000100	10,000,000

59 If a regulated consumer lender's records or docu-
60 ments are maintained in more than one location in this
61 state, then eight hundred dollars may be added to the
62 assessment for each additional location.

63 (3) For each credit union, an annual assessment as
64 provided for in section eight, article one, chapter thirty-
65 one-c of this code as follows:

	Total Assets				
	Over	But Not Over	This Amount	Plus	Of Excess Over
66					
67					
68					
69	\$ 0	\$ 100,000	\$ 100	-	\$ -
70	100,000	500,000	300	-	-
71	500,000	1,000,000	500	-	-
72	1,000,000	5,000,000	500	.000400	1,000,000
73	5,000,000	10,000,000	2,100	.000200	5,000,000
74	10,000,000	-	3,100	.000100	10,000,000

75 (4) For each bank holding company, an annual
76 assessment as provided for in section eight, article eight-a
77 of this chapter. The annual assessment shall not exceed ten
78 dollars per million dollars in deposits rounded off to the
79 nearest million dollars.

80 (c) The commissioner shall each December and each
81 June prepare and send to each state banking institution a
82 statement of the amount of the assessment due. The
83 commissioner shall, further, each June, prepare and send
84 to each regulated consumer lender and each state credit
85 union a statement of the amount of the assessment due.
86 The commissioner shall, annually, during the month of
87 January, prepare and send to each bank holding company
88 a statement of the amount of the assessment due.

89 Assessments shall be prescribed annually, not later
90 than the fifteenth day of June, by written order of the
91 commissioner, but shall not exceed the maximums as set
92 forth in subsection (b) of this section. In setting the
93 assessments the primary consideration shall be the amount
94 appropriated by the Legislature for the division of bank-
95 ing for the corresponding annual period. Reasonable
96 notice of the assessments shall be made to all interested
97 parties. All orders of the commissioner for the purpose of
98 setting assessments are not subject to the provisions of the
99 West Virginia administrative procedures act, under chapter
100 twenty-nine-a of this code.

101 (d) For making an examination within the state of any
102 other financial institution for which assessments are not
103 provided by this code, the commissioner of banking shall
104 charge and collect from such other financial institution

105 and pay into the special revenue account for the division
106 of banking the actual and necessary costs and expenses
107 incurred in connection therewith, as fixed and determined
108 by the commissioner.

109 (e) If the records of an institution are located outside
110 this state, the institution at its option shall make them
111 available to the commissioner at a convenient location
112 within the state, or pay the reasonable and necessary
113 expenses for the commissioner or his or her representa-
114 tives to examine them at the place where they are main-
115 tained. The commissioner may designate representatives,
116 including comparable officials of the state in which the
117 records are located, to inspect them on his or her behalf.

118 (f) The commissioner of banking may maintain an
119 action for the recovery of all assessments, costs and
120 expenses in any court of competent jurisdiction.

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITU- TIONS.

§31A-3-3. Hearings and orders; entry of order without notice and hearing.

1 (a) Subject to the provisions of subsections (e), (f), (g)
2 and (h) of this section and to the provisions of subsection
3 (j), section twelve, article eight of this chapter, notice and
4 hearing shall be provided in advance of the entry of any
5 order by the board.

6 (1) Such notice shall be given to the financial institu-
7 tion or person with respect to whom the hearing is to be
8 conducted in accordance with the provisions of section
9 two, article seven, chapter twenty-nine-a of this code, and
10 such hearing and the administrative procedures in connec-
11 tion therewith shall be governed by all of the provisions of
12 article five, chapter twenty-nine-a of this code, and shall be
13 held at a time and place set by the board, but shall not be
14 held less than ten or more than thirty days after such
15 notice is given. A hearing may be continued by the board
16 on its own motion or for good cause shown.

17 (2) At any such hearing a party may represent himself
18 or be represented by an attorney at law admitted to
19 practice before any circuit court of this state.

20 (b) After any such hearing and consideration of all of
21 the testimony and evidence, the board shall make and
22 enter an order deciding the matters with respect to which
23 such hearing was conducted, which order shall be accom-
24 panied by findings of fact and conclusions of law as
25 specified in section three, article five, chapter twenty-nine-
26 a of this code, and a copy of such order and accompany-
27 ing findings and conclusions shall be served upon all
28 parties to such hearing, and their attorneys of record, if
29 any.

30 (c) In the case of an application for the board's
31 approval to incorporate and organize a banking institution
32 in this state, as provided in subdivision (3), subsection (b),
33 section two of this article, the board shall, upon receipt of
34 any such application, provide notice to all banking
35 institutions, which in the manner hereinafter provided,
36 have requested notice of any such action. The request by
37 any such banking institution to receive such notice shall
38 be in writing and shall request the board to notify it of the
39 receipt by the board of any application to incorporate and
40 organize a banking institution in this state. A banking
41 institution may, within ten days after receipt of such
42 notice, file a petition to intervene and shall, if it so files
43 such petition, thereupon become a party to any hearing
44 relating thereto before the board.

45 (d) The board shall have the power and authority to
46 issue subpoenas and subpoenas duces tecum, administer
47 oaths and examine any person under oath in connection
48 with any subject relating to duties imposed upon or
49 powers vested in the board.

50 (e) Whenever the board shall find that extraordinary
51 circumstances exist which require immediate action, it may
52 forthwith without notice or hearing enter an order taking
53 any action permitted by subdivisions (1), (2), (4) and (5),
54 subsection (b), section two of this article. Immediately
55 upon the entry of such order, certified copies thereof shall
56 be served upon all persons affected thereby and upon

57 demand such persons shall be entitled to a hearing thereon
58 at the earliest practicable time.

59 (f) Whenever the board shall find that the financial
60 condition of a state banking institution or a national
61 banking association constitutes an imminent peril to its
62 depositors, savings account holders, other customers or
63 creditors, it may forthwith without notice or hearing enter
64 an order taking any action permitted by subdivisions (7)
65 and (8), subsection (b), section two of this article. Immedi-
66 ately upon entry of such order, certified copies thereof
67 shall be served upon all persons affected thereby and
68 upon demand such persons shall be entitled to a hearing
69 thereon at the earliest practicable time.

70 (g) Whenever the board shall find that the financial
71 condition of a state banking institution or national bank-
72 ing association constitutes an imminent peril to its deposi-
73 tors, savings account holders, other customers or creditors,
74 it may forthwith without compliance with the provisions of
75 section six or seven, article four of this chapter and
76 without notice or hearing enter an order approving or
77 disapproving an application to incorporate a state banking
78 institution which is being formed to purchase the business
79 and assets or assume the liabilities of, or both, or merge or
80 consolidate with, such state banking institution or national
81 banking institution the financial condition of which
82 constitutes an imminent peril to its depositors, savings
83 account holders, other customers or creditors. Immediate-
84 ly upon the entry of such order, certified copies thereof
85 shall be served upon all persons affected thereby and
86 upon demand such persons shall be entitled to a hearing
87 thereon at the earliest practicable time.

88 (h) Whenever the board shall find that the financial
89 condition of a state banking institution, national associa-
90 tion or bank holding company constitutes an imminent
91 peril to its depositors, savings account holders, other
92 customers or creditors, it may forthwith without compli-
93 ance with the provisions of section five or six, article eight-
94 a of this chapter and without notice of hearing enter an
95 order approving or disapproving an application by an
96 existing bank holding company or by an organizing bank

97 holding company to acquire in whole or in part, directly
98 or indirectly, such state banking institution, national
99 association or bank holding company. Immediately upon
100 the entry of such order, certified copies thereof shall be
101 served upon all persons affected thereby at the earliest
102 practicable time.

103 (i) Definitions:

104 (1) The term "imminent peril" means that, because
105 the banking institution or bank holding company is
106 insolvent or about to be insolvent, or there is a probability
107 that the banking institution will not be able to pay its debts
108 when they become due.

109 (2) A banking institution or bank holding company is
110 "about to be insolvent" when it would be unable to meet
111 the demands of its depositors or is clearly unable, without
112 impairment of capital, by sale of assets or lawful
113 borrowings or otherwise, to realize sufficient liquid assets
114 to pay such debts for which payment is likely, in the
115 immediate future, to be due and demanded in the ordinary
116 course of business.

117 (3) A banking institution or bank holding company is
118 "insolvent" when it is unable to pay its debts to its
119 depositors and other creditors in the ordinary and usual
120 course of business.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENER- ALLY.

§31A-4-9. Fidelity bonds and insurance.

§31A-4-14. Trust powers of banking institutions.

§31A-4-14a. Transfer of fiduciary accounts or relationships between affiliated subsidiary banks of a bank holding company.

§31A-4-15. Certificate showing unimpaired capital to be filed before exercising trust powers; penalties; notice of failure to comply.

§31A-4-30. Charges and interest allowed in certain cases; negotiability of installment notes.

§31A-4-30a. Alternative maximum interest rate on loans by banks chartered under state law.

§31A-4-9. Fidelity bonds and insurance.

1 (a) The directors of a state bank shall direct and
2 require good and sufficient fidelity bonds on all active

3 officers and employees, whether or not they draw salary or
4 compensation, which bonds shall provide for indemnity to
5 such bank on account of any losses sustained by it as the
6 result of any dishonest, fraudulent or criminal act or
7 omission committed or omitted by them acting indepen-
8 dently or in collusion or combination with any person or
9 persons. Such bonds may be in individual, schedule or
10 blanket form, and the premiums therefor shall be paid by
11 the bank.

12 (b) The directors shall also direct and require suitable
13 insurance protection to the bank against burglary, rob-
14 bery, theft and other similar insurable hazards to which the
15 bank may be exposed in the operations of its business on
16 the premises or elsewhere.

17 (c) The directors shall be responsible for prescribing
18 at least once in each year the amount or penal sum of such
19 bonds or policies and the sureties or underwriters thereon,
20 after giving due and careful consideration to all known
21 elements and factors constituting such risk or hazard.
22 Such action shall be recorded in the minutes of the board
23 of directors.

24 (d) A state bank which is a subsidiary of a bank
25 holding company as defined in section one, article eight-a
26 of this chapter may fulfill the requirements of subsections
27 (a) and (b) of this section if such fidelity bonds and
28 insurance protection are obtained on its behalf by the
29 bank holding company: *Provided*, That the evidence of
30 the existence of such bonds and insurance protection for
31 the state bank must be maintained at the main office of the
32 state bank and the directors of the state bank shall be
33 responsible for reviewing the adequacy of such bonds and
34 insurance protection annually and for recording such
35 review in the minutes of the board.

§31A-4-14. Trust powers of banking institutions.

1 (a) Every state banking institution which files the
2 reports required in section fifteen of this article and which
3 is not otherwise prohibited by the commissioner or federal
4 bank regulators from doing so, shall have and exercise the
5 following powers:

6 (1) All the powers, rights and privileges of any state
7 banking institution;

8 (2) To act as trustee, assignee, special commissioner,
9 general or special receiver, guardian, executor, administra-
10 tor, committee, agent, curator or in any other fiduciary
11 capacity, and to take, assume, accept and execute trusts of
12 every description not inconsistent with the constitution and
13 laws of the United States of America or of this state; and to
14 receive, hold, manage and apply any sinking fund on the
15 terms and for the purposes specified in the instrument
16 creating such fund;

17 (3) To act as registrar, transfer agent or dividend or
18 coupon paying agent for any corporation;

19 (4) To make, hold and dispose of investments and
20 establish common trust funds, and account therefor,
21 pursuant to the provisions of chapter forty-four of this
22 code;

23 (5) To purchase and sell and take charge of and
24 receive the rents, issues and profits of any real estate for
25 other persons or corporations;

26 (6) To act as trustee or agent in any collateral trust
27 and in order to secure the payment of any obligations of
28 any person, firm, private corporation, public corporation,
29 public body or public agency to receive and hold in trust
30 any items of personal property (including, without
31 limitation, notes, bonds, debentures, obligations and
32 certificates for shares of stock) with the right in case of
33 default to sell and dispose of such personal property and
34 to collect, settle and adjust any obligations for the pay-
35 ment of money, and at any sale of such personal property
36 held by it, to purchase the same for the benefit of all or
37 any of the holders of the obligations, to secure the pay-
38 ment of which such items of personal property were
39 pledged and delivered to the trustee or agent. Any such
40 sale may be made without any proceedings in any court,
41 and at such times and upon such terms as may be speci-
42 fied in the instrument or instruments creating the trust, or,
43 in the absence of any specification of terms, at such time

44 and upon such terms as the trustee shall deem reasonable;
45 and

46 (7) To do and perform any act or thing requisite or
47 necessary in, or incidental to, the exercise of the general
48 powers herein set forth.

49 (b) All national banks having their main office in this
50 state which have been, or hereafter may be, authorized
51 under the laws of the United States to act as trustee and in
52 other fiduciary capacities in the state of West Virginia shall
53 have all the rights, powers, privileges and immunities
54 conferred hereunder, provided they comply with the
55 requirements hereof.

56 (c) Banks having their main office in another state
57 which lawfully have a branch in this state pursuant to the
58 provisions of federal law or articles eight-d or eight-e of
59 this chapter which have been, or hereafter may be, autho-
60 rized under the laws of the United States or the laws of the
61 state in which such bank is chartered to act as trustee and
62 in other fiduciary capacities in the state in which their
63 main office is located shall have all the rights, powers,
64 privileges and immunities conferred hereunder, provided
65 they comply with the requirements hereof.

**§31A-4-14a. Transfer of fiduciary accounts or relationships
between affiliated subsidiary banks of a bank
holding company.**

1 (a) Notwithstanding any other provision of this code,
2 and unless the will, deed or other instrument creating a
3 trust or fiduciary account or relationship specifically
4 provides otherwise, any affiliate subsidiary which is
5 empowered with and authorized to exercise trust powers,
6 or otherwise performs fiduciary services for a fee, may,
7 without any order or other action on the part of any court
8 or otherwise, transfer to any other affiliate subsidiary
9 exercising or authorized to exercise trust powers any or all
10 rights, franchises and interests in its fiduciary accounts or
11 relationships, including, but not limited to, any or all
12 appointments, designations and nominations and any
13 other rights, franchises and interests, as trustee, executor,
14 administrator, guardian, committee, escrow agent, transfer

15 and paying agent of stocks and bonds and every other
16 fiduciary capacity; and the transferee or receiving affiliate
17 subsidiary shall hold and enjoy all rights of property,
18 franchises and interests in the same manner and to the
19 same extent as such rights, franchises and interests were
20 held or enjoyed by the transferor affiliate subsidiary. As
21 to transfers to an affiliate subsidiary pursuant to this
22 section, the receiving affiliate subsidiary shall take, receive,
23 accept, hold, administer and discharge any grants, gifts,
24 bequests, devises, conveyances, trusts, powers and appoint-
25 ments made by deed, deed of trust, will, agreement, order
26 of court or otherwise to, in favor of, or in the name of, the
27 transferor affiliate subsidiary, whether made, executed or
28 entered before or after such transfer and whether to vest or
29 become effective before or after such transfer, as fully and
30 to the same effect as if the receiving affiliate subsidiary
31 had been named in such deed, deed of trust, will, agree-
32 ment, order or other instrument instead of such transferor
33 affiliate subsidiary. All acts taken or performed in its own
34 name or in the name of or on behalf of the transferor
35 affiliate subsidiary by any receiving affiliate subsidiary as
36 trustee, agent, executor, administrator, guardian, deposito-
37 ry, registrar, transfer agent or other fiduciary with respect
38 to fiduciary accounts or relationships transferred pursuant
39 to this section are as good, valid and effective as if made
40 by the transferor affiliate subsidiary.

41 (b) For purposes of this section, the term "affiliate
42 subsidiary" means any two or more subsidiaries (as the
43 term "subsidiary" is defined in section one, article eight-a
44 of this chapter) which are "banks" or "banking institu-
45 tions" (as those terms are defined in section two, article
46 one of this chapter) and which have a common bank
47 holding company as their parent company. For purposes
48 of this section, the term "bank holding company" shall
49 have the meaning set forth in section one, article eight-a of
50 this chapter.

51 (c) At least thirty days before any transfer authorized
52 by this section, the transferor affiliate subsidiary shall send
53 a statement of intent to transfer together with the name
54 and address of the transferee or receiving affiliated

56 subsidiary by regular United States mail to the most recent
57 known address of all persons who appear in the records of
58 the transferor affiliate subsidiary as having a vested
59 present interest in the trust, fiduciary account or relation-
60 ship to be transferred.

61 (d) This section shall be applicable to both domestic
62 and foreign bank holding company affiliate subsidiaries.

**§31A-4-15. Certificate showing unimpaired capital to be filed
before exercising trust powers; penalties; notice
of failure to comply.**

1 No banking institution shall exercise any of the trust
2 powers mentioned in this article until it shall have filed
3 with the commissioner of banking an annual report of
4 trust assets each calendar year as filed with federal regula-
5 tors. If any such banking institution shall exercise, or
6 attempt to exercise, any such powers or rights without
7 having complied with the requirements of this section as to
8 the filing of such report, it shall be guilty of a misdemean-
9 or, and, upon conviction thereof, shall be fined not more
10 than five hundred dollars; and in every such case, whether
11 or not there shall have been a prosecution or conviction of
12 the company so offending, the commissioner of banking,
13 being satisfied of the facts, may publish a notice of the
14 fact that it has failed to comply with the requirements of
15 this section and is therefore not entitled to exercise the
16 trust powers and rights mentioned in the preceding
17 section. In the event a notice is published as aforesaid, it
18 shall be published as a Class II legal advertisement in
19 compliance with the provisions of article three, chapter
20 fifty-nine of this code, and the publication area for such
21 publication shall be the county in which such institution is
22 located.

**§31A-4-30. Charges and interest allowed in certain cases;
negotiability of installment notes.**

1 In addition to the interest rate provided in article six,
2 chapter forty-seven of this code and elsewhere by law, a
3 banking institution may charge interest together with other
4 finance charges at a rate of eighteen percent per annum or
5 less calculated according to the actuarial method, or one

6 and one-half percent per month, computed on unpaid
7 balances. Additional charges in connection with consum-
8 er loans are limited as provided in section one hundred
9 nine, article three, chapter forty-six-a of this code. Loans
10 may be made on a precomputed basis: *Provided*, That
11 upon prepayment in full of a precomputed loan, the bank
12 shall rebate the unearned portion of such finance charges
13 as specified in section five-d, article six, chapter forty-
14 seven of this code. Any note evidencing any such install-
15 ment loan may provide that the entire unpaid balance
16 thereof at the option of the holder shall become due and
17 payable upon default in the payment of any stipulated
18 installment without impairing the negotiability of such
19 note if otherwise negotiable.

**§31A-4-30a. Alternative maximum interest rate on loans by
banks chartered under state law.**

1 (a) The Legislature hereby finds and declares that:

2 (1) Under federal banking laws, national banking
3 associations are permitted to charge interest on loans at a
4 rate not exceeding one percent in excess of the discount
5 rate on ninety-day commercial paper in effect at the
6 federal reserve bank in the federal reserve district where
7 the national banking association is located;

8 (2) Banks chartered under the laws of West Virginia
9 should be able to charge interest on a comparable basis,
10 and hence avoid being placed at a competitive disadvan-
11 tage in relation to national banking associations having
12 their principal offices in the state;

13 (3) It is in the best interest of the citizens of this state
14 to preserve the state banking system and to that end, and
15 in order to foster equitable competition as to interest rates,
16 to provide a means by which banks chartered under the
17 laws of West Virginia, as an alternative to the interest rates
18 authorized by any other provisions of this code, may
19 charge interest at a rate comparable to the rate permitted
20 to national banking associations; therefore,

21 (4) As an alternative to the interest rate authorized by
22 any other provisions of this code, any bank now or

23 hereafter chartered under the laws of West Virginia may,
24 after the effective date of this section, on any loan of
25 money, contract in writing for the payment of interest at a
26 rate, including points expressed as a percentage of the
27 loan divided by the number of years of the loan contract,
28 not to exceed one percent in excess of the discount rate on
29 ninety-day commercial paper in effect at the federal
30 reserve bank in the federal reserve district where the state
31 bank is located.

32 (b) For the purpose of subsection (a) of this section,
33 the term "points" is defined as the amount of money, or
34 other consideration, received by any person or by such
35 banks, from whatever source, as a consideration for
36 making the loan and not otherwise expressly permitted by
37 statute.

38 (c) A commitment to make a loan pursuant to this
39 section which provides for consummation within some
40 future time may be consummated pursuant to the provi-
41 sions, including interest rate, of such commitment notwith-
42 standing the fact that the maximum rate of interest at the
43 time the loan contract is entered into is less than a commit-
44 ment rate of interest: *Provided*, That the commitment rate
45 of interest does not exceed the maximum interest rate in
46 effect on the date the commitment was issued: *Provided*,
47 *however*, That the commitment when agreed to by the
48 borrower constitutes a legally binding obligation on the
49 part of such person or such bank to make such a loan
50 within a specified time period in the future at a rate of
51 interest not exceeding the maximum rate of interest
52 effective as of the date of commitment, and the commit-
53 ment does not include any condition for increase of the
54 interest rate at the time of loan consummation even
55 though the maximum rate of interest is then higher.

56 (d) Nothing contained in this section shall prohibit the
57 parties to any loan transaction from contracting for a rate
58 of interest authorized by any other provision of this code.

**ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES;
JUDICIAL REVIEW; UNLAWFUL ACTS; PEN-
ALTIES.**

§31A-8-12. Procedure for authorization of branch banks; temporary offices at colleges and universities; limitations and restrictions; examinations and hearings; standards of review; penalties for violation of section.

§31A-8-12a. Banking from mobile units prohibited; prohibition not to include messenger services; limitation of messenger services.

§31A-8-12b. Installation and operation of customer bank communication terminals permitted.

§31A-8-12. Procedure for authorization of branch banks; temporary offices at colleges and universities; limitations and restrictions; examinations and hearings; standards of review; penalties for violation of section.

1 (a) No banking institution shall engage in business in
2 this state at any place other than at its principal office in
3 this state, at a branch bank in this state, at a customer bank
4 communication terminal permitted by section twelve-b of
5 this article or at any loan origination office permitted by
6 section twelve-c of this article:

7 (1) Acceptance of a deposit or allowing a withdrawal
8 at the banking offices of any subsidiary affiliate, as
9 defined in section one, article eight-a of this chapter, for
10 credit or debit to the customer's account at any other
11 subsidiary of the same bank holding company is permissi-
12 ble and does not constitute branch banking. In addition,
13 the conduct of activity at branch offices as an agent for
14 any bank subsidiary of the same bank holding company
15 shall be permitted to the same extent allowed by federal
16 law for national banks pursuant to 12 U.S.C. §1828, and
17 does not constitute branch banking; nor shall such activity
18 constitute a violation of section forty-two, article four of
19 this chapter: *Provided*, That no banking institution may
20 utilize that agency relationship to evade state consumer
21 protection laws, including usury laws, or any other appli-
22 cable laws of this state, or to conduct any activity that is
23 not financially-related, as that term is defined by section
24 two, article eight-c of this chapter;

25 (2) A banking institution located in a county where
26 there is also a higher educational institution as defined in

27 section two, article one, chapter eighteen-b of this code,
28 may establish a temporary business office on the campus
29 of any such educational institution located in such county
30 for the limited purposes of opening accounts and accept-
31 ing deposits for a period not in excess of four business
32 days per semester, trimester or quarter: *Provided*, That
33 prior to opening any temporary office, a banking institu-
34 tion must first obtain written permission from the institu-
35 tion of higher education. The term "business days", for
36 the purpose of this subsection, means days exclusive of
37 Saturdays, Sundays and legal holidays as defined in
38 section one, article two, chapter two of this code;

39 (3) Any banking institution which on the first day of
40 January, one thousand nine hundred eighty-four, was
41 authorized to operate an off-premises walk-in or drive-in
42 facility, pursuant to the law then in effect, may, as of the
43 seventh day of June, one thousand nine hundred eighty-
44 four, operate such facility as a branch bank and it shall not
45 be necessary, for the continued operation of such branch
46 bank, to obtain additional approvals, notwithstanding the
47 provisions of subsection (d) of this section and subdivision
48 (6), subsection (b), section two, article three of this chap-
49 ter.

50 (b) Except for a bank holding company, it shall be
51 unlawful for any individual, partnership, society, associa-
52 tion, firm, institution, trust, syndicate, public or private
53 corporation, or any other legal entity, or combination of
54 entities acting in concert, to directly or indirectly own,
55 control or hold with power to vote, twenty-five percent or
56 more of the voting shares of each of two or more banks,
57 or to control in any manner the election of a majority of
58 the directors of two or more banks.

59 (c) A banking institution may establish branch banks
60 either by:

61 (1) The construction, lease or acquisition of branch
62 bank facilities within any county of this state; or

63 (2) The purchase of the business and assets and
64 assumption of the liabilities of, or merger or consolidation
65 with, another banking institution.

66 (d) Notwithstanding any other provision of this
67 chapter to the contrary, subject to and in furtherance of
68 the board's authority under the provisions of subdivision
69 (6), subsection (b), section two, article three of this chapter,
70 and subsection (g) of this section, the board may approve
71 or disapprove the application of any state banking institu-
72 tion to establish a branch bank.

73 (e) The main office or a branch of a West Virginia
74 state banking institution may not be relocated without the
75 approval by order of the commissioner.

76 (f) Any banking institution which is authorized to
77 establish branch banks pursuant to this section may
78 provide the same banking services and exercise the same
79 powers at each such branch bank as may be provided and
80 exercised at its principal banking house.

81 (g) The board shall, upon receipt of any application to
82 establish a branch bank, provide notice of such application
83 to all banking institutions. A banking institution may,
84 within ten days after receipt of such notice, file a petition
85 to intervene and shall, if it so files such petition, thereupon
86 become a party to any hearing relating thereto before the
87 board.

88 (h) The commissioner shall prescribe the form of the
89 application for a branch bank and shall collect an exami-
90 nation and investigation fee of one thousand dollars for
91 each filed application for a branch bank that is to be
92 established by the construction, lease or acquisition of a
93 branch bank facility, and two thousand five hundred
94 dollars for a branch bank that is to be established by the
95 purchase of the business and assets and assumption of the
96 liabilities of, or merger or consolidation with another
97 banking institution. Notwithstanding the above, if the
98 merger or consolidation is between an existing banking
99 institution and a bank newly incorporated solely for the
100 purpose of facilitating the acquisition of the existing
101 banking institution, the commissioner shall collect an
102 examination and investigation fee of five hundred dollars.
103 The board shall complete the examination and investiga-
104 tion within ninety days from the date on which such
105 application and fee are received, unless the board requests

106 in writing additional information and disclosures concern-
107 ing the proposed branch bank from the applicant banking
108 institution, in which event such ninety-day period shall be
109 extended for an additional period of thirty days plus the
110 number of days between the date of such request and the
111 date such additional information and disclosures are
112 received.

113 (i) Upon completion of the examination and investiga-
114 tion with respect to such application, the board shall, if a
115 hearing be required pursuant to subsection (j) of this
116 section, forthwith give notice and hold a hearing pursuant
117 to the following provisions:

118 (1) Notice of such hearing shall be given to the
119 banking institution with respect to which the hearing is to
120 be conducted in accordance with the provisions of section
121 two, article seven, chapter twenty-nine-a of this code, and
122 such hearing and the administrative procedures in connec-
123 tion therewith shall be governed by all of the provisions of
124 article five, chapter twenty-nine-a of this code, and shall be
125 held at a time and place set by the board but shall not be
126 less than ten nor more than thirty days after such notice is
127 given;

128 (2) At any such hearing a party may represent himself
129 or be represented by an attorney at law admitted to
130 practice before any circuit court of this state;

131 (3) After such hearing and consideration of all the
132 testimony and evidence, the board shall make and enter an
133 order approving or disapproving the application, which
134 order shall be accompanied by findings of fact and
135 conclusions of law as specified in section three, article five,
136 chapter twenty-nine-a of this code, and a copy of such
137 order and accompanying findings and conclusions shall
138 be served upon all parties to such hearing, and their
139 attorneys of record, if any.

140 (j) No state banking institution may establish a branch
141 bank until the board, following an examination, investiga-
142 tion, notice and hearing, enters an order approving an
143 application for that branch bank: *Provided*, That no such
144 hearing shall be required with respect to any application to

145 establish a branch bank which is approved by the board
146 unless a banking institution has timely filed a petition to
147 intervene pursuant to subsection (g) of this section. The
148 order shall be accompanied by findings of fact that:

149 (1) Public convenience and advantage will be promot-
150 ed by the establishment of the proposed branch bank;

151 (2) Local conditions assure reasonable promise of
152 successful operation of the proposed branch bank and of
153 those banks and branches thereof already established in
154 the community;

155 (3) Suitable physical facilities will be provided for the
156 branch bank;

157 (4) The applicant state-chartered banking institution
158 satisfies such reasonable and appropriate requirements as
159 to sound financial condition as the commissioner or board
160 may from time to time establish by regulation;

161 (5) The establishment of the proposed branch bank
162 would not result in a monopoly, nor be in furtherance of
163 any combination or conspiracy to monopolize the busi-
164 ness of banking in any section of this state; and

165 (6) The establishment of the proposed branch bank
166 would not have the effect in any section of the state of
167 substantially lessening competition, nor tend to create a
168 monopoly or in any other manner be in restraint of trade,
169 unless the anticompetitive effects of the establishment of
170 that proposed branch bank are clearly outweighed in the
171 public interest by the probable effect of the establishment
172 of the proposed branch bank in meeting the convenience
173 and needs of the community to be served by that pro-
174 posed branch bank. If the branch results from the merger
175 or acquisition of banking institutions, the findings of fact
176 required in subdivisions (1) through (3) of this subsection
177 may be based on the performance and suitability of the
178 previous banking offices.

179 (k) Any party who is adversely affected by the order
180 of the board shall be entitled to judicial review thereof in

182 the manner provided in section four, article five, chapter
183 twenty-nine-a of this code. Any such party adversely
184 affected by a final judgment of a circuit court following
185 judicial review as provided in the foregoing sentence may
186 seek review thereof by appeal to the supreme court of
187 appeals in the manner provided in article six, chapter
188 twenty-nine-a of this code.

189 (l) Pursuant to the resolution of its board of directors
190 and with the prior written approval of the commissioner, a
191 state banking institution may discontinue the operation of
192 a branch bank upon at least thirty days prior public notice
193 given in such form and manner as the commissioner
194 prescribes.

195 (m) Any violation of any provision of this section
196 shall constitute a misdemeanor offense punishable by
197 applicable penalties as provided in section fifteen of this
198 article.

§31A-8-12a. Banking from mobile units prohibited; prohibition not to include messenger services; limitation of messenger services.

1 It is illegal for any banking institution or other
2 depository institution to conduct its business in a facility
3 that is a mobile unit not permanently attached to the real
4 estate upon which it is located, except that such mobile
5 units may be used as temporary banking quarters pending
6 construction of a permanent bank building on the same or
7 adjacent property thereto if a charter for said bank has
8 previously been approved. This section shall not be
9 construed or interpreted to prohibit a financial institution
10 from providing messenger services to its customers by
11 which items are received by mail, armored car service or
12 other courier or delivery service for subsequent deposit:
13 *Provided*, That all such messenger services are confined to
14 the territorial boundaries of the county in which an office
15 of such financial institution is located or within fifty miles
16 of an office of such financial institution.

§31A-8-12b. Installation and operation of customer bank communication terminals permitted.

1 (a) Any banking institution as defined in section two,
2 article one of this chapter, individually or jointly with one
3 or more other banking institutions or other federally
4 insured financial institutions having their principal offices
5 in this state, or any combination thereof, may upon ten
6 days prior written notice filed with the commissioner,
7 install, operate and engage in banking business by means
8 of one or more customer bank communication terminals.
9 Any banking institution which installs and operates a
10 customer bank communication terminal:

11 (1) Shall make such customer bank communication
12 terminal available for use by other banking institutions;
13 and

14 (2) May make such customer bank communication
15 terminal available for use by other federally insured
16 financial institutions, all in accordance with regulations
17 promulgated by the commissioner. Such customer bank
18 communication terminals shall not be considered to be
19 branch banks or branch offices, agencies or places of
20 business or off-premises walk-in or drive-in banking
21 facilities; nor shall the operation of such customer bank
22 communication terminals to communicate with and permit
23 financial transactions to be carried out through a nonex-
24 clusive access interchange system be considered to make
25 any banking institution which is part of such a nonexclu-
26 sive access interchange system to have illegal branch
27 banks or branch offices, agencies or places of business or
28 off-premises walk-in or drive-in banking facilities.

29 (b) Notwithstanding the provisions of subdivision (1),
30 subsection (a) of this section, a customer bank communi-
31 cation terminal located on the premises of the principal
32 office or branch bank of a banking institution or on the
33 premises of an authorized off-premises facility need not
34 be made available for use by any other banking institution
35 or its customers.

36 (c) For purposes of this section, "customer bank
37 communication terminal" means any electronic device or
38 machine owned, leased, or operated by a bank, together
39 with all associated equipment, structures and systems,
40 including, without limitation, point of sale terminals,

41 through or by means of which a customer and a banking
42 institution may engage in any banking transactions,
43 whether transmitted to the banking institution instanta-
44 neously or otherwise, including, without limitation, the
45 receipt of deposits of every kind, the receipt and dispens-
46 ing of cash, requests to withdraw money from an account
47 or pursuant to a previously authorized line of credit,
48 receiving payments payable at the bank or otherwise
49 transmitting instructions to receive, transfer or pay funds
50 for a customer's benefit. Personal computers, telephones
51 and associated equipment which enable a bank customer
52 to conduct banking transactions at their home or office
53 through links to their bank's computer or telephone
54 network, do not constitute a "customer bank communica-
55 tion terminal" under this section. All transactions initiated
56 through a customer bank communication terminal shall be
57 subject to verification by the banking institution.

58 (d) No person, other than: (1) A banking institution
59 authorized to engage in the banking business in this state;
60 or (2) a credit union authorized to conduct business in this
61 state, may operate any automatic teller machine ("ATM")
62 or automatic loan machine ("ALM") located in this state:
63 *Provided*, That ATM terminals of out-of-state state banks
64 not having branches in this state shall be allowed to
65 operate to the same extent as a West Virginia bank if a
66 national bank from that state not having branches in West
67 Virginia could do so through a federal preemption of state
68 law.

69 (e) For the purposes of this section, "point of sale
70 terminal" means a customer bank communication
71 terminal used for the primary purpose of either transfer-
72 ring funds to or from one or more deposit accounts in a
73 banking institution or segregating funds in one or more
74 deposit accounts in a banking institution for future
75 transfer, or both, in order to execute transactions between
76 a person and his customers incident to sales, including,
77 without limitation, devices and machines which may be
78 used to implement and facilitate check guaranty and
79 check authorization programs.

80 (f) Nothing in this section prevents point of sale
81 terminals and associated equipment from being owned,
82 leased or operated by nonbanking entities: *Provided*, That
83 such persons may not engage in the business of banking
84 by using point of sale devices. The use of a point of sale
85 terminal to enable a customer or other person to withdraw
86 and obtain cash of more than fifty dollars in excess of the
87 sales transaction purchase amount will be presumed to
88 constitute engaging in the business of banking.

89 (g) Except for customer bank communication termi-
90 nals located on the premises of the principal office or a
91 branch bank of the banking institution or on the premises
92 of an authorized off-premises walk-in or drive-in banking
93 facility, a customer bank communication terminal shall be
94 unattended or attended by persons not employed by any
95 banking institution utilizing the terminal: *Provided*, That:

96 (1) Employees of the banking institution may be
97 present at such terminal not located on the premises of an
98 authorized off-premises facility solely for the purposes of
99 installing, maintaining, repairing and servicing same; and

100 (2) A banking institution may provide an employee to
101 instruct and assist customers in the operation thereof:
102 *Provided*, That such employee shall not engage in any
103 other banking activity.

104 (h) The commissioner shall prescribe by regulation
105 the procedures and standards regarding the installation
106 and operation of customer bank communication terminals,
107 including, without limitation, the procedure for the sharing
108 thereof.

CHAPTER 31C. CREDIT UNIONS.

ARTICLE 1. SUPERVISION AND REGULATION.

§31C-1-5. Examinations.

1 (a) The commissioner shall examine, or cause to be
2 examined, each credit union at least once every eighteen
3 months. A credit union and any of its officers and agents
4 shall be required to give the commissioner, or the commis-
5 sioner's representatives, full access to all books, papers,

6 securities, records and other sources of information under
7 their control.

8 (b) A report of such examination shall be forwarded
9 to the credit union's board of directors within thirty days
10 after completion. Said report shall contain comments
11 relative to the management of the affairs of the credit
12 union and the general condition of its assets. Within thirty
13 days after the receipt of such report, the directors and
14 committee members shall meet to consider matters
15 contained in the report. Every official communication
16 from the commissioner to any such institution, or to any
17 officer thereof, relating to an examination or an investiga-
18 tion of the affairs of such institution conducted by the
19 commissioner or containing suggestions or recommenda-
20 tions as to the manner of conducting the business of the
21 institution, shall be read to the board of directors at the
22 next meeting after the receipt thereof, and the president, or
23 other executive officer, of the institution shall within
24 fourteen days of such meeting notify the commissioner in
25 writing of the presentation and reading of the communica-
26 tion and of any action taken thereon by the institution.

27 (c) In lieu of making an examination of a credit
28 union, the commissioner may accept an examination or
29 audit report of the condition of the credit union made by
30 the national credit union administration.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

Article

3. **Finance Charges and Related Provisions.**
4. **Regulated Consumer Lenders.**

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-104. Finance charge for loans other than loans made pursuant to revolving loan accounts; finance charge on assigned contracts; exceptions.

- 1 (1) With respect to a consumer loan, other than a
- 2 consumer loan made pursuant to a revolving loan account:
- 3 (a) A bank, as defined in section two, article one, chapter
- 4 thirty-one-a of this code, may contract for and receive a

5 loan finance charge not exceeding the charge or interest
6 permitted by the provisions of section thirty, article four,
7 chapter thirty-one-a or by the provisions of section five,
8 five-a or five-b, article six, chapter forty-seven of this
9 code, or that allowed under section two, article seven,
10 chapter thirty-one-c of this code; (b) a regulated consum-
11 er lender may contract for and receive a loan finance
12 charge not exceeding the aggregate of the interest and
13 charges permitted by section one hundred seven, article
14 four, chapter forty-six-a of this code or by the provisions
15 of section five, five-a or five-b, article six, chapter forty-
16 seven of this code; (c) a credit union, as defined in section
17 one, article one, chapter thirty-one-c of this code, may
18 contract for and receive a loan finance charge not exceed-
19 ing the charge or interest permitted by the provisions of
20 section two, article seven, chapter thirty-one-c of this code,
21 or by the provisions of section five, article six, chapter
22 forty-seven of this code; and (d) any other lender may
23 contract for and receive a loan finance charge not exceed-
24 ing the charge or interest permitted by the provisions of
25 section five, five-a or five-b, article six, chapter forty-seven
26 of this code.

27 (2) This section does not limit or restrict the manner
28 of calculating the loan finance charge, whether by way of
29 add-on, discount or otherwise, so long as the rate of loan
30 finance charge does not exceed that permitted by this
31 section.

32 (3) If the loan is precomputed:

33 (a) The loan finance charge may be calculated on the
34 assumption that all scheduled payments will be made when
35 due; and

36 (b) The effect of prepayment, refinancing or consoli-
37 dation is governed by the provisions on rebate upon
38 prepayment, refinancing or consolidation contained in
39 section one hundred eleven of this article.

40 (4) Notwithstanding subsection (1) of this section, the
41 lender may contract for and receive a minimum loan
42 finance charge of not more than five dollars when the
43 amount loaned does not exceed seventy-five dollars, or

44 seven dollars and fifty cents when the amount loaned
45 exceeds seventy-five dollars.

46 (5) An assignee of a consumer credit sale contract
47 may collect, receive or enforce the sales finance charge
48 provided in said contract, and any such charge so collect-
49 ed, received or enforced by an assignee shall not be
50 deemed usurious or in violation of this chapter or any
51 other provision of this code if such sales finance charge
52 does not exceed the limits permitted to be charged by a
53 seller under the provisions of this chapter.

54 (6) Notwithstanding subsection (5) of this section, a
55 resident lender who is the assignee of a consumer credit
56 sales contract from a credit grantor in another state, and
57 said contract was executed in such other state to finance a
58 retail purchase made by the consumer when the consumer
59 was in that other state, may collect, receive or enforce the
60 sales finance charge and other charges including late fees
61 provided in said contract under the laws of the state where
62 executed. Such charge shall not be deemed to be usurious
63 or in violation of the provisions of this chapter or any
64 other provisions of this code.

ARTICLE 4. REGULATED CONSUMER LENDERS.

§46A-4-104. Records; annual reports.

§46A-4-107. Loan finance charge for regulated consumer lenders.

§46A-4-111. Substantial benefit upon refinancing of a loan at higher rate.

§46A-4-104. Records; annual reports.

1 (1) Every licensee shall maintain records in conformi-
2 ty with generally accepted accounting principles and
3 practices in a manner which will enable the commissioner
4 to determine whether the licensee is complying with the
5 provisions of this article. The record-keeping system of a
6 licensee shall be sufficient if he makes the required
7 information reasonably available. The records need not
8 be kept in the place of business where regulated consumer
9 loans are made, if the commissioner is given free access to
10 the records wherever located. The records pertaining to
11 any loan need not be preserved for more than two years
12 after making the final entry relating to the loan, but in the

13 case of a revolving loan account such two-year period is
14 measured from the date of each entry.

15 (2) On or before the fifteenth day of February each
16 year, every licensee shall file with the commissioner a
17 composite annual report in the form prescribed by the
18 commissioner relating to all regulated consumer loans
19 made by him and showing in detail the actual financial
20 condition and the amount of the assets and liabilities of
21 such financial institution. The commissioner shall consult
22 with comparable officials in other states for the purpose of
23 making the kinds of information required in annual
24 reports uniform among the states. Information contained
25 in annual reports shall be confidential and may be pub-
26 lished only in composite form.

§46A-4-107. Loan finance charge for regulated consumer lenders.

1 (1) With respect to a regulated consumer loan, includ-
2 ing a revolving loan account, a regulated consumer lender
3 may contract for and receive a loan finance charge not
4 exceeding that permitted by this section.

5 (2) On a loan of two thousand dollars or less, which is
6 unsecured by real property, the loan finance charge,
7 calculated according to the actuarial method, may not
8 exceed thirty-one percent per year on the unpaid balance
9 of the principal amount.

10 (3) On a loan of greater than two thousand dollars or
11 which is secured by real property, the loan finance charge,
12 calculated according to the actuarial method, may not
13 exceed twenty-seven percent per year on the unpaid
14 balance of the principal amount: *Provided*, That the loan
15 finance charge on any loan greater than ten thousand
16 dollars may not exceed eighteen percent per year on the
17 unpaid balance of the principal amount. Loans made by
18 regulated consumer lenders shall be subject to the restric-
19 tions and supervision set forth in this article irrespective of
20 their rate of finance charges.

21 (4) Where the loan is nonrevolving and is greater than
22 two thousand dollars, the permitted finance charge may

23 include a charge of not more than a total of two percent of
24 the amount financed for any origination fee, points or
25 investigation fee: *Provided*, That where any loan, revolving
26 or nonrevolving, is secured by real estate, the permitted
27 finance charge may include a charge of not more than a
28 total of five percent of the amount financed for any
29 origination fee, points or investigation fee. In any loan
30 secured by real estate, such charges may not be imposed
31 again by the same or affiliated lender in any refinancing
32 of that loan made within twenty-four months thereof,
33 unless these earlier charges have been rebated by payment
34 or credit to the consumer under the actuarial method, or
35 the total of the earlier and proposed charges does not
36 exceed five percent of the amount financed. Charges
37 permitted under this subsection shall be included in the
38 calculation of the loan finance charge. The financing of
39 such charges shall be permissible and shall not constitute
40 charging interest on interest. In a revolving home equity
41 loan, the amount of the credit line extended shall, for
42 purposes of this subsection, constitute the amount fi-
43 nanced. Other than herein provided, no points, origination
44 fee, investigation fee or other similar prepaid finance
45 charges attributable to the lender or its affiliates may be
46 levied. Except as provided for by section one hundred
47 nine, article three of this chapter, no additional charges
48 may be made; nor may any charge permitted by this
49 section be assessed unless the loan is made. To the extent
50 that this section overrides the preemption on limiting
51 points and other such charges on first lien residential
52 mortgages contained in Section 501 of the United States
53 Depository Institutions Deregulation and Monetary
54 Control Act of 1980, the state law limitations contained in
55 this section shall apply. If the loan is precomputed:

56 (a) The loan finance charge may be calculated on the
57 assumption that all scheduled payments will be made when
58 due; and

59 (b) The effect of prepayment, refinancing or consoli-
60 dation is governed by the provisions on rebate upon
61 prepayment, refinancing or consolidation contained in
62 section one hundred eleven, article three of this chapter.

63 (5) For the purposes of this section, the term of a loan
64 commences on the date the loan is made. Differences in
65 the lengths of months are disregarded and a day may be
66 counted as one thirtieth of a month. Subject to classifica-
67 tions and differentiations the licensee may reasonably
68 establish, a part of a month in excess of fifteen days may
69 be treated as a full month if periods of fifteen days or less
70 are disregarded and if that procedure is not consistently
71 used to obtain a greater yield than would otherwise be
72 permitted.

73 (6) With respect to a revolving loan account:

74 (a) A charge may be made by a regulated consumer
75 lender in each monthly billing cycle which is one twelfth
76 of the maximum annual rates permitted by this section
77 computed on an amount not exceeding the greatest of:

78 (i) The average daily balance of the debt; or

79 (ii) The balance of the debt at the beginning of the
80 first day of the billing cycle, less all payments on and
81 credits to such debt during such billing cycle and exclud-
82 ing all additional borrowings during such billing cycle.
83 For the purpose of this subdivision a billing cycle is
84 monthly if the billing statement dates are on the same day
85 each month or do not vary by more than four days
86 therefrom.

87 (b) If the billing cycle is not monthly, the maximum
88 loan finance charge which may be made by a regulated
89 consumer lender is that percentage which bears the same
90 relation to an applicable monthly percentage as the
91 number of days in the billing cycle bears to thirty.

92 (c) Notwithstanding subdivisions (a) and (b) of this
93 subsection, if there is an unpaid balance on the date as of
94 which the loan finance charge is applied, the licensee may
95 contract for and receive a charge not exceeding fifty cents
96 if the billing cycle is monthly or longer, or the pro rata
97 part of fifty cents which bears the same relation to fifty
98 cents as the number of days in the billing cycle bears to
99 thirty if the billing cycle is shorter than monthly, but no
100 charge may be made pursuant to this subdivision if the

101 lender has made an annual charge for the same period as
102 permitted by the provisions on additional charges.

103 (7) As an alternative to the loan finance charges
104 allowed by subsections (2) and (4) of this section, a
105 regulated consumer lender may on a loan of one thousand
106 two hundred dollars or less contract for and receive
107 interest at a rate of up to thirty-one percent per year on
108 the unpaid balance of the principal amount, together with
109 a nonrefundable loan processing fee of not more than two
110 percent of the amount financed: *Provided*, That no other
111 finance charges are imposed on the loan. The processing
112 fee permitted under this subsection shall be included in
113 the calculation of the loan finance charge and the financ-
114 ing of the fee shall be permissible and shall not constitute
115 charging interest on interest.

116 (8) Notwithstanding any contrary provision in this
117 section, a licensed regulated consumer lender who is the
118 assignee of a nonrevolving consumer loan unsecured by
119 real property located in this state, which loan contract was
120 applied for by the consumer when he or she was in
121 another state, and which was executed and had its proceeds
122 distributed in that other state, may collect, receive and
123 enforce the loan finance charge and other charges,
124 including late fees, provided in said contract under the
125 laws of the state where executed: *Provided*, That the
126 consumer was not induced by the assignee or its in-state
127 affiliates to apply and obtain the loan from an out-of-state
128 source affiliated with the assignee in an effort to evade the
129 consumer protections afforded by this chapter. Such
130 charges shall not be deemed to be usurious or in violation
131 of the provisions of this chapter or any other provisions of
132 this code.

**§46A-4-111. Substantial benefit upon refinancing of a loan at
higher rate.**

1 (1) Any nonrevolving consumer loan or consumer
2 credit sale that is refinanced and consolidated with a new
3 loan under this article after the first day of September, one
4 thousand nine hundred ninety-six, at a higher finance rate
5 than allowed merchants by section one hundred one,
6 article three of this chapter must either provide the

7 consumer with a substantial benefit or provide the disclo-
8 sures set forth in this section. A substantial benefit accrues
9 to the consumer if the transaction:

10 (a) Provides the consumer at least five hundred dollars
11 in new funds for the consumer's own use, excluding any
12 charges connected with the loan; or

13 (b) Provides the consumer with new funds in an
14 amount equal to the original amount of the loan or credit.

15 (2) If no substantial benefit is provided, the lender
16 must comply with the following requirements, except
17 where such an agreement would violate section one
18 hundred eight of this article:

19 (a) The lender must in a fixed rate transaction give the
20 following disclosures in writing to the borrower prior to
21 the execution of the new agreement:

22 "If you do agree to consolidate your existing obliga-
23 tion, you will be paying an annual percentage rate of
24 _____% on the existing balance of \$_____, instead of the
25 rate of _____% which you are now paying.

26 I acknowledge receipt of this information
27 _____ (initials of borrower)."

28 (b) The lender must allow the borrower the choice of
29 repaying his or her existing loan/credit balance at the
30 originally agreed upon rate and obtaining any additional
31 extension of credit as a separate agreement, notwithstand-
32 ing any law other than section one hundred eight of this
33 article which may limit the borrower's ability to have
34 multiple loan agreements with the same lender;

35 (c) The lender, where it holds the prior agreement,
36 must refund or credit to the borrower's account any
37 unearned finance charge and any returned insurance
38 premiums upon cancellation of the insurance sold in
39 connection with the prior agreement;

40 (d) The lender shall, where applicable, provide the
41 borrower prior to the loan's execution, conspicuous
42 written notice of the provisions of subdivisions (a), (b) and
43 (c) of this subsection;

44 (e) The commissioner may provide and require a
45 modified disclosure form for similar transactions involv-
46 ing adjustable or variable rates, and where applicable, prior
47 to the loan's execution, the borrower must be given
48 conspicuous written notice of the provisions of subdivi-
49 sions (b) and (c) of this subsection, together with the
50 disclosure form as may be required by this section; and

51 (f) Nothing in this section shall prohibit the receipt of
52 goods or services by the borrower at the time the consoli-
53 dated loan agreement is made, nor shall this section
54 prohibit or pertain to any loan where the refinancing
55 results in the consumer paying the same or a lower finance
56 charge rate.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 24. THE REVERSE MORTGAGE ENABLING ACT.

§47-24-8. Regulatory authority and exemptions.

1 (a) All reverse mortgage loans subject to this article
2 shall be under the jurisdiction and supervision of the
3 commissioner of banking, and subject to the regulatory
4 authority and penalties set forth in chapter thirty-one-a of
5 this code.

6 (b) The commissioner of banking shall have the
7 authority to promulgate rules in order to affect compli-
8 ance with the provisions of this article.

9 (c) Persons making reverse mortgage loans through a
10 program authorized by and under the supervision of a
11 federal governmental agency or through a federally
12 sponsored mortgage enterprise are exempt from the
13 provisions of this article, and may make reverse mortgages
14 notwithstanding any provisions to the contrary in this
15 code: *Provided*, That such loans are sold to those agencies
16 or enterprises within forty-five days of loan closing and
17 that the commissioner of banking certifies that the pro-
18 gram provides consumers with protections against abusive
19 practices. Loans under this subsection may, like other
20 reverse mortgage loans, also be made or acquired without
21 regard to relevant interpretations of law to the same extent
22 as provided in section five of this article.

CHAPTER 47

(Com. Sub. For H. B. 2198—By Delegates Farris, Johnson, Thompson, Beane, L. White, H. White and Clements)

[Passed March 27, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter thirty-three of said code by adding thereto a new article, designated article eleven-a, all relating to providing West Virginia state-chartered banks authority and parity with national banks in the marketing and sale of insurance and annuities and providing for the protection of consumers and the regulation of the business of insurance when combined with the business of lending and the business of financial institutions.

Be it enacted by the Legislature of West Virginia:

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

Chapter

31A. Banks and Banking.

33. Insurance.

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-13. Powers of state banking institutions generally.

- 1 (a) Any state-chartered banking institution shall have
- 2 and exercise all of the powers necessary for, or incidental
- 3 to, the business of banking, and without limiting or
- 4 restricting such general powers, it shall have the right to

5 buy or discount promissory notes and bonds, negotiate
6 drafts, bills of exchange and other evidences of
7 indebtedness, borrow money, receive deposits on such
8 terms and conditions as its officers may prescribe, buy and
9 sell, exchange, bank notes, bullion or coin, loan money on
10 personal or other security, rent safe-deposit boxes and
11 receive on deposit, for safekeeping, jewelry, plate, stocks,
12 bonds and personal property of whatsoever description
13 and provide customer services incidental to the business of
14 banking, including, but not limited to, the issuance and
15 servicing of and lending money by means of credit cards
16 as letters of credit or otherwise. Any state-chartered
17 banking institution may accept, for payment at a future
18 date, not to exceed one year, drafts drawn upon it by its
19 customers. Any state-chartered banking institution may
20 issue letters of credit, with a specified expiration date or
21 for a definite term, authorizing the holders thereof to draw
22 drafts upon it or its correspondents, at sight or on time.
23 Any such banking institution may organize, acquire, own,
24 operate, dispose of, and otherwise manage wholly owned
25 subsidiary corporations for purposes incidental to the
26 banking powers and services authorized by this chapter.

27 (b) Any state-chartered banking institution may
28 acquire, own, hold, use and dispose of real estate, which
29 shall in no case be carried on its books at a value greater
30 than the actual cost: *Provided*, That such property shall be
31 necessary for the convenient transaction of its business,
32 including any buildings, office space or other facilities to
33 rent as a source of income: *Provided, however*, That such
34 investment hereafter made shall not exceed sixty-five
35 percent of the amount of its capital stock and surplus,
36 unless the consent in writing of the commissioner of
37 banking is first secured.

38 (c) Any state-chartered banking institution may
39 acquire, own, hold, use and dispose of real estate, which
40 shall be carried on its books at the lower of fair value or
41 cost as defined in rules promulgated by the commissioner
42 of banking, subject to the following limitations:

43 (1) Such as shall be mortgaged to it in good faith as
44 security for debts in its favor;

45 (2) Such as shall be conveyed to it in satisfaction of
46 debts previously contracted in the course of its business
47 dealings; and

48 (3) Such as it shall purchase at sales under judgments,
49 decrees, trust deeds or mortgages in its favor, or shall
50 purchase at private sale, to secure and effectuate the
51 payment of debts due to it.

52 (d) The value at which any real estate is held shall not
53 be increased by the addition thereto of taxes, insurance,
54 interest, ordinary repairs, or other charges which do not
55 materially enhance the value of the property.

56 (e) Any real estate acquired by any such banking
57 institution under subdivisions (2) and (3) of subsection (c)
58 of this section shall be disposed of by the banking
59 institution at the earliest practicable date, but the officers
60 thereof shall have a reasonable discretion in the matter of
61 the time to dispose of such property in order to save the
62 banking institution from unnecessary losses: *Provided,*
63 That in every case such property shall be disposed of
64 within ten years from the time it is acquired by the
65 banking institution, unless an extension of time is given in
66 writing by the commissioner of banking.

67 (f) The sale of annuities by state-chartered banking
68 institutions shall be subject to the following:

69 Any state-chartered banking institution having its
70 main or a branch office in any place the population of
71 which does not exceed five thousand inhabitants, as shown
72 by the last preceding decennial census, through its
73 employees or agents, may, from that place or office,
74 directly or through a controlled subsidiary, act as agent
75 for any fire, life, casualty, liability or other insurance
76 company authorized by the authorities of the state to do
77 business in this state, by soliciting and selling insurance
78 and collecting premiums on policies issued by such
79 company; and may receive for services so rendered all
80 permissible fees or commissions as may be agreed upon
81 between the bank and the insurance company for which it
82 may act as agent: *Provided,* That no such bank shall in
83 any case assume or guarantee the payment on insurance

84 policies issued through its agency by its principal:
85 *Provided, however,* That the bank shall not guarantee the
86 truth of any statement made by an insured in filing his,
87 her or its application for insurance. For purposes of this
88 section, a "controlled subsidiary" is one in which the
89 state-chartered banking institution owns at least eighty
90 percent of all classes of stock. This provision is intended
91 to give state-chartered banking institutions parity with
92 national banks operating in this state with regard to the
93 marketing and sale of insurance notwithstanding the
94 prohibitions and limitations contained in article eight-c or
95 elsewhere in this chapter, and shall be construed
96 consistently with interpretations of 12 U.S.C. §92, the
97 regulations promulgated thereunder, and any successor
98 legislation or regulations.

99 (g) Any state-chartered banking institution may,
100 through its employees or agents, market and sell, as agent,
101 annuities, either at its main office or at any of its branches.
102 The marketing and sale of annuities may be made by the
103 bank, through its employees or agents, directly, or through
104 a controlled subsidiary, as defined in subsection (f) above.
105 This provision is intended to give state-chartered banks
106 parity with national banks operating in this state with
107 regard to the sale of annuities, notwithstanding the
108 prohibitions and limitations contained in article eight-c or
109 elsewhere in this chapter.

110 (h) Unless waived in writing by the commissioner, a
111 state-chartered bank may not invest or otherwise expend
112 in excess of ten percent of its capital and surplus
113 calculated at the end of the previous calendar year on the
114 activities permitted by subsections (f) and (g) on an
115 aggregate basis together with any of its approved
116 financially related products and services. For purposes of
117 this section, approved financially related products and
118 services means those products and services offered by a
119 state-chartered bank pursuant to an approved application
120 submitted under article eight-c of this chapter.

121 (i) The commissioner shall promulgate rules in
122 accordance with chapter twenty-nine-a of this code
123 relating to the sale of insurance or annuities, including, but

124 not limited to, rules requiring notice of the intention to
125 engage in such activities and relating to the policies and
126 procedures state-chartered banking institutions should
127 adopt in connection with such activities.

128 (j) Any state-chartered banking institution and its
129 employees or agents engaged in the sale of insurance or
130 annuities permitted hereby must also comply with all
131 applicable requirements for the sale of such products
132 imposed by the West Virginia commissioner of insurance
133 and by any state or federal securities regulator.

134 (k) No state-chartered banking institution shall
135 hereafter invest more than twenty percent of the amount
136 of its capital and surplus in furniture and fixtures, whether
137 the same be installed in a building owned by such banking
138 institution, or in quarters leased by it, unless the consent in
139 writing of the commissioner of banking is first secured.

CHAPTER 33. INSURANCE.

ARTICLE 11A. INSURANCE SALES CONSUMER PROTECTION ACT.

- §33-11A-1. Short title.
- §33-11A-2. Purpose.
- §33-11A-3. Definitions.
- §33-11A-4. Authorization to implement regulations.
- §33-11A-5. Licensure requirement for insurance sales.
- §33-11A-6. Insurance sales separate from loan transaction.
- §33-11A-7. Referrals by unlicensed persons allowed.
- §33-11A-8. Tying of products prohibited.
- §33-11A-9. Disclosures.
- §33-11A-10. Timing of insurance solicitation.
- §33-11A-11. Insurance in connection with a loan.
- §33-11A-12. Prohibition of discrimination against agents or brokers.
- §33-11A-13. Confidentiality of insurance information obtained by financial institutions.
- §33-11A-14. Physical location of insurance sales.
- §33-11A-15. Insurance records to be kept separate.
- §33-11A-16. Severability.

§33-11A-1. Short title.

1 This article may be cited as the "Insurance Sales
2 Consumer Protection Act".

§33-11A-2. Purpose.

1 The purpose of this article is to regulate the business
2 of insurance in West Virginia when engaged in by
3 financial institutions and to protect the interests of
4 consumers.

§33-11A-3. Definitions.

1 For the purposes of this article:

2 (a) "Affiliate" means a person that directly or
3 indirectly or through one or more intermediaries, controls
4 or is controlled by another or is under common control
5 with another.

6 (b) "Commissioner" means the insurance commis-
7 sioner of West Virginia.

8 (c) "Financial institution":

9 (1) Means any bank, savings bank, savings and loan
10 association, trust company, credit union or any other
11 depository institution, which: (i) Accepts federally insured
12 deposits, including, but not limited to, those as defined by
13 the Federal Deposit Insurance Act, as amended, 12 U.S.C.
14 §1813(c)(1); and (ii) makes loans to residents of this state;

15 (2) Means any employee or agent of a financial
16 institution; and

17 (3) Means any nondepository affiliate or subsidiary of
18 a financial institution but only in the instances when the
19 nondepository affiliate or subsidiary is soliciting the sale
20 or purchase of insurance recommended or sponsored by,
21 on the premises of, or in connection with a product
22 offering of, the financial institution.

23 (4) Does not include a credit card bank, as defined in
24 the Bank Holding Company Act of 1956, as amended, 12
25 U.S.C. §1841(c)(2)(F), an industrial loan company as
26 defined in 12 U.S.C. §1841(c)(2)(H), a specialized savings

27 association serving certain military personnel as defined in
28 12 U.S.C. §1467a(m)(3)(F), a bank whose ownership is
29 grandfathered under the Competitive Equality Banking
30 Act of 1987 as codified at 12 U.S.C. §1843(f)(1), or an
31 insurance company.

32 (d) "Insurance" means all products defined or
33 regulated as insurance by the state of West Virginia,
34 except:

35 (1) Credit life, health and accident, accident, loss of
36 income, or property insurance as described in subsection b
37 of section one hundred nine, article three, chapter forty-
38 six-a of the code of West Virginia;

39 (2) Insurance placed by a financial institution in
40 connection with collateral pledged as security for a loan
41 when the debtor breaches the contractual obligation to
42 provide that insurance; and

43 (3) Private mortgage insurance.

44 (e) "Insurance company" means a company that
45 possesses a certificate under this chapter to transact
46 insurance business in West Virginia.

47 (f) "Insurance information" means copies of insur-
48 ance policies, or the information contained thereon,
49 binders, rates and expiration dates contained within the
50 information supplied in connection with the loan, which
51 are not otherwise available to the financial institution's
52 affiliated broker or agent.

53 (g) "Person" means any natural person, partnership,
54 corporation, association, business trust, or other form of
55 business enterprise, as the case demands.

§33-11A-4. Authorization to implement regulations.

1 The commissioner shall promulgate rules in
2 accordance with chapter twenty-nine-a of this code to
3 effectuate the provisions of this article.

§33-11A-5. Licensure requirement for insurance sales.

1 Solicitation for the purchase or sale of any insurance
2 product by any person, including an employee or agent of
3 a financial institution, shall be conducted only by
4 individuals who have complied with all applicable state
5 insurance licensing and appointment laws and regulations
6 and who have been issued an agent or broker's license
7 pursuant to chapter thirty-three of this code.

§33-11A-6. Insurance sales separate from loan transaction.

1 (a) Solicitation for the purchase or sale of insurance
2 by a financial institution shall be conducted only by
3 individuals whose responsibilities do not include loan
4 transactions or other transactions involving the extension
5 of credit: *Provided*, That for a financial institution
6 location having three or less individuals with lending
7 authority, solicitation for the sale of insurance may be
8 conducted by an individual with responsibilities for loan
9 transactions or other transactions involving the extension
10 of credit, as long as the individual primarily responsible
11 for making the specific loan or extension of credit is not
12 the same individual engaged in the solicitation of the
13 purchase or sale of insurance for that same transaction.

14 (b) In the event that in any small office, the same
15 individual is the licensed agent or broker and the sole
16 individual with lending authority, the commissioner may
17 grant a waiver of the requirements of this section upon a
18 written request. Such request shall include documentation
19 that, due to the small office staff, compliance is not
20 possible, and include identification of other steps which
21 will be taken to minimize the customer confusion
22 prohibited by this article.

§33-11A-7. Referrals by unlicensed persons allowed.

1 A person who is not licensed to sell insurance may
2 refer a customer who seeks to purchase, or seeks an
3 opinion or advice on, any insurance product to a person,
4 or provide the phone number of a person, who sells or
5 provides opinions or advice on such product, only if the
6 person making the referral receives no fee or only a
7 nominal fee for such referral and such fee is not based on
8 the customer's application for or purchase of insurance.

§33-11A-8. Tying of products prohibited.

1 (a) No person shall require or imply that the purchase
2 of an insurance product from a financial institution by a
3 customer or prospective customer of the institution is
4 required as a condition of the lending of money or
5 extension of credit.

6 (b) No financial institution may offer an insurance
7 product in combination with its other products, unless all
8 the products are available separately from the financial
9 institution.

§33-11A-9. Disclosures.

1 (a) A financial institution soliciting the purchase of or
2 selling insurance, and any person soliciting the purchase
3 of or selling insurance on the premises of, in connection
4 with a product offering of, or using a name identifiable
5 with, a financial institution, shall prominently disclose to
6 customers, in writing, in clear and concise language,
7 including in any advertisement or promotional material,
8 and orally during any customer contact, that insurance
9 offered, recommended, sponsored, or sold:

10 (1) Is not a deposit;

11 (2) Is not insured by the federal deposit insurance
12 corporation or, where applicable, the National Credit
13 Union Share Insurance Fund;

14 (3) Is not guaranteed by any insured depository
15 institution; and

16 (4) Where appropriate, involves investment risk,
17 including potential loss of principal.

18 (b) Any financial institution engaged in the making
19 of loans or other extensions of credit and the sale of
20 insurance shall prominently disclose to customers in
21 writing, in clear and concise language, that the insurance
22 product may be purchased from an agent or broker of the
23 customer's choice, and the customer's choice of another
24 insurance provider will not affect the customer's credit
25 relationship with the person. For purposes of this

26 subsection, loans and extensions of credit shall not include
27 financing in connection with the insurance product
28 offered or sold.

29 (c) Any person required under subsections (a) or (b)
30 of this section to make disclosures to a customer shall
31 obtain a written acknowledgment of receipt by the
32 customer of such disclosures, including the date of receipt
33 and the customer's name, address, and account number,
34 prior to or at the time of any application for insurance
35 sold by the person. Such acknowledgment shall be in a
36 separate document.

37 (d) The commissioner may grant a waiver of the
38 requirements of this section to any person required to give
39 the disclosures required by this section solely because that
40 person has a name identifiable with a financial institution
41 upon a written request by such person demonstrating that
42 his, her or its customers would not reasonably benefit
43 from, or might in fact be confused by, these required
44 disclosures.

§33-11A-10. Timing of insurance solicitation.

1 (a) No individual who is an employee or agent of a
2 financial institution, or of a subsidiary or affiliate thereof,
3 may, directly or indirectly, make an insurance-related
4 referral to or solicit the purchase of any insurance from a
5 customer knowing that such customer has applied for a
6 loan or extension of credit from that financial institution
7 before such time as the customer has received a written
8 commitment with respect to such loan or extension of
9 credit, or, in the event that no written commitment has or
10 will be issued in connection with the loan or extension of
11 credit, before such time as the customer receives
12 notification of approval of the loan or extension of credit
13 by the financial institution and the financial institution
14 creates a written record of the loan or extension of credit
15 approval.

16 (b) This provision shall not prohibit any individual
17 subject to subsection (a) above from:

18 (1) Informing a customer that insurance is required in
19 connection with a loan; or

20 (2) Contacting persons in the course of direct or mass
21 mailing to a group of persons in a manner that bears no
22 relation to the person's loan application or credit decision.

§33-11A-11. Insurance in connection with a loan.

1 (a) If insurance is required as a condition of obtaining
2 a loan, the credit and insurance transactions shall be
3 completed independently and through separate
4 documents.

5 (b) A loan for premiums on required insurance shall
6 not be included in the primary credit without the written
7 consent of the customer.

8 (c) No title insurance shall be issued until the title
9 insurance company has obtained a title opinion of an
10 attorney licensed to practice law in West Virginia, which
11 attorney is not an employee, agent, or owner of the
12 insured bank or its affiliates. Said attorney shall have
13 conducted or cause to have conducted under the
14 attorney's direct supervision a reasonable examination of
15 the title. In no event shall the authority of a state-
16 chartered bank to sell title insurance exceed the authority
17 of a nationally chartered bank to do so.

§33-11A-12. Prohibition of discrimination against agents or brokers.

1 (a) No financial institution may, in connection with a
2 loan or extension of credit that requires a borrower to
3 obtain insurance, reject an insurance policy because such
4 policy has been issued or underwritten by any person who
5 is not affiliated with such financial institution.

6 (b) No financial institution may impose any
7 requirement on any insurance agent or broker who is not
8 affiliated with the financial institution that is not imposed
9 on any insurance agent or broker who is affiliated with
10 such financial institution.

11 (c) No financial institution may, unless otherwise
12 authorized by any applicable federal or state law, require
13 any debtor, insurer, broker, or agent to pay a separate
14 charge in connection with the handling of insurance that is
15 required under a contract, if such insurance is sold by an
16 agent or broker not affiliated with the financial institution.

17 (d) No financial institution may offer, as a package of
18 products any products which are not insurance products in
19 connection with insurance products, on a discounted basis,
20 when compared with the pricing of each of the products
21 when offered separately: *Provided*, That this prohibition
22 does not apply to:

23 (1) Annuity products;

24 (2) The packaging of noninsurance products on a
25 discounted basis; or

26 (3) The packaging of insurance products on a
27 discounted basis to the extent permitted by the anti-
28 rebating statute contained in section four, article eleven of
29 this chapter.

30 (e) All of the prohibitions contained in this section
31 shall be subject to other applicable laws, rules and
32 regulations relating to the pricing of insurance products
33 and the products of financial institutions.

§33-11A-13. Confidentiality of insurance information obtained by financial institutions.

1 (a) When a financial institution requires a borrower to
2 provide insurance information in connection with the
3 making of a loan or extension of credit, neither such
4 financial institution nor an insurance agent or broker
5 affiliated with such financial institution may later use the
6 information so obtained to solicit or offer insurance to
7 such borrower, unless the consent required in subsection
8 (b) below is first obtained.

9 (b) A borrower may consent to the financial
10 institution's disclosure of insurance information to an

11 agent or broker affiliated with the financial institution, but
12 any such consent must be in writing and be given at a time
13 subsequent, which shall be no less than two days, to the
14 time of the application for, approval of and making of the
15 loan or extension of credit.

16 (c) Consent under subsection (b) of this section shall
17 be obtained in a separate document, distinct from any
18 other transaction, and shall not be required as a condition
19 for performance of other services for the customer.

§33-11A-14. Physical location of insurance sales.

1 The place of solicitation or sale of insurance by any
2 financial institution or on the premises of any financial
3 institution shall be clearly and conspicuously signed so as
4 to be readily distinguishable by the public as separate and
5 distinct from the financial institution's lending and
6 deposit-taking activities. In the event that a person which
7 would otherwise be subject to the requirements set forth in
8 this provision does not have the physical space to so
9 comply, the commissioner may grant a waiver of the
10 requirements of this section upon a written request by
11 such person demonstrating that, due to its small physical
12 facilities, compliance is not possible, and including
13 identification of other steps which will be taken to
14 minimize customer confusion.

§33-11A-15. Insurance records to be kept separate.

1 (a) Books and records relating to the insurance
2 transactions of any person licensed to sell insurance,
3 including all files relating to and reflecting customer
4 complaints, shall be kept separate and apart from all
5 records relating to other business transactions of such
6 person, and shall be made available to the commissioner
7 for inspection upon reasonable notice.

8 (b) Unless applicable provisions of chapter thirty-
9 three of this code or rules promulgated thereunder
10 expressly require that an original of any insurance record
11 be maintained, any insurance records may be stored in

12 any photographic, photostatic, microphotographic or
13 similar miniature photographic process or by nonerasable
14 optical image disks such as compact disks or by other
15 similar retention technology and such copies, in positive
16 or negative form, may be substituted for the originals
17 thereof. Thereafter, such copy or reproduction in the form
18 of a positive print thereof, shall be deemed for all
19 purposes to be an original counterpart of and shall have
20 the same force and effect as the original thereof and shall
21 be admissible in evidence in all courts and administrative
22 agencies in this state, to the same extent, and for the same
23 purposes as the original thereof, and the original may be
24 destroyed or otherwise disposed of; but every such person
25 shall retain either the originals or such copies or
26 reproductions for as long as required under applicable
27 records retention requirements.

28 (c) All circumstances surrounding the making or
29 issuance of such documents, books, records,
30 correspondence and other instruments, papers or writings,
31 or the photographic, photostatic or microphotographic
32 copies or optical disks or other permissible reproductions
33 thereof, when the same are offered in evidence, may be
34 shown to affect the weight but not the admissibility
35 thereof.

36 (d) Any device used to copy or reproduce such
37 documents and records shall be one which correctly and
38 accurately reproduces the original thereof in all details
39 and any disk or film used therein shall be of durable
40 material.

§33-11A-16. Severability.

1 If any provision of this article is for any reason held to
2 be invalid, the remainder of the article shall not be
3 affected thereby.

CHAPTER 48

(S. B. 454—By Senators Tomblin, Mr. President, and Buckalew,
By Request of the Executive)

[Passed April 10, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three-a and twenty-one, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to allowing the executive director of the development office to designate a representative to the industrial revenue bond allocation review committee; and permitting uncommitted bonds as of the fifteenth day of November of each year or forfeited bonds to go to applicants in any industrial classification.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2C. INDUSTRIAL DEVELOPMENT AND COMMERCIAL DEVELOPMENT BOND ACT.

§13-2C-3a. Creation of industrial revenue bond allocation review committee; appointment, term, etc., of private members; voting; expenses; duties.

§13-2C-21. Ceiling on issuance of private activity bonds; establishing procedure for allocation and disbursements; reservation of funds; limitations; unused allocation; expirations and carryovers.

§13-2C-3a. Creation of industrial revenue bond allocation review committee; appointment, term, etc., of private members; voting; expenses; duties.

- 1 (a) There is hereby created the West Virginia industrial
- 2 revenue bond allocation review committee consisting of
- 3 five members, as follows: The secretary of tax and revenue,
- 4 who shall serve as chair of the committee, and the

5 executive director of the development office or his or her
6 designee, and three members chosen from the general
7 public as private members.

8 (b) The three private members shall be appointed by
9 the governor, with the advice and consent of the Senate:
10 *Provided*, That one private member shall be appointed
11 from each congressional district of the state, in such a
12 manner as to provide a broad geographical distribution of
13 members of the committee: *Provided, however*, That at
14 least one private member appointed pursuant to this subdi-
15 vision shall have significant experience in economic devel-
16 opment. No more than two private members shall be from
17 the same political party.

18 (c) Appointment of the three members shall be for
19 staggered terms of three years. Any member whose term
20 has expired shall serve until a successor has been duly
21 appointed and qualified. Any member shall be eligible
22 for reappointment. In case of any vacancy in the office of
23 a private member, such vacancy shall be filled by appoint-
24 ment by the governor for the unexpired term. The gover-
25 nor may remove any private member in case of incompe-
26 tency, neglect of duty, gross immorality or malfeasance in
27 office; and he may declare the office vacant and may
28 appoint a person for such vacancy as provided in other
29 cases of vacancy.

30 (d) Members shall not be entitled to compensation for
31 services performed as members, but shall be entitled to
32 reimbursement for all reasonable and necessary expenses
33 actually incurred in the performance of their duties.

34 (e) A majority of the members of the committee shall
35 constitute a quorum for the purpose of conducting busi-
36 ness. The affirmative vote of at least the majority of the
37 members present is necessary for any action taken by vote
38 of the committee. No vacancy in the membership of the
39 committee shall impair the right of a quorum to exercise
40 all the rights and perform all the duties of the committee.

41 (f) The committee shall review and evaluate all appli-
42 cations for reservation of funds submitted to the develop-
43 ment office by a governmental body pursuant to the pro-

44 visions of subsections (d) and (e), section twenty-one of
45 this article, and shall make reservations of the state alloca-
46 tion (as defined in subdivision (2), subsection (b) of said
47 section) pursuant to subdivision (3), subsection (b) and
48 subsection (c) of said section.

**§13-2C-21. Ceiling on issuance of private activity bonds; est-
ablishing procedure for allocation and dis-
bursements; reservation of funds; limitations;
unused allocation; expirations and carryovers.**

1 (a) Private activity bonds (as defined in Section 141(a)
2 of the United States Internal Revenue Code of 1986, other
3 than those described in Section 146(g) of the Internal
4 Revenue Code) issued pursuant to this article, including
5 bonds issued by the West Virginia public energy authority
6 pursuant to subsection (11), section five, article one, chap-
7 ter five-d of this code, or under article eighteen, chapter
8 thirty-one of this code, during any calendar year shall not
9 exceed the ceiling established by Section 146(d) of the
10 United States Internal Revenue Code. It is hereby deter-
11 mined and declared as a matter of legislative finding: (i)
12 That, in an attempt to promote economic revitalization of
13 distressed urban and rural areas, certain special tax incen-
14 tives will be provided for empowerment zones and enter-
15 prise communities to be designated from qualifying areas
16 nominated by state and local governments, all as set forth
17 by Section 1391 et seq. of the United States Internal Reve-
18 nue Code; (ii) that qualified businesses operating in enter-
19 prise communities and empowerment zones will be eligi-
20 ble to finance property and provide other forms of finan-
21 cial assistance as provided for in Section 1394 of the Unit-
22 ed States Internal Revenue Code; (iii) that it is in the best
23 interest of this state and the citizens thereof to facilitate the
24 acquisition, construction and equipping of projects within
25 designated empowerment zones and enterprise communi-
26 ties by providing an orderly mechanism for the commit-
27 ment of the annual ceiling for private activity bonds for
28 such projects. It is hereby further determined and de-
29 clared as a matter of legislative finding: (iv) that the pro-
30 duction of bituminous coal in this state has resulted in coal
31 waste, which coal waste is stored in areas generally referred
32 to as gob piles; (v) that such gob piles are unsightly and

33 have the potential to pollute the environment in this state;
34 (vi) that the utilization of the materials in such gob piles to
35 produce alternative forms of energy needs to be encour-
36 aged; (vii) that Section 142(a)(6) of the United States
37 Internal Revenue Code of 1986, permits the financing of
38 solid waste disposal facilities through the issuance of such
39 private activity bonds; and (viii) that it is in the best inter-
40 est of this state and the citizens thereof to facilitate the
41 construction of facilities for the generation of power
42 through the utilization of coal waste by providing an or-
43 derly mechanism for the commitment of the annual ceil-
44 ing for private activity bonds for such projects.

45 (b) On or before the first day of each calendar year,
46 the executive director of the development office shall
47 determine the state ceiling for such year based on the
48 criteria of the United States Internal Revenue Code, which
49 annual ceiling shall be allocated among the several issuers
50 of bonds under this article or under article eighteen, chap-
51 ter thirty-one of this code, as follows:

52 (1) Fifty million dollars shall be allocated to the West
53 Virginia housing development fund for the purpose of
54 issuing qualified mortgage bonds, qualified mortgage
55 certificates or bonds for qualified residential rental pro-
56 jects;

57 (2) The amount remaining after the allocation to the
58 West Virginia housing development fund described in
59 subdivision (1) of this subsection shall be retained by the
60 West Virginia development office and shall be referred to
61 in this section as the "state allocation";

62 (3) For calendar year one thousand nine hundred
63 ninety-five, twenty-five and one-half percent of the state
64 allocation and for all subsequent calendar years, thirty-five
65 percent of the state allocation shall be set aside by the
66 development office to be made available for lessees, pur-
67 chasers or owners of proposed projects, hereafter in this
68 section referred to as "nonexempt projects", which do not
69 qualify as exempt facilities as defined by United States
70 Internal Revenue Code. All reservations of private activity
71 bonds for nonexempt projects shall be approved and
72 awarded by the committee based upon an evaluation of

73 general economic benefit and any rule or regulation that
74 the council for community and economic development
75 may promulgate pursuant to section three, article two,
76 chapter five-b of this code: *Provided*, That all requests for
77 reservations of funds from projects described in this sub-
78 section shall be submitted to the development office on or
79 before the first day of November of each calendar year:
80 *Provided, however*, That on the fifteenth day of Novem-
81 ber of each calendar year, the uncommitted portion of this
82 part of the state allocation, shall revert to and become part
83 of the state allocation portion described in subsection (g)
84 of this section; and

85 (4) For calendar year one thousand nine hundred
86 ninety-five, four and one-half percent of the state alloca-
87 tion and for all subsequent calendar years, ten percent of
88 the state allocation shall be made available for lessees,
89 purchasers or owners of proposed commercial or industri-
90 al projects which qualify as exempt facilities under Section
91 1394 of the United States Internal Revenue Code. All
92 reservations of private activity bonds for the projects shall
93 be approved and awarded by the committee based upon
94 an evaluation of general economic benefit and any rule or
95 regulation that the council for community and economic
96 development may promulgate pursuant to section three,
97 article two, chapter five-b of this code: *Provided*, That all
98 requests for reservations of funds from projects described
99 in this subsection shall be submitted to the development
100 office on or before the first day of November of each
101 calendar year: *Provided, however*, That on the fifteenth
102 day of November of each calendar year, the uncommitted
103 portion of this part of the state allocation shall revert to
104 and become part of the state allocation portion described
105 in subsection (g) of this section.

106 (c) For calendar year one thousand nine hundred
107 ninety-five, the remaining seventy percent and for all
108 subsequent calendar years, the remaining fifty-five percent
109 of the state allocation shall be made available for lessees,
110 purchasers or owners of proposed commercial or industri-
111 al projects which qualify as exempt facilities as defined by
112 Section 142(a) of the United States Internal Revenue
113 Code. All reservations of private activity bonds for ex-

114 empty facilities shall be approved and awarded by the com-
115 mittee based upon an evaluation of general economic
116 benefit and any rule or regulation that the council for
117 community and economic development may promulgate
118 pursuant to section three, article two, chapter five-b of this
119 code: *Provided*, That no reservation shall be in an amount
120 in excess of fifty percent of this portion of the state alloca-
121 tion: *Provided, however*, That all requests for reservations
122 of funds from projects described in this subsection shall
123 be submitted to the development office on or before the
124 first day of November of each calendar year: *Provided*
125 *further*, That on the fifteenth day of November of each
126 calendar year, the uncommitted portion of this part of the
127 state allocation shall revert to and become part of the state
128 allocation portion described in subsection (g) of this sec-
129 tion.

130 (d) No reservation shall be made for any project until
131 the governmental body seeking the same shall submit a
132 notice of reservation of funds as provided in subsection
133 (e) of this section. The governmental body must first
134 adopt an inducement resolution approving the prospective
135 issuance of bonds and setting forth the maximum amount
136 of bonds to be issued. Each governmental body seeking a
137 reservation of funds following the adoption of such in-
138 ducement resolution shall submit a notice of inducement
139 signed by its clerk, secretary or recorder or other appro-
140 priate official to the development office. Such notice shall
141 include information as may be required by the develop-
142 ment office pursuant to any rule or regulation of the
143 council for community and economic development. Not-
144 withstanding the foregoing, when a governmental body
145 proposes to issue bonds for the purpose of: (i) Construct-
146 ing, acquiring or equipping a project described in subdivi-
147 sion (3) or (4), subsection (b) of this section; or (ii) con-
148 structing an energy producing project which relies, in
149 whole or in part, upon coal waste as fuel, to the extent such
150 project qualifies as a solid waste facility under Section
151 142(a)(6) of the United States Internal Revenue Code of
152 1986, the project may be awarded a reservation of funds
153 from the state allocation available for three years subse-
154 quent to the year in which the notice of reservation of

155 funds is submitted, at the discretion of the executive direc-
156 tor of the development office: *Provided*, That no discre-
157 tionary reservation may be made for any single project
158 described in this subsection in an amount in excess of
159 thirty-five percent of the state allocation available for the
160 year subsequent to the year in which the request is made.
161 A discretionary reservation of the state allocation for a
162 project described in this subsection shall not be granted by
163 the executive director of the development office unless the
164 project for which the request is made has received a certif-
165 ication from the federal energy regulatory commission as
166 a qualifying facility or a cogeneration project.

167 (e) Currently with or following the submission of its
168 notice of inducement, the governmental body at any time
169 deemed expedient by it may submit its notice of reserva-
170 tion of funds which shall include the following informa-
171 tion:

172 (1) The date of the notice of reservation of funds;

173 (2) The identity of the governmental body issuing the
174 bonds;

175 (3) The date of inducement and the prospective date
176 of issuance;

177 (4) The name of the entity for which the bonds are to
178 be issued;

179 (5) The amount of the bond issue or, if the amount of
180 the bond issue for which a reservation of funds has been
181 made has been increased, the amount of the increase;

182 (6) The type of issue; and

183 (7) A description of the project for which the bonds
184 are to be issued.

185 (f) The development office shall accept the notice of
186 reservation of funds no earlier than the first calendar
187 workday of the year for which a reservation of funds is
188 sought: *Provided*, That a notice of reservation of funds
189 with respect to a project described in subdivision (4), sub-
190 section (b) of this section or an energy producing project
191 that is eligible for a reservation of funds for a year subse-

192 quent to the year in which the notice of reservation of
193 funds is submitted may contain an application for funds
194 from a subsequent year's state allocation. Upon receipt of
195 the notice of reservation of funds, the development office
196 shall immediately note upon the face of the notice the date
197 and time of reception.

198 (g) If the bond issue for which a reservation has been
199 made has not been finally closed within one hundred
200 twenty days of the date of the reservation to be made by
201 the committee, or the thirty-first day of December follow-
202 ing such date of reservation if sooner and a statement of
203 bond closure which has been executed by the clerk, secre-
204 tary, recorder or other appropriate official of the govern-
205 mental body reserving the same has not been received by
206 the development office within that time, then the reserva-
207 tion shall expire and be deemed to have been forfeited
208 and the funds so reserved shall be released and revert to
209 the portion of the state allocation from which the funds
210 were originally reserved and shall then be made available
211 for other qualified issues in accordance with this section
212 and the Internal Revenue Code: *Provided*, That as to any
213 reservation for a nonexempt project or any reservation for
214 a project described in subdivision (4), subsection (b) of
215 this section that is forfeited on or after the first day of
216 November in any calendar year, such reservation shall
217 revert to the state allocation for allocation by the industrial
218 revenue bond allocation review committee: *Provided*,
219 *however*, That as to any notice of reservation of funds
220 received by the development office during the month of
221 December in any calendar year with respect to any project
222 qualifying as an elective carry forward pursuant to Section
223 146(f)(5) of the Internal Revenue Code, the notice of
224 reservation of funds and the reservation to which the same
225 relates shall not expire or be subject to forfeiture: *Provid-*
226 *ed further*, That any unused state ceiling as of the
227 thirty-first day of December in any year not otherwise
228 subject to a carry forward pursuant to Section 146(f) of
229 the Internal Revenue Code shall be allocated to the West
230 Virginia housing development fund, which shall be
231 deemed to have elected to carry forward the unused state
232 ceiling for the purpose of issuing qualified mortgage

233 bonds, qualified mortgage credit certificates or bonds for
234 qualified residential rental projects, each as defined in the
235 Internal Revenue Code. All requests for subsequent
236 reservation of funds upon loss of a reservation pursuant to
237 this section shall be treated in the same manner as a new
238 notice of reservation of funds in accordance with
239 subsections (d) and (e) of this section.

240 (h) Once a reservation of funds has been made for a
241 project described in subdivision (4), subsection (b) of this
242 section or for an energy producing project which relies, in
243 whole or in part, upon coal waste as fuel and otherwise
244 qualifies as a solid waste facility under Section 142(a)(6)
245 of the United States Internal Revenue Code of 1986,
246 notwithstanding the language of subsection (g) of this
247 section, the reservation shall remain fully available with
248 respect to such project until the first day of October in the
249 year from which the reservation was made at which time, if
250 the bond issue has not been finally closed, the reservation
251 shall expire and be deemed forfeited and the funds so
252 reserved shall be released as provided in subsection (g) of
253 this section.

CHAPTER 49

(Com. Sub. for H. B. 2508—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article twenty-six, all relating to the sale of state road general obligation bonds; providing for the deposit of bond proceeds in the state road fund; setting forth the definitions to be used in the article; authorizing the issuance of bonds by the governor upon resolution by the Legislature;

exempting interest on bonds from taxation; setting forth the amount of bonds which may be sold in each fiscal year; creating the safe road bond debt service fund and dedicating the fund for the payment of interest on bonds; setting forth the source of funds for the payment of debt service; providing for the investment of the remainder of the safe road bond debt service fund; setting forth the covenants between the state and the bondholders; setting forth impermissible conflicts of interest and providing criminal penalties for violation of the conflict of interest provisions; providing that state road bonds are lawful investments for specified entities; providing for the sale of refunding bonds and the manner of making interest payments thereon; providing for transfer of funds upon dissolution of division of highways; providing for the selection of the financial advisor for the issuance of bonds; providing for the selection of bond counsel; providing for the selection of underwriters for the issuance of bonds; authorizing the payment of expenses from the safe road bond debt service fund; and providing for the dedication of the gasoline and special fuel excise tax to pay debt service.

Be it enacted by the Legislature of West Virginia:

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

Article

3. State Road Fund.

26. State Road Bonds.

ARTICLE 3. STATE ROAD FUND.

§17-3-1. What constitutes fund; payments into fund; use of money in fund.

1 There shall be a state road fund, which shall consist of
 2 the proceeds of all state license taxes imposed upon
 3 automobiles or other motor or steam driven vehicles; the
 4 registration fees imposed upon all owners, chauffeurs,
 5 operators and dealers in automobiles or other motor
 6 driven vehicles; all sums of money which may be donated

7 to such fund; all proceeds derived from the sale of state
8 bonds issued pursuant to any resolution or act of the
9 Legislature carrying into effect the "Better Roads
10 Amendment" to the constitution of this state, adopted in
11 the month of November, one thousand nine hundred
12 sixty-four, except that the proceeds from the sale of these
13 bonds shall be kept in a separate and distinct account in
14 the state road fund; all proceeds from the sale of state
15 bonds issued pursuant to any resolution or act of the
16 Legislature carrying into effect the "Safe Roads
17 Amendment of 1996" to the constitution of this state,
18 adopted in the month of November, one thousand nine
19 hundred ninety-six, except that the proceeds from the sale
20 of these bonds shall be kept in a separate and distinct
21 account in the state road fund; all moneys and funds
22 appropriated to it by the Legislature; and all moneys
23 allotted or appropriated by the federal government to this
24 state for road construction and maintenance pursuant to
25 any act of the Congress of the United States; the proceeds
26 of all taxes imposed upon and collected from any person,
27 firm or corporation and of all taxes or charges imposed
28 upon and collected from any county, district or
29 municipality for the benefit of the fund; the proceeds of
30 all judgments, decrees or awards recovered and collected
31 from any person, firm or corporation for damages done
32 to, or sustained by, any of the state roads or parts thereof;
33 all moneys recovered or received by reason of the
34 violation of any contract respecting the building,
35 construction or maintenance of any state road; all
36 penalties and forfeitures imposed, recovered or received
37 by reason thereof; and any and all other moneys and
38 funds appropriated to, imposed and collected for the
39 benefit of such fund, or collected by virtue of any statute
40 and payable to such fund: *Provided*, That notwithstanding
41 any provisions of this code to the contrary, fifty cents of
42 every license fee paid pursuant to the provisions of
43 subdivision (2), subsection (a), section eight, article two,
44 chapter seventeen-b of this code shall be paid to the
45 special fund established pursuant to the provisions of
46 subsection (a), section twelve, article two, chapter three of
47 this code.

48 When any money is collected from any of the sources
 49 aforesaid, it shall be paid into the state treasury by the
 50 officer whose duty it is to collect and account for the
 51 same, and credited to the state road fund, and shall be used
 52 only for the purposes named in this chapter, which are:
 53 (a) To pay the principal and interest due on all state bonds
 54 issued for the benefit of said fund, and set aside and
 55 appropriated for that purpose; (b) to pay the expenses of
 56 the administration of the road department; and (c) to pay
 57 the cost of maintenance, construction, reconstruction and
 58 improvement of all state roads.

ARTICLE 26. STATE ROAD BONDS.

- §17-26-1. Definitions.
- §17-26-2. State road general obligation bonds; amount; when may issue.
- §17-26-3. Creation of debt service fund; disbursements to pay debt service on state road general obligation bonds.
- §17-26-4. Safe road bond debt service fund; sources used to pay bonds and interest; investment of remainder.
- §17-26-5. Covenants of state.
- §17-26-6. Sale by governor; minimum price; certification of annual debt service amount.
- §17-26-7. Conflicts of interest.
- §17-26-8. State road bonds lawful investments.
- §17-26-9. Refunding bonds.
- §17-26-10. Termination or dissolution.
- §17-26-11. Treasurer to determine financial advisor.
- §17-26-12. Governor to determine bond counsel.
- §17-26-13. Approval and payment of all necessary expenses.
- §17-26-14. Dedication of tax.

§17-26-1. Definitions.

1 For purposes of this article:

2 (a) "Commissioner" means the West Virginia
 3 commissioner of highways continued pursuant to section
 4 one, article two-a of this chapter;

5 (b) "Amendment" means the amendment to the
 6 constitution of this state entitled "Safe Roads Amendment
 7 of 1996" as approved by referendum in the month of
 8 November, one thousand nine hundred ninety-six;

9 (c) "State road bond" means any bond or bonds
10 issued by the state pursuant to section two of this article;

11 (d) "Division" means the West Virginia division of
12 highways established under section one, article two-a, of
13 this chapter, or any successor to all or any substantial part
14 of its powers and duties; and

15 (e) "Secretary" means the secretary of the West
16 Virginia department of transportation.

**§17-26-2. State road general obligation bonds; amount; when
may issue.**

1 Bonds of the state of West Virginia, under authority of
2 the "Safe Roads Amendment of 1996" of the par value
3 not to exceed in the aggregate five hundred fifty million
4 dollars, are hereby authorized to be issued and sold for
5 matching available federal funds for highway construction
6 and for general highway construction or improvements in
7 each of the fifty-five counties in this state, as provided for
8 by the constitution and the provisions of this article.
9 During the fiscal year ending the thirtieth day of June, one
10 thousand nine hundred ninety-eight, the amount of one
11 hundred ten million dollars in bonds may be sold. That
12 same amount is authorized to be sold in each of the next
13 four following fiscal years: *Provided*, That any amount
14 not sold in a fiscal year may be carried forward and sold
15 in the next fiscal year.

16 These bonds may be issued by the governor upon
17 resolution passed by the Legislature authorizing the same.
18 The bonds shall bear the date and mature at the time, bear
19 interest at the rate, be in amounts, be in denominations, be
20 in the registered form, carry registration privileges, be due
21 and payable at the time and place and in amounts, and
22 subject to terms of redemption as the resolution may
23 allow.

24 Both the principal and interest of the bonds shall be
25 payable in the lawful money of the United States of
26 America and the bonds and the interest thereon shall be
27 exempt from taxation by the state of West Virginia, or by
28 any county, district or municipality thereof, which fact

29 shall appear on the face of the bonds as part of the
30 contract with the holder of the bond.

31 The bonds shall be executed on behalf of the state of
32 West Virginia, by the manual or facsimile signature of the
33 state treasurer, under the great seal of the state or a
34 facsimile of the great seal, and countersigned by the
35 manual or facsimile signature of the auditor of the state.

§17-26-3. Creation of debt service fund; disbursements to pay debt service on state road general obligation bonds.

1 There is hereby created a special account in the state
2 treasury, which shall be designated and known as the
3 "Safe Road Bond Debt Service Fund", into which shall be
4 deposited any and all amounts appropriated by the
5 Legislature from the state road fund or funds from any
6 source whatsoever which is made liable by law for the
7 purpose of paying the interest on the bonds or paying off
8 and retiring bonds issued pursuant to this article.

§17-26-4. Safe road bond debt service fund; sources used to pay bonds and interest; investment of remainder.

1 All funds deposited to the credit of the safe road bond
2 debt service fund shall be kept by the treasurer of the state
3 in a separate account and all money belonging to the fund
4 shall be deposited in the treasury to the credit of the fund.

5 The fund shall be applied by the treasurer of the state
6 for payments on the principal and interest on bonds sold
7 pursuant to this article as it becomes due and payable.
8 The remainder of the fund, if any, shall be invested by the
9 state board of investments in the manner authorized under
10 article six, chapter twelve of this code.

§17-26-5. Covenants of state.

1 The state of West Virginia covenants and agrees with
2 the holders of the bonds issued pursuant hereto as follows:
3 (1) That the bonds shall constitute a direct and general
4 obligation of the state of West Virginia; (2) that the full
5 faith and credit of the state is hereby pledged to secure the
6 payment of the principal and interest of the bonds; (3)

7 that an annual state tax shall be collected in an amount
8 sufficient to pay, as it may accrue, the interest on the
9 bonds and the principal thereof; and (4) that the tax shall
10 be levied in any year only to the extent that the moneys
11 transferred to the safe road bond debt service fund as
12 provided in sections three and four, of this article which
13 are irrevocably set aside and appropriated for and applied
14 to the payment of the interest on and principal of any
15 bond becoming due and payable in such year are
16 insufficient therefor.

§17-26-6. Sale by governor; minimum price; certification of annual debt service amount.

1 The governor shall sell the bonds herein authorized at
2 a time or times as provided by a resolution enacted by the
3 Legislature. The governor, in his or her discretion, may,
4 by executive message, request that a resolution be
5 proposed for the issuance of bonds pursuant to this article.
6 The governor shall determine the manner by which bonds
7 will be sold. On or before the first day of June in each
8 fiscal year the commissioner shall certify to the treasurer
9 and secretary of the department of tax and revenue the
10 principal and interest requirement for the following fiscal
11 year on any bonds issued pursuant to this article.

§17-26-7. Conflicts of interest.

1 No part of the proceeds from the sale of bonds under
2 this article may inure to the benefit of or be distributable
3 to the officers, employees of the state except to pay
4 reasonable compensation for services rendered to the state.
5 Any person violating the provisions of this section shall be
6 guilty of a misdemeanor and, upon conviction thereof,
7 shall be fined not more than one thousand dollars, or
8 confined in jail not more than one year, or both fined and
9 imprisoned.

§17-26-8. State road bonds lawful investments.

1 All state road bonds issued pursuant to this article shall
2 be lawful investments for banking institutions, societies for
3 savings, building and loan associations, savings and loan
4 associations, deposit guarantee associations, trust
5 companies, insurance companies, including domestic for

6 life and domestic not for life insurance companies.

§17-26-9. Refunding bonds.

1 Any state road general obligation bonds which are
2 outstanding may at any time be refunded by the issuance
3 of refunding bonds in an amount deemed necessary to
4 refund the principal of the bonds to be refunded, together
5 with any unpaid interest thereon; to accomplish the
6 purpose of the amendment and to pay any premiums and
7 commissions necessary to be paid in connection therewith.
8 Any refunding may be effected whether the state road
9 general obligation bonds to be refunded shall have then
10 matured or shall thereafter mature. Any refunding bonds
11 issued pursuant to this article shall be payable from the
12 safe road bond debt service fund.

§17-26-10. Termination or dissolution.

1 Upon the termination or dissolution of the West
2 Virginia division of highways, all rights and properties of
3 the West Virginia division of highways with respect to the
4 safe road bond debt service fund shall pass to and be
5 vested in the state, subject to the rights of bondholders,
6 lienholders and other creditors.

§17-26-11. Treasurer to determine financial advisor.

1 The treasurer, in his or her discretion, may select a
2 competent person or firm to serve as financial advisor for
3 the issuance and sale of general obligation bonds issued
4 pursuant to this article.

§17-26-12. Governor to determine bond counsel.

1 The governor shall select a competent person or firm
2 to serve as bond counsel who shall be responsible for the
3 issuance of a final approving opinion regarding the
4 legality of the sale of general obligation bonds issued
5 pursuant to this article. Notwithstanding the provisions of
6 article three, chapter five of this code, bond counsel may
7 represent the state in court, render advice and provide
8 other legal services as may be requested by the governor,
9 the secretary or the commissioner regarding any bond
10 issuance pursuant to this article and all other matters
11 relating to the bond issue. The governor may also, in his
12 or her discretion, select a person or firm to serve as
13 underwriter for any issuance pursuant to this article.

§17-26-13. Approval and payment of all necessary expenses.

1 All necessary expenses, including legal expenses,
2 incurred in the issuance of any general obligation bonds
3 pursuant to this article shall be paid out of the safe road
4 bond debt service fund. The amount of any expenses
5 incurred shall be certified to the commissioner of
6 highways.

§17-26-14. Dedication of tax.

1 (a) There shall be dedicated an annual amount from
2 the collections of the tax imposed pursuant to section
3 three, article fourteen, chapter eleven of this code,
4 sufficient to pay the principal and interest of any state
5 road bonds issued pursuant to this article.

6 (b) Beginning in the month of July, in the fiscal year
7 in which bonds are first issued, and monthly thereafter,
8 there shall be deposited into the safe road bond debt
9 service fund an amount equal to one tenth of the projected
10 annual principal, interest requirements, as certified by the
11 commissioner, on all bonds issued pursuant to this article,
12 of the tax collected pursuant to article fourteen, chapter
13 eleven of this code.

CHAPTER 50

(S. B. 368—By Senators Craig, Anderson, Bailey, Chafin, Helmick, Jackson,
Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie,
Minear and Sprouse)

[Passed April 20, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eight and twenty, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the West Virginia capital company act; reducing for one fiscal year the total tax credits to all companies, which the West Virginia economic development authority may

authorize; allowing officers, employees or directors of a financial institution owning part of any capital company to serve on the capital company's board; and prohibiting capital company board members from a financial institution owning a part of the capital company from voting on an issue relating to that institution.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§5E-1-8. Tax credits.

§5E-1-20. Limitation on financial institutions.

§5E-1-8. Tax credits.

1 (a) The total amount of tax credits authorized for a
2 single qualified company may not exceed two million
3 dollars. Capitalization of the company may be increased
4 pursuant to rule of the authority.

5 (b) The total credits authorized by the authority for all
6 companies may not exceed a total of ten million dollars
7 each fiscal year: *Provided*, That for the fiscal year begin-
8 ning on the first day of July, one thousand nine hundred
9 ninety-seven, the total credits authorized for all companies
10 may not exceed a total of five and one-half million dol-
11 lars. The authority shall, for the first one hundred eighty
12 days of the fiscal year, accept applications only from com-
13 panies who certify in their application that the investment
14 of its entire capital base will be in one or more small busi-
15 ness investment corporations organized under the small
16 business investment act: *Provided, however*, That the capi-
17 tal base of any such qualified company shall be invested
18 in accordance with the provisions of this article. The au-
19 thority shall allocate these credits to qualified companies
20 in the order that said companies are qualified.

21 (c) Any investor, including an individual, partnership
22 or corporation who makes a capital investment in a quali-
23 fied West Virginia capital company, is entitled to a tax
24 credit equal to fifty percent of the investment, except as
25 otherwise provided in this section or in this article. The
26 credit allowed by this article shall be taken after all other
27 credits allowed by chapter eleven of this code. It shall be

28 taken against the same taxes and in the same order as set
29 forth in subsections (c) through (i), inclusive, section five,
30 article thirteen-c, chapter eleven of this code. The credit
31 for investments by a partnership or by a corporation elect-
32 ing to be treated as a Subchapter S corporation may be
33 divided pursuant to election of partners or shareholders.

34 (d) The tax credit allowed under this section is to be
35 credited against the taxpayer's tax liability for the taxable
36 year in which the investment in a qualified West Virginia
37 capital company is made. If the amount of the tax credit
38 exceeds the taxpayer's tax liability for the taxable year, the
39 amount of the credit which exceeds the tax liability for the
40 taxable year may be carried to succeeding taxable years
41 until used in full, or until forfeited: *Provided, That:* (i)
42 Tax credits may not be carried forward beyond fifteen
43 years; and (ii) tax credits may not be carried back to prior
44 taxable years. Any tax credit remaining after the fifteenth
45 taxable year is forfeited.

46 (e) The tax credit provided for in this section is avail-
47 able only to those taxpayers whose investment in a quali-
48 fied West Virginia capital company occurs after the first
49 day of July, one thousand nine hundred eighty-six.

50 (f) The tax credit allowed under this section may not
51 be used against any liability the taxpayer may have for
52 interest, penalties or additions to tax.

53 (g) Notwithstanding any provision in this code to the
54 contrary, the tax commissioner shall publish in the state
55 register the name and address of every taxpayer, and the
56 amount, by category, of any credit asserted under this
57 article. The categories by dollar amount of credit received
58 shall be as follows:

- 59 (1) More than \$1.00, but not more than \$50,000;
- 60 (2) More than \$50,000, but not more than \$100,000;
- 61 (3) More than \$100,000, but not more than \$250,000;
- 62 (4) More than \$250,000, but not more than \$500,000;
- 63 (5) More than \$500,000, but not more than
64 \$1,000,000;
- 65 (6) More than \$1,000,000.

§5E-1-20. Limitation on financial institutions.

1 Not more than forty-nine percent of the total capital
2 base of any capital company may be owned by banks,
3 savings and loan associations, savings banks or other fi-
4 nancial institutions, or any affiliate thereof, as investors.
5 No officer, employee or director of any such financial
6 institution may vote as a member of the board of any
7 capital company formed under the provisions of this arti-
8 cle if the matter being voted upon affects the financial
9 institution for which the board member serves as an offi-
10 cer, employee or director.

CHAPTER 51

(Com. Sub. For S. B. 365—Senators Chafin, Sprouse, Kimble, Bailey,
Snyder and Wiedebusch)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section thirteen, article one-b, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, three, four, seventeen, nineteen, twenty-six and thirty-one, article one-a of said chapter; to amend and reenact sections two, three, five, six, seven, nine, eleven and twelve, article one-b of said chapter; and to further amend said article by adding thereto a new section, designated section sixteen, all relating to establishing guidelines for child support award amounts; redefining the terms “adjusted gross income”, “attributed income”, “automatic data processing and retrieval system”, “extraordinary medical expenses”, “gross income”, “shared physical custody” and “unreimbursed health care expenses”; providing for the calculation of child support orders; establishing monthly basic child support obligations through use of a table; providing for a federal child care tax credit; setting forth a worksheet for the computation of child support orders in sole custody cases; pro-

viding for the calculation of child support obligations in cases where there is shared physical custody and setting forth a worksheet for the computation of child support orders in cases of shared physical custody; allowing an adjustment when an obligor's social security benefits are sent directly to the child; providing for modification of a child support order if there is a substantial change of circumstances; providing for an allocation of the right to claim dependent children for income tax purposes; and authorizing a circuit court to provide for the investment of child support for future educational and other needs of the child.

Be it enacted by the Legislature of West Virginia:

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

Article

1A. Definitions.

1B. Guidelines for Child Support Awards.

ARTICLE 1A. DEFINITIONS.

- §48A-1A-2. Adjusted gross income.
- §48A-1A-3. Attributed income.
- §48A-1A-4. Automatic data processing and retrieval system.
- §48A-1A-17. Extraordinary medical expenses.
- §48A-1A-19. Gross income.
- §48A-1A-26. Shared physical custody.
- §48A-1A-31. Unreimbursed health care expenses.

§48A-1A-2. Adjusted gross income.

- 1 (a) "Adjusted gross income" means gross income less
- 2 the payment of previously ordered child support, spousal
- 3 support or separate maintenance.

- 4 (b) A further deduction from gross income for addi-

5 tional dependents may be allowed by the court or master
6 if the parent has legal dependents other than those for
7 whom support is being determined. An adjustment may be
8 used in the establishment of a child support order or in a
9 review of a child support order. However, in cases where a
10 modification is sought, the adjustment should not be used
11 to the extent that it results in a support amount lower than
12 the previously existing order for the children who are the
13 subject of the modification. The court or master may elect
14 to use the following adjustment because it allots equitable
15 shares of support to all of the support obligor's legal
16 dependents. Using the income of the support obligor only,
17 determine the basic child support obligation (from the
18 table of basic child support obligations in section three,
19 article one-b of this chapter) for the number of additional
20 legal dependents living with the support obligor. Multiply
21 this figure by 0.75 and subtract this amount from the
22 support obligor's gross income.

23 (c) As used in this section, the term "legal depen-
24 dents" means:

25 (1) Minor natural or adopted children who live with
26 the parent; and

27 (2) Natural or adopted adult children who are totally
28 incapacitated because of physical or emotional disabilities
29 and for whom the parent owes a duty of support.

§48A-1A-3. Attributed income.

1 (a) "Attributed income" means income not actually
2 earned by a parent, but which may be attributed to the
3 parent because he or she is unemployed, is not working
4 full time, or is working below full earning capacity, or has
5 nonperforming or under-performing assets. Income may
6 be attributed to a parent if the court or master evaluates
7 the parent's earning capacity in the local economy (giving
8 consideration to relevant evidence that pertains to the
9 parent's work history, qualifications, education and physi-
10 cal or mental condition) and determines that the parent is
11 unemployed, is not working full time, or is working below
12 full earning capacity. Income may also be attributed to a
13 parent if the court or master finds that the obligor has

14 nonperforming or under-performing assets.

15 (b) If an obligor: (1) Voluntarily leaves employment
16 or voluntarily alters his or her pattern of employment so
17 as to be unemployed, underemployed or employed below
18 full earning capacity; (2) is able to work and is available
19 for full-time work for which he or she is fitted by prior
20 training or experience; and (3) is not seeking employment
21 in the manner that a reasonably prudent person in his or
22 her circumstances would do, then an alternative method
23 for the court or master to determine gross income is to
24 attribute to the person an earning capacity based on his or
25 her previous income. If the obligor's work history, qualifi-
26 cations, education or physical or mental condition cannot
27 be determined, or if there is an inadequate record of the
28 obligor's previous income, the court or master may, as a
29 minimum, base attributed income on full-time employ-
30 ment (at forty hours per week) at the federal minimum
31 wage in effect at the time the support obligation is estab-
32 lished.

33 (c) Income shall not be attributed to an obligor who is
34 unemployed or underemployed or is otherwise working
35 below full earning capacity if any of the following condi-
36 tions exist:

37 (1) The parent is providing care required by the chil-
38 dren to whom the parties owe a joint legal responsibility
39 for support, and such children are of preschool age or are
40 handicapped or otherwise in a situation requiring particu-
41 lar care by the parent;

42 (2) The parent is pursuing a plan of economic self-
43 improvement which will result, within a reasonable time, in
44 an economic benefit to the children to whom the support
45 obligation is owed, including, but not limited to, self-em-
46 ployment or education: *Provided*, That if the parent is
47 involved in an educational program, the court or master
48 shall ascertain that the person is making substantial prog-
49 ress toward completion of the program;

50 (3) The parent is, for valid medical reasons, earning an
51 income in an amount less than previously earned; or

52 (4) The court or master makes a written finding that
53 other circumstances exist which would make the attribu-
54 tion of income inequitable: *Provided*, That in such case,
55 the court or master may decrease the amount of attributed
56 income to an extent required to remove such inequity.

57 (d) The court or master may attribute income to a
58 parent's nonperforming or under-performing assets, other
59 than the parent's primary residence. Assets may be con-
60 sidered to be nonperforming or under-performing to the
61 extent that they do not produce income at a rate equiva-
62 lent to the current six-month certificate of deposit rate, or
63 such other rate that the court or master determines is rea-
64 sonable.

§48A-1A-4. Automatic data processing and retrieval system.

1 "Automatic data processing and retrieval system"
2 means a computerized data processing system designed to
3 do the following:

4 (1) To control, account for and monitor all of the
5 factors in the support enforcement collection and paterni-
6 ty determination process, including, but not limited to:

7 (A) Identifiable correlation factors (such as social
8 security numbers, names, dates of birth, home addresses
9 and mailing addresses of any individual with respect to
10 whom support obligations are sought to be established or
11 enforced and with respect to any person to whom such
12 support obligations are owing) to assure sufficient com-
13 patibility among the systems of different jurisdictions to
14 permit periodic screening to determine whether such indi-
15 vidual is paying or is obligated to pay support in more
16 than one jurisdiction;

17 (B) Checking of records of such individuals on a peri-
18 odic basis with federal, interstate, intrastate and local agen-
19 cies;

20 (C) Maintaining the data necessary to meet applicable
21 federal reporting requirements on a timely basis; and

22 (D) Delinquency and enforcement activities;

23 (2) To control, account for and monitor the collection

24 and distribution of support payments (both interstate and
25 intrastate) the determination, collection and distribution of
26 incentive payments (both interstate and intrastate), and the
27 maintenance of accounts receivable on all amounts owed,
28 collected and distributed;

29 (3) To control, account for and monitor the costs of
30 all services rendered, either directly or by exchanging
31 information with state agencies responsible for maintain-
32 ing financial management and expenditure information;

33 (4) To provide access to the records of the department
34 of health and human resources in order to determine if a
35 collection of a support payment causes a change affecting
36 eligibility for or the amount of aid under such program;

37 (5) To provide for security against unauthorized ac-
38 cess to, or use of, the data in such system;

39 (6) To facilitate the development and improvement of
40 the income withholding and other procedures designed to
41 improve the effectiveness of support enforcement through
42 the monitoring of support payments, the maintenance of
43 accurate records regarding the payment of support and
44 the prompt provision of notice to appropriate officials
45 with respect to any arrearage in support payments which
46 may occur; and

47 (7) To provide management information on all cases
48 from initial referral or application through collection and
49 enforcement.

§48A-1A-17. Extraordinary medical expenses.

1 "Extraordinary medical expenses" means uninsured
2 medical expenses in excess of two hundred fifty dollars
3 per year per child which are recurring and can reasonably
4 be predicted by the court or master at the time of estab-
5 lishment or modification of a child support order. Such
6 expenses shall include, but not be limited to, insurance
7 copayments and deductibles, reasonable costs for neces-
8 sary orthodontia, dental treatment, asthma treatments,
9 physical therapy, vision therapy and eye care, and any
10 uninsured chronic health problem. Nonrecurring or sub-
11 sequently occurring uninsured medical expenses in excess

12 of two hundred fifty dollars per year per child shall be
13 separately divided between the parties in proportion to
14 their adjusted gross incomes.

§48A-1A-19. Gross income.

1 (a) "Gross income" means all earned and unearned
2 income. The word "income" means gross income unless
3 the word is otherwise qualified or unless a different mean-
4 ing clearly appears from the context. When determining
5 whether an income source should be included in the child
6 support calculation, the court or master should consider
7 the income source if it would have been available to pay
8 child-rearing expenses had the family remained intact or,
9 in cases involving a nonmarital birth, if a household had
10 been formed.

11 (b) "Gross income" includes, but is not limited to, the
12 following:

13 (1) Earnings in the form of salaries, wages, commis-
14 sions, fees, bonuses, profit sharing, tips and other income;

15 (2) Any payment from a pension plan, an insurance
16 contract, an annuity, social security benefits, unemploy-
17 ment compensation, supplemental employment benefits,
18 workers' compensation benefits and state lottery winnings
19 and prizes;

20 (3) Interest, dividends or royalties;

21 (4) Expense reimbursements or in kind payments
22 such as business expense accounts, business credit ac-
23 counts, and tangible property such as automobiles and
24 meals, to the extent that they provide the parent with prop-
25 erty or services he or she would otherwise have to provide;

26 (5) Attributed income of the parent, calculated in
27 accordance with the provisions of section three, article
28 one-a of this chapter;

29 (6) Compensation paid for personal services as over-
30 time pay: *Provided*, That overtime compensation may be
31 excluded from gross income if the parent with the over-
32 time income demonstrates to the court or master that the
33 overtime work is voluntarily performed and that he or she

34 did not have a previous pattern of working overtime hours
35 prior to separation or birth of a nonmarital child;

36 (7) Income from self-employment or the operation of
37 a business, minus ordinary and necessary expenses which
38 are not reimbursable, and which are lawfully deductible in
39 computing taxable income under applicable income tax
40 laws, and minus FICA and medicare contributions made in
41 excess of the amount that would be paid on an equal
42 amount of income if the parent was not self-employed:
43 *Provided*, That the amount of monthly income to be in-
44 cluded in gross income shall be determined by averaging
45 the income from such employment during the previous
46 thirty-six-month period or during a period beginning with
47 the month in which the parent first received such income,
48 whichever period is shorter;

49 (8) Income from seasonal employment or other spo-
50 radic sources: *Provided*, That the amount of monthly
51 income to be included in gross income shall be deter-
52 mined by averaging the income from seasonal employ-
53 ment or other sporadic sources received during the previ-
54 ous thirty-six-month period or during a period beginning
55 with the month in which the parent first received such
56 compensation, whichever period is shorter; and

57 (9) Alimony and separate maintenance receipts.

58 (c) Depending on the circumstances of the particular
59 case, the court or master may also include severance pay,
60 capital gains and net gambling, gifts or prizes as gross
61 income.

62 (d) "Gross Income" does not include:

63 (1) Income received by other household members
64 such as a new spouse;

65 (2) Child support received for the children of another
66 relationship;

67 (3) Means-tested assistance such as aid to families with
68 dependent children, supplemental security income and
69 food stamps; and

70 (4) A child's income unless the court or master deter-

71 mines that the child's income substantially reduces the
72 family's living expenses.

§48A-1A-26. Shared physical custody.

1 "Shared physical custody" means an arrangement
2 under which each parent keeps a child or children over-
3 night for more than thirty-five percent of the year and
4 under which both parents contribute to the expenses of the
5 child or children in addition to the payment of child sup-
6 port.

§48A-1A-31. Unreimbursed health care expenses.

1 "Unreimbursed health care expenses" means the
2 child's portion of health insurance premiums and extraor-
3 dinary medical expenses.

ARTICLE 1B. GUIDELINES FOR CHILD SUPPORT AWARDS.

§48A-1B-2. Calculation of child support order.

§48A-1B-3. Basic child support obligation.

§48A-1B-5. Federal child care tax credit.

§48A-1B-6. Computation of child support order in sole custody cases.

§48A-1B-7. Shared physical custody adjustment.

§48A-1B-9. Adjustment for obligor's social security benefits sent directly to
the child.

§48A-1B-11. Modification.

§48A-1B-12. Tax exemption for child due support.

§48A-1B-16. Investment of child support.

§48A-1B-2. Calculation of child support order.

1 (a) Both parents' adjusted gross income, as defined in
2 section two, article one-a of this chapter, is used to deter-
3 mine the amount of child support. Unreimbursed child
4 health care expenses, work-related child care expenses and
5 any other extraordinary expenses agreed to by the parents
6 or ordered by the court or master less any extraordinary
7 credits agreed to by the parents or ordered by the court or
8 master are added to the basic child support obligation to
9 determine the total child support obligation. The child
10 support order is determined by dividing the total child
11 support obligation between the parents in proportion to
12 their income.

13 (b) The calculation of the support order amount re-
 14 quires the use of one of two worksheets which must be
 15 completed for each case. Worksheet A is used for a sole
 16 physical custody arrangement. Worksheet B is used for a
 17 shared physical custody arrangement.

§48A-1B-3. Basic child support obligation.

1 (a) The basic child support obligation is determined
 2 from the following table of monthly basic child support
 3 obligations:

4 **MONTHLY BASIC CHILD SUPPORT**
 5 **OBLIGATIONS**

6 Combined 7 Adjusted 8 Gross 9 Monthly 10 Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or more Children
11 550	121	179	212	234	254	272
12 600	135	200	237	262	283	303
13 650	143	213	253	279	303	324
14 700	151	225	267	295	319	342
15 750	159	237	281	310	336	360
16 800	167	250	296	327	355	380
17 850	176	263	312	344	373	399
18 900	184	276	327	362	392	419
19 950	193	289	343	379	411	439
20 1,000	201	303	358	396	429	459
21 1,050	210	316	374	413	448	479
22 1,100	218	329	389	430	467	499
23 1,150	227	342	405	448	485	519
24 1,200	235	355	420	465	504	539
25 1,250	243	368	436	482	522	558
26 1,300	252	381	451	498	540	577

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27	1,350	261	393	465	514	557	596
28	1,400	270	405	479	529	574	614
29	1,450	279	417	493	545	590	632
30	1,500	289	429	507	560	607	650
31	1,550	298	441	521	576	624	668
32	1,600	307	453	535	591	641	686
33	1,650	316	465	549	607	658	704
34	1,700	325	477	563	623	675	722
35	1,750	334	489	578	638	692	740
36	1,800	344	501	592	654	709	758
37	1,850	353	513	606	669	726	776
38	1,900	361	525	620	685	742	794
39	1,950	370	537	634	701	759	812
40	2,000	378	549	648	716	776	831
41	2,050	386	561	662	732	793	849
42	2,100	395	573	676	747	810	867
43	2,150	403	585	690	763	827	885
44	2,200	411	597	704	778	844	903
45	2,250	420	609	718	794	860	921
46	2,300	428	621	732	809	877	939
47	2,350	436	633	746	825	894	957
48	2,400	445	645	760	840	911	975
49	2,450	453	657	774	856	927	992
50	2,500	460	668	787	869	942	1,008
51	2,550	467	677	798	882	956	1,023
52	2,600	474	687	809	894	969	1,037
53	2,650	480	696	820	906	982	1,051
54	2,700	487	706	831	918	995	1,065

55	2,750	494	715	842	930	1,008	1,079
56	2,800	500	725	853	942	1,022	1,093
57	2,850	507	734	864	955	1,035	1,107
58	2,900	514	744	875	967	1,048	1,122
59	2,950	520	753	886	979	1,061	1,136
60	3,000	527	763	897	991	1,074	1,150
61	3,050	534	772	908	1,003	1,088	1,164
62	3,100	540	782	919	1,016	1,101	1,178
63	3,150	546	790	929	1,026	1,113	1,191
64	3,200	551	797	937	1,036	1,123	1,201
65	3,250	556	804	946	1,045	1,133	1,212
66	3,300	560	811	954	1,054	1,143	1,223
67	3,350	565	818	963	1,064	1,153	1,234
68	3,400	570	825	971	1,073	1,163	1,245
69	3,450	575	832	980	1,083	1,174	1,256
70	3,500	579	839	988	1,092	1,184	1,267
71	3,550	584	846	997	1,101	1,194	1,277
72	3,600	589	853	1,005	1,111	1,204	1,288
73	3,650	594	860	1,014	1,120	1,214	1,299
74	3,700	598	867	1,022	1,129	1,224	1,310
75	3,750	603	874	1,030	1,138	1,234	1,320
76	3,800	608	881	1,038	1,148	1,244	1,331
77	3,850	612	887	1,046	1,156	1,253	1,341
78	3,900	616	893	1,052	1,163	1,260	1,348
79	3,950	620	898	1,058	1,169	1,267	1,356
80	4,000	624	904	1,064	1,176	1,275	1,364
81	4,050	628	909	1,070	1,183	1,282	1,372
82	4,100	632	915	1,076	1,190	1,289	1,380

83	4,150	636	920	1,083	1,196	1,297	1,387
84	4,200	640	926	1,089	1,203	1,304	1,395
85	4,250	644	931	1,095	1,210	1,311	1,403
86	4,300	648	937	1,101	1,217	1,319	1,411
87	4,350	652	942	1,107	1,223	1,326	1,419
88	4,400	657	948	1,113	1,230	1,333	1,427
89	4,450	661	953	1,119	1,237	1,341	1,434
90	4,500	665	959	1,125	1,244	1,348	1,442
91	4,550	669	964	1,131	1,250	1,355	1,450
92	4,600	671	969	1,136	1,255	1,361	1,456
93	4,650	674	972	1,141	1,260	1,366	1,462
94	4,700	677	976	1,145	1,265	1,372	1,468
95	4,750	679	980	1,150	1,270	1,377	1,473
96	4,800	682	984	1,154	1,275	1,382	1,479
97	4,850	684	987	1,158	1,280	1,387	1,484
98	4,900	687	991	1,163	1,285	1,392	1,490
99	4,950	689	995	1,167	1,289	1,398	1,495
100	5,000	692	998	1,171	1,294	1,403	1,501
101	5,050	694	1,002	1,176	1,299	1,408	1,506
102	5,100	697	1,006	1,180	1,304	1,413	1,512
103	5,150	700	1,010	1,185	1,309	1,419	1,518
104	5,200	703	1,014	1,189	1,314	1,424	1,524
105	5,250	704	1,015	1,191	1,317	1,427	1,527
106	5,300	709	1,023	1,200	1,326	1,437	1,538
107	5,350	714	1,030	1,208	1,335	1,447	1,549
108	5,400	719	1,037	1,216	1,344	1,457	1,559
109	5,450	725	1,045	1,225	1,353	1,467	1,570
110	5,500	730	1,052	1,233	1,363	1,477	1,580

111	5,550	735	1,059	1,241	1,372	1,487	1,591
112	5,600	740	1,066	1,250	1,381	1,497	1,602
113	5,650	745	1,074	1,258	1,390	1,507	1,612
114	5,700	750	1,081	1,266	1,399	1,517	1,623
115	5,750	756	1,088	1,275	1,409	1,527	1,634
116	5,800	761	1,096	1,283	1,418	1,537	1,644
117	5,850	766	1,103	1,291	1,427	1,547	1,655
118	5,900	771	1,110	1,299	1,436	1,557	1,666
119	5,950	776	1,117	1,308	1,445	1,567	1,676
120	6,000	781	1,124	1,315	1,454	1,576	1,686
121	6,050	785	1,130	1,322	1,461	1,584	1,695
122	6,100	789	1,135	1,329	1,469	1,592	1,703
123	6,150	793	1,141	1,336	1,476	1,600	1,712
124	6,200	797	1,147	1,343	1,484	1,609	1,721
125	6,250	801	1,153	1,350	1,491	1,617	1,730
126	6,300	805	1,158	1,356	1,499	1,625	1,738
127	6,350	809	1,164	1,363	1,507	1,633	1,747
128	6,400	813	1,170	1,370	1,514	1,641	1,756
129	6,450	817	1,176	1,377	1,522	1,649	1,765
130	6,500	821	1,182	1,384	1,529	1,658	1,773
131	6,550	825	1,187	1,391	1,537	1,666	1,782
132	6,600	829	1,193	1,397	1,544	1,674	1,791
133	6,650	833	1,199	1,404	1,552	1,682	1,800
134	6,700	837	1,205	1,411	1,559	1,690	1,809
135	6,750	841	1,211	1,418	1,567	1,699	1,817
136	6,800	845	1,216	1,425	1,575	1,707	1,826
137	6,850	849	1,222	1,432	1,582	1,715	1,835
138	6,900	853	1,228	1,438	1,590	1,723	1,844

139	6,950	857	1,234	1,445	1,597	1,731	1,852
140	7,000	861	1,240	1,452	1,605	1,740	1,861
141	7,050	865	1,246	1,460	1,613	1,748	1,871
142	7,100	870	1,253	1,467	1,621	1,757	1,881
143	7,150	874	1,259	1,475	1,630	1,766	1,890
144	7,200	879	1,266	1,482	1,638	1,776	1,900
145	7,250	883	1,272	1,490	1,646	1,785	1,910
146	7,300	888	1,279	1,497	1,655	1,794	1,919
147	7,350	893	1,285	1,505	1,663	1,803	1,929
148	7,400	897	1,292	1,513	1,671	1,812	1,939
149	7,450	902	1,298	1,520	1,680	1,821	1,949
150	7,500	906	1,305	1,528	1,688	1,830	1,958
151	7,550	911	1,311	1,535	1,697	1,839	1,968
152	7,600	915	1,318	1,543	1,705	1,848	1,978
153	7,650	920	1,324	1,550	1,713	1,857	1,987
154	7,700	925	1,331	1,558	1,722	1,866	1,997
155	7,750	929	1,337	1,566	1,730	1,875	2,007
156	7,800	934	1,344	1,573	1,738	1,884	2,017
157	7,850	938	1,350	1,581	1,747	1,894	2,026
158	7,900	943	1,357	1,588	1,755	1,903	2,036
159	7,950	947	1,363	1,596	1,763	1,912	2,046
160	8,000	952	1,370	1,603	1,772	1,921	2,055
161	8,050	956	1,376	1,611	1,780	1,930	2,065
162	8,100	961	1,383	1,619	1,789	1,939	2,075
163	8,150	966	1,389	1,626	1,797	1,948	2,084
164	8,200	970	1,396	1,634	1,805	1,957	2,094
165	8,250	975	1,402	1,641	1,814	1,966	2,104
166	8,300	979	1,409	1,649	1,822	1,975	2,114

167	8,350	984	1,415	1,656	1,830	1,984	2,123
168	8,400	988	1,422	1,664	1,839	1,993	2,133
169	8,450	992	1,428	1,671	1,846	2,002	2,142
170	8,500	996	1,433	1,678	1,854	2,010	2,151
171	8,550	1,000	1,439	1,685	1,862	2,018	2,160
172	8,600	1,004	1,445	1,692	1,869	2,027	2,168
173	8,650	1,008	1,451	1,699	1,877	2,035	2,177
174	8,700	1,012	1,457	1,706	1,885	2,043	2,186
175	8,750	1,016	1,463	1,713	1,893	2,052	2,195
176	8,800	1,020	1,469	1,720	1,900	2,060	2,204
177	8,850	1,024	1,475	1,727	1,908	2,069	2,213
178	8,900	1,028	1,480	1,734	1,916	2,077	2,222
179	8,950	1,032	1,486	1,741	1,923	2,085	2,231
180	9,000	1,036	1,492	1,748	1,931	2,094	2,240
181	9,050	1,040	1,498	1,755	1,939	2,102	2,249
182	9,100	1,044	1,504	1,762	1,946	2,110	2,258
183	9,150	1,048	1,510	1,769	1,954	2,119	2,267
184	9,200	1,053	1,516	1,776	1,962	2,127	2,276
185	9,250	1,057	1,522	1,783	1,970	2,135	2,285
186	9,300	1,061	1,528	1,790	1,977	2,144	2,294
187	9,350	1,065	1,533	1,797	1,985	2,152	2,302
188	9,400	1,069	1,539	1,804	1,993	2,160	2,311
189	9,450	1,073	1,545	1,811	2,000	2,169	2,320
190	9,500	1,077	1,551	1,817	2,008	2,177	2,329
191	9,550	1,081	1,557	1,824	2,016	2,185	2,338
192	9,600	1,085	1,563	1,831	2,023	2,194	2,347
193	9,650	1,089	1,569	1,838	2,031	2,202	2,356
194	9,700	1,093	1,575	1,845	2,039	2,210	2,365

195	9,750	1,097	1,581	1,853	2,047	2,219	2,375
196	9,800	1,101	1,586	1,859	2,054	2,227	2,383
197	9,850	1,104	1,591	1,865	2,061	2,234	2,391
198	9,900	1,108	1,596	1,872	2,068	2,242	2,399
199	9,950	1,111	1,601	1,878	2,075	2,249	2,407
200	10,000	1,115	1,607	1,884	2,082	2,257	2,415
201	10,050	1,118	1,612	1,890	2,089	2,264	2,423
202	10,100	1,122	1,617	1,897	2,096	2,272	2,431
203	10,150	1,126	1,622	1,903	2,103	2,279	2,439
204	10,200	1,129	1,627	1,909	2,110	2,287	2,447
205	10,250	1,133	1,632	1,915	2,116	2,294	2,455
206	10,300	1,136	1,638	1,922	2,123	2,302	2,463
207	10,350	1,140	1,643	1,928	2,130	2,309	2,471
208	10,400	1,143	1,648	1,934	2,137	2,316	2,478
209	10,450	1,146	1,652	1,939	2,143	2,323	2,486
210	10,500	1,149	1,657	1,945	2,149	2,330	2,493
211	10,550	1,153	1,662	1,951	2,156	2,337	2,500
212	10,600	1,156	1,667	1,957	2,162	2,344	2,508
213	10,650	1,159	1,672	1,962	2,168	2,351	2,515
214	10,700	1,162	1,676	1,968	2,175	2,357	2,522
215	10,750	1,166	1,681	1,974	2,181	2,364	2,530
216	10,800	1,169	1,686	1,980	2,188	2,371	2,537
217	10,850	1,172	1,691	1,985	2,194	2,378	2,545
218	10,900	1,175	1,695	1,991	2,200	2,385	2,552
219	10,950	1,178	1,700	1,997	2,207	2,392	2,559
220	11,000	1,182	1,705	2,003	2,213	2,399	2,567
221	11,050	1,185	1,710	2,008	2,219	2,406	2,574
222	11,100	1,188	1,714	2,014	2,226	2,412	2,581

223	11,150	1,191	1,719	2,020	2,232	2,419	2,589
224	11,200	1,195	1,724	2,026	2,238	2,426	2,596
225	11,250	1,198	1,729	2,032	2,245	2,434	2,604
226	11,300	1,202	1,736	2,039	2,254	2,443	2,614
227	11,350	1,206	1,742	2,047	2,262	2,452	2,624
228	11,400	1,210	1,748	2,055	2,270	2,461	2,633
229	11,450	1,214	1,754	2,062	2,279	2,470	2,643
230	11,500	1,219	1,760	2,070	2,287	2,479	2,653
231	11,550	1,223	1,767	2,077	2,295	2,488	2,662
232	11,600	1,227	1,773	2,085	2,304	2,497	2,672
233	11,650	1,231	1,779	2,092	2,312	2,506	2,682
234	11,700	1,235	1,785	2,100	2,320	2,516	2,691
235	11,750	1,239	1,791	2,107	2,329	2,525	2,701
236	11,800	1,243	1,798	2,115	2,337	2,534	2,711
237	11,850	1,248	1,804	2,123	2,345	2,543	2,720
238	11,900	1,252	1,810	2,130	2,354	2,552	2,730
239	11,950	1,256	1,816	2,138	2,362	2,561	2,740
240	12,000	1,260	1,822	2,145	2,370	2,570	2,750
241	12,050	1,264	1,829	2,153	2,379	2,579	2,759
242	12,100	1,268	1,835	2,160	2,387	2,588	2,769
243	12,150	1,272	1,841	2,168	2,395	2,597	2,779
244	12,200	1,277	1,847	2,175	2,404	2,606	2,788
245	12,250	1,281	1,853	2,183	2,412	2,615	2,798
246	12,300	1,285	1,860	2,191	2,421	2,624	2,808
247	12,350	1,289	1,866	2,198	2,429	2,633	2,817
248	12,400	1,293	1,872	2,206	2,437	2,642	2,827
249	12,450	1,297	1,878	2,213	2,446	2,651	2,837
250	12,500	1,301	1,884	2,221	2,454	2,660	2,846

251	12,550	1,306	1,891	2,228	2,462	2,669	2,856
252	12,600	1,310	1,897	2,236	2,471	2,678	2,866
253	12,650	1,314	1,903	2,243	2,479	2,687	2,875
254	12,700	1,318	1,909	2,251	2,487	2,697	2,885
255	12,750	1,322	1,916	2,258	2,495	2,705	2,894
256	12,800	1,325	1,920	2,263	2,501	2,711	2,901
257	12,850	1,328	1,924	2,268	2,507	2,717	2,907
258	12,900	1,331	1,928	2,273	2,512	2,723	2,913
259	12,950	1,334	1,933	2,278	2,518	2,729	2,920
260	13,000	1,337	1,937	2,283	2,523	2,735	2,926
261	13,050	1,340	1,941	2,288	2,529	2,741	2,933
262	13,100	1,343	1,945	2,293	2,534	2,747	2,939
263	13,150	1,346	1,950	2,298	2,540	2,753	2,945
264	13,200	1,349	1,954	2,303	2,545	2,759	2,952
265	13,250	1,352	1,958	2,308	2,551	2,765	2,958
266	13,300	1,355	1,963	2,313	2,556	2,771	2,964
267	13,350	1,358	1,967	2,318	2,562	2,777	2,971
268	13,400	1,361	1,971	2,323	2,567	2,783	2,977
269	13,450	1,364	1,975	2,328	2,573	2,789	2,984
270	13,500	1,367	1,980	2,333	2,578	2,794	2,990
271	13,550	1,370	1,984	2,338	2,584	2,800	2,996
272	13,600	1,373	1,988	2,343	2,589	2,806	3,003
273	13,650	1,376	1,993	2,348	2,595	2,812	3,009
274	13,700	1,379	1,997	2,353	2,600	2,818	3,016
275	13,750	1,382	2,001	2,358	2,606	2,824	3,022
276	13,800	1,385	2,005	2,363	2,611	2,830	3,028
277	13,850	1,388	2,010	2,368	2,617	2,836	3,035
278	13,900	1,391	2,014	2,373	2,622	2,842	3,041

279	13,950	1,394	2,018	2,378	2,628	2,848	3,048
280	14,000	1,397	2,023	2,383	2,633	2,854	3,054
281	14,050	1,400	2,027	2,388	2,639	2,860	3,060
282	14,100	1,403	2,031	2,393	2,644	2,866	3,067
283	14,150	1,406	2,035	2,398	2,650	2,872	3,073
284	14,200	1,409	2,040	2,403	2,655	2,878	3,080
285	14,250	1,412	2,044	2,408	2,661	2,884	3,086
286	14,300	1,415	2,048	2,413	2,666	2,890	3,092
287	14,350	1,418	2,052	2,418	2,672	2,896	3,099
288	14,400	1,421	2,057	2,423	2,677	2,902	3,105
289	14,450	1,424	2,061	2,428	2,683	2,908	3,112
290	14,500	1,427	2,065	2,433	2,689	2,914	3,118
291	14,550	1,430	2,070	2,438	2,694	2,920	3,124
292	14,600	1,433	2,074	2,443	2,700	2,926	3,131
293	14,650	1,436	2,078	2,448	2,705	2,932	3,137
294	14,700	1,439	2,082	2,453	2,711	2,938	3,144
295	14,750	1,442	2,087	2,458	2,716	2,944	3,150
296	14,800	1,445	2,091	2,463	2,722	2,950	3,156
297	14,850	1,448	2,095	2,468	2,727	2,956	3,163
298	14,900	1,451	2,100	2,473	2,733	2,962	3,169
299	14,950	1,454	2,104	2,478	2,738	2,968	3,176
300	15,000	1,457	2,108	2,483	2,744	2,974	3,182

301 (b) This subsection provides for incomes below table.
302 If combined adjusted gross income is below five hundred
303 fifty dollars per month, which is the lowest amount of
304 income considered in the table of monthly basic child
305 support obligations set forth in subsection (a) of this sec-
306 tion, the basic child support obligation shall be set at fifty
307 dollars per month or a discretionary amount determined
308 by the court or master based on the resources and living

309 expenses of the parents and the number of children due
310 support.

311 (c) This subsection provides for incomes above table.
312 If combined adjusted gross income is above fifteen thou-
313 sand dollars per month, which is the highest amount of
314 income considered in the table of monthly basic child
315 support obligations set forth in subsection (a) of this sec-
316 tion, the basic child support obligation shall not be less
317 than it would be based on a combined adjusted gross in-
318 come of fifteen thousand dollars. The court or master
319 may also compute the basic child support obligation for
320 combined adjusted gross incomes above fifteen thousand
321 dollars by the following:

322 (1) One child — $\$1,457 + 0.088 \times$ combined adjust-
323 ed gross income above fifteen thousand dollars per
324 month;

325 (2) Two children — $\$2,108 + 0.129 \times$ combined ad-
326 justed gross income above fifteen thousand dollars per
327 month;

328 (3) Three children — $\$2,483 + 0.153 \times$ combined
329 adjusted gross income above fifteen thousand dollars per
330 month;

331 (4) Four children — $\$2,744 + 0.169 \times$ combined
332 adjusted gross income above fifteen thousand dollars per
333 month;

334 (5) Five children — $\$2,974 + 0.183 \times$ combined
335 adjusted gross income above fifteen thousand dollars per
336 month; and

337 (6) Six children — $\$3,182 + 0.196 \times$ combined ad-
338 justed gross income above fifteen thousand dollars per
339 month.

§48A-1B-5. Federal child care tax credit.

1 (a) The amount of the federal tax credit for child care
2 expenses that can be realized by the custodial parent shall
3 be approximated by deducting twenty-five percent from
4 work-related child care costs, except that no such deduc-

5 tion shall be made for custodial parents with monthly
6 gross incomes below the following amounts:

7 (1) One child — \$1,150;

8 (2) Two children — \$1,550;

9 (3) Three children — \$1,750;

10 (4) Four children — \$1,950;

11 (5) Five children — \$2,150; and

12 (6) Six or more children — \$2,350.

13 (b) Work-related child care costs net of any adjust-
14 ment for the child care tax credit shall be added to the
15 basic child support obligation and shall be divided be-
16 tween the parents in proportion to their adjusted gross
17 income.

**§48A-1B-6. Computation of child support order in sole custo-
dy cases.**

1 (a) For sole custody cases, the total child support obli-
2 gation consists of the basic child support obligation plus
3 the child's share of any unreimbursed health care expend-
4 es, work-related child care expenses and any other ex-
5 traordinary expenses agreed to by the parents or ordered
6 by the court or master less any extraordinary credits
7 agreed to by the parents or ordered by the court or mas-
8 ter.

9 (b) In a sole custody case, the total basic child support
10 obligation is divided between the parents in proportion to
11 their income. From this amount is subtracted the obli-
12 gor's direct expenditures of any items which were added
13 to the basic child support obligation to arrive at the total
14 child support obligation.

15 (c) Child support for sole custody cases shall be calcu-
16 lated using the following worksheet:

WORKSHEET A: SOLE PHYSICAL CUSTODY

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA CASE NO. _____

Mother: _____ SS No.: _____

Custodial parent? Yes No

Father: _____ SS No.: _____

Custodial parent? Yes No

Children	SSN	Date of Birth	Children	SSN	Date of Birth

PART I. CHILD SUPPORT ORDER	Mother	Father	Combined
1. MONTHLY GROSS INCOME	\$	\$	
a. Minus preexisting child support payment	-	-	
b. Minus maintenance paid	-	-	
2. MONTHLY ADJUSTED GROSS INCOME	\$	\$	\$
3. PERCENTAGE SHARE OF INCOME (Each parent's income from line 2 divided by Combined Income)	%	%	100%
4. BASIC OBLIGATION (Use Line 2 combined to find amount from schedule.)			\$
5. ADJUSTMENTS (Expenses paid directly by each parent)			
a. Work-Related Child Care Costs Adjusted for Federal Tax Credit (0.75 x actual work-related child care costs.)	\$	\$	
b. Extraordinary Medical Expenses (Uninsured only) and Children's Portion of Health Insurance Premium Costs.	\$	\$	
c. Extraordinary Expenses (Agreed to by parents or by order of the court or master.)	\$	\$	
d. Minus Extraordinary Adjustments (Agreed to by parents or by order of court or master.)			

1 (d) In cases where the noncustodial parent's adjusted
2 gross income is below one thousand four hundred dollars
3 per month, an additional calculation in Worksheet A, Part
4 II shall be made. This additional calculation sets the child
5 support order at whichever is lower: (i) Child support at
6 the amount determined in Part I; or (ii) the difference
7 between eighty-five percent of the noncustodial parent's
8 adjusted gross income and five hundred dollars, or fifty
9 dollars, whichever is more.

§48A-1B-7. Shared physical custody adjustment.

1 (a) Child support for cases with shared physical custo-
2 dy shall be calculated using Worksheet B. The following
3 method should be used only for shared physical custody
4 as defined in section twenty-six, article one-a of this chap-
5 ter: That is, cases where each parent has the child for
6 more than one hundred twenty-seven days per year (thir-
7 ty-five percent).

8 (b) The basic child support obligation shall be multi-
9 plied by 1.5 to arrive at a shared custody basic child sup-
10 port obligation. The shared custody basic child support
11 obligation is apportioned to each parent according to his
12 or her income. In turn, a child support obligation is com-
13 puted for each parent by multiplying that parent's portion
14 of the shared custody child support obligation by the
15 percentage of time the child spends with the other parent.
16 The respective basic child support obligations are then
17 offset, with the parent owing more basic child support
18 paying the difference between the two amounts. The
19 transfer for the basic obligation for the parent owing less
20 basic child support shall be set at zero dollars.

21 (c) Adjustments for each parent's additional direct
22 expenses on the child are made by apportioning the sum
23 of the parent's direct expenditures on the child's share of
24 any unreimbursed child health care expenses, work-related
25 child care expenses and any other extraordinary expenses
26 agreed to by the parents or ordered by the court or master
27 less any extraordinary credits agreed to by the parents or
28 ordered by the court or master to each parent according to
29 their income share. In turn each parent's net share of
30 additional direct expenses is determined by subtracting the
31 parent's actual direct expenses on the child's share of any
32 unreimbursed child health care expenses, work-related
33 child care expenses and any other extraordinary expenses
34 agreed to by the parents or by the court or master less any

35 extraordinary credits agreed to by the parents or ordered
 36 by the court or master from their share. The parent with a
 37 positive net share of additional direct expenses owes the
 38 other parent the amount of his or her net share of addi-
 39 tional direct expenses. The parent with zero or a negative
 40 net share of additional direct expenses owes zero dollars
 41 for additional direct expenses.

42 (d) The final amount of the child support order is
 43 determined by summing what each parent owes for the
 44 basic support obligation and additional direct expenses as
 45 defined in subsections (b) and (c) of this section. The
 46 respective sums are then offset, with the parent owing
 47 more paying the other parent the difference between the
 48 two amounts.

49 (e) Child support for shared physical custody cases
 50 shall be calculated using the following worksheet:

WORKSHEET B: SHARED PHYSICAL CUSTODY

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA CASE NO. _____

Mother: _____ SS No.: _____ Custodial parent? Yes No

Father: _____ SS No.: _____ Custodial parent? Yes No

Child- ren	SSN	Date of Birth	Children	SSN	Date of Birth

PART I. BASIC OBLIGATION	Mother	Father	Combined
1. MONTHLY GROSS INCOME	\$	\$	
a. Minus preexisting child support payment	-	-	
b. Minus maintenance paid	-	-	
2. MONTHLY ADJUSTED GROSS INCOME	\$	\$	\$
3. PERCENTAGE SHARE OF INCOME (Each parent's income from line 2 divided by Combined Income)	%	%	100%
4. BASIC OBLIGATION (Use line 2 Combined to find amount from Child Support Schedule.)			\$
PART II. SHARED CUSTODY ADJUSTMENT			

5. Shared Custody Basic Obligation (line 4 x 1.50)			\$
6. Each Parent's Share (Line 5 x each parent's line 3)	\$	\$	
7. Overnights with Each Parent (must total 365)			365
8. Percentage with Each Parent (Line 7 divided by 365)	%	%	100%
9. Amount Retained (Line 6 x line 8 for each parent)	\$	\$	
10. Each Parent's Obligation (Line 6 - line 9)	\$	\$	
11. AMOUNT TRANSFERRED FOR BASIC OBLIGATION (Subtract smaller amount on line 10 from larger amount on line 10. Parent with larger amount on line 10 owes the other parent the difference. Enter \$0 for other parent.	\$	\$	
PART III. ADJUSTMENTS FOR ADDITIONAL EXPENSES (Expenses paid directly by each parent.)			
12a. Work-Related Child Care Costs Adjusted for Federal Tax Credit (0.75 x actual work-related child care costs.)	\$	\$	
12b. Extraordinary Medical Expenses (Unin- sured only) and Children's Portion of Health Insurance Premium Costs.	\$	\$	
12c. Extraordinary Additional Expenses (Agreed to by parents or by order of the court or master.)	\$	\$	
12d. Minus Extraordinary Adjustments (Agreed to by parents or by order of the court or master.)	\$	\$	
12e. Total Adjustments (For each column, add 11a, 11b, and 11c. Subtract line 11d. Add the parent's totals together for Combined amount.)	\$	\$	\$
13. Each Parent's Share of Additional Expenses (Line 3 x line 12e Combined.)	\$	\$	
14. Each parent's Net Share of Additional direct expenses (Each parent's line 13-line 12e. If negative number, enter \$0)	\$	\$	
15. AMOUNT TRANSFERRED FOR ADDI- TIONAL EXPENSES (Subtract smaller amount on line 14 from larger amount on line 14. Parent with larger amount on line 14 owes the other parent the difference. Enter \$0 for other parent.	\$	\$	
PART IV. RECOMMENDED CHILD SUPPORT ORDER			
16. TOTAL AMOUNT TRANSFERRED (Line 11 + line 15)	\$	\$	

17. RECOMMENDED CHILD SUPPORT ORDER (Subtract smaller amount on line 16 from larger amount on line 16. Parent with larger amount on line 16 owes the other parent the difference.	\$	\$	
Comments, calculations, or rebuttals to schedule or adjustments			
PREPARED BY:	Date:		

§48A-1B-9. Adjustment for obligor's social security benefits sent directly to the child.

1 If a proportion of the obligor's social security benefit
 2 is paid directly to the custodian of his or her dependents
 3 who are the subject of the child support order, the follow-
 4 ing adjustment shall be made. The total amount of the
 5 social security benefit which includes the amounts paid to
 6 the obligor and the obligee shall be counted as gross in-
 7 come to the obligor. In turn, the child support order will
 8 be calculated as described in section six of this article. To
 9 arrive at the final child support amount, however, the
 10 amount of the social security benefits sent directly to the
 11 child's household will be subtracted from the child sup-
 12 port order. If the child support order amount results in a
 13 negative amount it shall be set at zero.

§48A-1B-11. Modification.

1 The provisions of a child support order may be modi-
 2 fied if there is a substantial change of circumstances. If
 3 application of the guideline would result in a new order
 4 that is more than fifteen percent different, then the cir-
 5 cumstances are considered to be a substantial change.

§48A-1B-12. Tax exemption for child due support.

1 Unless otherwise agreed to by the parties, the court
 2 shall allocate the right to claim dependent children for
 3 income tax purposes to the custodial parent except in
 4 cases of shared custody. In shared custody cases, these
 5 rights shall be allocated between the parties in proportion
 6 to their adjusted gross incomes for child support calcula-
 7 tions. In a situation where allocation would be of no tax

8 benefit to a party, the court or master need make no
9 allocation to that party. However, the tax exemptions for
10 the minor child or children should be granted to the
11 noncustodial parent only if the total of the custodial
12 parent's income and child support is greater when the
13 exemption is awarded to the noncustodial parent.

§48A-1B-16. Investment of child support.

1 A circuit judge has the discretion, in appropriate cases,
2 to direct that a portion of child support be placed in trust
3 and invested for future educational or other needs of the
4 child. The family law master may recommend and the
5 circuit judge may order such investment when all of the
6 child's day-to-day needs are being met such that, with due
7 consideration of the age of the child, the child is living as
8 well as his or her parents. A trustee named by the court
9 shall use the judgment and care under the circumstances
10 then prevailing that persons of prudence, discretion and
11 intelligence exercise in the management of their own
12 affairs, not in regard to speculation but in regard to the
13 permanent disposition of their funds, considering the
14 probable income as well as the probable safety of their
15 capital. A trustee shall be governed by the provisions of
16 the uniform prudent investor act as set forth in article six-
17 c, chapter forty-four of this code. The court may
18 prescribe the powers of the trustee and provide for the
19 management and control of the trust. Upon petition of a
20 party or the child's guardian or next friend and upon a
21 showing of good cause, the court may order the release of
22 funds in the trust from time to time.

CHAPTER 52

(H. B. 2885—By Delegates Compton, Hutchins, Henderson, Hubbard,
Caputo, Capito and Louisos)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three and four, article five-k, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to early intervention services for children with developmental delays; modifying definitions; increasing responsibilities of the department of health and human resources to include personnel development; and authorizing additions to the interagency coordinating council.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5K. EARLY INTERVENTION SERVICES FOR CHILDREN WITH DEVELOPMENTAL DELAYS.

§16-5K-2. Definitions.

§16-5K-3. Responsibilities of the department of health and human resources.

§16-5K-4. Interagency coordinating council.

§16-5K-2. Definitions.

1 Unless the context clearly otherwise indicates, as used
2 in this article:

3 (a) "Cabinet" means the governor's cabinet on chil-
4 dren and families.

5 (b) "Council" means the governor's early interven-
6 tion interagency coordinating council.

7 (c) "Department" means the department of health
8 and human resources.

9 (d) "Early intervention services" means develop-
10 mental services which:

11 (1) Are designed to meet the developmental needs of
12 developmentally delayed infants and toddlers and the
13 needs of the family related to enhancing the child's
14 development;

15 (2) Are selected in collaboration with the parents;

16 (3) Are provided under public supervision in
17 conformity with an individualized family service plan, and
18 at no cost to families;

19 (4) Meet the state's early intervention standards, as
20 established by the department of health and human
21 resources with the assistance of the governor's early
22 intervention interagency coordinating council;

23 (5) Include assistive technology, audiology, audi-
24 ology case management, family training, counseling and
25 home visits, health services necessary to enable a child to
26 benefit from other early intervention services, medical
27 services only for diagnostic or evaluation purposes,
28 nursing services, nutrition services, occupational therapy,
29 physical therapy, psychological services, social work
30 services, special instruction, speech-language pathology,
31 vision and transportation; and

32 (6) Are provided by licensed or otherwise qualified
33 personnel, including audiologists, family therapists, nurses,
34 nutritionists, occupational therapists, orientation and
35 mobility specialists, physical therapists, physicians,
36 psychologists, social workers, special educators, speech-
37 language pathologists and paraprofessionals appropriately
38 trained and supervised.

39 (e) "Infants and toddlers with developmental delay"
40 means children from birth to thirty-six months of age who
41 need early intervention services for any of the following
42 reasons:

43 (1) They are experiencing developmental delays, as
44 measured by appropriate methods and procedures, in one
45 or more of the following areas: Cognitive, physical,
46 including visual and hearing, communicative, adaptive,
47 social, language and speech, or psycho-social development
48 or self-help skills; or

49 (2) They have a diagnosed physical or mental
50 condition that has a high probability of resulting in
51 developmental delay; or

52 (3) They are at risk of having substantial develop-
53 mental delays if early intervention services are not
54 provided.

§16-5K-3. Responsibilities of the department of health and human resources.

1 (a) The department of health and human resources is
2 the administering agency for the development of a
3 statewide, comprehensive, coordinated, interagency system
4 of early intervention services.

5 (b) Consistent with the provisions of Public Law
6 99-457, as enacted by the Congress of the United States,
7 the department has the following responsibilities:

8 (1) To carry out the general administration, super-
9 vision and monitoring of early intervention programs and
10 activities;

11 (2) To resolve complaints regarding the requirements
12 of Public Law 99-457;

13 (3) To identify and coordinate all available resources
14 within the state from federal, state, local and private
15 sources;

16 (4) To enter into formal interagency agreements with
17 other state agencies involved in early intervention;

18 (5) To resolve intraagency and interagency disputes
19 and to ensure that early intervention services are provided
20 in a timely manner pending the resolution of such
21 disputes; and

22 (6) To coordinate and implement a comprehensive
23 system of personnel development, including the
24 certification and credentialing of qualified personnel
25 pursuant to federal regulations or requirements;

26 (c) The department may propose rules for legislative
27 approval in accordance with the provisions of article three,
28 chapter twenty-nine-a of this code necessary to carry out
29 the purposes of this article.

30 (d) The department of health and human resources
31 and the department of education shall enter into a formal
32 interagency agreement regarding early intervention
33 services. The agreement shall define the financial
34 responsibility of each agency, describe the transition of
35 services to children and their families between service
36 systems, and establish procedures for resolving disputes.

§16-5K-4. Interagency coordinating council.

1 (a) The governor's early intervention interagency
2 coordinating council is hereby established. The council is
3 composed of at least fifteen members appointed by the
4 governor with additional ex officio members representing
5 specific agencies serving infants and toddlers with
6 developmental delays.

7 (b) The membership of the council shall consist of the
8 following:

9 (1) At least three parents of children, ages birth
10 through six years of age, who have developmental delays;

11 (2) At least three persons, representative of the public
12 or private service providers;

13 (3) At least one member of the House of Delegates
14 recommended by the speaker of the House of Delegates
15 and one member of the Senate recommended by the
16 Senate president;

17 (4) At least one person from higher education
18 involved in training individuals to provide services under
19 this article; and

20 (5) A representative of each of the agencies involved
21 in the provision of or payment for early intervention
22 services to infants and toddlers with developmental delays
23 and their families.

24 (c) The council shall meet at least quarterly and in
25 such place as it considers necessary.

26 (d) The council is responsible for the following
27 functions:

28 (1) To advise and assist the department of health and
29 human resources in the development and implementation
30 of early intervention policies;

31 (2) To assist the department in achieving the full
32 participation of all relevant state agencies and programs;

33 (3) To collaborate with the governor's cabinet on
34 children and families in the coordination of early
35 intervention services with other programs and services for
36 children and families;

37 (4) To assist the department in the effective
38 implementation of a statewide system of early intervention
39 services;

40 (5) To assist the department in the resolution of
41 disputes;

42 (6) To advise and assist the department in the
43 preparation of grant applications; and

44 (7) To prepare and submit an annual report to the
45 governor, the Legislature and the United States secretary
46 of education on the status of early intervention programs
47 within the state.

CHAPTER 53

(H. B. 2680—By Delegates Givens, Staton, Kominar,
Mahan, Underwood, Riggs and Smirl)

[Passed April 12, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to repeal section sixteen-b, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article one of said chapter; to amend and reenact section sixteen, article two of said chapter; to amend and reenact sections thirteen and sixteen-a, article five of said chapter; to further amend said article by adding thereto a

new section, designated section thirteen-e; to amend and reenact sections six and six-a, article five-a of said chapter; to amend and reenact sections two and four, article five-b of said chapter; to amend and reenact article five-c of said chapter; to further amend said chapter by adding thereto a new article, designated article five-e; to amend and reenact section eight, article six of said chapter; to amend article seven of said chapter by adding thereto three new sections, designated sections thirty, thirty-one and thirty-two; and to further amend said chapter by adding thereto a new article, designated article ten, all relating to reforming and reorganizing the system of child welfare throughout the state; setting forth purposes and defining certain terms; transferring certain functions to the division of juvenile services within the department of military affairs and public safety; providing for disposition in juvenile proceedings; establishing a comprehensive plan for juveniles; requiring juvenile facility rules; authorizing assignment of personnel by division of juvenile services; providing for state plan predispositional detention of juveniles; stating purpose and intent of juvenile offender rehabilitation act; setting forth the responsibilities of the department of health and human resources and the division of juvenile services with regard to juveniles; providing for the creation of oversight committees; prescribing the powers and duties of committees; providing for the appointment of members, time and place of meetings, assistance of other agencies, and reimbursement for expenses; creating the division of juvenile services within the department of military affairs and public safety; prescribing duties and responsibilities of the division of juvenile services; transferring fiscal responsibility for the Kanawha home for children to the division of juvenile services; providing for a study to establish a facility for housing juveniles who have been transferred to adult criminal jurisdiction; requiring legislative rules for specialized training for juvenile corrections officers and detention center employees; establishing a procedure for summary review of certain facilities or services, in lieu of certificate of need review; establishing a special account in the state treasury known as the child assessment and in-state placement fund, providing for a juvenile justice database; creating a child placement alternatives corporation; giving management and control of

corporation to board of directors; prescribing the powers of the corporation; providing for a structured risk assessment and classification for children placed in out-of-state facilities; and requiring statistical and analytical reports.

Be it enacted by the Legislature of West Virginia:

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

Article

1. Purposes; Definitions.
2. State Responsibilities for the Protection and Care of Children.
5. Juvenile Proceedings.
- 5A. Juvenile Referee System.
- 5B. West Virginia Juvenile Offender Rehabilitation Act.
- 5C. Committee on Juvenile Law.
- 5E. Division of Juvenile Services.
6. Procedure in Cases of Child Neglect or Abuse.
7. General Provisions.
10. Child Placement Alternatives.

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-1. Purpose.

1 (a) The purpose of this chapter is to provide a system
2 of child welfare for the children of this state that has goals
3 to:

4 (1) Assure each child care and guidance;

5 (2) Serve the mental and physical welfare of the child;

6 (3) Preserve and strengthen the child's family ties;

7 (4) Recognize the fundamental rights of children and
8 parents;

9 (5) Adopt procedures and establish programs that are
10 family-focused rather than focused on specific family
11 members, except where the best interests of the child or
12 the safety of the community are at risk;

13 (6) Involve the child and his or her family or
14 caregiver in the planning and delivery of programs and
15 services;

16 (7) Provide services that are community-based, in the
17 least restrictive settings that are consonant with the needs
18 and potentials of the child and his or her family;

19 (8) Provide for early identification of the problems of
20 children and their families, and respond appropriately with
21 measures and services to prevent abuse and neglect or
22 delinquency;

23 (9) Provide a system for the rehabilitation or detention
24 of juvenile delinquents; and

25 (10) Protect the welfare of the general public.

26 In pursuit of these goals it is the intention of the
27 Legislature to provide for removing the child from the
28 custody of parents only when the child's welfare or the
29 safety and protection of the public cannot be adequately
30 safeguarded without removal; and, when the child has to
31 be removed from his or her family, to secure for the child
32 custody, care and discipline consistent with the child's best
33 interests and other goals herein set out.

34 (b) The child welfare service of the state shall be
35 administered by the state department of health and human

36 resources and the division of juvenile services of the
37 department of military affairs and public safety.

38 The state department of health and human resources is
39 designated as the agency to cooperate with the United
40 States department of health and human services and
41 United States department of justice in extending and
42 improving child welfare services, to comply with
43 regulations thereof, and to receive and expend federal
44 funds for these services. The division of juvenile services
45 of the department of military affairs and public safety is
46 designated as the agency to cooperate with the United
47 States department of health and human services and
48 United States department of justice in operating,
49 maintaining and improving juvenile correction facilities
50 and centers for the predispositional detention of children,
51 to comply with regulations thereof, and to receive and
52 expend federal funds for these services.

ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION AND CARE OF CHILDREN.

§49-2-16. State responsibility for child care.

1 The division of juvenile services of the department of
2 military affairs and public safety is hereby authorized and
3 empowered to operate and maintain centers for juveniles
4 needing detention pending disposition by a court having
5 juvenile jurisdiction or temporary care following such
6 court action.

7 The state department of health and human resources is
8 hereby authorized and empowered to provide care,
9 support and protective services for children who are
10 handicapped by dependency, neglect, single parent status,
11 mental or physical disability, or who for other reasons are
12 in need of public service. Such department is also hereby
13 authorized and empowered in its discretion to accept
14 children for care from their parent or parents, guardian,
15 custodian or relatives and to accept the custody of
16 children committed to its care by courts. The department
17 of human services or any county office of such
18 department is also hereby authorized and empowered in
19 its discretion to accept temporary custody of children for

20 care from any law-enforcement officer in an emergency
21 situation.

22 Within ninety days of the date of the signatures to a
23 voluntary placement agreement, after receipt of physical
24 custody, the state department of health and human
25 resources shall file with the court a petition for review of
26 the placement, stating the child's situation and the
27 circumstance that gives rise to the voluntary placement. If
28 the department intends to extend the voluntary placement
29 agreement, the department shall file with the court a copy
30 of the child's case plan. The court shall appoint an
31 attorney for the child, who shall also receive a copy of the
32 case plan. The court shall schedule a hearing and shall
33 give notice of the time and place and right to be present at
34 such hearing to: The child's attorney; the child, if twelve
35 years of age or older; the child's parents or guardians; the
36 child's foster parents; and any other such persons as the
37 court may in its discretion direct. The child's presence at
38 such hearing may be waived by the child's attorney at the
39 request of the child or if the child would suffer emotional
40 harm. At the conclusion of the proceedings, but no later
41 than ninety days after the date of the signatures to the
42 voluntary placement agreement, the court shall enter an
43 order determining whether or not continuation of the
44 voluntary placement is in the best interests of the child;
45 specifying under what conditions the child's placement
46 shall continue; and specifying whether or not the
47 department has made reasonable efforts to reunify the
48 family and/or provide a plan for the permanent placement
49 of the child.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-13. Disposition; appeal.

§49-5-13e. Comprehensive plan for juveniles.

§49-5-16a. Rules governing juvenile facilities.

*§49-5-13. Disposition; appeal.

1 (a) In aid of disposition, the juvenile probation officer
2 assigned to the court shall, upon request of the court,
3 make an investigation of the environment of the child and
4 the alternative dispositions possible. The court, upon its

*Clerk's Note: This section was also amended by H.B. 2873 (Chapter 54), which passed subsequent to this act.

5 own motion, or upon request of counsel, may order a
6 psychological examination of the child. The report of
7 such examination and other investigative and social
8 reports shall not be made available to the court until after
9 the adjudicatory hearing. Unless waived, copies of the
10 report shall be provided to counsel for the petitioner and
11 counsel for the child no later than seventy-two hours prior
12 to the dispositional hearing.

13 (b) Following the adjudication, the court shall conduct
14 the dispositional proceeding, giving all parties an
15 opportunity to be heard. In disposition the court shall not
16 be limited to the relief sought in the petition and shall, in
17 electing from the following alternatives, consider the best
18 interests of the child and the welfare of the public:

19 (1) Dismiss the petition;

20 (2) Refer the child and the child's parent or custodian
21 to a community agency for needed assistance and dismiss
22 the petition;

23 (3) Upon a finding that the child is in need of
24 extra-parental supervision: (A) Place the child under the
25 supervision of a probation officer of the court or of the
26 court of the county where the child has his or her usual
27 place of abode or other person while leaving the child in
28 custody of his or her parent or custodian; and (B)
29 prescribe a program of treatment or therapy or limit the
30 child's activities under terms which are reasonable and
31 within the child's ability to perform, including
32 participation in the litter control program established
33 pursuant to section twenty-five, article seven, chapter
34 twenty of this code, or other appropriate programs of
35 community service;

36 (4) Upon a finding that a parent or custodian is not
37 willing or able to take custody of the child, that a child is
38 not willing to reside in the custody of his parent or
39 custodian, or that a parent or custodian cannot provide the
40 necessary supervision and care of the child, the court may
41 place the child in temporary foster care or temporarily
42 commit the child to the department of health and human
43 resources or a child welfare agency. The court order shall

44 state that continuation in the home is contrary to the best
45 interest of the child and why; and whether or not the state
46 department made a reasonable effort to prevent the
47 placement or that the emergency situation made such
48 efforts unreasonable or impossible. Whenever the court
49 transfers custody of a youth to the department of human
50 services, an appropriate order of financial support by the
51 parents or guardians shall be entered in accordance with
52 section five, article seven of this chapter and guidelines
53 promulgated by the supreme court of appeals;

54 (5) Upon a finding that the best interests of the child
55 or the welfare of the public require it, and upon an
56 adjudication of delinquency pursuant to subdivision (1),
57 section four, article one of this chapter, the court may
58 commit the child to an industrial home, correctional
59 institution for children, or other appropriate facility for
60 the treatment, instruction and rehabilitation of juveniles:
61 *Provided*, That the court maintains discretion to consider
62 alternative sentencing arrangements. Commitments shall
63 not exceed the maximum term for which an adult could
64 have been sentenced for the same offense. The order shall
65 state that continuation in the home is contrary to the best
66 interests of the child and why; and whether or not the state
67 department made a reasonable effort to prevent the
68 placement or that the emergency situation made such
69 efforts unreasonable or impossible;

70 (6) Upon an adjudication of delinquency pursuant to
71 subdivision (3) or (4), section four, article one of this
72 chapter, and upon a finding that the child is so totally
73 unmanageable, ungovernable and antisocial that the child
74 is amenable to no treatment or restraint short of
75 incarceration, commit the child to a rehabilitative facility
76 devoted exclusively to the custody and rehabilitation of
77 children adjudicated delinquent pursuant to said
78 subdivision. Commitments shall not exceed the maximum
79 period of one year with discretion as to discharge to rest
80 with the director of the institution, who may release the
81 child and return him or her to the court for further
82 disposition. The order shall state that continuation in the
83 home is contrary to the best interests of the child and why;
84 and whether or not the state department made a reasonable

85 effort to prevent the placement or that the emergency
86 situation made such efforts unreasonable or impossible; or

87 (7) After a hearing conducted under the procedures
88 set out in subsections (c) and (d), section four, article five,
89 chapter twenty-seven of this code, commit the child to a
90 mental health facility in accordance with the child's
91 treatment plan; the director may release a child and return
92 him to the court for further disposition. The order shall
93 state that continuation in the home is contrary to the best
94 interests of the child and why; and whether or not the state
95 department made a reasonable effort to prevent the
96 placement or that the emergency situation made such
97 efforts unreasonable or impossible.

98 (c) The disposition of the child shall not be affected
99 by the fact that the child demanded a trial by jury or made
100 a plea of denial. Any dispositional order is subject to
101 appeal to the supreme court of appeals.

102 (d) Following disposition, it shall be inquired of the
103 respondent whether or not appeal is desired and the
104 response transcribed; a negative response shall not be
105 construed as a waiver. The evidence shall be transcribed
106 as soon as practicable and made available to the child or
107 his or her counsel, if the same is requested for purposes of
108 further proceedings. A judge may grant a stay of
109 execution pending further proceedings.

110 (e) Notwithstanding any other provision of this code
111 to the contrary, if a child charged with delinquency under
112 this chapter is transferred to adult jurisdiction and there
113 tried and convicted, the court may make its disposition in
114 accordance with this section in lieu of sentencing such
115 person as an adult.

§49-5-13e. Comprehensive plan for juveniles.

1 The division of juvenile services within the department
2 of military affairs and public safety shall develop a
3 comprehensive plan to establish a unified state system for
4 social and rehabilitative programming and treatment of
5 juveniles in predispositional detention centers and in
6 juvenile correction facilities and a comprehensive plan for

7 regional juvenile detention facilities and programs. These
8 plans are to be submitted to the West Virginia Legislature
9 no later than the first day of January, one thousand nine
10 hundred ninety-eight.

11 The comprehensive plan for regional detention
12 programs and facilities shall be based on a needs
13 assessment of juvenile detention services and may locate
14 all newly constructed detention facilities on or near a
15 regional jail facility, with common facilities and
16 administration as permitted by federal law.

§49-5-16a. Rules governing juvenile facilities.

1 The director of the division of juvenile services within
2 the department of military affairs and public safety shall
3 prescribe written rules subject to the provisions of chapter
4 twenty-nine-a of this code, outlining policies and
5 procedures governing the operation of those correctional,
6 detention, predispositional detention centers and other
7 facilities wherein juveniles may be housed. Said policies
8 and procedures shall include, but shall not be limited to,
9 standards of cleanliness, temperature and lighting;
10 availability of medical and dental care; provision of food,
11 furnishings, clothing and toilet articles; supervision;
12 procedures for enforcing rules of conduct consistent with
13 due process of law, and visitation privileges. On and after
14 the first day of January, one thousand nine hundred
15 seventy-nine, a child in custody or detention shall have, at
16 a minimum, the following rights, and the policies
17 prescribed shall ensure that:

18 (1) A child shall not be punished by physical force,
19 deprivation of nutritious meals, deprivation of family visits
20 or solitary confinement;

21 (2) A child shall have the opportunity to participate in
22 physical exercise each day;

23 (3) Except for sleeping hours a child in a state facility
24 shall not be locked alone in a room unless such child is
25 out of control;

26 (4) A child shall be provided his own clothing or
27 individualized clothing which is clean, supplied by the
28 facility, and daily access to showers;

29 (5) A child shall have constant access to writing
30 materials and may send mail without limitation, censorship
31 or prior reading, and may receive mail without prior
32 reading, except that mail may be opened in the child's
33 presence, without being read, to inspect for contraband;

34 (6) A child may make and receive regular local phone
35 calls without charge and long distance calls to his family
36 without charge at least once a week, and receive visitors
37 daily and on a regular basis;

38 (7) A child shall have immediate access to medical
39 care as needed;

40 (8) A child in a juvenile detention facility or state
41 institution shall be provided access to education including
42 teaching, educational materials and books;

43 (9) A child shall have reasonable access to an attorney
44 upon request; and

45 (10) A child shall be afforded a grievance procedure,
46 including an appeal mechanism.

47 Upon admission to a jail, detention facility or
48 institution, a child shall be furnished with a copy of the
49 rights provided him by virtue of this section and as further
50 prescribed by rules promulgated pursuant to this section.

ARTICLE 5A. JUVENILE REFEREE SYSTEM.

§49-5A-6. Assistance of division of juvenile services of the department of military affairs and public safety.

§49-5A-6a. State plan for predispositional detention centers for juveniles.

§49-5A-6. Assistance of division of juvenile services of the department of military affairs and public safety.

1 The division of juvenile services of the department of
2 military affairs and public safety is authorized to assign
3 the necessary personnel and provide adequate space for
4 the support and operation of any facility operated by the

5 division of juvenile services of the department of military
6 affairs and public safety providing for the detention of
7 children as provided in this article, subject to and not
8 inconsistent with the appropriation and availability of
9 funds.

**§49-5A-6a. State plan for predispositional detention centers
for juveniles.**

1 (a) The division of juvenile services of the department
2 of military affairs and public safety shall develop a
3 comprehensive plan to maintain and improve a unified
4 state system of regional predispositional detention centers
5 for juveniles. The plan shall consider recommendations
6 from the division of corrections, the governor's committee
7 on crime, delinquency and correction, the state board of
8 education, detention center personnel, juvenile probation
9 officers and judicial and law-enforcement officials from
10 throughout the state.

1 The principal purpose of the plan shall be, through
2 statements of policy and program goals, to provide for the
3 effective and efficient use of regional juvenile detention
4 facilities.

5 (b) The plan shall identify operational problems of
6 secure detention centers, including, but not limited to,
7 overcrowding, security and violence within centers,
8 difficulties in moving juveniles through the centers within
9 required time periods, health needs, educational needs,
10 transportation problems, staff turnover and morale and
11 other perceived problem areas. The plan shall further
12 provide recommendations directed to alleviate the
13 problems.

14 (c) The plan shall include, but not be limited to,
15 statements of policies and goals in the following areas:

- 16 (1) Licensing of secure detention centers;
- 17 (2) Criteria for placing juveniles in detention;
- 18 (3) Alternatives to secure detention;

29 (4) Allocation of fiscal resources to the costs of secure
30 detention facilities;

31 (5) Information and referral services; and

32 (6) Educational regulations developed and approved
33 by the West Virginia board of education.

34 (d) The Legislature shall designate a committee or task
35 force thereof, to act in a continuing capacity as an
36 oversight committee, and shall assist the director of the
37 division of juvenile services within the department of
38 military affairs and public safety in the periodic review
39 and update of the state plan for the predispositional
40 detention centers for juveniles.

**ARTICLE 5B. WEST VIRGINIA JUVENILE OFFENDER
REHABILITATION ACT.**

§49-5B-2. Purpose and intent.

§49-5B-4. Responsibilities of the department of health and human resources
and division of juvenile services of the department of military
affairs and public safety.

***§49-5B-2. Purpose and intent.**

1 It is the purpose and intent of the Legislature to
2 provide for the creation of all reasonable means and
3 methods that can be established by a humane and
4 enlightened state, solicitous of the welfare of its children,
5 for the prevention of delinquency and for the care and
6 rehabilitation of delinquent children. It is further the
7 intent of the Legislature that this state, through the
8 department of health and human resources and the
9 division of juvenile services of the department of military
10 affairs and public safety, establish, maintain, and
11 continuously refine and develop, a balanced and
12 comprehensive state program for children who are
13 potentially delinquent or are delinquent.

*Clerk's Note: This section was also amended by H.B. 2873 (Chapter 54),
which passed subsequent to this act.

***§49-5B-4. Responsibilities of the department of health and human resources and division of juvenile services of the department of military affairs and public safety.**

1 (a) The department of health and human resources
2 and the division of juvenile services of the department of
3 military affairs and public safety are empowered to
4 establish, and shall establish, subject to the limits of funds
5 available or otherwise appropriated therefor, programs and
6 services designed to prevent juvenile delinquency, to divert
7 juveniles from the juvenile justice system, to provide
8 community-based alternatives to juvenile detention and
9 correctional facilities and to encourage a diversity of
10 alternatives within the juvenile justice system. The
11 development, maintenance and expansion of programs
12 and services may include, but not be limited to, the
13 following:

14 (1) Community-based programs and services for the
15 prevention and treatment of juvenile delinquency through
16 the development of foster-care and shelter-care homes,
17 group homes, halfway houses, homemaker and home
18 health services, twenty-four hour intake screening,
19 volunteer and crisis home programs, day treatment and
20 any other designated community-based diagnostic,
21 treatment or rehabilitative service;

22 (2) Community-based programs and services to work
23 with parents and other family members to maintain and
24 strengthen the family unit so that the juvenile may be
25 retained in his home;

26 (3) Youth service bureaus and other community-based
27 programs to divert youth from the juvenile court or to
28 support, counsel, or provide work and recreational
29 opportunities for delinquents and other youth to help
30 prevent delinquency;

***Clerk's Note:** This section was also amended by H.B. 2873 (Chapter 54), which passed subsequent to this act.

31 (4) Projects designed to develop and implement
32 programs stressing advocacy activities aimed at improving
33 services for and protecting rights of youth impacted by
34 the juvenile justice system;

35 (5) Educational programs or supportive services
36 designed to keep delinquents, and to encourage other
37 youth to remain, in elementary and secondary schools or
38 in alternative learning situations;

39 (6) Expanded use of professional and parapro-
40 fessional personnel and volunteers to work effectively with
41 youth;

42 (7) Youth initiated programs and outreach programs
43 designed to assist youth who otherwise would not be
44 reached by traditional youth assistance programs;

45 (8) A statewide program designed to reduce the
46 number of commitments of juveniles to any form of
47 juvenile facility as a percentage of the state juvenile
48 population, to increase the use of nonsecure community-
49 based facilities as a percentage of total commitments to
50 juvenile facilities and to discourage the use of secure
51 incarceration and detention.

52 (b) The department of health and human resources
53 shall establish, within the funds available, an individualized
54 program of rehabilitation for each accused juvenile
55 offender referred to the department after being allowed an
56 improvement period by the juvenile court, and for each
57 adjudicated juvenile offender who, after adjudication, is
58 referred to the department for investigation or treatment
59 or whose custody is vested in the department. Such
60 individualized program of rehabilitation shall take into
61 account the programs and services to be provided by other
62 public or private agencies or personnel which are available
63 in the community to deal with the circumstances of the
64 particular child. Such individualized program of
65 rehabilitation shall be furnished to the juvenile court and
66 shall be available to counsel for the child; it may be
67 modified from time to time at the direction of the
68 department or by order of the juvenile court. The
69 department may develop an individualized program of

70 rehabilitation for any child referred for noncustodial
71 counseling under section five, article three of this chapter,
72 for any child receiving counsel and advice under section
73 three-a, article five of this chapter, or for any other child
74 upon the request of a public or private agency.

75 (c) The department of health and human resources
76 and the division of juvenile services of the department of
77 military affairs and public safety are authorized to enter
78 into cooperative arrangements and agreements with private
79 agencies or with agencies of the state and its political
80 subdivisions to effectuate the purpose of this article.

ARTICLE 5C. COMMITTEES ON JUVENILE LAW.

§49-5C-1. Creation of committees.

§49-5C-2. Powers and duties.

§49-5C-3. Appointment of members.

§49-5C-4. Time and place of meetings.

§49-5C-5. Assistance of other agencies.

§49-5C-6. Expenses; reimbursement.

§49-5C-1. Creation of committees.

1 The Legislature shall create such committees and
2 forums as may be necessary to oversee matters related to
3 juvenile law, placement, housing, detention and
4 correctional facilities. The Legislature shall delegate or
5 contract such responsibilities and duties to other
6 governmental bodies as needed.

§49-5C-2. Powers and duties.

1 The powers and duties of the committees shall include,
2 but not be limited to, the following:

3 (a) Studying the status and effectiveness of the laws
4 relating to juvenile proceedings, the juvenile referee
5 system, and the West Virginia juvenile offender
6 rehabilitation act, and making recommendations as to any
7 changes needed in the system and the ways and means to
8 effect such changes;

9 (b) Making further and more specific recom-
10 mendations within the scope of the study as to the

11 detention of juvenile offenders, considering both short
12 and long-term detention;

13 (c) Considering existing juvenile detention facilities
14 and making recommendations, with particular attention to
15 financing, as to the need for updating present facilities
16 and/or creating new facilities and the location of each;

17 (d) Filing a report to each regular session of the
18 Legislature which will include drafts of legislation
19 necessary to effectuate any recommendations;

20 (e) Maintaining reference materials concerning
21 juvenile offenders including, without limitation,
22 information as to laws and systems in other states;

23 (f) Visiting, inspecting, and interviewing residents of
24 juvenile institutions, detention facilities, and places wherein
25 West Virginia juveniles may be held involuntarily and
26 making public reports of such reviews;

27 (g) Overseeing the maintenance and improvement of
28 the system of predispositional detention of juveniles.

§49-5C-3. Appointment of members.

1 The committees may include qualified members of the
2 general public as well as members of the Senate and the
3 House of Delegates. An effort shall be made to include
4 representatives of more than one political party on each
5 committee.

§49-5C-4. Time and place of meetings.

1 The committees shall hold meetings at such times and
2 places as they may designate.

§49-5C-5. Assistance of other agencies.

1 The committees may request information from any
2 state officer or agency in order to assist in carrying out the
3 terms of this article, and such officer or agency is
4 authorized and directed to promptly furnish any data
5 requested.

§49-5C-6. Expenses; reimbursement.

1 The members of the committees and their assistants
2 shall be reimbursed for all expenses actually and
3 necessarily incurred in the performance of their duties
4 hereunder by the joint committee on government and
5 finance from the joint expenses fund.

ARTICLE 5E. DIVISION OF JUVENILE SERVICES.

§49-5E-1. Policy.

§49-5E-2. Division created; transfer of functions; employment of comprehensive strategy.

§49-5E-3. Transfer of functions; duties and powers; employment of comprehensive strategy.

§49-5E-4. Transfer of fiscal responsibility of Kanawha home for children.

§49-5E-5. Adult transfer facility; rules for specialized training for juvenile corrections officers and detention center employees.

§49-5E-1. Policy.

1 It is the policy of the state to provide a continuum of
2 care for its children who have been charged with an
3 offense which would be a crime if committed by an adult
4 and taken into custody. It is further the policy of the state
5 to ensure the safe and efficient custody of a detained child
6 through the entire juvenile justice process, and that this
7 can best be accomplished by the state by and through a
8 single division within the department of military affairs
9 and public safety.

§49-5E-2. Division created; transfer of functions; employment of comprehensive strategy.

1 There is hereby created the division of juvenile
2 services within the department of military affairs and
3 public safety. The director shall be appointed by the
4 governor with the advice and consent of the Senate, and
5 shall be responsible for the control and supervision of
6 each of its offices. The director may appoint deputy
7 directors and assign them duties as may be necessary for
8 the efficient management and operation of the division.

9 The division of juvenile services shall consist of two
10 subdivisions:

11 (1) The office of juvenile detention, which shall
12 assume responsibility for operating and maintaining

13 centers for the predispositional detention of juveniles,
14 including juveniles who have been transferred to adult
15 criminal jurisdiction under section ten, article five of this
16 chapter and juveniles who are awaiting transfer to a
17 juvenile corrections facility; and

18 (2) The office of juvenile corrections, which shall
19 assume responsibility for operating and maintaining
20 juvenile corrections facilities.

§49-5E-3. Transfer of functions; duties and powers; employment of comprehensive strategy.

1 The division of juvenile services shall assume the
2 following duties performed by the department of health
3 and human resources as to juveniles in detention facilities
4 or juvenile corrections facilities:

5 (1) Cooperating with the United States department of
6 justice in operating, maintaining and improving juvenile
7 correction facilities and predispositional detention centers,
8 complying with regulations thereof, and receiving and
9 expending federal funds for the services, as set forth in
10 section one, article one of this chapter;

11 (2) Providing care for children needing detention
12 pending disposition by a court having juvenile jurisdiction
13 or temporary care following such court action, as set forth
14 in section sixteen, article two of this chapter;

15 (3) Assigning the necessary personnel and providing
16 adequate space for the support and operation of any
17 facility providing for the detention of children committed
18 to the care of the division of juvenile services, as set forth
19 in section six, article five-a of this chapter;

20 (4) Proposing rules which outline policies and
21 procedures governing the operation of correctional,
22 detention and other facilities in its division wherein
23 juveniles may be housed, as set forth in section sixteen-a,
24 article five of this chapter;

25 (5) Assigning the necessary personnel and providing
26 adequate space for the support and operation of its

27 facilities, as set forth in section six, article five-a of this
28 chapter;

29 (6) Developing a comprehensive plan to maintain and
30 improve a unified state system of predispositional
31 detention centers for juveniles, as set forth in section six-a,
32 article five-a of this chapter;

33 (7) Working in cooperation with the department of
34 health and human resources in establishing, maintaining,
35 and continuously refining and developing a balanced and
36 comprehensive state program for children who are
37 delinquent, as set forth in section two, article six-b of this
38 chapter;

39 (8) In cooperation with the department of health and
40 human resources, establishing programs and services,
41 within available funds, designed to prevent juvenile
42 delinquency, to divert juveniles from the juvenile justice
43 system, to provide community-based alternatives to
44 juvenile detention and correctional facilities and to
45 encourage a diversity of alternatives within the juvenile
46 justice system, as set forth in section four, article five-b of
47 this chapter.

48 Working in collaboration with the department of
49 health and human resources, the division of juvenile
50 services shall employ a comprehensive strategy for the
51 social and rehabilitative programming and treatment of
52 juveniles consistent with the principles adopted by the
53 office of juvenile justice and delinquency prevention of
54 the office of justice programs of the United States
55 department of justice.

**§49-5E-4. Transfer of fiscal responsibility of Kanawha home
for children.**

1 (a) "Kanawha home for children" means the county
2 home for the detention of juvenile delinquents or children
3 charged with delinquency as established by the county
4 commission of Kanawha County pursuant to the
5 provisions of a local bill, House Bill No. 141, enacted by
6 the Legislature on the fourteenth day of February, one
7 thousand nine hundred fifty-five, as set forth in the Acts

8 of the West Virginia Legislature, Regular Session, 1955,
9 ch. 185.

10 (b) After the effective date of this section, the division
11 of juvenile services shall assume all fiscal responsibility for
12 operating, maintaining, administering and managing the
13 Kanawha home for children.

**§49-5E-5. Adult transfer facility; rules for specialized training
for juvenile corrections officers and detention
center employees.**

1 (a) On or before the first day of December, one
2 thousand nine hundred ninety-seven, the division of
3 juvenile services shall conduct a study of the
4 appropriateness and cost of renovating the Ohio County
5 jail or other facilities to house juveniles who have been
6 transferred to adult criminal jurisdiction and/or who are
7 awaiting post-sentencing transfer to a correctional facility.

8 (b) The division of juvenile services shall propose
9 legislative rules to be promulgated by the Legislature
10 according to the provisions of chapter twenty-nine-a of
11 this code, to require juvenile corrections officers and
12 detention center employees to complete specialized
13 training and certification. The training programs shall
14 meet the standards of those offered or endorsed by the
15 office of juvenile justice and delinquency prevention of
16 the office of justice programs of the United States
17 department of justice.

**ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR
ABUSE.**

§49-6-8. Foster care review; annual reports to the court.

1 (a) If, twelve months after receipt (by the state
2 department or its authorized agent) of physical custody of
3 a child either by a court ordered placement or by a
4 voluntary agreement, the state department has not placed a
5 child in permanent foster care or an adoptive home or
6 placed the child with a natural parent, the state department
7 shall file with the court a petition for review of the case.
8 The department shall also file with the court a report
9 detailing the efforts that have been made to place the child

10 in a permanent home and copies of the child's case plan
11 including the permanency plan as defined in section five,
12 article six of this chapter. Copies of the report shall be
13 sent to the child's attorney and be made available to the
14 child's parent(s) or guardian. "Permanent foster care"
15 shall mean a written arrangement with an adult or adults
16 following a six-month trial period whereby the state
17 department places the care, custody and control of a child
18 until the child's emancipation with such adult or adults.
19 The court shall schedule a hearing in chambers, giving
20 notice and the right to be present to: The child's attorney;
21 the child, if twelve years of age or older; the child's
22 parents; the child's guardians; the child's foster parents;
23 and such other persons as the court may in its discretion
24 direct. The child's presence may be waived by the child's
25 attorney at the request of the child or if the child would
26 suffer emotional harm. The purpose of the hearing is to
27 review the child's case, to determine whether and under
28 what conditions the child's commitment to the department
29 shall continue, and to determine what efforts are necessary
30 to provide the child with a permanent home. At the
31 conclusion of the hearing the court shall in accordance
32 with the best interests of the child enter an appropriate
33 order of disposition. The court order shall state: (1)
34 Whether or not the department made reasonable effort to
35 prevent out-of-home placement or that the specific
36 situation made such effort unreasonable; (2) the
37 permanency plan for the child; and (3) services required
38 to meet the child's needs. The court shall possess
39 continuing jurisdiction over cases reviewed under this
40 section for so long as a child remains in temporary foster
41 care, or, when a child is returned to his or her natural
42 parents subject to conditions imposed by the court, for so
43 long as the conditions are effective.

44 (b) The state department shall file a supplementary
45 petition for review with the court within twelve months and
46 every twelve months thereafter for every child that remains
47 in the physical or legal custody of the state department
48 until the child is placed in an adoptive home or permanent
49 foster care or returned to his or her parents.

50 (c) The state department shall annually report to the
51 court the current status of the placements of children in
52 permanent care and custody of the state department who
53 have not been adopted.

54 (d) The state department shall file a report with the
55 court in any case where any child in the temporary or
56 permanent custody of the state receives more than three
57 placements in one year no later than thirty days after the
58 third placement. This report shall be provided to all
59 parties and their counsel. Upon motion by any party, the
60 court shall review these placements and determine what
61 efforts are necessary to provide the child with a stable
62 foster or temporary home: *Provided*, That no report shall
63 be provided to any parent or parent's attorney whose
64 parental rights have been terminated pursuant to this
65 article.

66 (e) The state department shall notify, in writing, the
67 court, the child, if over the age of twelve, the child's
68 attorney, the parents and the parents' attorney forty-eight
69 hours prior to the move if this is a planned move, or within
70 forty-eight hours of the next business day after the move
71 if this is an emergency move, except where such
72 notification would endanger the child or the foster family.
73 This notice shall not be required in any case where the
74 child is in imminent danger in the child's current
75 placement. The location of the child need not be
76 disclosed, but the purpose of the move should be. This
77 requirement is not waived by placement of the child in a
78 home or other residence maintained by a private provider.
79 No notice shall be provided pursuant to this provision to
80 any parent or parent's attorney whose parental rights have
81 been terminated pursuant to this article.

82 (f) Nothing in this article precludes any party from
83 petitioning the court for review of the child's case at any
84 time. The court shall grant such petition upon a showing
85 that there is a change in circumstance or needs of the child
86 that warrants court review.

ARTICLE 7. GENERAL PROVISIONS.

§49-7-30. Certificate of need not required.

§49-7-31. Special account.

§49-7-32. Juvenile justice database.

§49-7-30. Certificate of need not required.

1 (a) A certificate of need, as provided for in article two-
2 d, chapter sixteen of this code, is not required by an entity
3 proposing behavioral health care facilities or behavioral
4 health care services for children who are placed out of
5 their home, or who are at imminent risk of being placed
6 out of their home, if a summary review is performed in
7 accordance with the provisions of this section.

8 (b) A summary review of proposed health care
9 facilities or health care services for children who are
10 placed out of their home, or who are at imminent risk of
11 being placed out of their home, is initiated when the
12 proposal is recommended to the health care cost review
13 authority by the secretary of the department of health and
14 human resources, and the secretary has made the
15 following findings:

16 (1) That the proposed facility or service is consistent
17 with the state health plan;

18 (2) That the proposed facility or service is consistent
19 with the department's programmatic and fiscal plan for
20 behavioral health services for children with mental health
21 and addiction disorders;

22 (3) That the proposed facility or service contributes to
23 providing services that are child and family driven, with
24 priority given to keeping children in their own homes;

25 (4) That the proposed facility or service will contribute
26 to reducing the number of child placements in out-of-state
27 facilities by making placements available in in-state
28 facilities;

29 (5) That the proposed facility or service contributes to
30 reducing the number of child placements in in-state or
31 out-of-state facilities by returning children to their
32 families, placing them in foster care programs, or making
33 available school-based and out-patient services; and

34 (6) If applicable, that the proposed services will be
35 community-based, locally accessible, and provided in an
36 appropriate setting consistent with the unique needs and
37 potential of each child and his or her family.

38 (c) The secretary's findings required by subsection (b)
39 of this section shall be filed with the secretary's
40 recommendation and appropriate documentation. If the
41 secretary's findings are supported by the accompanying
42 documentation, the proposal shall not require a certificate
43 of need.

44 (d) Any entity that does not qualify for summary
45 review shall be subject to certificate of need review.

§49-7-31. Special account.

1 (a) There is hereby established a special account in the
2 department of health and human resources in the state
3 treasury to be known as the "Child Assessment and In-
4 state Placement Fund." Any funds provided for the
5 purposes of this article by line-item appropriation of the
6 Legislature in any fiscal year shall be deposited in the
7 special account and used to carry out the purposes of this
8 article. Balances remaining in the special account at the
9 end of the fiscal year shall not expire or revert to the
10 general revenue: *Provided*, That balances remaining in the
11 account may be redesignated for other purposes by
12 appropriation of the Legislature. The secretary of the
13 department of health and human resources may order the
14 transfer of moneys in the special account to other
15 accounts within the department of health and human
16 resources, to the limited extent that children who are the
17 subject of this article are financially and medically eligible
18 for other programs or services of the division of health
19 and human resources, including programs funded, in
20 whole or in part, by federal funds.

21 (b) Any moneys saved by the department of health
22 and human resources by virtue of returning children from
23 out-of-state placements after implementing the structured
24 risk assessment and classification system provided for in
25 section four, article nine of this chapter shall be deposited
26 in the child assessment and in-state placement fund and

27 used solely for the purpose of developing and
 28 implementing programs that will reduce the numbers of
 29 children in long-term placements outside of their homes.

§49-7-32. Juvenile justice database.

1 The criminal justice and highway safety division of the
 2 department of military affairs and public safety is
 3 responsible for collecting, compiling and disseminating
 4 information in the juvenile justice database heretofore
 5 maintained by the facilities review panel of the juvenile
 6 justice committee. Accordingly, and notwithstanding any
 7 other provision of this code to the contrary, the division
 8 shall be granted access to confidential juvenile records for
 9 the limited purpose of continuing maintenance of the
 10 juvenile justice database: *Provided*, That the divisions shall
 11 keep such records confidential and not publish any
 12 information that would identify any individual juvenile.

ARTICLE 10. CHILD PLACEMENT ALTERNATIVES.

- §49-10-1. Creation of child placement alternatives corporation; composition; board of directors; appointment, term, etc., of private members; chairman and vice chairman; quorum.
- §49-10-2. Management and control of child placement alternatives corporation vested in board; officers.
- §49-10-3. Corporate powers.
- §49-10-4. Out-of-state placements; needs assessment; screenings; referral for assessment, placement and services; limitations.
- §49-10-5. Statistical and analytical reports.

§49-10-1. Creation of child placement alternatives corporation; composition; board of directors; appointment, term, etc., of private members; chairman and vice chairman; quorum.

1 (a) There is created as a governmental instrumentality
 2 of the state of West Virginia, a public body corporate to be
 3 known as the West Virginia child placement alternatives
 4 corporation.

5 (b) The child placement alternatives corporation is
 6 created and established to serve a public corporate
 7 purpose and to act for the public benefit and as a
 8 governmental instrumentality of the state of West Virginia,

9 to act on behalf of the state and its people in serving the
10 needs of children who are placed out of their homes or
11 who are at risk of out-of-home placement, as well as
12 serving families, providers and policymakers.

13 (c) The child placement alternatives corporation shall
14 be governed by a board of directors, consisting of nine
15 members, three of whom shall be the secretary of the
16 department of health and human resources, the director of
17 the division of juvenile services within the department of
18 military affairs and public safety, and the chairman of the
19 department of behavioral medicine and psychiatry of the
20 Robert C. Byrd health sciences center at West Virginia
21 university, or their designated representatives as public
22 directors, and six citizen members chosen from the
23 general public residing in the state, no more than two of
24 whom shall be from each congressional district, and not
25 more than three of whom shall be from any political
26 party.

27 (d) Upon organization of the child placement
28 alternatives corporation, the governor shall appoint, by
29 and with the advice and consent of the Senate, the six
30 private directors to take office and to exercise all powers
31 thereof immediately, with three appointed for terms of two
32 years, and with three appointed for terms of four years,
33 respectively, as the governor shall designate; at the
34 expiration of the initial terms and for all succeeding terms,
35 the governor shall appoint a successor to the office of
36 private director for a term of four years in each case.

37 (e) In cases of any vacancy in the office of a private
38 director, such vacancy shall be filled by appointment by
39 the governor for the unexpired term.

40 (f) The governor may remove any private director
41 whom he may appoint in case of incompetency, neglect of
42 duty, gross immorality, or malfeasance in office; and he
43 may declare his or her office vacant and may appoint a
44 person for such vacancy as provided in other cases of
45 vacancy.

46 (g) The chairman of the board of directors shall be
47 designated by the governor from among the directors.

48 (h) Five members of the board of directors shall
49 constitute a quorum. No vacancy in the membership of
50 the board shall impair the right of a quorum to exercise all
51 the rights and perform all the duties of the board of
52 directors.

53 (i) No action shall be taken by the board of directors
54 except upon the affirmative vote of a majority of the
55 directors present and voting.

56 (j) The directors, including the chairman, vice
57 chairman and the treasurer of the board of directors, and
58 the secretary of the board of directors, shall receive no
59 compensation for their services but shall be entitled to
60 their reasonable and necessary expenses actually incurred
61 in discharging their duties under this article.

**§49-10-2. Management and control of child placement
alternatives corporation vested in board; officers.**

1 (a) The management and control of the child
2 placement alternatives corporation shall be vested solely in
3 the board of directors in accordance with the provisions of
4 this article.

5 (b) The chairman shall be the chief executive officer
6 of the corporation, and, in his absence, the vice chairman
7 shall act as chief executive officer.

8 (c) The board of directors may appoint a chief
9 administrative officer and may fix his title, duties and
10 compensation.

11 (d) The board of directors of the corporation shall
12 annually elect from its membership a treasurer, and shall
13 annually elect a secretary, who need not be a member of
14 the board, to keep a record of the proceedings of the
15 corporation.

16 (e) The treasurer of the corporation shall be custodian
17 of all funds of the child placement alternatives
18 corporation, and shall be bonded in such amount as the
19 other members of the board of directors may designate.

§49-10-3. Corporate powers.

1 The child placement alternatives corporation is hereby
2 granted, has and may exercise all powers necessary or
3 appropriate to carry out and effectuate its corporate
4 purposes, including, but not limited to, the following:

5 (1) To act as an information broker or gatekeeper
6 serving children, families, providers and policymakers,
7 functioning as the single entity responsible for
8 recommending appropriate placements for children out of
9 their homes and alternatives to such placements;

10 (2) To provide one or more diagnostic and evaluation
11 centers to accept referrals and conduct evaluations,
12 including psychiatric, psychological, educational, pediatric
13 and adaptive functioning, as a complement to existing
14 community-based programs and services;

15 (3) To identify the services and availability of services,
16 as gatekeeper, for level assignment and placement;

17 (4) To assist the juvenile justice system, mental health
18 providers and social service agencies in the identification
19 of facilities and services appropriate to the needs of
20 individual children, providing access to placement
21 information through one telephone call and a twenty-four
22 hour response time;

23 (5) To accept appropriations, gifts, grants, bequests
24 and devises and to utilize or dispose of the same to carry
25 out its corporate purposes;

26 (6) To make and execute contracts, releases,
27 compromises, compositions and other instruments
28 necessary or convenient for the exercise of its powers, or
29 to carry out its corporate purposes;

30 (7) To collect reasonable fees and charges in
31 connection with providing services as prescribed by this
32 article, and in connection with providing professional,
33 consultative and project assistance services;

34 (8) To sue and be sued;

35 (9) To have a seal and alter the same at will;

36 (10) To make, and from time to time, amend and
37 repeal bylaws and rules not inconsistent with the
38 provisions of this article;

39 (11) To appoint such officers, employees and
40 consultants as it deems advisable and to fix their
41 compensation and prescribe their duties;

42 (12) To acquire, hold and dispose of real and personal
43 property for its corporate purposes;

44 (13) To enter into agreements or other transactions
45 with any federal or state agency, any person and any
46 domestic or foreign partnership, corporation, association
47 or organization; and

48 (14) To make and publish such rules as are necessary
49 to effectuate its corporate purposes.

**§49-10-4. Out-of-state placements; needs assessment; screen-
ings; referral for assessment, placement and
services; limitations.**

1 (a) On or before first day of October, one thousand
2 nine hundred ninety-seven, the corporation shall develop
3 and implement a structured risk assessment and
4 classification system for West Virginia children currently
5 placed in out-of-state facilities. The risk assessment
6 system shall be designed to identify:

7 (1) Those children who require long-term placement
8 in a facility with special features not available within this
9 state;

10 (2) Those children who require long-term placement
11 in a facility that is or may become available within this
12 state;

13 (3) Those children who require short-term care in a
14 facility of not more than three months followed by
15 movement to a less restrictive setting;

16 (4) Those children who could be placed directly in a
17 community-based setting with appropriate support and
18 services.

19 (b) The corporation shall cause an initial screening,
20 based on the risk assessment and classification system, to
21 preliminarily identify those children who require long-
22 term placement in a facility with special features not
23 available within this state and those children for whom
24 appropriate in-state placements may be found. After the
25 initial screening, the corporation may conduct further
26 screenings under this subsection at intervals established by
27 the corporation.

28 (c) The corporation shall develop and implement a
29 plan for: (1) Reviewing and assessing the needs of those
30 children for whom appropriate in-state placements may be
31 found; and (2) developing and implementing specific in-
32 state alternatives for placement of each child, including
33 recommended support services. Based on the initial
34 screening, any or all of the children for whom appropriate
35 in-state placements may be found may be provided with
36 further review and assessment, appropriate in-state
37 placement, and services under. The corporation shall
38 consider:

39 (1) Services through community-based programs to
40 assist in the prevention of the need for more costly
41 residential care;

42 (2) The resources and programming available through
43 family resource networks and multidisciplinary teams;

44 (3) The recommendations of legislative and executive
45 committees, commissions and task forces established to
46 study issues affecting juvenile placement;

47 (4) The comprehensive strategy and assessment and
48 classification models endorsed by the office of juvenile
49 justice and delinquency prevention of the United States
50 department of justice; and

51 (5) Individual concerns to be addressed by service and
52 care providers.

53 (d) The corporation may issue requests for proposals
54 to implement the provisions of this section, and may solicit
55 alternate proposals to meet a defined need. The
56 corporation may further accept bids from any person,
57 firm, agency or corporation, and may enter into contracts
58 or agreements with public or private agencies, licensed
59 health care providers, or other qualified persons for the
60 following functions or combinations of the following
61 functions, according to standards established by the
62 corporation:

63 (1) Conducting needs assessments for children
64 currently in out-of-state facilities for whom appropriate
65 in-state alternatives may be found and, if the corporation
66 determines that evaluation of family resources and needs
67 is necessary, the child's family;

68 (2) Recommending a service plan that best meets the
69 individual needs of the child and may include support
70 services for his or her family;

71 (3) Obtaining appropriate care, treatment or place-
72 ment and appropriate community-based service.

§49-10-5. Statistical and analytical reports.

1 Beginning with the last quarter of the calendar year
2 one thousand nine hundred ninety-seven, the corporation,
3 in cooperation with the secretary of health and human
4 resources, shall prepare a quarterly statistical and
5 analytical report regarding the numbers of children
6 returned to the state since the inception of the program
7 and during the quarter, and the effectiveness of the
8 program established in this article. Copies of the quarterly
9 statistical and analytical reports shall be furnished to the
10 governor and to the joint committee on government and
11 finance.

CHAPTER 54

(H. B. 2873—By Delegates Amores, Givens, Buchanan, Coleman,
Johnson, Smirl and L. White)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section five, article one, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section three, article five-b of said chapter; to amend and reenact sections two and four, article one of said chapter; to amend and reenact sections three, eight, nine, eleven, thirteen and sixteen, article five of said chapter; to further amend said article by adding thereto two new sections, designated sections eight-a and eleven-a; and to amend and reenact sections two, four, five, six and seven, article five-b of said chapter, all relating to decriminalizing status offenses and providing that no juvenile shall be confined in a facility for adult offenders.

Be it enacted by the Legislature of West Virginia:

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

Article

1. Purposes; Definitions.
5. Juvenile Proceedings.
- 5B. West Virginia Juvenile Offender Rehabilitation Act.

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-2. "Juvenile" or "Child" defined.

§49-1-4. Other definitions.

§49-1-2. "Juvenile" or "Child" defined.

1 As used in this chapter, "juvenile" or "child" means
2 any person under eighteen years of age. Once a juvenile
3 or child is transferred to a court with criminal jurisdiction
4 pursuant to section ten, article five of this chapter, he or
5 she nevertheless remains a juvenile or child for the
6 purposes of the applicability of the provisions of this
7 chapter with the exception of sections one through
8 seventeen of article five of this chapter, unless otherwise
9 stated therein.

§49-1-4. Other definitions.

1 As used in this chapter:

2 (1) "Child welfare agency" means any agency or
3 facility maintained by the state or any county or
4 municipality thereof, or any agency or facility maintained
5 by an individual, firm, corporation, association or
6 organization, public or private, to receive children for care
7 and maintenance or for placement in residential care
8 facilities;

9 (2) "Community based," when referring to a facility,
10 program, or service, means located near the juvenile's
11 home or family and involving community participation in
12 planning, operation, and evaluation, and which may
13 include, but is not limited to, medical, educational,
14 vocational, social and psychological guidance, training,
15 special education, counseling, alcoholism and any
16 treatment, and other rehabilitation services;

17 (3) "Court" means the circuit court of the county
18 with jurisdiction of the case or the judge thereof in
19 vacation unless otherwise specifically provided;

20 (4) "Custodian" means a person who has or shares
21 actual physical possession or care and custody of a child,
22 regardless of whether such person has been granted
23 custody of the child by any contract, agreement or legal
24 proceedings;

25 (5) "Department" or "state department" means the
26 state department of health and human resources;

27 (6) "Division of juvenile services" means the division
28 within the department of military affairs and public safety
29 pursuant to article five-e of this chapter;

30 (7) "Guardian" means a person who has care and
31 custody of a child as a result of any contract, agreement or
32 legal proceeding;

33 (8) "Juvenile delinquent" means a juvenile who has
34 been adjudicated as one who commits an act which would
35 be a crime under state law or a municipal ordinance if
36 committed by an adult;

37 (9) "Nonsecure facility" means any public or private
38 residential facility not characterized by construction
39 fixtures designed to physically restrict the movements and
40 activities of individuals held in lawful custody in such
41 facility and which provides its residents access to the
42 surrounding community with supervision;

43 (10) "Referee" means a juvenile referee appointed
44 pursuant to section one, article five-a of this chapter,
45 except that in any county which does not have a juvenile
46 referee the judge or judges of the circuit court may
47 designate one or more magistrates of the county to
48 perform the functions and duties which may be performed
49 by a referee under this chapter;

50 (11) "Secretary" means the secretary of health and
51 human resources;

52 (12) "Secure facility" means any public or private
53 residential facility which includes construction fixtures
54 designed to physically restrict the movements and
55 activities of juveniles or other individuals held in lawful
56 custody in such facility;

57 (13) "Staff-secure facility" means any public or
58 private residential facility characterized by staff
59 restrictions of the movements and activities of individuals
60 held in lawful custody in such facility and which limits its
61 residents' access to the surrounding community, but is not

62 characterized by construction fixtures designed to
63 physically restrict the movements and activities of
64 residents;

65 (14) "Status offender" means a juvenile who has
66 been adjudicated as one:

67 (A) Who habitually and continually refuses to respond
68 to the lawful supervision by his or her parents, guardian or
69 legal custodian such that the child's behavior substantially
70 endangers the health, safety, or welfare of the juvenile or
71 any other person;

72 (B) Who has left the care of his or her parents,
73 guardian or custodian without the consent of such person
74 or without good cause;

75 (C) Who is habitually absent from school without
76 good cause; or

77 (D) Who violates any West Virginia municipal, county,
78 or state law regarding use of alcoholic beverages by
79 minors;

80 (15) "Valid court order" means a court order given
81 to a juvenile who was brought before the court and made
82 subject to such order, and who received, before the
83 issuance of such order, the full due process rights
84 guaranteed to such juvenile by the constitutions of the
85 United States and the state of West Virginia.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-3. Noncustodial counseling of a child.

§49-5-8. Taking a juvenile into custody.

§49-5-8a. Detention hearing; counsel.

§49-5-9. Preliminary hearing; counsel; improvement period.

§49-5-11. Adjudication.

§49-5-11a. Status Offenders: Intervention and services by state department;
enforcement; detention; out-of-home placement; state department
custody; least restrictive alternative.

§49-5-13. Disposition of juvenile delinquents; appeal.

§49-5-16. Prohibition on committing juveniles to adult facilities.

§49-5-3. Noncustodial counseling of a child.

1 The court at any time, or the department or other
2 official upon a request from a parent, guardian, or
3 custodian, may, without institution of proceedings under
4 this article, refer a juvenile alleged to be delinquent or a
5 status offender to a counselor at the department or a
6 community mental health center, or other professional
7 counselor in the community. In the event the juvenile
8 refuses to respond to such reference the department may
9 serve a notice by first-class mail or personal service of
10 process upon the juvenile, setting forth the facts and
11 stating that the department will seek a noncustodial order
12 from the court directing the juvenile to submit to
13 counseling. The notice shall set forth the time and place
14 for the hearing on the matter. The court or referee after
15 hearing may direct the juvenile to participate in a
16 noncustodial period of counseling not to exceed six
17 months. Upon recommendation of the department, and
18 with the consent of the juvenile's parent, custodian, or
19 guardian, the court or referee may also allow the
20 participation of such parent, custodian, or guardian in said
21 counseling. No information obtained as the result of such
22 counseling shall be admissible in a subsequent proceeding
23 under this article.

§49-5-8. Taking a juvenile into custody.

1 (a) In proceedings instituted by the filing of a juvenile
2 petition the circuit court may enter an order directing that
3 a juvenile be taken into custody only if one of the
4 following conditions exist: (1) The petition shows that
5 grounds exist for the arrest of an adult in identical
6 circumstances; (2) the health, safety and welfare of the
7 juvenile demand such custody; (3) the juvenile is a
8 fugitive from a lawful custody or commitment order of a
9 juvenile court; or (4) the juvenile is an alleged delinquent
10 and has a record of willful failure to appear at juvenile
11 proceedings, and custody is necessary to assure his or her
12 presence before the court. A detention hearing pursuant
13 to section eight-a of this article shall be held without delay
14 by the judge, juvenile referee or magistrate authorized to
15 conduct such hearing, and in no event shall the delay
16 exceed the next day, and such juvenile shall be released on
17 recognizance to his or her parent, guardian or custodian

18 unless findings are made as specified in subsection (a) of
19 section eight-a of this article.

20 (b) Absent a warrant or court order, a juvenile may be
21 taken into custody by a law-enforcement official only if
22 one of the following conditions exist: (1) Grounds exist
23 for the arrest of an adult in identical circumstances; (2)
24 emergency conditions exist which in the judgment of the
25 officer pose imminent danger to the health, safety and
26 welfare of the juvenile; (3) the official has reasonable
27 grounds to believe that the juvenile has left the care of his
28 or her parents, guardian or custodian without the consent
29 of such person, and the health, safety and welfare of the
30 juvenile is endangered; (4) the juvenile is a fugitive from a
31 lawful custody or commitment order of a juvenile court;
32 or (5) the official has reasonable grounds to believe the
33 juvenile to have been driving a motor vehicle with any
34 amount of alcohol in his or her blood.

35 (c) Upon taking a juvenile into custody, with or
36 without a warrant or court order, the official shall:

37 (1) Immediately notify the juvenile's parent, guardian,
38 custodian or, if the parent, guardian or custodian cannot
39 be located, a close relative;

40 (2) Release the juvenile into the custody of his or her
41 parent, guardian or custodian unless the circumstances
42 warrant otherwise: *Provided*, That an alleged status
43 offender shall not be detained in a secure facility in any
44 case and in a staff-secure facility only if:

45 (A) Circumstances present an immediate threat of
46 serious bodily harm to the juvenile if released;

47 (B) No responsible adult can be found into whose
48 custody the juvenile can be delivered: *Provided*, That each
49 day the juvenile is detained, a written record must be made
50 of all attempts to locate such responsible adult and, after
51 the initial detention, a lawyer shall be appointed to
52 represent the juvenile by the end of the next calendar day;

53 (3) Refer the matter to the prosecuting attorney,
54 department or probation officer for proceedings under
55 this article; and

56 (4) If a juvenile is being held in custody absent a
57 warrant or court order, cause a warrant or order, as the
58 case may be, to be immediately issued authorizing the
59 detention of such juvenile.

60 An alleged status offender detained pursuant to
61 paragraphs (A) and (B) of subdivision (2) herein shall be
62 placed in the custody of the department.

63 (d) If an alleged status offender is taken into custody
64 pursuant to this section, the department shall be
65 immediately notified. Such child shall be placed in the
66 custody of the department and shall not be confined in a
67 secure facility.

68 (e) In the event that a child is delivered into the
69 custody of a sheriff or director of a detention facility, such
70 sheriff or director shall immediately notify the court or
71 referee. Said sheriff or director shall immediately provide
72 to every child who is delivered into his or her custody a
73 written statement explaining the child's right to a prompt
74 detention hearing, his or her right to counsel including
75 appointed counsel if he cannot afford counsel and his or
76 her privilege against self-incrimination. In all cases when
77 a child is delivered into custody, the child shall be released
78 to his or her parent, guardian or custodian by the end of
79 the next day, after being delivered into such custody,
80 unless the child has been placed in detention pursuant to
81 section eight-a of this article.

82 (f) A child in custody must immediately be taken
83 before a referee or judge of the circuit court and in no
84 event shall a delay exceed the next day: *Provided*, That if
85 there be no judge or referee then available in the county,
86 then such child shall be taken immediately before any
87 magistrate in the county for the sole purpose of holding a
88 detention hearing.

§49-5-8a. Detention hearing; counsel.

1 (a) The judge, referee or magistrate shall inform the
2 juvenile of his or her right to remain silent, that any
3 statement may be used against him or her and of his or
4 her right to counsel, and no interrogation shall be made

5 without the presence of a parent or counsel. If the
6 juvenile or his or her parent, guardian or custodian has not
7 retained counsel, counsel shall be appointed as soon as
8 practicable. The referee, judge or magistrate shall hear
9 testimony concerning the circumstances for taking the
10 juvenile into custody and the possible need for detention
11 in accordance with section two, article five-a of this
12 chapter. The sole mandatory issue at the detention
13 hearing shall be whether the juvenile shall be detained
14 pending further court proceedings. The court shall, if
15 advisable, and if the health, safety and welfare of the
16 juvenile will not be endangered thereby, release the
17 juvenile on recognizance to his or her parents, custodians
18 or an appropriate agency; however, if warranted, the court
19 may require bail, except that bail may be denied in any
20 case where bail could be denied if the accused were an
21 adult.

22 (b) The judge of the circuit court or referee may, in
23 conjunction with the detention hearing, conduct a
24 preliminary hearing pursuant to section nine, article five
25 of this chapter: *Provided*, That all parties are prepared to
26 proceed and the juvenile has counsel during such hearing.

§49-5-9. Preliminary hearing; counsel; improvement period.

1 (a) Following the filing of a juvenile petition, unless a
2 preliminary hearing has previously been held in
3 conjunction with a detention hearing with respect to the
4 same charge contained in the petition, the circuit court or
5 referee shall hold a preliminary hearing. In the event that
6 the juvenile is in custody, such hearing shall be held within
7 ten days of the time the juvenile is taken into custody
8 unless good cause be shown for a continuance. If no
9 preliminary hearing is held within ten days of the time the
10 juvenile is taken into custody, the juvenile shall be released
11 on recognizance unless the hearing has been continued
12 for good cause. If the judge is in another county in the
13 circuit, the hearing may be conducted in such other
14 county. The preliminary hearing may be waived by the
15 juvenile, upon advice of his counsel. At the hearing, the
16 court or referee shall:

17 (1) If the juvenile is not represented by counsel,
18 inform the juvenile and his parents, guardian or custodian
19 or any other person standing in loco parentis to him of the
20 juvenile's right to be represented at all stages of
21 proceedings under this article and the right to have
22 counsel appointed.

23 (2) Appoint counsel by order entered of record, if
24 counsel has not already been retained, appointed or
25 knowingly waived.

26 (3) Determine after hearing if there is probable cause
27 to believe that the juvenile is a status offender or a juvenile
28 delinquent. If probable cause is not found, the juvenile, if
29 in detention, shall be released and the proceedings
30 dismissed. If probable cause is found, the case shall
31 proceed to adjudication. At the hearing or as soon
32 thereafter as is practicable, the date for the adjudicatory
33 hearing shall be set to give the juvenile, the juvenile's
34 parents and attorney at least ten days' notice, unless notice
35 is waived by all parties.

36 (4) In lieu of placing the juvenile in a detention
37 facility when bond is not provided, the court may place
38 the juvenile in the temporary custody of the department
39 pursuant to section sixteen, article two of this chapter or
40 may place the juvenile, if the juvenile is an alleged
41 delinquent, in the custody of a probation officer.

42 If the juvenile is detained in custody, the detention
43 shall not continue longer than thirty days without
44 commencement of the adjudicatory hearing unless good
45 cause for a continuance be shown by either party or, if a
46 jury trial be demanded, no longer than the next regular
47 term of said court.

48 (5) Inform the juvenile of the right to demand a jury
49 trial.

50 (b) The juvenile may move to be allowed an
51 improvement period for a period not to exceed one year.
52 If the court is satisfied that the best interest of the juvenile
53 is likely to be served by an improvement period, the court

54 may delay the adjudicatory hearing and allow a
55 noncustodial improvement period upon terms calculated
56 to serve the rehabilitative needs of the juvenile. At the
57 conclusion of the improvement period, the court shall
58 dismiss the proceeding if the terms have been fulfilled;
59 otherwise, the court shall proceed to the adjudicatory
60 stage. A motion for an improvement period shall not be
61 construed as an admission or be used as evidence.

§49-5-11. Adjudication.

1 At the outset of an adjudicatory hearing, the court
2 shall inquire of the juvenile whether he wishes to admit or
3 deny the allegations in the petition. The juvenile may
4 elect to stand mute, in which event the court shall enter a
5 general denial of all allegations in the petition.

6 (a) If the respondent juvenile admits the allegations of
7 the petition, the court shall consider the admission to be
8 proof of the allegations if the court finds (1) the
9 respondent fully understands all his rights under this
10 article, (2) the respondent voluntarily, intelligently and
11 knowingly admits all facts requisite for an adjudication
12 and (3) the respondent in his admission has not set forth
13 facts which constitute a defense to the allegations.

14 (b) If the respondent juvenile denies the allegations,
15 the court shall dispose of all pretrial motions and the court
16 or jury shall proceed to hear evidence.

17 (c) If the allegations in a petition alleging that the
18 juvenile is delinquent are admitted or are sustained by
19 proof beyond a reasonable doubt, the court shall schedule
20 the matter for disposition pursuant to section thirteen of
21 this article.

22 (d) If the allegations in a petition alleging that the
23 juvenile is a status offender are admitted or sustained by
24 clear and convincing proof, the court shall refer the
25 juvenile to the department of health and human resources
26 for services, pursuant to section eleven-a of this article.

27 (e) If the allegations in a petition are not sustained by
28 proof as provided in subsections (c) and (d) of this

29 section, the petition shall be dismissed and the juvenile
30 shall be discharged if he or she is in custody.

31 (f) Findings of fact and conclusions of law addressed
32 to all allegations in the petition shall be stated on the
33 record or reduced to writing and filed with the record or
34 incorporated into the order of the court.

**§49-5-11a. Status Offenders: Intervention and services by
state department; enforcement; detention; out-
of-home placement; state department custody;
least restrictive alternative.**

1 (a) Services for status offenders provided by the
2 department shall be consistent with the provisions of
3 article five-b of this chapter and shall be designed to
4 develop skills and supports within families and to resolve
5 problems related to the juveniles or conflicts within their
6 families. Services may include, but are not limited to,
7 referral of juveniles and parents, guardians, or custodians
8 and other family members to services for psychiatric or
9 other medical care, or psychological, welfare, legal,
10 educational, or other social services, as appropriate to the
11 needs of the juveniles and the family.

12 (b) If necessary, the department may petition the
13 circuit court:

14 (1) For a valid court order, as defined in section four,
15 article one of this chapter, to enforce compliance with a
16 service plan or to restrain actions that interfere with or
17 defeat a service plan; or

18 (2) For a valid court order to place a juvenile out-of-
19 home in a nonsecure or staff-secure setting, and/or to
20 place a juvenile in custody of the department.

21 (c) The court shall not be limited to the relief sought
22 in the department's petition and shall make every effort to
23 place juveniles in community based facilities which are the
24 least restrictive alternatives appropriate to the needs of the
25 juvenile and the community.

***§49-5-13. Disposition of juvenile delinquents; appeal.**

1 (a) In aid of disposition of juvenile delinquents, the
2 juvenile probation officer assigned to the court shall, upon
3 request of the court, make an investigation of the
4 environment of the juvenile and the alternative
5 dispositions possible. The court, upon its own motion, or
6 upon request of counsel, may order a psychological
7 examination of the juvenile. The report of such
8 examination and other investigative and social reports
9 shall not be made available to the court until after the
10 adjudicatory hearing. Unless waived, copies of the report
11 shall be provided to counsel for the petitioner and counsel
12 for the juvenile no later than seventy-two hours prior to
13 the dispositional hearing.

14 (b) Following the adjudication, the court shall conduct
15 the dispositional proceeding, giving all parties an
16 opportunity to be heard. In disposition the court shall not
17 be limited to the relief sought in the petition and shall, in
18 electing from the following alternatives, consider the best
19 interests of the juvenile and the welfare of the public:

20 (1) Dismiss the petition;

21 (2) Refer the juvenile and the juvenile's parent or
22 custodian to a community agency for needed assistance
23 and dismiss the petition;

24 (3) Upon a finding that the juvenile is in need of
25 extra-parental supervision: (A) Place the juvenile under
26 the supervision of a probation officer of the court or of
27 the court of the county where the juvenile has his or her
28 usual place of abode or other person while leaving the
29 juvenile in custody of his or her parent or custodian; and
30 (B) prescribe a program of treatment or therapy or limit
31 the juvenile's activities under terms which are reasonable
32 and within the child's ability to perform, including
33 participation in the litter control program established

***Clerk's Note:** This section was also amended by H.B. 2680 (Chapter 53), which passed prior to this act.

34 pursuant to section twenty-five, article seven, chapter
35 twenty of this code, or other appropriate programs of
36 community service;

37 (4) Upon a finding that a parent or custodian is not
38 willing or able to take custody of the juvenile, that a
39 juvenile is not willing to reside in the custody of his parent
40 or custodian, or that a parent or custodian cannot provide
41 the necessary supervision and care of the juvenile, the
42 court may place the juvenile in temporary foster care or
43 temporarily commit the juvenile to the department, the
44 division of juvenile services or a child welfare agency.
45 The court order shall state that continuation in the home is
46 contrary to the best interest of the juvenile and why; and
47 whether or not the department made a reasonable effort to
48 prevent the placement or that the emergency situation
49 made such efforts unreasonable or impossible. Whenever
50 the court transfers custody of a youth to the division of
51 human services, an appropriate order of financial support
52 by the parents or guardians shall be entered in accordance
53 with section five, article seven of this chapter and
54 guidelines promulgated by the supreme court of appeals;

55 (5) Upon a finding that the best interests of the
56 juvenile or the welfare of the public require it, and upon
57 an adjudication of delinquency pursuant to subdivision
58 (1), section four, article one of this chapter, the court may
59 commit the juvenile to an industrial home, correctional
60 institution for juveniles, or other appropriate facility for
61 the treatment, instruction and rehabilitation of juveniles:
62 *Provided*, That the court maintains discretion to consider
63 alternative sentencing arrangements. Commitments shall
64 not exceed the maximum term for which an adult could
65 have been sentenced for the same offense. The order shall
66 state that continuation in the home is contrary to the best
67 interests of the juvenile and why; and whether or not the
68 state department made a reasonable effort to prevent the
69 placement or that the emergency situation made such
70 efforts unreasonable or impossible; or

71 (6) After a hearing conducted under the procedures
72 set out in subsections (c) and (d), section four, article five,
73 chapter twenty-seven of this code, commit the juvenile to a

74 mental health facility in accordance with the juvenile's
75 treatment plan; the director may release a juvenile and
76 return him to the court for further disposition. The order
77 shall state that continuation in the home is contrary to the
78 best interests of the juvenile and why; and whether or not
79 the state department made a reasonable effort to prevent
80 the placement or that the emergency situation made such
81 efforts unreasonable or impossible.

82 (c) The disposition of the juvenile shall not be affected
83 by the fact that the juvenile demanded a trial by jury or
84 made a plea of denial. Any dispositional order is subject
85 to appeal to the supreme court of appeals.

86 (d) Following disposition, it shall be inquired of the
87 respondent whether or not appeal is desired and the
88 response transcribed; a negative response shall not be
89 construed as a waiver. The evidence shall be transcribed
90 as soon as practicable and made available to the juvenile
91 or his or her counsel, if the same is requested for purposes
92 of further proceedings. A judge may grant a stay of
93 execution pending further proceedings.

94 (e) Notwithstanding any other provision of this code
95 to the contrary, if a juvenile charged with delinquency
96 under this chapter is transferred to adult jurisdiction and
97 there tried and convicted, the court may make its
98 disposition in accordance with this section in lieu of
99 sentencing such person as an adult.

§49-5-16. Prohibition on committing juveniles to adult facilities.

1 (a) No juvenile, including one who has been
2 transferred to criminal jurisdiction of the court, shall be
3 detained or confined in any institution in which he or she
4 has contact with or comes within sight or sound of any
5 adult persons incarcerated because they have been
6 convicted of a crime or are awaiting trial on criminal
7 charges or with the security staff (including management)
8 or direct-care staff of a jail or locked facility for adults.

9 (b) No child who has been convicted of an offense
10 under the adult jurisdiction of the circuit court shall be

11 held in custody in a penitentiary of this state: *Provided,*
12 That such child may be transferred from a secure juvenile
13 facility to a penitentiary after he shall attain the age of
14 eighteen years if, in the judgment of the court which
15 committed such child, such transfer is appropriate:
16 *Provided, however,* That any other provision of this code
17 to the contrary notwithstanding, prior to such transfer the
18 child shall be returned to the sentencing court for the
19 purpose of reconsideration and modification of the
20 imposed sentence, which shall be based upon a review of
21 all records and relevant information relating to the child's
22 rehabilitation since his conviction under the adult
23 jurisdiction of the court.

**ARTICLE 5B. WEST VIRGINIA JUVENILE OFFENDER REHA-
BILITATION ACT.**

§49-5B-2. Purpose and intent.

§49-5B-4. Responsibilities of the department of health and human resources.

§49-5B-5. Rehabilitative facilities for status offenders.

§49-5B-6. Enforcement of legal custody.

§49-5B-7. Reporting requirements; cataloguing of services.

***§49-5B-2. Purpose and intent.**

1 It is the purpose and intent of the Legislature to
2 provide for the creation of all reasonable means and
3 methods that can be established by a humane and
4 enlightened state, solicitous of the welfare of its children,
5 for the prevention of delinquency and for the care and
6 rehabilitation of juvenile delinquents and status offenders.
7 It is further the intent of the Legislature that this state,
8 through the department of health and human resources,
9 establish, maintain, and continuously refine and develop, a
10 balanced and comprehensive state program for juveniles
11 who are potentially delinquent or are status offenders or
12 juvenile delinquents in the care or custody of the
13 department.

*Clerk's Note: This section was also amended by H.B. 2680 (Chapter 53), which passed prior to this act.

***§49-5B-4. Responsibilities of the department of health and human resources.**

1 (a) The department of health and human resources
2 and the division of juvenile services of the department of
3 military affairs and public safety are empowered to
4 establish, and shall establish, subject to the limits of funds
5 available or otherwise appropriated therefor, programs and
6 services designed to prevent juvenile delinquency, to divert
7 juveniles from the juvenile justice system, to provide
8 community-based alternatives to juvenile detention and
9 correctional facilities and to encourage a diversity of
10 alternatives within the juvenile justice system. The
11 development, maintenance and expansion of programs
12 and services may include, but not be limited to, the
13 following:

14 (1) Community-based programs and services for the
15 prevention and treatment of juvenile delinquency through
16 the development of foster-care and shelter-care homes,
17 group homes, halfway houses, homemaker and home
18 health services, twenty-four hour intake screening,
19 volunteer and crisis home programs, day treatment and
20 any other designated community-based diagnostic,
21 treatment or rehabilitative service;

22 (2) Community-based programs and services to work
23 with parents and other family members to maintain and
24 strengthen the family unit so that the juvenile may be
25 retained in his home;

26 (3) Youth service bureaus and other community-based
27 programs to divert youth from the juvenile court or to
28 support, counsel, or provide work and recreational
29 opportunities for status offenders, juvenile delinquents and
30 other youth to help prevent delinquency;

31 (4) Projects designed to develop and implement
32 programs stressing advocacy activities aimed at improving
33 services for and protecting rights of youth impacted by
34 the juvenile justice system;

*Clerk's Note: This section was also amended by H.B. 2680 (Chapter 53), which passed prior to this act.

35 (5) Educational programs or supportive services
36 designed to encourage status offenders, juvenile
37 delinquents, and other youth to remain in elementary and
38 secondary schools or in alternative learning situations;

39 (6) Expanded use of professional and para-
40 professional personnel and volunteers to work effectively
41 with youth;

42 (7) Youth initiated programs and outreach programs
43 designed to assist youth who otherwise would not be
44 reached by traditional youth assistance programs;

45 (8) A statewide program designed to reduce the
46 number of commitments of juveniles to any form of
47 juvenile facility as a percentage of the state juvenile
48 population, to increase the use of nonsecure community-
49 based facilities as a percentage of total commitments to
50 juvenile facilities and to discourage the use of secure
51 incarceration and detention.

52 (b) The department of health and human resources
53 shall establish, within the funds available, an individualized
54 program of rehabilitation for each status offender referred
55 to the department and to each alleged juvenile delinquent
56 referred to the department after being allowed an
57 improvement period by the juvenile court, and for each
58 adjudicated juvenile delinquent who, after adjudication, is
59 referred to the department for investigation or treatment
60 or whose custody is vested in the department. Such
61 individualized program of rehabilitation shall take into
62 account the programs and services to be provided by other
63 public or private agencies or personnel which are available
64 in the community to deal with the circumstances of the
65 particular juvenile. For alleged juvenile delinquents and
66 status offenders, such individualized program of
67 rehabilitation shall be furnished to the juvenile court and
68 shall be available to counsel for the juvenile; it may be
69 modified from time to time at the direction of the
70 department or by order of the juvenile court. The
71 department may develop an individualized program of
72 rehabilitation for any juvenile referred for noncustodial
73 counseling under section five, article three of this chapter,
74 for any juvenile receiving counsel and advice under

75 section three-a, article five of this chapter, or for any other
76 juvenile upon the request of a public or private agency.

77 (c) The department of health and human resources
78 and the division of juvenile services of the department of
79 military affairs and public safety are authorized to enter
80 into cooperative arrangements and agreements with private
81 agencies or with agencies of the state and its political
82 subdivisions to effectuate the purpose of this article.

§49-5B-5. Rehabilitative facilities for status offenders.

1 (a) The department of health and human resources
2 shall, within the limits of state and federal funds
3 appropriated therefor, establish and maintain one or more
4 rehabilitative facilities to be used exclusively for the lawful
5 custody of status offenders. Each such facility shall be a
6 nonsecure facility having as its purpose the rehabilitation
7 of status offenders. Such facility shall have a bed capacity
8 for not more than twenty juveniles, and shall minimize the
9 institutional atmosphere and prepare the juvenile for
10 reintegration into the community.

11 (b) Within the funds available, rehabilitative programs
12 and services shall be provided by or through each such
13 facility and may include, but not be limited to, medical,
14 educational, vocational, social and psychological guidance,
15 training, counseling, alcoholism treatment, drug treatment
16 and other rehabilitative services. The department of health
17 and human resources shall provide to each status offender
18 committed to the facility a program of treatment and
19 services consistent with the individualized program of
20 rehabilitation developed for such juvenile. In the case of
21 any other juvenile residing at the facility, the department
22 shall provide such programs and services as may be
23 proper in the circumstances including, but not limited to,
24 any such programs or services directed to be provided by
25 the court.

26 (c) The board of education of the county in which the
27 facility is located shall provide instruction for juveniles
28 residing at the facility. Residents who can be permitted to
29 do so shall attend local schools, and instruction shall
30 otherwise take place at the facility.

31 (d) Facilities established pursuant to this section shall
32 be structured as community-based facilities.

§49-5B-6. Enforcement of legal custody.

1 The department of health and human resources shall
2 have authority to require any juvenile committed to its
3 legal custody to remain at and to return to the residence to
4 which the juvenile is assigned by the department or by the
5 juvenile court. In aid of such authority, and upon request
6 of a designated employee of the department, any police
7 officer, sheriff, deputy sheriff, or juvenile court probation
8 officer is authorized to take any such juvenile into custody
9 and return such juvenile to his or her place of residence or
10 into the custody of a designated employee of the
11 department.

§49-5B-7. Reporting requirements; cataloguing of services.

1 (a) The department of health and human resources
2 shall from time to time, but not less often than annually,
3 review its programs and services and submit a report to the
4 governor, the Legislature and the supreme court of
5 appeals, analyzing and evaluating the effectiveness of the
6 programs and services being carried out by the
7 department. Such report shall include, but not be limited
8 to, an analysis and evaluation of programs and services
9 continued, established and discontinued during the period
10 covered by the report, and shall further describe programs
11 and services which should be implemented to further the
12 purposes of this article. Such report shall also include, but
13 not be limited to, relevant information concerning the
14 number of juveniles comprising the population of any
15 rehabilitative facility during the period covered by the
16 report, the length of residence, the nature of the problems
17 of each juvenile, the juvenile's response to programs and
18 services and such other information as will enable a user
19 of the report to ascertain the effectiveness of the facility as
20 a rehabilitative facility.

21 (b) The department of health and human resources
22 shall prepare a descriptive catalogue of its juvenile
23 programs and services available in local communities
24 throughout this state and shall distribute copies of the

25 same to every juvenile court in the state and, at the
26 direction of the juvenile court, such catalogue shall be
27 distributed to attorneys practicing before such court.
28 Such catalogue shall also be made available to members of
29 the general public upon request. The catalogue shall
30 contain sufficient information as to particular programs
31 and services so as to enable a user of the catalogue to
32 make inquiries and referrals. The catalogue shall be
33 constructed so as to meaningfully identify and describe
34 programs and services. The requirements of this section
35 are not satisfied by a simple listing of specific agencies or
36 the individuals in charge of programs at a given time. The
37 catalogue shall be updated and republished or
38 supplemented from time to time as may be required to
39 maintain its usefulness as a resource manual.

CHAPTER 55

(Com. Sub. for H. B. 2535—By Delegates Seacrist, Beane,
Evans, Clements and Compton)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the adjutant general; alcohol beverage control administration; attorney general; board of barbers and cosmetologists; board of directors of the state college system; board of examiners for licensed practical nurses; board of trustees of the university system of West Virginia; bureau of employment programs; department of administration; department of agriculture; department of tax and revenue; development office; division of corrections;

division of environmental protection; division of health; division of highways; division of human services; division of motor vehicles; division of personnel; division of rehabilitation services; division of tourism and parks; division of veterans affairs; education and state employees grievance board; insurance commission; library commission; municipal bond commission; office of health projects; office of water resources; public service commission; real estate commission; regional jail and correctional facility authority; state fire commission; state rail authority; state treasurer; supreme court of appeals; West Virginia state police; and West Virginia court of claims; to be moral obligations of the state and directing payment thereof.

1 The Legislature has considered the findings of fact
 2 and recommendations reported to it by the court of claims
 3 concerning various claims against the state and agencies
 4 thereof, and in respect to each of the following claims the
 5 Legislature adopts those findings of fact as its own, and in
 6 respect of certain claims herein, the Legislature has
 7 independently made findings of fact and determinations
 8 of award and hereby declares it to be the moral obligation
 9 of the state to pay each claim in the amount specified
 10 below, and directs the auditor to issue warrants for the
 11 payment thereof out of any fund appropriated and
 12 available for the purpose.

13 (a) *Claims against the Adjutant General:*

14 (TO BE PAID FROM GENERAL REVENUE FUND)

- 15 (1) Bell Atlantic-West Virginia, Inc. \$ 497.96
- 16 (2) Paul A. Vosburgh, III \$ 890.00

17 (b) *Claims against the Alcohol Beverage Control*
 18 *Administration:*

19 (TO BE PAID FROM SPECIAL REVENUE FUND)

- 20 (1) Attorney General \$ 471.40
- 21 (2) Bell Atlantic-West Virginia, Inc. \$ 2,036.84

22 (c) *Claim against the Attorney General:*

- 23 (TO BE PAID FROM GENERAL REVENUE FUND)
- 24 (1) American Investigations, Inc.. \$ 69.20
- 25 (d) *Claim against the Board of Barbers and*
- 26 *Cosmetologists:*
- 27 (TO BE PAID FROM SPECIAL REVENUE FUND)
- 28 (1) National Interstate Council of
- 29 Boards of Cosmetology \$ 687.50
- 30 (e) *Claim against the Board of Directors of the State*
- 31 *College System:*
- 32 (TO BE PAID FROM SPECIAL REVENUE FUND)
- 33 (1) Dennis W. Rowsey, Jr. \$ 792.93
- 34 (f) *Claim against the Board of Examiners for Licensed*
- 35 *Practical Nurses:*
- 36 (TO BE PAID FROM SPECIAL REVENUE FUND)
- 37 (1) Archives Security, Inc. \$ 9.55
- 38 (g) *Claim against the Board of Trustees of the*
- 39 *University System of WV:*
- 40 (TO BE PAID FROM SPECIAL REVENUE FUND)
- 41 (1) Jiansheng Li \$ 400.00
- 42 (h) *Claim against the Bureau of Employment*
- 43 *Programs:*
- 44 (TO BE PAID FROM SPECIAL REVENUE FUND —
- 45 EMPLOYMENT SERVICE DIVISION)
- 46 (1) Bell Atlantic-West Virginia, Inc. \$ 37,796.40
- 47 (TO BE PAID FROM WORKERS' COMPENSATION FUND)
- 48 (2) Bell Atlantic-West Virginia, Inc. \$ 51,502.59
- 49 (i) *Claim against the Department of Administration:*
- 50 (TO BE PAID FROM GENERAL REVENUE FUND)
- 51 (1) Colonial Ford-Lincoln-Mercury, Inc. \$ 1,852.10

52	<i>(j) Claims against the Department of Agriculture:</i>	
53	(TO BE PAID FROM SPECIAL REVENUE FUND)	
54	(1) Bell Atlantic-West Virginia, Inc.	\$ 2,435.52
55	(2) Division of Highways	\$ 1,808.05
56	<i>(k) Claim against the Department of Tax and Revenue:</i>	
57	(TO BE PAID FROM GENERAL REVENUE FUND)	
58	(1) Bell Atlantic-West Virginia, Inc.	\$ 30,622.29
59	<i>(l) Claim against the Development Office:</i>	
60	(TO BE PAID FROM GENERAL REVENUE FUND)	
61	(1) Bell Atlantic-West Virginia, Inc.	\$ 5,186.47
62	<i>(m) Claims against the Division of Corrections:</i>	
63	(TO BE PAID FROM GENERAL REVENUE FUND)	
64	(1) Alltel Corporation/Citizens Telecom	\$ 2,313.37
65	(2) Charles D. Anderson	\$ 545.74
66	(3) Appalachian Community	
67	Health Center, Inc.	\$ 168.00
68	(4) Authorized Factory Service, Inc.	\$ 363.70
69	(5) Cabell County Commission	\$ 14,661.26
70	(6) Anthony Catania, Jr., D.P.M.	\$ 70.00
71	(7) Domingo T. Chua, M.D.	\$ 70.00
72	(8) Nelson Cunningham	\$ 70.00
73	(9) Doddridge County Commission	\$ 1,155.00
74	(10) General Anesthesia Services, Inc.	\$ 864.00
75	(11) Grafton City Hospital	\$ 10,164.03
76	(12) Harrison County Commission	\$ 3,900.00
77	(13) Kenneth Heard	\$ 420.85
78	(14) Jan-Care Ambulance Service, Inc.	\$ 2,804.00

79	(15) Mammen Kovoov, M.D.	\$ 25.00
80	(16) Charles A. Lefebure, M.D.	\$ 175.00
81	(17) Marion County Commission	\$155,050.00
82	(18) Metro Radiology Greenbrier	\$ 156.00
83	(19) Monongalia General Hospital	\$ 110.00
84	(20) Mountaineer Gas Company	\$ 26,242.47
85	(21) Abraham Nazem, M.D., Inc.	\$ 50.00
86	(22) Scott G. Phelps	\$ 152.00
87	(23) Regional Jail and	
88	Correctional Facility Authority	\$304,627.52
89	(24) Service America Corporation	\$ 30,850.97
90	(25) United Hospital Center	\$ 75.38
91	(26) West Virginia University	
92	Hospitals, Inc.	\$ 4,821.13
93	(27) Henry C. Wilkes	\$ 150.00
94	(28) Donald Wilson, Jr.	\$ 18.25
95	<i>(n) Claims against the Division of Environmental</i>	
96	<i>Protection:</i>	
97	(TO BE PAID FROM SPECIAL REVENUE FUND —	
98	ACCOUNT NO. 3331)	
99	(1) Division of Highways	\$ 3,883.02
100	(2) LCM Corporation	\$ 38,996.37
101	(3) West Virginia Association of	
102	Rehabilitation Facilities	\$ 1,264.64
103	(TO BE PAID FROM FEDERAL FUNDS —	
104	ACCOUNT NO. 8708)	
105	(4) Division of Natural Resources	\$ 6,290.14
106	<i>(o) Claims against the Division of Health:</i>	

107	(TO BE PAID FROM SPECIAL REVENUE FUND)	
108	(1) Bell Atlantic-West Virginia, Inc.	\$ 69,461.83
109	(TO BE PAID FROM GENERAL REVENUE FUND)	
110	(2) West Virginia Association of	
111	Rehabilitation Facilities	\$ 8,317.14
112	(p) <i>Claims against the Division of Highways:</i>	
113	(TO BE PAID FROM STATE ROAD FUND)	
114	(1) Hobart Adkins	\$ 590.60
115	(2) Burton Anderson, Jr.	\$ 535.40
116	(3) Robert L. Anderson	\$ 250.00
117	(4) Archives Security, Inc.	\$ 543.40
118	(5) Bell Atlantic-West Virginia, Inc.	\$ 84,922.14
119	(6) Charles L. and Wilma Burr	\$ 1,575.00
120	(7) Karen L. Christian	\$ 199.78
121	(8) Brian M. Darr	\$ 59.36
122	(9) Janie S. DeLung	\$ 90.45
123	(10) Vernon Dingess	\$ 100.00
124	(11) Steven B. Drain	\$ 130.00
125	(12) Gregory A. and Lisa Edens	\$ 612.12
126	(13) Mark and Donna Finkenbinder	\$ 459.22
127	(14) Melinda Lou Fish	\$ 142.04
128	(15) Martha Gardner	\$ 250.00
129	(16) Joseph Hall	\$ 609.40
130	(17) Larry Haught and	
131	Linda Martin-Haught	\$ 3,600.00
132	(18) Betty Hensley	\$ 90.09
133	(19) Henry L. Hercules	\$ 271.07

134	(20) George and Martha Hores	\$	100.00
135	(21) Mark Joseph	\$	500.00
136	(22) Chris Kennedy	\$	145.28
137	(23) Cheryl Kesner	\$	500.00
138	(24) James W. King	\$	350.00
139	(25) Garey and Deborah L. Mahoney ..	\$	73.62
140	(26) Eleanor Martino	\$	250.00
141	(27) Charlotte Kay McClung	\$	141.25
142	(28) Joseph M. and Aspasia Melcher ...	\$	642.57
143	(29) Rebecca J. Miller	\$	191.47
144	(30) Randall L. and Debra S. Morgan ..	\$	223.73
145	(31) George R. Muth	\$	1,667.42
146	(32) Earrick Norman	\$	280.41
147	(33) Frank Pendry	\$	52.00
148	(34) Carl W. Pettit	\$	1,355.50
149	(35) Lisa J. Pratt	\$	486.70
150	(36) Karen Racer	\$	532.74
151	(37) Lloyd A. Reeves	\$	77.33
152	(38) W. Stephen Riggs	\$	2,113.51
153	(39) Judith R. and James R. Rogers	\$	156.99
154	(40) Jean A. Sartoris	\$	30.14
155	(41) Cecil Scott	\$	229.28
156	(42) Todd E. and Jerri M. Shafer	\$	1,293.30
157	(43) Debra S. Shrieves	\$	77.52
158	(44) Robert D. Shuman	\$	442.45

159	(45) Kathleen J. Skube	\$ 1,014.48
160	(46) Wilma L. and Cruz Soto	\$ 3,700.00
161	(47) Joseph and Johanna Stiglich	\$ 250.00
162	(48) Carolyn J. and	
163	Howard P. Timbrook	\$ 411.02
164	(49) Elmer R. Warnick	\$ 177.94
165	(50) Weirton Bandag	\$ 1,695.15
166	(51) Douglas M. White	\$ 500.00
167	(52) Nancy M. Williams	\$ 1,013.95
168	(53) Junior Wolford	\$ 7,500.00
169	(54) Harry B. Young, Jr.	\$ 615.90
170	<i>(q) Claims against Division of Human Services:</i>	
171	(TO BE PAID FROM GENERAL REVENUE FUND)	
172	(1) Bartlett-Chapman Funeral Home	\$ 400.00
173	(2) Browning Funeral Home, Inc.	\$ 800.00
174	(3) Carpenter & Ford Funeral Home ...	\$ 500.00
175	(4) Davis Funeral Home,	
176	Bartlett Chapel	\$ 180.00
177	(5) Dorsey Funeral Home, Inc.	\$ 400.00
178	(6) Heck Funeral Home, Inc.	\$ 400.00
179	(7) Melton Mortuary, Inc.	\$ 325.00
180	(8) Schaeffer Funeral Home, Inc.	\$ 400.00
181	(9) Stewart Funeral Home	\$ 325.00
182	(10) Weaver Mortuary, Inc.	\$ 400.00
183	<i>(r) Claims against Division of Motor Vehicles:</i>	
184	(TO BE PAID FROM STATE ROAD FUND)	
185	(1) Mercer, McDowell, Wyoming	

452	CLAIMS	[Ch. 55
186	Mental Health Council	\$ 150.00
187	(2) Dale D. Radcliff	\$ 3,500.00
188	(3) West Virginia Association of	
189	Rehabilitation Facilities	\$ 218.34
190	<i>(s) Claim against the Division of Personnel:</i>	
191	(TO BE PAID FROM SPECIAL REVENUE FUND)	
192	(1) International Personnel	
193	Management Association	\$ 230.00
194	<i>(t) Claims against the Division of Rehabilitation</i>	
195	<i>Services:</i>	
196	(TO BE PAID FROM SPECIAL REVENUE FUND —	
197	ACCOUNT NO. 8662)	
198	(1) West Virginia Association of	
199	Rehabilitation Facilities	\$ 1,395.38
200	(TO BE PAID FROM FEDERAL FUNDS—	
201	ACCOUNT NO. 8734)	
202	(2) Bell Atlantic-West Virginia, Inc.	\$ 9,341.11
203	<i>(u) Claim against the Division of Tourism and Parks:</i>	
204	(TO BE PAID FROM SPECIAL REVENUE FUND)	
205	(1) Thomas F. and Lottie J. Pyles	\$ 525.00
206	<i>(v) Claim against the Division of Veterans Affairs:</i>	
207	(TO BE PAID FROM GENERAL REVENUE FUND)	
208	(1) Bell Atlantic-West Virginia, Inc.	\$ 2,516.64
209	<i>(w) Claim against the Education and State Employees</i>	
210	<i>Grievance Board:</i>	
211	(TO BE PAID FROM GENERAL REVENUE FUND)	
212	(1) Pitney Bowes	\$ 62.25
213	<i>(x) Claim against the Insurance Commission:</i>	

214	(TO BE PAID FROM SPECIAL REVENUE FUND—	
215	ACCOUNT NO. 7152)	
216	(1) Bell Atlantic-West Virginia, Inc.	\$ 3,803.58
217	<i>(y) Claim against the Library Commission:</i>	
218	(TO BE PAID FROM GENERAL REVENUE FUND)	
219	(1) Bell Atlantic-West Virginia, Inc.	\$ 1,215.53
220	<i>(z) Claim against the Municipal Bond Commission:</i>	
221	(TO BE PAID FROM SPECIAL REVENUE FUND)	
222	(1) Bell Atlantic-West Virginia, Inc	\$ 85.07
223	<i>(aa) Claim against the Office of Health Projects:</i>	
224	(TO BE PAID FROM SPECIAL REVENUE FUND)	
225	(1) Archives Security, Inc.	\$ 6.19
226	<i>(bb) Claim against the Office of Water Resources:</i>	
227	(TO BE PAID FROM GENERAL REVENUE FUND)	
228	(1) Bell Atlantic-West Virginia, Inc.	\$ 10,289.76
229	<i>(cc) Claims against the Public Service Commission:</i>	
230	(TO BE PAID FROM SPECIAL REVENUE FUND)	
231	(1) Archives Security, Inc.	\$ 260.70
232	(2) Bell Atlantic-West Virginia, Inc.	\$ 3,834.67
233	(3) CCH Incorporated	\$ 121.00
234	(4) Goodyear Tire and	
235	Rubber Company	\$ 187.20
236	<i>(dd) Claim against the Real Estate Commission:</i>	
237	(TO BE PAID FROM SPECIAL REVENUE FUND)	
238	(1) Bell Atlantic-West Virginia, Inc.	\$ 1,358.52
239	<i>(ee) Claims against the Regional Jail and Correctional</i>	
240	<i>Facility Authority:</i>	

241	(TO BE PAID FROM GENERAL REVENUE FUND)	
242	(1) Bell Atlantic-West Virginia, Inc.	\$ 3,804.36
243	(2) Zachariah J. Chittum	\$ 458.30
244	(ff) <i>Claim against the State Fire Commission:</i>	
245	(TO BE PAID FROM GENERAL REVENUE FUND)	
246	(1) Appalachian Tire Products, Inc.	\$ 294.92
247	(gg) <i>Claim against the State Rail Authority:</i>	
248	(TO BE PAID FROM GENERAL REVENUE FUND)	
249	(1) Amtrac Railroad Contractors	
250	of Maryland, Inc.	\$ 50,000.00
251	(hh) <i>Claim against the State Treasurer:</i>	
252	(TO BE PAID FROM GENERAL REVENUE FUND)	
253	(1) West Virginia Parkways Authority . . .	\$ 25.00
254	(ii) <i>Claims against the Supreme Court of Appeals:</i>	
255	(TO BE PAID FROM GENERAL REVENUE FUND)	
256	(1) David M. Buzzard	\$ 191.58
257	(2) James M. Casey	\$ 1,523.50
258	(3) Roy L. Johnson	\$ 288.75
259	(4) Shirley Adkins	\$ 514.07
260	(5) William D. Anderson	\$ 100.00
261	(6) Ernest F. Backus	\$ 1,743.75
262	(7) Tamela D. Bailey	\$ 1,538.07
263	(8) Marjorie L. Baker	\$ 514.07
264	(9) Linda L. Bixby	\$ 514.07
265	(10) Beverly C. Booth	\$ 514.07
266	(11) Teresa Bruno	\$ 522.33
267	(12) David M. Buzzard	\$ 1,506.05

268	(13) Philip G. Conley	\$ 1,536.30
269	(14) John L. Daniels	\$ 4,500.00
270	(15) Marian A. Darby	\$ 3,304.44
271	(16) J.V. DeMarco, Jr.	\$ 1,506.05
272	(17) Norman D. Ferrari	\$ 1,530.25
273	(18) Judith P. Goontz	\$ 1,506.05
274	(19) Lorie L. Green	\$ 524.39
275	(20) Jeanette Grimes	\$ 514.07
276	(21) Anita Hager	\$ 1,104.44
277	(22) Tammy J. Halsey	\$ 1,538.07
278	(23) Edward Harless, Jr.	\$ 4,500.00
279	(24) Sue Hedstrom	\$ 595.22
280	(25) Edward S. Hicks	\$ 1,743.75
281	(26) Sonja L. Johns	\$ 514.07
282	(27) Mark A. Kerwood	\$ 1,506.05
283	(28) Teresa E. King	\$ 1,278.77
284	(29) Wilma L. Kocher	\$ 514.07
285	(30) Shirley Laxton	\$ 223.80
286	(31) Ruth D. Lemon	\$ 1,104.44
287	(32) Robert Lightner	\$ 1,282.30
288	(33) Louis E. Longanacre	\$ 1,743.75
289	(34) Mary E. Loucas	\$ 1,045.03
290	(35) Mickey M. Mallas	\$ 1,530.25
291	(36) Franchesca McClung	\$ 595.22
292	(37) Helen McCormick	\$ 1,506.05
293	(38) Mary S. McCutcheon	\$ 524.39
294	(39) Nina L. McKight	\$ 595.22

456	CLAIMS	[Ch. 55
295	(40) Barbara Minor	\$ 514.07
296	(41) John D. Morton	\$ 1,536.30
297	(42) John Moses	\$ 1,506.05
298	(43) Pamela Newsome	\$ 514.07
299	(44) Walter Nogay	\$ 1,530.25
300	(45) Agnes D. Riffel	\$ 1,126.61
301	(46) Kimberly J. Roach	\$ 1,538.07
302	(47) Deloris Sidebottom	\$ 514.07
303	(48) Jerry P. Turner	\$ 595.22
304	(49) Bill Webb	\$ 1,506.05
305	(50) Tamera Webster	\$ 522.33
306	(51) Connie White	\$ 1,538.07
307	(52) Mary F. Wiedebusch	\$ 1,104.44
308	(53) Doris Zagula	\$ 522.33
309	<i>(jj) Claim against the West Virginia State Police:</i>	
310	(TO BE PAID FROM GENERAL REVENUE FUND)	
311	(1) Bell Atlantic-West Virginia, Inc.	\$ 37,643.51
312	<i>(kk) Claim against the West Virginia Court of Claims:</i>	
313	(TO BE PAID FROM THE CRIME VICTIMS	
314	COMPENSATION FUND)	
315	(1) Paul Lallande, O.D., P.C.	\$ 106.00
316	<i>(ll) Claim against the State of West Virginia:</i>	
317	(TO BE PAID FROM GENERAL REVENUE FUND)	
318	(1) Kermit Lee Godbey and	
319	The Poca Valley Bank	\$ 5,790.22
320	(2) Kermit Lee Godbey	\$ 248.50

321 The Legislature finds that the above moral obligations
322 and the appropriations made in satisfaction thereof shall
323 be the full compensation for all claimants, and that prior
324 to the payments to any claimant provided for in this bill,
325 the court of claims shall receive a release from claimants
326 releasing any and all claims for moral obligations arising
327 from the matters considered by the Legislature in the
328 finding of the moral obligations and the making of the
329 appropriations for the claimant. The court of claims shall
330 deliver all releases obtained from claimants to the
331 department against which the claim was allowed.

CHAPTER 56

(Com. Sub. for S. B. 284—By Senators Love, Helmick, Sharpe,
Sprouse and McKenzie)

[Passed April 8, 1997; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims for compensation of innocent victims of crimes occurring in West Virginia to be moral obligations of the state and directing the auditor to issue warrants for the payment of the claims.

Be it enacted by the Legislature of West Virginia:

COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§1. Finding and declaring certain crime victims claims for compensation to be moral obligations of the state and directing payment of the claims.

1 The Legislature has duly considered the findings of
2 fact and recommendations for awards reported to it by the
3 court of claims in respect to the following named
4 claimants who were innocent victims of crime within this
5 state and who are entitled to compensation; and in respect
6 to each of the named claimants the Legislature adopts
7 those findings of fact as its own, hereby declares it to be
8 the moral obligation of the state to pay each claimant in
9 the amount specified below, and directs the auditor to
10 issue warrants for the payment of the claims out of any
11 fund appropriated and available for the purpose.

12	<i>Claims for crime victims compensation awards:</i>	
13	(TO BE PAID FROM CRIME VICTIMS COMPENSATION FUND)	
14	(1) William C. Chapman	\$ 1,000.00
15	(2) Jerry N. Gibson, as guardain of	
16	C. D. G.	\$ 5,000.00
17	(3) Jerry N. Gibson, as guardian of	
18	J. Y. G.	\$ 5,000.00
19	(4) Betty J. Sargent, as the adoptive	
20	parent of R. W. S.	\$ 23,500.00
21	(5) Betty J. Sargent, as the adoptive	
22	parent of D. M. S.	\$ 23,500.00
23	(6) Alan D. Taylor	\$ 15,000.00
24	TOTAL	\$ 73,000.00
25	The Legislature finds that the above moral obligations	
26	and the appropriations made in satisfaction of the moral	
27	obligations are the full compensation for all of the named	
28	claimants.	

CHAPTER 57

(S. B. 311—By Senators Love, Helmick, Sharpe, Sprouse and McKenzie)

[Passed April 8, 1997; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the department of education; division of corrections; and education and state employees grievance board to be

moral obligations of the state and directing payments thereof.

1 The Legislature has heretofore made findings of fact
 2 that the state has received the benefit of the commodities
 3 received and/or services rendered by certain claimants
 4 herein and has considered these claims against the state,
 5 and agencies thereof, which have arisen due to
 6 overexpenditures of the departmental appropriations by
 7 officers of such state spending units, such claims having
 8 been previously considered by the court of claims which
 9 also found that the state has received the benefit of the
 10 commodities received and/or services rendered by the
 11 claimants, but were denied by the court of claims on the
 12 purely statutory grounds that to allow such claims would
 13 be condoning illegal acts contrary to the laws of the state.
 14 The Legislature pursuant to its findings of fact and also by
 15 the adoption of the findings of fact by the court of claims
 16 as its own, and, while not condoning such illegal acts,
 17 hereby declares it to be the moral obligation of the state to
 18 pay these claims in the amounts specified below, and
 19 directs the auditor to issue warrants upon receipt of
 20 properly executed requisitions supported by itemized
 21 invoices, statements or other satisfactory documents as
 22 required by section ten, article three, chapter twelve of the
 23 code of West Virginia, one thousand nine hundred thirty-
 24 one, as amended, for the payments thereof out of any
 25 fund appropriated and available for the purpose.

26 *(a) Claims against the Department of Education:*

27 (TO BE PAID FROM GENERAL REVENUE FUND)

28	(1) Michael A. Cochran	\$	900.00
29	(2) Rebecca A. Griffith	\$	150.00
30	(3) Gloria M. Johnson	\$	470.00
31	(4) Linda Spencer	\$	714.00
32	(5) Mildred Faye Tallman	\$	170.00
33	(6) Sandra C. Wilmoth	\$	950.00

34 *(b) Claims against the Division of Corrections:*

35 (TO BE PAID FROM GENERAL REVENUE FUND)

36	(1) Anthony Creek Rescue Squad	\$ 923.00
37	(2) Bell Atlantic-West Virginia, Inc.	\$ 17,555.52
38	(3) Jolene Berry, D.O.	\$ 190.00
39	(4) Ravin Bhirud, M.D.	\$ 2,714.00
40	(5) C & C Pharmacy, Inc.	\$ 368.93
41	(6) Charleston Area Medical Center	\$ 43,101.99
42	(7) Clarksburg Anesthesia Associates	\$ 918.00
43	(8) Clarksburg Cardiology Consultants	\$ 235.00
44	(9) Correctional Medical Services	\$ 43,476.33
45	(10) Davis Memorial Hospital	\$ 3,664.34
46	(11) Division of Highways	\$ 13,102.18
47	(12) Manuel A. Gomez	\$ 155.00
48	(13) Grafton City Hospital	\$ 15,707.19
49	(14) Greenbrier Cardiovascular Associates	\$ 975.00
50	(15) Jan-Care Ambulance Service, Inc.	\$ 486.00
51	(16) Montgomery General Hospital	\$ 86,136.14
52	(17) Joseph A. Noronha, M.D.	\$ 300.00
53	(18) Prison Health Services, Inc.	\$ 268,747.98
54	(19) R. Sampath, M.D., Inc.	\$ 4,268.00
55	(20) V.K. Raju, M.D.	\$ 115.00
56	(21) Sistersville General Hospital	\$ 180.40
57	(22) Wexford Health Sources, Inc.	\$ 169,062.44
58	<i>(c) Claim against the Education and State</i>	
59	<i>Employees Grievance Board:</i>	
60	(TO BE PAID FROM GENERAL REVENUE FUND)	
61	(1) Archives Security, Inc.	\$ 4.62

CHAPTER 58

(H. B. 2237—By Delegates Douglas, Collins, Tucker, Prunty,
Claypole, Stalnaker and Capito)

[Passed April 1, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to repeal section eight, article twenty-four, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to repeal of language placing the forest management review commission under sunset review.

Be it enacted by the Legislature of West Virginia:

That section eight, article twenty-four, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed.

§1. Repeal of section placing the forest management review commission under sunset review.

- 1 Section eight, article twenty-four, chapter five of the
- 2 code of West Virginia, one thousand nine hundred thirty-
- 3 one, as amended, is hereby repealed.

CHAPTER 59

(H. B. 2162—By Delegates Martin, Douglas, Collins,
Varnier, Thompson, Everson and Stalnaker)

[Passed April 1, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article two-b and section eight, article two-d, both of chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to repeal of archaic language relating to economic development programs that have completed their duties or are otherwise defunct and inactive; repealing provisions creating the enterprise zone authority; repealing provisions creating the governor's work force development council.

Be it enacted by the Legislature of West Virginia:

That article two-b and section eight, article two-d, both of chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed.

§1. Repeal of article creating the enterprise zone authority.

1 Article two-b, chapter five-b of the code of West
2 Virginia, one thousand nine hundred thirty-one, as
3 amended, is hereby repealed.

§2. Repeal of section creating the governor's work force development council.

1 Section eight, article two-d, chapter five-b of the code
2 of West Virginia, one thousand nine hundred thirty-one, as
3 amended, is hereby repealed.

CHAPTER 60

(H. B. 2160—By Delegates Martin, Douglas, Varner, Collins, Thompson,
Everson and Stalnaker)

[Passed April 1, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twenty-seven, article one-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to repeal of archaic language relating to the appraisal control and review commission and related subcommittees.

Be it enacted by the Legislature of West Virginia:

That section twenty-seven, article one-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed.

§1. Repeal of section creating the appraisal control and review commission and related subcommittees.

1 Section twenty-seven, article one-a, chapter eleven of
2 the code of West Virginia, one thousand nine hundred
3 thirty-one, as amended, is hereby repealed.

CHAPTER 61

(Com. Sub. For H. B. 2161—By Delegates Martin, Douglas, Varner, Collins, Thompson, Everson and Stalnaker)

[Passed April 1, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article one-a; sections six, seven, eight, nine and ten, article five-a; section six, article twenty-nine-b; and article twenty-nine-c, all of chapter sixteen of the code of West Virginia, one thousand nine hundred and thirty- one, as amended, relating to repeal of archaic language relating to health-related boards, councils, committees and programs which have terminated, been superseded or are otherwise defunct and inactive; repealing provisions creating the health care planning commission and related legislative oversight committee; repealing provisions creating the patient qualification and review board and the controlled substances therapeutic research program; repealing provisions creating the health care cost review advisory council; and repealing article relating to the indigent care act and the legislative task force on uncompensated health care and medicaid expenditures.

Be it enacted by the Legislature of West Virginia:

That article one-a; sections six, seven, eight, nine and ten, article five-a; section six, article twenty-nine-b; and article twenty-nine-c, all of chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed.

§1. Repeal of article creating a health care planning commission and related legislative oversight committee.

- 1 Article one-a, chapter sixteen of the code of West
- 2 Virginia, one thousand nine hundred thirty-one, as
- 3 amended, is hereby repealed.

§2. Repeal of sections creating the patient qualification and review board and the controlled substances therapeutic research program.

Sections six, seven, eight, nine and ten, article five-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, are hereby repealed.

§3. Repeal of section creating the health care cost review advisory council.

- 1 Section six, article twenty-nine-b, chapter sixteen of
- 2 the code of West Virginia, one thousand nine hundred
- 3 thirty-one, as amended, is hereby repealed.

§4. Repeal of article relating to the indigent care act and the legislative task force on uncompensated health care and medicaid expenditures.

- 1 Article twenty-nine-c, chapter sixteen of the code of
- 2 West Virginia, one thousand nine hundred thirty-one, as
- 3 amended, is hereby repealed.

CHAPTER 62

(S. B. 93—Originating in the Committee on Government Organization)

[Passed March 7, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section nineteen, article twenty-two-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the termination of the provisions of the racetrack video lottery act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§1. Repeal of section relating to termination of the provisions of the racetrack video lottery act.

- 1 Section nineteen, article twenty-two-a, chapter
- 2 twenty-nine of the code of West Virginia, one thousand
- 3 nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 63

(S. B. 280—By Senators Wiedebusch, Dittmar, Ball, Bailey, Anderson, Buckalew, White, Snyder, Love, Schoonover and Bowman)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

A BILL to amend article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-e, relating to prohibiting conservation officers from performing duties for consideration from individuals; criminal penalties; allowing the chief conservation officer to contract with entities to provide extraordinary law-enforcement services; payment from special account to officers; contract provisions; indemnification of state; and promulgation of rules.

Be it enacted by the Legislature of West Virginia:

That article seven, 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 one-e, to read as follows:

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

PART 1. LAW ENFORCEMENT, PROCEDURES AND PENALTIES.

§20-7-1e. Conservation officers performing duties for private persons; penalty; providing extraordinary law enforcement or security services by contract.

- 1 (a) Any conservation officer who hires himself or
- 2 herself to any person, firm or corporation to guard private
- 3 property, or who demands or receives from any person,
- 4 firm or corporation any money or other thing of value as
- 5 a consideration for the performance of, or the failure to
- 6 perform, his or her duties under the regulations of the
- 7 chief conservation officer and the provisions of this
- 8 section, is guilty of a misdemeanor and, upon conviction
- 9 thereof, shall be fined not less than twenty-five dollars nor
- 10 more than two hundred dollars, or confined in the county
- 11 or regional jail for not more than four months, or both
- 12 fined and confined.

13 (b) Notwithstanding any other provision of this section
14 to the contrary, the chief conservation officer may con-
15 tract with the public, military or private entities to provide
16 extraordinary law enforcement or security services by the
17 division of natural resources when it is determined by the
18 chief conservation officer to be in the public interest. The
19 chief conservation officer may assign personnel, equip-
20 ment or facilities, and the division shall be reimbursed for
21 the wages, overtime wages, benefits and costs of providing
22 the contract services as negotiated between the parties.
23 The compensation paid to conservation officers by virtue
24 of contracts provided in this section shall be paid from a
25 special account and are excluded from any formulation
26 used to calculate an employee's benefits. All requests for
27 obtaining extraordinary law enforcement or security
28 services shall be made to the chief conservation officer in
29 writing and shall explain the funding source and the
30 authority for making the request. No officer of the
31 division is required to accept any assignment made
32 pursuant to this subsection. Every officer assigned to duty
33 hereunder shall be paid according to the hours and
34 overtime hours actually worked notwithstanding that
35 officer's status as exempt personnel under the "Federal
36 Labor Standards Act" or applicable state statutes. Every
37 contract entered into under this subsection shall contain
38 the provision that in the event of public disaster or emer-
39 gency where the reassignment to official duty of the
40 officer is required, neither the division nor any of its
41 officers or other personnel are liable for any damages
42 incurred as the result of the reassignment. Further, any
43 entity contracting with the division of natural resources
44 under this section shall also agree as part of that contract
45 to hold harmless and indemnify the state, division of
46 natural resources and its personnel from any liability
47 arising out of employment under that contract.

48 The director is authorized to propose legislative rules,
49 subject to approval by the Legislature, in accordance with
50 chapter twenty-nine-a of this code relating to the imple-
51 mentation of contracts entered into pursuant to this
52 subsection: *Provided*, That the rules expressly prohibit
53 private employment of officers in circumstances involving
54 labor disputes.

CHAPTER 64

(Com. Sub. for S. B. 111—By Senators Dittmar and Snyder)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one hundred eight; and to amend and reenact section one hundred twenty-seven, article two of said chapter, all relating to revisions to the West Virginia consumer credit protection act; providing methods for electronic records retention for persons subject to the act other than banks and credit unions; providing for the admissibility in evidence of such reproduced or copied records; and eliminating certain disclosure requirements for debt collectors under the act.

Be it enacted by the Legislature of West Virginia:

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

Article

1. Short Title, Definitions and General Provisions.
2. Consumer Credit Protection.

ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS.

§46A-1-108. Records retention methods.

- 1 (a) All persons, other than banks and credit unions,
- 2 who are subject to the provisions of this chapter and who
- 3 are required to create or maintain records or other docu-
- 4 ments in the course of their business, may copy or repro-
- 5 duce those records or documents (other than notes, bonds,
- 6 mortgages and other securities and investments) by any

7 existing and generally accepted method of reproduction
8 or retention technology which conforms to the require-
9 ments of section thirty-five, article four, chapter thirty-
10 one-a of this code and may substitute copies or reproduc-
11 tions of the records or documents either in positive or
12 negative form for the originals. A copy or reproduction
13 in the form of a positive print is deemed to be an original
14 counterpart of and has the same force as the original and
15 is admissible in evidence in all courts and administrative
16 agencies in this state for all purposes. The copies or
17 reproductions authorized by this subsection shall be
18 maintained pursuant to the records retention requirements
19 applicable to the original records or documents. The
20 original records or documents, once copied or repro-
21 duced, may be destroyed or otherwise eliminated.

22 (b) When copies of documents are offered in evidence,
23 all circumstances surrounding the making or issuance of
24 the documents, books, records, correspondence and other
25 instruments, papers or writings, or the photographic,
26 photostatic or microphotographic copies or optical disks
27 or other permissible reproductions represented by the
28 copies, may be shown to affect the weight of the docu-
29 ments as evidence, but not the admissibility.

30 (c) Any device used to copy or reproduce documents
31 and records shall be one which correctly and accurately
32 reproduces the original document or record in all details
33 and any disk or film used for this purpose shall be of
34 durable material.

35 (d) Banks and credit unions may reproduce and
36 maintain records and documents in conformity with this
37 section as long as the reproduction and maintenance
38 methods used do not conflict with any other provisions of
39 this code applicable to banks or credit unions or with any
40 rule of the commissioner of banking.

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-127. Fraudulent, deceptive or misleading representa- tions.

1 No debt collector shall use any fraudulent, deceptive

2 or misleading representation or means to collect or
3 attempt to collect claims or to obtain information concern-
4 ing consumers. Without limiting the general application of
5 the foregoing, the following conduct is deemed to violate
6 this section:

7 (a) The use of any business, company or organization
8 name while engaged in the collection of claims, other than
9 the true name of the debt collector's business, company or
10 organization;

11 (b) Any false representation that the debt collector has
12 in his possession information or something of value for
13 the consumer that is made to solicit or discover informa-
14 tion about the consumer;

15 (c) The failure to clearly disclose the name and full
16 business address of the person to whom the claim has been
17 assigned for collection, or to whom the claim is owed, at
18 the time of making any demand for money;

19 (d) Any false representation or implication of the
20 character, extent or amount of a claim against a consumer,
21 or of its status in any legal proceeding;

22 (e) Any false representation or false implication that
23 any debt collector is vouched for, bonded by, affiliated
24 with or an instrumentality, agent or official of this state or
25 any agency of the federal, state or local government;

26 (f) The use or distribution or sale of any written
27 communication which simulates or is falsely represented
28 to be a document authorized, issued or approved by a
29 court, an official or any other legally constituted or
30 authorized authority, or which creates a false impression
31 about its source, authorization or approval;

32 (g) Any representation that an existing obligation of
33 the consumer may be increased by the addition of attor-
34 ney's fees, investigation fees, service fees or any other fees
35 or charges when in fact such fees or charges may not
36 legally be added to the existing obligation; and

37 (h) Any false representation or false impression about
38 the status or true nature of or the services rendered by the
39 debt collector or his business.

CHAPTER 65

(S. B. 334—By Senators Wooton, Ball, Bowman, Dittmar, Fanning, Hunter, Oliverio, Schoonover, Snyder, White, Buckalew, Deem, Kimble and Scott)

[Passed April 11, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section thirteen-a, article twenty-one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reimbursement of the cost of transcripts provided by official court reporters; and requiring public defender services to keep computer records of payments made for such transcripts.

Be it enacted by the Legislature of West Virginia:

That section thirteen-a, article twenty-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 21. PUBLIC DEFENDER SERVICES.

§29-21-13a. Compensation and expenses for panel attorneys.

1 (a) All panel attorneys shall maintain detailed and
2 accurate records of the time expended and expenses
3 incurred on behalf of eligible clients, and upon comple-
4 tion of each case, exclusive of appeal, shall submit to the
5 appointing court a voucher for services. Claims for fees
6 and expense reimbursements shall be submitted to the
7 appointing court on forms approved by the executive
8 director. Claims submitted more than four years after the
9 last date of service shall be rejected.

10 The appointing court shall review the voucher to
11 determine if the time and expense claims are reasonable,
12 necessary and valid, and shall forward the voucher to the
13 agency with an order approving payment of the claimed

14 amount or of a lesser sum the court considers appropriate.

15 (b) Notwithstanding any other provision of this section
16 to the contrary, public defender services may pay by
17 direct bill, prior to the completion of the case, litigation
18 expenses incurred by attorneys appointed under this
19 article.

20 (c) Notwithstanding any other provision of this section
21 to the contrary, a panel attorney may be compensated for
22 services rendered and reimbursed for expenses incurred
23 prior to the completion of the case where: (1) More than
24 six months have expired since the commencement of the
25 panel attorney's representation in the case; and (2) no
26 prior payment of attorney fees has been made to the panel
27 attorney by public defender services during the case. The
28 amounts of any fees or expenses paid to the panel attor-
29 ney on an interim basis, when combined with any amounts
30 paid to the panel attorney at the conclusion of the case,
31 shall not exceed the limitations on fees and expenses
32 imposed by this section.

33 (d) In each case in which a panel attorney provides
34 legal representation under this article, and in each appeal
35 after conviction in circuit court, the panel attorney shall be
36 compensated at the following rates for actual and neces-
37 sary time expended for services performed and expenses
38 incurred subsequent to the effective date of this article:

39 (1) For attorney's work performed out of court,
40 compensation shall be at the rate of forty-five dollars per
41 hour. For paralegal's work performed out of court for the
42 attorney, compensation shall be at the rate of the parale-
43 gal's regular compensation on an hourly basis or, if
44 salaried, at the hourly rate of compensation which would
45 produce the paralegal's current salary, but in no event shall
46 the compensation exceed twenty dollars per hour. Out-of-
47 court work includes, but is not limited to, travel, interviews
48 of clients or witnesses, preparation of pleadings and
49 prehearing or pretrial research.

50 (2) For attorney's work performed in court, compensa-
51 tion shall be at the rate of sixty-five dollars per hour. No
52 compensation for paralegal's work performed in court
53 shall be allowed. In-court work includes, but is not limited
54 to, all time spent awaiting hearing or trial if the presence
55 of the attorney is required.

56 (3) The maximum amount of compensation for out-
57 of-court and in-court work under this subsection is as
58 follows: For proceedings of any kind involving felonies
59 for which a penalty of life imprisonment may be imposed,
60 the amount as the court may approve; for all other eligible
61 proceedings, three thousand dollars unless the court, for
62 good cause shown, approves payment of a larger sum.

63 (e) Actual and necessary expenses incurred in provid-
64 ing legal representation for proceedings of any kind
65 involving felonies for which a penalty of life imprison-
66 ment may be imposed, including, but not limited to,
67 expenses for travel, transcripts, salaried or contracted
68 investigative services and expert witnesses, shall be reim-
69 bursed in an amount as the court may approve. For all
70 other eligible proceedings, actual and necessary expenses
71 incurred in providing legal representation, including, but
72 not limited to, expenses for travel, transcripts, salaried or
73 contracted investigative services and expert witnesses, shall
74 be reimbursed to a maximum of fifteen hundred dollars
75 unless the court, for good cause shown, approves reim-
76 bursement of a larger sum.

77 Expense vouchers shall specifically set forth the
78 nature, amount and purpose of expenses incurred and
79 shall provide receipts, invoices or other documentation
80 required by the executive director and the state auditor:

81 (1) (A) Reimbursement of expenses for production of
82 transcripts of proceedings reported by a court reporter is
83 limited to the cost per original page set forth in section
84 four, article seven, chapter fifty-one of this code. Reim-
85 bursement of the cost of copies of such transcripts is
86 limited to the cost per copy page as provided for under

87 said section. It is the duty of the executive director of
88 public defender services to maintain computer records of
89 all transcripts, including originals and copies, for which
90 payment has been made.

91 (B) (i) There shall be no reimbursement of expenses
92 for or production of a transcript of a preliminary hearing
93 before a magistrate or juvenile referee, or of a magistrate
94 court jury trial, which has been reported by a court
95 reporter at the request of the attorney, where the prelimi-
96 nary hearing or jury trial has also been recorded electroni-
97 cally in accordance with the provisions of section eight,
98 article five, chapter fifty of this code or court rule.

99 (ii) Reimbursement of the expense of an appearance
100 fee for a court reporter who reports a proceeding other
101 than one described in subparagraph (i) of this paragraph,
102 or who reports a proceeding which is not reported by an
103 official court reporter acting in his or her official capacity
104 for the court, is limited to twenty-five dollars. Where a
105 transcript of a proceeding is produced, there shall be no
106 reimbursement for the expense of any appearance fee.
107 Where a transcript is requested by the attorney after an
108 appearance fee has been paid, reimbursement of the
109 expense incurred to obtain the transcript is limited to the
110 cost of producing the transcript, within the prescribed
111 limitations of paragraph (A) of this subdivision, less the
112 amount of the paid appearance fee.

113 (iii) Reimbursement of travel expenses incurred for
114 travel by a court reporter is subject to the limitations
115 provided by subdivision (2) of this subsection.

116 (iv) Except for the appearance fees provided in this
117 paragraph, there shall be no reimbursement for hourly
118 court reporters' fees or fees for other time expended by
119 the court reporter, either at the proceeding or traveling to
120 or from the proceeding.

121 (C) Reimbursement of the cost of transcription of
122 tapes electronically recorded during preliminary hearings

123 or magistrate court jury trials is limited to the rates
124 established by the supreme court of appeals for the
125 reimbursement of transcriptions of electronically recorded
126 hearings and trial.

127 (2) Reimbursement for any travel expense incurred in
128 an eligible proceeding is limited to the rates for the
129 reimbursement of travel expenses established by rules
130 promulgated by the governor pursuant to the provisions
131 of section eleven, article eight, chapter twelve of this code
132 and administered by the secretary of the department of
133 administration pursuant to the provisions of section forty-
134 eight, article three, chapter five-a of this code.

135 (3) Reimbursement for investigative services is limited
136 to a rate of thirty dollars per hour for work performed by
137 an investigator.

138 (f) For purposes of compensation under this section,
139 an appeal from a final order of the circuit court, or
140 proceeding seeking an extraordinary remedy, made to the
141 supreme court of appeals, shall be considered a separate
142 case.

143 (g) Vouchers submitted under this section shall
144 specifically set forth the nature of the service rendered, the
145 stage of proceeding or type of hearing involved, the date
146 and place the service was rendered and the amount of time
147 expended in each instance. All time claimed on the
148 vouchers shall be itemized to the nearest tenth of an hour.
149 If the charge against the eligible client for which services
150 were rendered is one of several charges involving multiple
151 warrants or indictments, the voucher shall indicate the fact
152 and sufficiently identify the several charges so as to enable
153 the court to avoid a duplication of compensation for
154 services rendered. The executive director shall refuse to
155 requisition payment for any voucher which is not in
156 conformity with the recordkeeping, compensation or other
157 provisions of this article and in such circumstance shall
158 return the voucher to the court or to the service provider
159 for further review or correction.

CHAPTER 66

(S. B. 331—By Senators Wooton, Ball, Dittmar, Oliverio, Schoonover, Snyder, White, Deem, Kimble and Scott)

[Passed April 12, 1997: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article seven, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the rate of payment for court transcripts as of the first day of July, one thousand nine hundred ninety-seven; allowing for transcripts to be provided on disc or for multiple pages to be copied on condensed pages; and to certification and filing of transcripts.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. OFFICIAL REPORTERS.

§51-7-4. Transcript of notes; fees; authenticity; transcript for judge in criminal cases.

1 The reporter shall furnish, upon request, to any party
2 to a case, a typewritten transcript of the testimony or other
3 proceedings, which shall be upon paper measuring eight
4 and one-half inches in width and eleven inches in length,
5 with margins of one-half inch on the right side and
6 bottom, one inch at the top and one and one-half inches
7 on the left, with the page filled as completely as practica-
8 ble, with at least twenty-four complete lines on each page,
9 with no more than double spacing used between lines, with
10 no more than five spaces used for indentation from the
11 left margin, with no larger than ten point pica type being
12 used, and shall certify the same as being correct and shall
13 be paid therefor, by the party requesting the transcript, at
14 the rate of two dollars and eighty-five cents for each page
15 so transcribed and stamped "original"; and for each copy

16 of the transcript stamped "copy", ordered at any time, he
17 or she shall be paid one dollar for each page so furnished:
18 *Provided*, That if any "original" transcript does not
19 conform with the specifications set forth in this section, the
20 party requesting the transcript may not be obligated to
21 pay for the transcript: *Provided, however*, That the copy
22 of the transcript may be provided either on disc or with
23 multiple transcript pages condensed on each page if the
24 court reporter can produce such a disc or copy and if the
25 party requesting the copy specifically asks for a disc or a
26 condensed page transcript: *Provided further*, That the
27 reporter shall be paid at the same rate for each page as the
28 copy rate for the original for a disc or for a condensed
29 page transcript.

30 A transcript of the testimony or proceedings, when
31 certified by the official reporter and by the judge of the
32 court, shall be authentic for all purposes, and shall be used
33 by the parties to the cause in any further proceeding
34 therein wherein the use of the same may be required. An
35 original transcript shall, upon completion and certification,
36 be filed with the circuit clerk. The original transcript may
37 be used, without further authentication, in making up the
38 record on appeal, as provided in sections thirty-six and
39 thirty-seven, article six, chapter fifty-six of this code. A
40 certified copy of the original transcript so filed shall be
41 delivered to the requesting party. In all cases of appeal
42 the reporter shall also make a copy of the transcript, which
43 copy shall be filed in the office of the clerk of the court in
44 which the trial or proceedings were had, to be used, if
45 necessary, in making up the record on appeal, and, if so
46 used, the clerk may not be entitled to any fee for that part
47 of the record. If, upon appeal or writ of error, the judg-
48 ment, decree or order entered in the cause be reversed, the
49 cost of the transcript shall be taxed as other costs; and if
50 the transcript be requested or required for the purpose of
51 demurring to the evidence, the cost thereof shall be taxed
52 in favor of the party prevailing on the demurrer.

53 It shall also be the duty of the reporter in any criminal
54 case, upon the request of the court or the judge thereof,
55 and for his or her use, to furnish a transcript of his or her
56 notes of the testimony and proceedings without extra
57 charge.

CHAPTER 67

(S. B. 335—By Senators Wooton, Ball, Bowman, Dittmar, Fanning, Hunter, Oliverio, Ross, Schoonover, Snyder, White, Buckalew, Deem, Kimble and Scott)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seven, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight, relating to furnishing transcripts to indigent respondents in juvenile delinquency and child abuse and neglect civil proceedings; and providing for the payment of the cost of preparing the transcripts from appropriations to the supreme court of appeals.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. OFFICIAL REPORTERS.

§51-7-8. Transcripts to be furnished indigent persons in juvenile delinquency and child abuse and neglect proceedings upon timely request; payment therefor.

1 In any proceeding held pursuant to article five or six,
2 chapter forty-nine of this code in which an indigent
3 respondent or his or her counsel has filed a written
4 request, in the manner prescribed by the supreme court of
5 appeals, evidencing an intent to appeal a decision of a
6 circuit court in the proceeding, the court, upon presenta-
7 tion of a written request, presented within thirty days after
8 the entry of the order sought to be appealed, shall autho-
9 rize and direct the court reporter to furnish a transcript of
10 the testimony of the proceeding or the part or parts
11 thereof that have specifically been requested.

12 The court, after being sufficiently satisfied of the
13 reasonableness of a voucher or claim submitted for
14 payment of the cost of preparing the transcript, shall
15 certify the cost to the state auditor, who shall, in a timely
16 manner, pay the court reporter's fee from appropriations
17 to the supreme court of appeals.

CHAPTER 68

(S. B. 293—By Senators Wooton, Ball, Bowman, Dittmar, Ross,
Snyder and Kimble)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article four, chapter fifty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to precluding a court reporter from having a contractual relationship with a party litigant other than governmental entities.

Be it enacted by the Legislature of West Virginia:

That section one, article four, chapter fifty-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. DEPOSITIONS AND PERPETUATION OF TESTIMONY.

§57-4-1. Taking and certification of depositions — generally.

1 In any pending case the deposition of a witness,
2 whether a party to the suit or not, may, without commis-
3 sion, be taken in or out of this state by a justice, or notary
4 public, or by a commissioner in chancery, or before any
5 officer authorized to take depositions in the county or
6 state where they may be taken. However, a deposition
7 may not be taken by any person who is a relative or
8 employee or attorney of any of the parties, or is a relative
9 or employee of the attorney, or a relative or employee or
10 attorney of one who has a financial interest in the outcome
11 of the case, or who is otherwise financially interested in the
12 action. Any deposition taken by an interested party, as
13 described above, shall be considered void. For purposes
14 of this article, an employee includes a person who has a
15 contractual relationship with a party litigant to provide
16 reporting or other court services and also includes a
17 person employed part or full time under contract or
18 otherwise by a person who has a contractual relationship

19 with a party litigant to provide reporting or other court
20 services. A party litigant does not include federal, state or
21 local governments and the subdivisions thereof.
22 Depositions may be taken in shorthand, or stenographic
23 characters or notes, and shall be written out in full and
24 transcribed into the English language by the stenographer
25 taking the same, and certified by the officer before whom
26 the depositions are taken; and if certified by such officer
27 under his hand and if further certified by him that such
28 stenographic characters and notes were correctly taken
29 and accurately transcribed by him, or under his direction
30 and supervision, and that the witnesses were duly sworn,
31 such depositions may be received and read in evidence
32 without proof of the signature to such certificate and
33 without the signature of the witness to such depositions.
34 And in case the stenographer taking such depositions is
35 not the officer before whom the same are being taken,
36 then such stenographer, before proceeding to take any of
37 said depositions, shall be sworn to take correctly and
38 accurately transcribe the same, and the certificate of the
39 officer before whom the depositions are taken shall state
40 that the stenographer was so sworn.

CHAPTER 69

(Com. Sub. for H. B. 2205—By Delegates Yeager and Staton)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to criminal penalties and restitution for intentionally causing injury or death to a law-enforcement or fire prevention or investigation animal or an animal used by the department of military affairs and public safety.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. DOGS AND CATS.

§19-20-24. Causing death or injury to animals used by law-enforcement officials or by fire prevention or investigation officials; criminal penalties.

1 Any person who, without justification, and with the
2 unlawful intent to inflict serious physical injury or death,
3 causes the death of any trained dog or horse used by law-
4 enforcement officials, the department of military affairs
5 and public safety or by fire prevention or investigation
6 officials in the performance of their official duties is
7 guilty of a felony and, upon conviction thereof, shall be
8 fined not less than five hundred dollars nor more than one
9 thousand dollars and imprisoned in the penitentiary for a
10 definite term of not more than three years.

11 Any person who, without justification, willfully and
12 unlawfully causes physical injury to any trained dog or
13 horse used by law-enforcement officials, the department
14 of military affairs and public safety or by fire prevention
15 or investigation officials in the performance of their
16 official duties is guilty of a misdemeanor and, upon
17 conviction thereof, shall be fined not more than five
18 hundred dollars, or confined in the county jail not more
19 than six months, or both.

20 Any person convicted of a violation of this section
21 shall be ordered to make restitution to the law-
22 enforcement agency, the department of military affairs
23 and public safety or to the state fire marshal or other fire
24 prevention or investigation department or agency owning
25 the animal for any veterinary bills and replacement costs
26 of any disabled or killed animal.

CHAPTER 70

(Com. Sub. for H. B. 2436—By Delegates Proudfoot, Fragale, Caputo, Flanigan, Stemple, Damron and Leggett)

[Passed April 1, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the possession of illegally obtained wildlife; forfeiture to state; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That section four, 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.

§20-2-4. Possession of wildlife.

1 Except as otherwise provided by law, no person shall
2 have in his or her possession any wildlife, or parts thereof,
3 during closed seasons. It is unlawful to possess any
4 wildlife, or parts thereof, which have been illegally taken,
5 killed or obtained. Any wildlife illegally taken, killed or
6 possessed shall be forfeited to the state and shall be
7 counted toward the daily, seasonal, bag, creel and posses-
8 sion limit of the person in possession of, or responsible
9 for, the illegal taking or killing of any wildlife.

10 Wildlife lawfully taken outside of this state shall be
11 subject to the same laws and rules as that taken within this
12 state.

13 Migratory wild birds shall be possessed only in
14 accordance with the "Migratory Bird Treaty Act" and
15 regulations thereunder.

16 The restrictions in this section do not apply to the
17 director or duly authorized agents, who may, in any
18 manner, take or maintain in captivity, at any time, any
19 wildlife for the purpose of carrying out the provisions of
20 this chapter.

CHAPTER 71

(Com. Sub. for H. B. 2847—By Delegates Stemple,
Martin, Kominar, Tucker and Boggs)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten-b, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing a second offense of battery upon a police officer from a misdemeanor to a felony; and increasing penalties for convictions of battery upon a police officer.

Be it enacted by the Legislature of West Virginia:

That section ten-b, article two, 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 2. CRIMES AGAINST THE PERSON.

§61-2-10b. Malicious assault; unlawful assault; battery and recidivism of battery; assault on police officers, conservation officers, county or state correctional officers; penalties.

1 (a) *Malicious assault.* — If any person maliciously
2 shoots, stabs, cuts or wounds or by any means causes bodily
3 injury with intent to maim, disfigure, disable or kill a
4 police officer, county correctional officer or state correc-
5 tional officer acting in his or her official capacity and the
6 person committing the malicious assault knows or has
7 reason to know that the victim is a police officer, conserva-
8 tion officer, humane officer, emergency medical techni-
9 cian, firefighter, county correctional officer or state cor-
10 rectional officer acting in his or her official capacity, then
11 the offender shall be guilty of a felony and, upon convic-
12 tion, shall be punished by confinement in the penitentiary
13 not less than three nor more than fifteen years.

14 (b) *Unlawful assault.* — If any person unlawfully but
15 not maliciously shoots, stabs, cuts or wounds or by any
16 means causes a police officer, conservation officer, county
17 correctional officer acting in his or her official capacity or
18 state correctional officer bodily injury with intent to maim,
19 disfigure, disable or kill said officer and the person com-
20 mitting the unlawful assault knows or has reason to know
21 that the victim is a police officer, conservation officer,
22 county correctional officer or state correctional officer
23 acting in his or her official capacity, then the offender is
24 guilty of a felony and, upon conviction, shall be confined
25 to the penitentiary for a period of not less than two years
26 nor more than five years.

27 (c) *Battery.* — If any person unlawfully and intention-
28 ally makes physical contact of an insulting or provoking
29 nature with a police officer, conservation officer, county
30 correctional officer or state correctional officer acting in
31 his or her official capacity, or unlawfully and intentionally
32 causes physical harm to a police officer, conservation
33 officer, county correctional officer or state correctional
34 officer acting in such capacity, said person is guilty of a
35 misdemeanor and, upon conviction thereof, shall be con-
36 fined to the county or regional jail not less than one
37 month nor more than twelve months or fined the sum of
38 five hundred dollars or both fined and imprisoned. If any
39 person commits a second such offense, then such person is
40 guilty of a felony and, upon conviction thereof, shall be
41 confined in the state correctional facility not less than one
42 year nor more than three years or fined the sum of one
43 thousand dollars or both fined and imprisoned. Any
44 person who commits a third violation of this subsection is
45 guilty of a felony and, upon conviction, shall be confined
46 in the state correctional facility not less than two years nor
47 more than five years or fined not more than two thousand
48 dollars or both fined and imprisoned.

49 (d) *Assault.* — If any person unlawfully attempts to
50 commit a violent injury to the person of a police officer,
51 conservation officer, county correctional officer or state
52 correctional officer, or unlawfully commits an act which
53 places a police officer, conservation officer, county cor-
54 rectional officer or state correctional officer acting in his

55 or her official capacity in reasonable apprehension of
 56 immediately receiving a violent injury, he shall be guilty
 57 of a misdemeanor and, upon conviction, shall be confined
 58 in the county or regional jail for not less than twenty-four
 59 hours nor more than six months, or fined not more than
 60 two hundred dollars, or both such fine and imprisonment.

61 (e) *Police officer defined.* — As used in this section, a
 62 police officer means any officer employed by the division
 63 of public safety, any county law-enforcement agency, any
 64 officer employed by the state to perform law-enforcement
 65 duties or any police officer employed by any city or
 66 municipality who is responsible for the prevention or
 67 detection of crime and the enforcement of the penal,
 68 traffic or highway laws of this state.

CHAPTER 72

(Com. Sub. for H. B. 2084—By Delegates Riggs and Warner)

[Passed April 8, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section fifteen, article six, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article two, chapter sixty-one of said code by adding thereto a new section, designated section twenty-nine, relating to abuse of incapacitated adults; definitions; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-29. Abuse or neglect of incapacitated adult.

1 (a) The following words when used in this section

2 have the meaning ascribed, unless the context clearly
3 indicates otherwise:

4 (1) "Abuse" means the infliction or threat to inflict
5 physical pain or injury on an incapacitated adult;

6 (2) "Care giver" means an adult who has or shares
7 actual physical possession or care of an incapacitated
8 adult on a full-time or temporary basis, regardless of
9 whether such person has been designated as a guardian of
10 such adult by any contract, agreement or legal pro-
11 ceeding. Care giver includes health care providers, family
12 members, and any person who otherwise voluntarily
13 accepts a supervisory role towards an incapacitated adult;

14 (3) "Neglect" means (i) the failure to provide the
15 necessities of life to an incapacitated adult or (ii) the
16 unlawful expenditure or willful dissipation of the funds or
17 other assets owned or paid to or for the benefit of an
18 incapacitated adult; and

19 (4) "Incapacitated adult" means any person who by
20 reason of physical, mental or other infirmity is unable to
21 physically carry on the daily activities of life necessary to
22 sustaining life and reasonable health.

23 (b) Any care giver who neglects an incapacitated
24 adult, or who knowingly permits another person to neglect
25 said adult, is guilty of a misdemeanor and, upon
26 conviction thereof, shall be fined not less than five
27 hundred dollars nor more than fifteen hundred dollars, or
28 imprisoned in the county jail for not less than ninety days
29 nor more than one year, or both fined and imprisoned.

30 (c) Any care giver who intentionally abuses or
31 neglects an incapacitated adult is guilty of a felony and,
32 upon conviction thereof, shall, in the discretion of the
33 court, be confined in the penitentiary for not less than two
34 nor more than ten years or be confined in the county jail
35 for not more than twelve months and fined not more than
36 fifteen hundred dollars.

37 (d) Nothing in this article shall be construed to mean
38 an adult is abused or neglected for the sole reason that his
39 or her independent decision is to rely upon treatment by
40 spiritual means in accordance with the tenets and practices
41 of a recognized church or religious denomination or
42 organization in lieu of medical treatment.

CHAPTER 73

(Com. Sub. for H. B. 2473—By Delegates Staton, Damron, Kuhn,
Trump, Campbell and Laird)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, five and six, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections seven and eight, all relating to the crime of arson generally, modifying penalties; changing fines; modifying elements for arson crimes; providing definitions; creating felony offenses for injuries to persons injured during the commission of an arson crime and providing penalties therefor; and establishing reimbursement for the expenses of arson suppression.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. CRIMES AGAINST PROPERTY.

- §61-3-1. Burning, etc., of a dwelling or outbuilding; first degree arson; penalty; definitions.
- §61-3-2. Burning, etc., of other buildings or structures; second degree arson; penalty.
- §61-3-3. Burning personal property of another of the value of five hundred dollars or more; third degree arson; penalty.
- §61-3-4. Attempt to commit arson; fourth degree arson; penalty.
- §61-3-5. Burning, or attempting to burn, insured property; penalty.
- §61-3-6. Willfully, unlawfully and maliciously setting fire on lands; penalty.
- §61-3-7. Causing injuries during an arson-related crime; penalties.
- §61-3-8. Recovery of costs incurred in fighting fires caused by arson.

§61-3-1. Burning, etc., of a dwelling or outbuilding; first degree arson; penalty; definitions.

1 (a) Any person who willfully and maliciously sets fire
2 to or burns, or who causes to be burned, or who aids,
3 counsels, procures, persuades, incites, entices or solicits
4 any person to burn, any dwelling, whether occupied,
5 unoccupied or vacant, or any outbuilding, whether the
6 property of himself or herself or of another, shall be
7 guilty of arson in the first degree and, upon conviction
8 thereof, be sentenced to the penitentiary for a definite
9 term of imprisonment which is not less than two nor more
10 than twenty years. A person imprisoned pursuant to this
11 section is not eligible for parole prior to having served a
12 minimum of two years of his or her sentence or the
13 minimum period required by the provisions of section
14 thirteen, article twelve, chapter sixty-two of this code,
15 whichever is greater.

16 (b) As used in subsection (a) of this section:

17 (1) "Dwelling" means any building or structure
18 intended for habitation or lodging, in whole or in part,
19 regularly or occasionally, and shall include, but not be
20 limited to, any house, apartment, hotel, dormitory, hospital,
21 nursing home, jail, prison, mobile home, house trailer,
22 modular home, factory-built home or self-propelled
23 motor home;

24 (2) "Outbuilding" means any building or structure
25 which adjoins, is part of, belongs to, or is used in
26 connection with a dwelling, and shall include, but not be
27 limited to, any garage, shop, shed, barn or stable.

§61-3-2. Burning, etc., of other buildings or structures; second degree arson; penalty.

1 Any person who willfully and maliciously sets fire to
2 or burns, or who causes to be burned, or who aids,
3 counsels, procures, persuades, incites, entices or solicits
4 any person to burn, any building or structure of any class
5 or character, whether the property of himself or herself or
6 of another, not included or prescribed in the preceding
7 section, shall be guilty of arson in the second degree and,

8 upon conviction thereof, be sentenced to the penitentiary
9 for a definite term of imprisonment which is not less than
10 one nor more than ten years. A person imprisoned
11 pursuant to this section is not eligible for parole prior to
12 having served a minimum of one year of his or her
13 sentence or the minimum period required by the
14 provisions of section thirteen, article twelve, chapter sixty-
15 two of this code, whichever is greater.

**§61-3-3. Burning personal property of another of the value of
five hundred dollars or more; third degree arson;
penalty.**

1 Any person who willfully and maliciously sets fire to
2 or burns, or who causes to be burned, or who aids,
3 counsels, procures, persuades, incites, entices or solicits
4 any person to burn, any personal property of any class or
5 character, of the value of not less than five hundred
6 dollars, and the property of another person, shall be guilty
7 of arson in the third degree and, upon conviction thereof,
8 be sentenced to the penitentiary for a definite term of
9 imprisonment which is not less than one nor more than
10 three years. A person imprisoned pursuant to this section
11 is not eligible for parole prior to having served a
12 minimum of one year of his or her sentence.

**§61-3-4. Attempt to commit arson; fourth degree arson;
penalty.**

1 (a) Any person who willfully and maliciously attempts
2 to set fire to, or burn, or attempts to cause to be burned, or
3 attempts to aid, counsel, procure, persuade, incite, entice or
4 solicit any person to burn, any of the buildings, structures
5 or personal property mentioned in the foregoing sections,
6 or who commits any act preliminary thereto, or in
7 furtherance thereof, shall be guilty of arson in the fourth
8 degree and, upon conviction thereof, be sentenced to the
9 penitentiary for a definite term of imprisonment which is
10 not less than one nor more than two years, or fined not to
11 exceed two thousand five hundred dollars, or both. A
12 person imprisoned pursuant to this section is not eligible
13 for parole prior to having served a minimum of one year
14 of his or her sentence.

15 (b) The placing or distributing of any inflammable,
16 explosive or combustible material or substance, or any
17 device in any building, structure or personal property
18 mentioned in the foregoing sections, in an arrangement or
19 preparation with intent to eventually, willfully and
20 maliciously, set fire to or burn, or to cause to be burned,
21 or to aid, counsel, procure, persuade, incite, entice or
22 solicit the setting fire to or burning of any building,
23 structure or personal property mentioned in the foregoing
24 sections shall, for the purposes of this section, constitute an
25 attempt to burn that building, structure or personal
26 property.

**§61-3-5. Burning, or attempting to burn, insured property;
penalty.**

1 Any person who willfully and with intent to injure or
2 defraud an insurer sets fire to or burns, or attempts so to
3 do, or causes to be burned, or who aids, counsels, procures,
4 persuades, incites, entices or solicits any person to burn,
5 any building, structure or personal property, of any class
6 or character, whether the property of himself or herself or
7 of another, which shall at the time be insured or which is
8 believed by the person committing an act prohibited by
9 this section to be insured by any person against loss or
10 damage by fire, shall be guilty of a felony and, upon
11 conviction thereof, be sentenced to the penitentiary for a
12 definite term of imprisonment which is not less than one
13 nor more than five years or fined not to exceed ten
14 thousand dollars, or both. A person imprisoned pursuant
15 to this section is not eligible for parole prior to having
16 served a minimum of one year of his or her sentence or
17 the minimum period required by the provisions of section
18 thirteen, article twelve, chapter sixty-two of this code,
19 whichever is greater.

**§61-3-6. Willfully, unlawfully and maliciously setting fire on
lands; penalty.**

1 If any person willfully, unlawfully and maliciously sets
2 fire to any woods, fence, grass, straw or other thing
3 capable of spreading fire on lands, he or she shall be
4 guilty of a felony and, upon conviction, shall be sentenced
5 to the penitentiary for a definite term of imprisonment

6 which is not less than one year nor more than five years or
7 fined not to exceed five thousand dollars, or both. He or
8 she shall, moreover, be liable to any person injured
9 thereby, or in consequence thereof, for double the amount
10 of damages sustained by such person. A person
11 imprisoned pursuant to this section is not eligible for
12 parole prior to having served a minimum of one year of
13 his or her sentence or the minimum period required by
14 the provisions of section thirteen, article twelve, chapter
15 sixty-two of this code, whichever is greater.

**§61-3-7. Causing injuries during an arson-related crime;
penalties.**

1 (a) Any person who violates the provisions of sections
2 one, two, three, four, five or six of this article, which
3 violation causes bodily injury, but does not result in death,
4 to any person shall be guilty of a felony and, upon
5 conviction thereof, shall be sentenced to the penitentiary
6 for a definite term of imprisonment which is not less than
7 two nor more than ten years, or fined not more than five
8 thousand dollars, or both. A person imprisoned pursuant
9 to this section is not eligible for parole prior to having
10 served a minimum of two years of his or her sentence or
11 the minimum period required by the provisions of section
12 thirteen, article twelve, chapter sixty-two of this code,
13 whichever is greater.

14 (b) Any person who violates the provisions of sections
15 one, two, three, four, five or six of this article, which
16 violation causes serious bodily injury which maims,
17 disfigures, or disables any person, but does not result in
18 death, shall be guilty of a felony and, upon conviction
19 thereof, shall be sentenced to the penitentiary for a
20 definite term of imprisonment which is not less than three
21 nor more than fifteen years, or fined not more than ten
22 thousand dollars, or both. A person imprisoned pursuant
23 to this section is not eligible for parole prior to having
24 served a minimum of three years of his or her sentence or
25 the minimum period required by the provisions of section
26 thirteen, article twelve, chapter sixty-two of this code,
27 whichever is greater.

§61-3-8. Recovery of costs incurred in fighting fires caused by arson.

1 Any person convicted of any felony enumerated in
2 sections one, two, three, four, five or six of this article may
3 be ordered to reimburse any fire department or company
4 for the costs expended to control, extinguish and suppress
5 the arson fire, and all reasonable costs associated therewith,
6 including, but not limited to, costs for the personal services
7 rendered by any employees of any fire department or
8 company, and operating costs of equipment and supplies
9 used to control, extinguish or suppress the fire.

CHAPTER 74

(Com. Sub. for H. B. 2221—By Delegates Faircloth, Trump, Staton,
Amores, Hunt and Douglas)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article five, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to obstructing and fleeing from an officer; removing the penalty for counseling, advising or inviting another to obstruct an officer; establishing various offenses relating to fleeing from an officer in a vehicle and providing penalties therefor; and defining terms for purposes of this section.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article five, 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 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-17. Obstructing officer; fleeing from officer; fleeing from officer in a vehicle; penalties; definitions.

1 (a) Any person who by threats, menaces, acts or
2 otherwise, forcibly or illegally hinders or obstructs, or
3 attempts to hinder or obstruct, any law-enforcement
4 officer acting in his or her official capacity is guilty of a
5 misdemeanor and, upon conviction thereof, shall be fined
6 not less than fifty nor more than five hundred dollars, and
7 may, in the discretion of the court, be confined in the
8 county or regional jail not more than one year.

9 (b) Any person who intentionally flees or attempts to
10 flee by any means other than the use of a vehicle from
11 any law-enforcement officer acting in his or her official
12 capacity who is attempting to make a lawful arrest of the
13 person, and who knows or reasonably believes that the
14 officer is attempting to arrest him or her, is guilty of a
15 misdemeanor and, upon conviction thereof, shall be fined
16 not less than fifty nor more than five hundred dollars, and
17 may, in the discretion of the court, be confined in the
18 county or regional jail not more than one year.

19 (c) Any person who intentionally flees or attempts to
20 flee in a vehicle from any law-enforcement officer acting
21 in his or her official capacity, after the officer has given a
22 clear visual or audible signal directing the person to stop,
23 is guilty of a misdemeanor and, upon conviction thereof,
24 shall be fined not less than five hundred nor more than
25 one thousand dollars, and shall be confined in the county
26 or regional jail not more than one year.

27 (d) Any person who intentionally flees or attempts to
28 flee in a vehicle from any law-enforcement officer acting
29 in his or her official capacity, after the officer has given a
30 clear visual or audible signal directing the person to stop,
31 and who causes damage to the real or personal property of
32 any person during or resulting from his or her flight, is
33 guilty of a misdemeanor and, upon conviction thereof,
34 shall be fined not less than one thousand nor more than
35 three thousand dollars, and shall be confined in the county
36 or regional jail for not less than six months nor more than
37 one year.

38 (e) Any person who intentionally flees or attempts to
39 flee in a vehicle from any law-enforcement officer acting
40 in his or her official capacity, after the officer has given a
41 clear visual or audible signal directing the person to stop,

42 and who causes bodily injury to any person during or
43 resulting from his or her flight, is guilty of a felony and,
44 upon conviction thereof, shall be imprisoned in the state
45 correctional facility not less than one nor more than five
46 years.

47 (f) Any person who intentionally flees or attempts to
48 flee in a vehicle from any law-enforcement officer acting
49 in his or her official capacity, after the officer has given a
50 clear visual or audible signal directing the person to stop,
51 and who causes death to any person during or resulting
52 from his or her flight, is guilty of a felony and, upon
53 conviction thereof, shall be punished by a definite term of
54 imprisonment in the state correctional facility which is not
55 less than three nor more than fifteen years. A person
56 imprisoned pursuant to the provisions of this subsection is
57 not eligible for parole prior to having served a minimum
58 of three years of his or her sentence or the minimum
59 period required by the provisions of section thirteen,
60 article twelve, chapter sixty-two, whichever is greater.

61 (g) Any person who intentionally flees or attempts to
62 flee in a vehicle from any law-enforcement officer acting
63 in his or her official capacity, after the officer has given a
64 clear visual or audible signal directing the person to stop,
65 and who is under the influence of alcohol, controlled
66 substances or drugs at the time, is guilty of a felony and,
67 upon conviction thereof, shall be imprisoned in the state
68 correctional facility not less than one nor more than five
69 years.

70 (h) For purposes of this section, the term "vehicle"
71 includes any motor vehicle, motorcycle, motorboat, all-
72 terrain vehicle or snowmobile, as those terms are defined
73 in section one, article one, chapter seventeen-a of this
74 code, whether or not it is being operated on a public
75 highway at the time and whether or not it is licensed by
76 the state.

77 (i) For purposes of this section, the terms "flee,"
78 "fleeing," and "flight" shall not include any person's
79 reasonable attempt to travel to a safe place, allowing the
80 pursuing law-enforcement officer to maintain appropriate
81 surveillance, for the purpose of complying with the
82 officer's direction to stop.

CHAPTER 75

(Com. Sub. for S. B. 134—By Senators Oliverio, Prezioso, Sharpe, White, McKenzie, Buckalew, Hunter, Minear, Bowman, Anderson, Helmick, Kimble, Ross, Snyder, Schoonover, Ball, Sprouse, Dugan, Chafin, Jackson, Wooton, Walker, Dittmar, Bailey and Tomblin, Mr. President)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eight-d, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-a, relating to child neglect; and creating a criminal offense for any parent, guardian or custodian whose neglect causes the death of a child.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8D. CHILD ABUSE.

§61-8D-4a. Child neglect resulting in death; criminal penalties.

1 (a) If any parent, guardian or custodian shall neglect a
 2 child under his or her care, custody or control and by
 3 such neglect cause the death of said child, then such
 4 parent, guardian or custodian shall be guilty of a felony
 5 and, upon conviction thereof, shall be fined not less than
 6 one thousand dollars nor more than five thousand dollars
 7 or committed to the custody of the division of corrections
 8 for not less than three nor more than fifteen years, or both
 9 such fine and imprisonment.

10 (b) No child who in lieu of medical treatment was
 11 under treatment solely by spiritual means through prayer
 12 in accordance with a recognized method of religious
 13 healing with a reasonable proven record of success shall,

14 for that reason alone, be considered to have been neglect-
15 ed within the provisions of this section. A method of
16 religious healing shall be presumed to be a recognized
17 method of religious healing if fees and expenses incurred
18 in connection with such treatment are permitted to be
19 deducted from taxable income as "medical expenses"
20 pursuant to regulations or rules promulgated by the Unit-
21 ed States internal revenue service.

22 (c) A child whose parent, guardian or legal custodian
23 has inhibited or interfered with the provision of medical
24 treatment in accordance with a court order may be consid-
25 ered to have been neglected for the purposes of this sec-
26 tion.

CHAPTER 76

(Com. Sub. for H. B. 2756—By Delegates Laird, Mahan and Staton)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article eight-f, chapter sixty-one 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 ten; and to amend and reenact section two, article twelve, chapter sixty-two of said code, all relating to modifying registration requirements for persons convicted of acts causing the person to be registered under provisions of the sex offender registration act; adding definitions and reporting requirements associated with the sex offender registration act; and including these requirements for offenders released on probation.

Be it enacted by the Legislature of West Virginia:

That section two, article eight-f, chapter sixty-one 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 ten; and that section two, article twelve, chapter sixty-two of said code be amended and reenacted, all to read as follows:

Chapter

61. Crimes and Their Punishment.

62. Criminal Procedure.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8F. SEX OFFENDER REGISTRATION ACT.

§61-8F-2. Registration.

§61-8F-10. Address Verification.

§61-8F-2. Registration.

1 (a) Any person who has been convicted of a violation
2 of the provisions of article eight-b, eight-c or eight-d of
3 this chapter, or of section fourteen, article two, or of sec-
4 tion thirteen, article eight of this chapter, or of a similar
5 provision in another jurisdiction shall be required to be
6 registered as set forth in this article. Any person who has
7 been convicted of an attempt to commit any of the offens-
8 es set forth in this section shall also be required to register
9 as set forth in this article.

10 (b) On the date that any person convicted of the
11 crimes listed herein is released, is granted probation, is
12 granted a suspended sentence, is released on parole or
13 probation, or is ordered to be placed on home detention,
14 the commissioner of corrections, regional jail supervisor
15 or city or sheriff operating a jail which releases such per-
16 son and any parole or probation officer who releases such
17 person or supervises such person following the release
18 shall obtain all information required by this subsection
19 prior to the release of the person and shall send written
20 notice of the release of the person to the state police within
21 three days of receiving the information. The notice shall
22 include:

23 (1) The full name of the person;

- 24 (2) The address where the person shall reside;
- 25 (3) The person's social security number;
- 26 (4) A recent photograph of the person;
- 27 (5) A brief description of the crime for which the
28 person was convicted;
- 29 (6) Fingerprints; and
- 30 (7) For any person determined to be a sexually violent
31 predator, the notice shall also include:
- 32 (i) Identifying factors, including physical characteris-
33 tics;
- 34 (ii) History of the offense; and
- 35 (iii) Documentation of any treatment received for the
36 mental abnormality or personality disorder.
- 37 (c) At the time the person is convicted of the crimes
38 set forth in subsection (a) of this section, the person shall
39 sign in open court, a statement acknowledging that he or
40 she understands the requirements imposed by this article.
41 The court shall inform the person so convicted of the
42 requirements to register imposed by this article and shall
43 further satisfy itself by interrogation of the defendant or
44 his or her counsel that the defendant has received notice
45 of the provisions of this article and that the defendant
46 understands such provisions. Such statement, when signed
47 and witnessed shall constitute prima facie evidence that the
48 person had knowledge of the requirements of this article.
- 49 (d) When a person required to register under this arti-
50 cle is released following incarceration, the commissioner
51 of corrections, the regional jail supervisor or the city or
52 sheriff or any other person supervising the operation of
53 the place of confinement shall, within three days, inform
54 the state police of such release and provide such further
55 information as is required by this article.
- 56 (e) The state police shall maintain a central registry of
57 all persons who register under this article and shall release

58 information only as provided in this article.

59 (f) For the purposes of this article, sexually violent
60 offenses shall be defined as any criminal offenses set forth
61 in article eight-b of this chapter which include forcible
62 compulsion, bodily injury or the use of deadly weapons.

63 (g) A person is defined as a sexually violent predator
64 when the person is convicted of a sexually violent offense
65 and who suffers from a mental abnormality or personality
66 disorder, a symptom of which includes a likelihood of
67 engaging in predatory sexually violent behavior.

68 (h) A person is defined as having a mental abnormali-
69 ty if the person has a disorder that makes the person likely
70 to engage in predatory sexually violent offenses.

71 (i) The term "predatory act" as defined in this article
72 means an act directed at a stranger or at a person with
73 whom a relationship has been established or promoted for
74 the primary purpose of victimization.

75 (j) Determining if the offender is a sexually violent
76 predator shall be the responsibility of the person or per-
77 sons conducting the offender's psychiatric study and
78 diagnosis required for probation eligibility as set forth in
79 section two, article twelve of chapter sixty-two of this code.

§61-8F-10. Address Verification.

1 The state police shall verify addresses of those persons
2 registered as sexually violent predators every ninety days
3 and all other registered persons once a year.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-2. Eligibility for probation.

1 (a) All persons who are found guilty of or plead guilty
2 to any felony, the maximum penalty for which is less than
3 life imprisonment, and all persons who are found guilty of
4 or plead guilty to any misdemeanor, shall be eligible for
5 probation, notwithstanding the provisions of sections eigh-

6 teen and nineteen, article eleven, chapter sixty-one of this
7 code.

8 (b) The provisions of subsection (a) of this section to
9 the contrary notwithstanding, any person who commits or
10 attempts to commit a felony with the use, presentment or
11 brandishing of a firearm shall be ineligible for probation.
12 Nothing in this section shall apply to an accessory before
13 the fact or a principal in the second degree who has been
14 convicted as if he or she were a principal in the first de-
15 gree if, in the commission of or in the attempted commis-
16 sion of the felony, only the principal in the first degree
17 used, presented or brandished a firearm.

18 (c)(1) The existence of any fact which would make
19 any person ineligible for probation under subsection (b)
20 of this section because of the commission or attempted
21 commission of a felony with the use, presentment or bran-
22 dishing of a firearm shall not be applicable unless such
23 fact is clearly stated and included in the indictment or
24 presentment by which such person is charged and is ei-
25 ther: (i) Found by the court upon a plea of guilty or nolo
26 contendere; or (ii) found by the jury, if the matter be tried
27 before a jury, upon submitting to such jury a special inter-
28 rogatory for such purpose; or (iii) found by the court, if
29 the matter be tried by the court, without a jury.

30 (2) The amendments to this subsection adopted in the
31 year one thousand nine hundred eighty-one:

32 (A) Shall apply to all applicable offenses occurring on
33 or after the first day of August of that year;

34 (B) Shall apply with respect to the contents of any
35 indictment or presentment returned on or after the first
36 day of August of that year irrespective of when the of-
37 fense occurred;

38 (C) Shall apply with respect to the submission of a
39 special interrogatory to the jury and the finding to be
40 made thereon in any case submitted to such jury on or
41 after the first day of August of that year or to the requisite
42 findings of the court upon a plea of guilty or in any case

43 tried without a jury: *Provided*, That the state shall give
44 notice in writing of its intent to seek such finding by the
45 jury or court, as the case may be, which notice shall state
46 with particularity the grounds upon which such finding
47 shall be sought as fully as such grounds are otherwise
48 required to be stated in an indictment, unless the grounds
49 therefor are alleged in the indictment or presentment upon
50 which the matter is being tried;

51 (D) Shall not apply with respect to cases not affected
52 by such amendment and in such cases the prior provisions
53 of this section shall apply and be construed without refer-
54 ence to such amendment; and

55 Insofar as such amendments relate to mandatory sen-
56 tences without probation, all such matters requiring such
57 sentence shall be proved beyond a reasonable doubt in all
58 cases tried by the jury or the court.

59 (d) For the purpose of this section, the term "fire-
60 arm" shall mean any instrument which will, or is designed
61 to, or may readily be converted to, expel a projectile by
62 the action of an explosive, gunpowder or any other similar
63 means.

64 (e) In the case of any person who has been found
65 guilty of, or pleaded guilty to, a felony or misdemeanor
66 under the provisions of section twelve or twenty-four,
67 article eight of chapter sixty-one, or under the provisions
68 of article eight-c or eight-b, both of chapter sixty-one, all
69 of this code, such person shall only be eligible for proba-
70 tion after undergoing a physical, mental and psychiatric
71 study and diagnosis which shall include an on-going treat-
72 ment plan requiring active participation in sexual abuse
73 counseling at a mental health facility or through some
74 other approved program: *Provided*, That nothing dis-
75 closed by the person during such study or diagnosis shall
76 be made available to any law enforcement agency, or
77 other party without that person's consent, or admissible in
78 any court of this state, unless such information disclosed
79 shall indicate the intention or plans of the probationer to
80 do harm to any person, animal, institution, or property, in

81 which case such information may be released only to such
82 persons as might be necessary for protection of the said
83 person, animal, institution or property.

84 (f) Any person who has been convicted of a violation
85 of the provisions of article eight-b, eight-c or eight-d,
86 chapter sixty-one of this code, or of section fourteen,
87 article two, or of section thirteen, article eight, all of chap-
88 ter sixty-one of this code, or of a similar provision in an-
89 other jurisdiction shall be required to be registered upon
90 release on probation. Any person who has been convicted
91 of an attempt to commit any of the offenses set forth in
92 this subsection shall also be registered upon release on
93 probation.

94 (g) The probation officer shall within three days of
95 release of the offender, send written notice to the state
96 police of the release of the offender. The notice shall
97 include:

98 (1) The full name of the person;

99 (2) The address where the person shall reside;

100 (3) The person's social security number;

101 (4) A recent photograph of the person;

102 (5) A brief description of the crime for which the
103 person was convicted;

104 (6) Fingerprints; and

105 (7) For any person determined to be a sexually violent
106 predator as defined in section two, article eight-f, chapter
107 sixty-one of this code, the notice shall also include:

108 (i) Identifying factors, including physical characteris-
109 tics;

110 (ii) History of the offense; and

111 (iii) Documentation of any treatment received for the
112 mental abnormality or personality disorder.

CHAPTER 77

(S. B. 292—By Senators Wooton, Ball, Bowman, Dittmar, Fanning, Hunter, Schoonover, Snyder, White, Buckalew, Deem, Kimble and Scott)

[Passed April 11, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twelve, thirteen and eighteen, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the parole board; providing that no more than two board members may be from the same congressional district; providing that no person convicted of first degree murder shall be eligible for parole until he or she has served fifteen years; providing that review of an inmate who was initially refused parole must be by at least three members of the board; providing that the parole board may designate, within a three-year period, when inmates serving life sentences may be reconsidered for parole; providing that parole provisions of this article apply only to felons; providing that at least three board members shall interview an inmate for parole and that an inmate shall be released upon a concurrence of a majority of the interviewing board members; adding certain offenses to those which disqualify a parole violator from being discharged from parole; and cleaning up archaic language.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. PROBATION AND PAROLE.

§62-12-12. Parole board generally.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.

§62-12-18. Period of parole; discharge.

§62-12-12. Parole board generally.

1 There shall be a state board of parole, known as the
2 "West Virginia parole board". The board shall consist of
3 five members, each of whom shall have been a resident of
4 this state for at least five consecutive years prior to his or
5 her appointment. No more than three of the board mem-
6 bers may at any one time belong to the same political
7 party. The board shall be appointed by the governor, by
8 and with the advice and consent of the Senate. Appoint-
9 ments following the effective date of this section shall be
10 made in such a manner that each congressional district is
11 represented and so that no more than two members of the
12 board reside in any one congressional district. Each
13 member of the board shall have a degree in criminal jus-
14 tice or like experience and academic training and shall be
15 otherwise competent to perform the duties of his or her
16 office. The members shall be appointed for overlapping
17 terms of six years. Any member qualified under this
18 section is eligible for reappointment. The members of the
19 board shall devote their full time and attention to their
20 board duties. Any single member of the board is empow-
21 ered to hold any hearing provided for in this article, where
22 a transcript of the hearing, including exhibits and docu-
23 mentary evidence, and the recommendation of the mem-
24 ber holding the hearing is submitted to the board for deci-
25 sion.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.

1 (a) The board of parole, whenever it is of the opinion
2 that the best interests of the state and of the inmate will be
3 subserved thereby, and subject to the limitations hereinaf-
4 ter provided, shall release any such inmate on parole for
5 such terms and upon such conditions as are provided by
6 this article. Any inmate of a state correctional center, to
7 be eligible for parole:

8 (1) (A) Shall have served the minimum term of his or
9 her indeterminate sentence, or shall have served one fourth
10 of his or her definite term sentence, as the case may be,
11 except that in no case shall any person who committed, or
12 attempted to commit a felony with the use, presentment or

13 brandishing of a firearm, be eligible for parole prior to
14 serving a minimum of three years of his or her sentence or
15 the maximum sentence imposed by the court, whichever is
16 less: *Provided*, That any person who committed, or at-
17 tempted to commit, any violation of section twelve, article
18 two, chapter sixty-one of this code, with the use, present-
19 ment or brandishing of a firearm, shall not be eligible for
20 parole prior to serving a minimum of five years of his or
21 her sentence or one third of his or her definite term sen-
22 tence, whichever shall be the greater. Nothing in this sec-
23 tion shall apply to an accessory before the fact or a princi-
24 pal in the second degree who has been convicted as if he
25 or she were a principal in the first degree if, in the com-
26 mission of or in the attempted commission of the felony,
27 only the principal in the first degree used, presented or
28 brandished a firearm. No person is ineligible for parole
29 under the provisions of this subdivision because of the
30 commission or attempted commission of a felony with the
31 use, presentment or brandishing of a firearm unless such
32 fact is clearly stated and included in the indictment or
33 presentment by which such person was charged and was
34 either: (i) Found by the court at the time of trial upon a
35 plea of guilty or nolo contendere; or (ii) found by the
36 jury, upon submitting to such jury a special interrogatory
37 for such purpose if the matter was tried before a jury; or
38 (iii) found by the court, if the matter was tried by the court
39 without a jury.

40 For the purpose of this section, the term "firearm" shall
41 mean any instrument which will, or is designed to, or may
42 readily be converted to, expel a projectile by the action of
43 an explosive, gunpowder or any other similar means.

44 (B) The amendments to this subsection adopted in the
45 year one thousand nine hundred eighty-one:

46 (i) Shall apply to all applicable offenses occurring on
47 or after the first day of August of that year;

48 (ii) Shall apply with respect to the contents of any
49 indictment or presentment returned on or after the first
50 day of August of that year irrespective of when the of-
51 fense occurred;

52 (iii) Shall apply with respect to the submission of a
53 special interrogatory to the jury and the finding to be
54 made thereon in any case submitted to such jury on or
55 after the first day of August of that year or to the requisite
56 findings of the court upon a plea of guilty or in any case
57 tried without a jury: *Provided*, That the state shall give
58 notice in writing of its intent to seek such finding by the
59 jury or court, as the case may be, which notice shall state
60 with particularity the grounds upon which such finding
61 shall be sought as fully as such grounds are otherwise
62 required to be stated in an indictment, unless the grounds
63 therefor are alleged in the indictment or presentment upon
64 which the matter is being tried; and

65 (iv) Shall not apply with respect to cases not affected
66 by such amendment and in such cases the prior provisions
67 of this section shall apply and be construed without refer-
68 ence to such amendment.

69 Insofar as such amendments relate to mandatory sen-
70 tences restricting the eligibility for parole, all such matters
71 requiring such sentence shall be proved beyond a reason-
72 able doubt in all cases tried by the jury or the court.

73 (2) Shall not be under punishment or in solitary con-
74 finement for any infraction of prison rules;

75 (3) Shall have maintained a record of good conduct in
76 prison for a period of at least three months immediately
77 preceding the date of his or her release on parole;

78 (4) Shall have submitted to the board a written parole
79 release plan setting forth proposed plans for his or her
80 place of residence, employment and, if appropriate, his or
81 her plans regarding education and post-release counseling
82 and treatment, said parole release plan having been ap-
83 proved by the commissioner of corrections or his or her
84 authorized representative; and

85 (5) Shall have satisfied the board that if released on
86 parole he or she will not constitute a danger to the com-
87 munity.

88 Except in the case of one serving a life sentence, no
89 person who has been previously twice convicted of a felo-

90 ny may be released on parole until he or she has served
91 the minimum term provided by law for the crime for
92 which he or she was convicted. No person sentenced for
93 life may be paroled until he or she has served ten years,
94 and no person sentenced for life who has been previously
95 twice convicted of a felony may be paroled until he or she
96 has served fifteen years: *Provided*, That no person con-
97 victed of first degree murder for an offense committed on
98 or after the tenth day of June, one thousand nine hundred
99 ninety-four, shall be eligible for parole until he or she has
100 served fifteen years. In the case of a person sentenced to
101 any state correctional center, it shall be the duty of the
102 board, as soon as such person becomes eligible, to consid-
103 er the advisability of his or her release on parole. If, upon
104 such consideration, parole be denied, the board shall at
105 least once a year reconsider and review the case of every
106 inmate so eligible, which reconsideration and review shall
107 be by at least three members of the board: *Provided*,
108 *however*, That the board may reconsider and review parole
109 eligibility any time within three years following the denial
110 of parole of a person serving a life sentence. The board
111 shall, at the time of denial, notify the person of the month
112 and year they may apply for reconsideration and review.
113 If parole be denied, the inmate shall be promptly notified.

114 (b) Any person serving a sentence on a felony conviction
115 who becomes eligible for parole consideration prior
116 to being transferred to a state correctional center may
117 make written application for parole. The terms and condi-
118 tions for parole consideration established by this article
119 shall be applied to such inmates.

120 (c) The board shall, with the approval of the governor,
121 adopt rules and regulations governing the procedure in
122 the granting of parole. No provision of this article and
123 none of the rules and regulations adopted hereunder are
124 intended or shall be construed to contravene, limit or oth-
125 erwise interfere with or affect the authority of the gover-
126 nor to grant pardons and reprieves, commute sentences,
127 remit fines or otherwise exercise his or her constitutional
128 powers of executive clemency.

129 The department of corrections shall be charged with

130 the duty of supervising all probationers and parolees
131 whose supervision may have been undertaken by this state
132 by reason of any interstate compact entered into pursuant
133 to the uniform act for out of state parolee supervision.

134 (d) When considering an inmate of a state correctional
135 center for release on parole, the parole board shall have
136 before it an authentic copy of or report on the inmate's
137 current criminal record as provided through the West
138 Virginia state police, the United States department of jus-
139 tice or other reliable criminal information sources and
140 written reports of the warden or superintendent of the state
141 correctional center to which such inmate is sentenced:

142 (1) On the inmate's conduct record while in custody,
143 including a detailed statement showing any and all infrac-
144 tions of disciplinary rules by the inmate and the nature
145 and extent of discipline administered therefor;

146 (2) On improvement or other changes noted in the
147 inmate's mental and moral condition while in custody,
148 including a statement expressive of the inmate's current
149 attitude toward society in general, toward the judge who
150 sentenced him or her, toward the prosecuting attorney who
151 prosecuted him or her, toward the policeman or other
152 officer who arrested the inmate and toward the crime for
153 which he or she is under sentence and his or her previous
154 criminal record;

155 (3) On the inmate's industrial record while in custody
156 which shall include: The nature of his or her work, occu-
157 pation or education, the average number of hours per day
158 he or she has been employed or in class while in custody
159 and a recommendation as to the nature and kinds of em-
160 ployment which he or she is best fitted to perform and in
161 which the inmate is most likely to succeed when he or she
162 leaves prison;

163 (4) On physical, mental and psychiatric examinations
164 of the inmate conducted, insofar as practicable, within the
165 two months next preceding parole consideration by the
166 board.

167 The board may waive the requirement of any such

168 report when not available or not applicable as to any in-
169 mate considered for parole but, in every such case, shall
170 enter in the record thereof its reason for such waiver:
171 *Provided*, That in the case of an inmate who is incarcerat-
172 ed because such inmate has been found guilty of, or has
173 pleaded guilty to a felony under the provisions of section
174 twelve, article eight, chapter sixty-one of this code or un-
175 der the provisions of article eight-b or eight-c, chapter
176 sixty-one of this code, the board may not waive the report
177 required by this subsection and the report shall include a
178 study and diagnosis which shall include an on-going treat-
179 ment plan requiring active participation in sexual abuse
180 counseling at an approved mental health facility or
181 through some other approved program: *Provided, howev-*
182 *er*, That nothing disclosed by the person during such
183 study or diagnosis shall be made available to any
184 law-enforcement agency, or other party without that per-
185 son's consent, or admissible in any court of this state, un-
186 less such information disclosed shall indicate the intention
187 or plans of the parolee to do harm to any person, animal,
188 institution, or to property. Progress reports of outpatient
189 treatment shall be made at least every six months to the
190 parole officer supervising such person. In addition, in
191 such cases, the parole board shall inform the prosecuting
192 attorney of the county in which the person was convicted
193 of the parole hearing and shall request that the prosecut-
194 ing attorney inform the parole board of the circumstances
195 surrounding a conviction or plea of guilty, plea bargain-
196 ing and other background information that might be use-
197 ful in its deliberations.

198 Before releasing any inmate on parole, the board of
199 parole shall arrange for the inmate to appear in person
200 before at least three members of the board and the board
201 may examine and interrogate him or her on any matters
202 pertaining to his or her parole, including reports before
203 the board made pursuant to the provisions hereof. The
204 board shall reach its own written conclusions as to the
205 desirability of releasing such inmate on parole and the
206 majority of the board members considering the release
207 shall concur in the decision. The warden or superinten-
208 dent shall furnish all necessary assistance and cooperate to

209 the fullest extent with the parole board. All information,
210 records and reports received by the board shall be kept on
211 permanent file.

212 The board and its designated agents shall at all times
213 have access to inmates imprisoned in any state correctional
214 center or in any city, county or regional jail in this state,
215 and shall have the power to obtain any information or aid
216 necessary to the performance of its duties from other
217 departments and agencies of the state or from any political
218 subdivision thereof.

219 The board shall, if so requested by the governor, in-
220 vestigate and consider all applications for pardon, reprieve
221 or commutation and shall make recommendation thereon
222 to the governor.

223 Prior to making such recommendation and prior to
224 releasing any inmate on parole, the board shall notify the
225 sentencing judge and prosecuting attorney at least ten
226 days before such recommendation or parole. Any person
227 released on parole shall participate as a condition of pa-
228 role in the litter control program of the county to the
229 extent directed by the board, unless the board specifically
230 finds that this alternative service would be inappropriate.

§62-12-18. Period of parole; discharge.

1 The period of parole shall be the maximum of any
2 sentence, less deductions for good conduct and work as
3 provided by law, for which the paroled inmate, at the time
4 of release, was subject to imprisonment under his or her
5 definite or indeterminate sentence, as the case may be:
6 *Provided*, That any time after a parolee has been on pa-
7 role for a period of one year from the date of his or her
8 release, the board may, when in its judgment the ends of
9 parole have been attained and the best interests of the state
10 and the parolee will be served thereby, release the parolee
11 from further supervision and discharge him or her from
12 parole: *Provided, however*, That no inmate sentenced to
13 serve a life term of imprisonment and released on parole
14 shall be discharged from supervision and parole in a peri-
15 od less than five years from the date of his or her release
16 on parole.

17 No parolee who has violated the terms of his or her
18 release on parole by confession to, or being convicted of,
19 in any state of the United States, the District of Columbia,
20 or the territorial possessions of the United States, the crime
21 of treason, murder, aggravated robbery, first degree sexual
22 assault, second degree sexual assault, a sexual offense
23 against a minor, incest or offenses with the same essential
24 elements if known by other terms in other jurisdictions
25 shall be discharged from parole. A parolee serving a
26 sentence in any correctional facility of another state or the
27 United States may, unless incarcerated for one of the
28 above enumerated crimes, be discharged from parole
29 while so serving his or her sentence in said correctional
30 facility, or be continued on parole or returned to West
31 Virginia as a parole violator, in the discretion of the parole
32 board.

CHAPTER 78

(Com. Sub. for H. B. 2148—By Mr. Speaker, Mr. Kliss,
and Delegates Michael and Martin)

[Passed March 27, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, four and fourteen, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to compensation awards to victims of crimes; including restitution as a collateral source of income; increasing the amount awarded for death expenses; including acts of terrorism in definition of criminally injurious conduct; allowing compensation fund moneys to be deposited in the state consolidated investment account; and increasing the maximum award amounts for economic loss and death of the victim.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF
CRIMES.**

§14-2A-3. Definitions.

§14-2A-4. Creation of crime victims compensation fund.

§14-2A-14. Grounds for denial of claim or reduction of awards; maximum awards.

§14-2A-3. Definitions.

1 As used in this article, the term:

2 (a) "Claimant" means any of the following persons,
3 whether residents or nonresidents of this state, who claim
4 an award of compensation under this article:

5 (1) A victim: *Provided*, That the term victim does not
6 include a nonresident of this state where the criminally
7 injurious act did not occur in this state;

8 (2) A dependent, spouse or minor child of a deceased
9 victim; or in the event that the deceased victim is a minor,
10 the parents, legal guardians and siblings of the victim;

11 (3) A third person other than a collateral source who
12 legally assumes or voluntarily pays the obligations of a
13 victim, or of a dependent of a victim, which obligations are
14 incurred as a result of the criminally injurious conduct
15 that is the subject of the claim; and

16 (4) A person who is authorized to act on behalf of a
17 victim, dependent or a third person who is not a collateral
18 source; and, in the event that the victim, dependent or third
19 person who is not a collateral source is a minor or other
20 legally incompetent person, the duly qualified fiduciary of
21 the minor.

22 (b) "Collateral source" means a source of benefits or
23 advantages for economic loss otherwise compensable that
24 the victim or claimant has received, or that is readily
25 available to him, from any of the following sources:

26 (1) The offender, including any restitution received
27 from the offender pursuant to an order by a court of law
28 sentencing the offender or placing him on probation
29 following a conviction in a criminal case arising from the
30 criminally injurious act for which a claim for
31 compensation is made;

32 (2) The government of the United States or any of its
33 agencies, a state or any of its political subdivisions, or an
34 instrumentality of two or more states;

35 (3) Social security, medicare and medicaid;

36 (4) State-required, temporary, nonoccupational
37 disability insurance; other disability insurance;

38 (5) Workers' compensation;

39 (6) Wage continuation programs of any employer;

40 (7) Proceeds of a contract of insurance payable to the
41 victim or claimant for loss that was sustained because of
42 the criminally injurious conduct;

43 (8) A contract providing prepaid hospital and other
44 health care services or benefits for disability; and

45 (9) That portion of the proceeds of all contracts of
46 insurance payable to the claimant on account of the death
47 of the victim which exceeds twenty-five thousand dollars.

48 (c) "Criminally injurious conduct" means conduct
49 that occurs or is attempted in this state or in any state not
50 having a victim compensation program which by its nature
51 poses a substantial threat of personal injury or death, and
52 is punishable by fine or imprisonment or death, or would
53 be so punishable but for the fact that the person engaging
54 in the conduct lacked capacity to commit the crime under
55 the laws of this state. Criminally injurious conduct also
56 includes an act of terrorism, as defined in 18 U.S.C. §
57 2331, committed outside of the United States against a
58 resident of this state. Criminally injurious conduct does
59 not include conduct arising out of the ownership,
60 maintenance or use of a motor vehicle, except when the
61 person engaging in the conduct intended to cause
62 personal injury or death, or except when the person

63 engaging in the conduct committed negligent homicide,
64 driving under the influence of alcohol, controlled
65 substances or drugs, or reckless driving.

66 (d) "Dependent" means an individual who received
67 over half of his or her support from the victim. For the
68 purpose of determining whether an individual received
69 over half of his or her support from the victim, there shall
70 be taken into account the amount of support received
71 from the victim as compared to the entire amount of
72 support which the individual received from all sources,
73 including support which the individual himself or herself
74 supplied. The term "support" includes, but is not limited
75 to, food, shelter, clothing, medical and dental care and
76 education. The term "dependent" includes a child of the
77 victim born after his or her death.

78 (e) "Economic loss" means economic detriment
79 consisting only of allowable expense, work loss and
80 replacement services loss. If criminally injurious conduct
81 causes death, economic loss includes a dependent's
82 economic loss and a dependent's replacement services
83 loss. Noneconomic detriment is not economic loss;
84 however, economic loss may be caused by pain and
85 suffering or physical impairment.

86 (f) "Allowable expense" means reasonable charges
87 incurred or to be incurred for reasonably needed
88 products, services and accommodations, including those
89 for medical care, prosthetic devices, eye glasses, dentures,
90 rehabilitation and other remedial treatment and care.

91 Allowable expense includes a total charge not in
92 excess of four thousand dollars for expenses in any way
93 related to funeral, cremation and burial. It does not
94 include that portion of a charge for a room in a hospital,
95 clinic, convalescent home, nursing home or any other
96 institution engaged in providing nursing care and related
97 services in excess of a reasonable and customary charge
98 for semiprivate accommodations, unless accommodations
99 other than semiprivate accommodations are medically
100 required.

101 (g) "Work loss" means loss of income from work that
102 the injured person would have performed if he or she had
103 not been injured and expenses reasonably incurred or to
104 be incurred by him or her to obtain services in lieu of
105 those he or she would have performed for income,
106 reduced by any income from substitute work actually
107 performed or to be performed by him or her, or by
108 income he or she would have earned in available
109 appropriate substitute work that he or she was capable of
110 performing but unreasonably failed to undertake.

111 (h) "Replacement services loss" means expenses
112 reasonably incurred or to be incurred in obtaining
113 ordinary and necessary services in lieu of those the injured
114 person would have performed, not for income but for the
115 benefit of himself or herself or his or her family, if he or
116 she had not been injured.

117 (i) "Dependent's economic loss" means loss after a
118 victim's death of contributions or things of economic
119 value to his or her dependents, not including services they
120 would have received from the victim if he or she had not
121 suffered the fatal injury, less expenses of the dependents
122 avoided by reason of the victim's death.

123 (j) "Dependent's replacement service loss" means
124 loss reasonably incurred or to be incurred by dependents
125 after a victim's death in obtaining ordinary and necessary
126 services in lieu of those the victim would have performed
127 for their benefit if he or she had not suffered the fatal
128 injury, less expenses of the dependents avoided by reason
129 of the victim's death and not subtracted in calculating
130 dependent's economic loss.

131 (k) "Victim" means a person who suffers personal
132 injury or death as a result of any one of the following: (1)
133 Criminally injurious conduct; (2) the good faith effort of
134 the person to prevent criminally injurious conduct; or (3)
135 the good faith effort of the person to apprehend a person
136 that the injured person has observed engaging in
137 criminally injurious conduct, or who the injured person
138 has reasonable cause to believe has engaged in criminally
139 injurious conduct immediately prior to the attempted
140 apprehension.

141 (l) "Contributory misconduct" means any conduct of
142 the claimant, or of the victim through whom the claimant
143 claims an award, that is unlawful or intentionally tortious
144 and that, without regard to the conduct's proximity in
145 time or space to the criminally injurious conduct has
146 causal relationship to the criminally injurious conduct that
147 is the basis of the claim and shall also include the
148 voluntary intoxication of the claimant, either by the
149 consumption of alcohol or the use of any controlled
150 substance when the intoxication has a causal connection or
151 relationship to the injury sustained. The voluntary
152 intoxication of a victim is not a defense against the estate
153 of a deceased victim.

§14-2A-4. Creation of crime victims compensation fund.

1 (a) Every person within the state who is convicted of
2 or pleads guilty to a misdemeanor offense, other than a
3 traffic offense that is not a moving violation, in any
4 magistrate court or circuit court, shall pay the sum of ten
5 dollars as costs in the case, in addition to any other court
6 costs that the court is required by law to impose upon the
7 convicted person. Every person within the state who is
8 convicted of or pleads guilty to a misdemeanor offense,
9 other than a traffic offense that is not a moving violation,
10 in any municipal court, shall pay the sum of eight dollars
11 as costs in the case, in addition to any other court costs
12 that the court is required by law to impose upon the
13 convicted person. In addition to any other costs
14 previously specified, every person within the state who is
15 convicted of or pleads guilty to a violation of section two,
16 article five, chapter seventeen-c of this code, shall pay a
17 fee in the amount of twenty percent of any fine imposed
18 under said section. This shall be in addition to any other
19 court costs required by this section or which may be
20 required by law.

21 (b) The clerk of the circuit court, magistrate court or
22 municipal court wherein the additional costs are imposed
23 under the provisions of subsection (a) of this section shall,
24 on or before the last day of each month, transmit all costs
25 received under this article to the state treasurer for deposit
26 in the state treasury to the credit of a special revenue fund

27 to be known as the "Crime Victims Compensation Fund",
28 which is hereby created. All moneys heretofore collected
29 and received under the prior enactment or reenactments of
30 this article and deposited or to be deposited in the "Crime
31 Victims Reparation Fund" are hereby transferred to the
32 crime victims compensation fund, and the treasurer shall
33 deposit the moneys in the state treasury. All moneys
34 collected and received under this article and paid into the
35 state treasury and credited to the crime victims
36 compensation fund in the manner prescribed in section
37 two, article two, chapter twelve of this code, shall be kept
38 and maintained for the specific purposes of this article,
39 and shall not be treated by the auditor and treasurer as
40 part of the general revenue of the state.

41 (c) Moneys in the crime victims compensation fund
42 shall be available for the payment of the costs of
43 administration of this article in accordance with the budget
44 of the court approved therefor: *Provided*, That the
45 services of the office of the attorney general, as may be
46 required or authorized by any of the provisions of this
47 article, shall be rendered without charge to the fund.

48 (d) Any moneys in the crime victims compensation
49 fund may be deposited in the West Virginia consolidated
50 investment fund with the West Virginia state board of
51 investments as established in article one of chapter twelve
52 of this code, with the interest income a proper credit to the
53 crimes victims compensation fund.

**§14-2A-14. Grounds for denial of claim or reduction of
awards; maximum awards.**

1 (a) Except as provided in subsection (b), section ten of
2 this article, the judge or commissioner may not approve an
3 award of compensation to a claimant who did not file his
4 or her application for an award of compensation within
5 two years after the date of the occurrence of the criminally
6 injurious conduct that caused the injury or death for
7 which he or she is seeking an award of compensation.

8 (b) The judge or commissioner may not approve an
9 award of compensation if the criminally injurious conduct
10 upon which the claim is based was not reported to a

11 law-enforcement officer or agency within seventy-two
12 hours after the occurrence of the conduct, unless it is
13 determined that good cause existed for the failure to
14 report the conduct within the seventy-two hour period.

15 (c) The judge or commissioner may not approve an
16 award of compensation to a claimant who is the offender
17 or an accomplice of the offender who committed the
18 criminally injurious conduct, nor to any claimant if the
19 award would unjustly benefit the offender or his or her
20 accomplice.

21 (d) A judge or commissioner, upon a finding that the
22 claimant or victim has not fully cooperated with
23 appropriate law-enforcement agencies, or the claim
24 investigator, may deny a claim, reduce an award of
25 compensation, or reconsider a claim already approved.

26 (e) A judge or commissioner may not approve an
27 award of compensation if the injury occurred while the
28 victim was confined in any state, county or regional jail,
29 prison, private prison or correctional facility.

30 (f) After reaching a decision to approve an award of
31 compensation, but prior to announcing the approval, the
32 judge or commissioner shall require the claimant to
33 submit current information as to collateral sources on
34 forms prescribed by the clerk of the court of claims. The
35 judge or commissioner shall reduce an award of
36 compensation or deny a claim for an award of
37 compensation that is otherwise payable to a claimant to the
38 extent that the economic loss upon which the claim is
39 based is or will be recouped from other persons, including
40 collateral sources, or if the reduction or denial is
41 determined to be reasonable because of the contributory
42 misconduct of the claimant or of a victim through whom
43 he or she claims. If an award is reduced or a claim is
44 denied because of the expected recoupment of all or part
45 of the economic loss of the claimant from a collateral
46 source, the amount of the award or the denial of the claim
47 shall be conditioned upon the claimant's economic loss
48 being recouped by the collateral source: *Provided*, That if
49 it is thereafter determined that the claimant will not receive
50 all or part of the expected recoupment, the claim shall be

51 reopened and an award shall be approved in an amount
52 equal to the amount of expected recoupment that it is
53 determined the claimant will not receive from the
54 collateral source, subject to the limitation set forth in
55 subsection (g) of this section.

56 (g) Except in the case of death, compensation payable
57 to a victim and to all other claimants sustaining economic
58 loss because of injury to that victim may not exceed
59 twenty-five thousand dollars in the aggregate. Compensa-
60 tion payable to all claimants because of the death of the
61 victim may not exceed thirty-five thousand dollars in the
62 aggregate.

63 (h) If an award of compensation of five thousand
64 dollars or more is made to a minor, a guardian shall be
65 appointed pursuant to the provisions of article ten, chapter
66 forty-four of this code to manage the minor's estate.

CHAPTER 79

(S. B. 367—By Senators Anderson, Bailey, Chafin, Helmick, Jackson, Love,
Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two and three, article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section four-a, all relating generally to the West Virginia development office; allowing the chair of tourism to appoint a designee to serve on the council for community and economic development; removing obsolete language regarding initial appointments to the council; providing for confidentiality of materials received by the development office or other public body whose primary responsibility is economic development; removing obsolete language regarding the development of a reorganization plan for the

development office and the report to the governor and the Legislature on the reorganization; providing for the amount of matching grants available to participating economic development corporations and authorities under the certified development community program; allowing the development office to enter into contractual agreements with eligible regional councils to provide funding for obtaining federal matching grants and for other purposes; specifying the amount of the state allocation; and requiring the development office to develop eligibility criteria.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-1. West Virginia development office; confidentiality.

§5B-2-2. Council for community and economic development; members, appointment and expenses; meetings; appointment and compensation of director.

§5B-2-3. Powers and duties of council for community and economic development.

§5B-2-4a. State allocation to regional councils.

§5B-2-1. West Virginia development office; confidentiality.

1 The governor's office of community and industrial
 2 development is hereby continued but is hereafter
 3 designated and shall be known as the West Virginia
 4 development office. All references in this code to the
 5 office of community and industrial development or the
 6 governor's office of community and industrial
 7 development shall be construed as references to the West
 8 Virginia development office.

9 Any documentary material, data or other writing made
 10 or received by the West Virginia development office or
 11 other public body, whose primary responsibility is
 12 economic development, for the purpose of furnishing
 13 assistance to a new or existing business shall be exempt

14 from the provisions of article one, chapter twenty-nine-b
15 of this code: *Provided*, That any agreement entered into
16 or signed by the development office or public body which
17 obligates public funds shall be subject to inspection and
18 copying pursuant to the provisions of said article as of the
19 date the agreement is entered into, signed or otherwise
20 made public.

**§5B-2-2. Council for community and economic development;
members, appointment and expenses; meetings;
appointment and compensation of director.**

1 (a) The council for community and economic
2 development, within the West Virginia development office,
3 is a body corporate and politic, constituting a public
4 corporation and government instrumentality.
5 Membership on the council consists of:

6 (1) Nine members to be appointed by the governor,
7 with the advice and consent of the Senate, representing
8 community or regional interests, including economic
9 development, commerce, banking, manufacturing, the
10 utility industry, the mining industry, the telecommuni-
11 cations/data processing industry, small business, labor,
12 tourism or agriculture: *Provided*, That one member
13 appointed pursuant to this subsection shall be a member
14 of a regional planning and development council. Of the
15 nine members representing community or regional
16 interests, three members shall be from each congressional
17 district of the state and shall be appointed in such a
18 manner as to provide a broad geographical distribution of
19 members of the council;

20 (2) Two at-large members to be appointed by the
21 governor with the advice and consent of the Senate;

22 (3) One member to be appointed by the governor
23 from a list of two persons recommended by the speaker of
24 the House of Delegates;

25 (4) One member to be appointed by the governor
26 from a list of two persons recommended by the president
27 of the Senate;

28 (5) The president of the West Virginia economic
29 development council; and

30 (6) The chair, or his or her designee, of the tourism
31 commission created pursuant to the provisions of section
32 eight of this article.

33 (b) The governor shall appoint the appointed
34 members of the council for four-year terms. Any
35 member whose term has expired shall serve until his or her
36 successor has been duly appointed and qualified. Any
37 person appointed to fill a vacancy shall serve only for the
38 unexpired term. Any member is eligible for
39 reappointment. In cases of any vacancy in the office of a
40 member, the vacancy shall be filled by the governor in the
41 same manner as the original appointment.

42 (c) Members of the council are not entitled to
43 compensation for services performed as members, but are
44 entitled to reimbursement for all reasonable and necessary
45 expenses actually incurred in the performance of their
46 duties. A majority of the members constitute a quorum
47 for the purpose of conducting business. The council shall
48 elect its chair for a term to run concurrent with the term of
49 office of the member elected as chair. The chair is
50 eligible for successive terms in that position.

51 (d) The council shall employ an executive director of
52 the West Virginia development office, who is qualified for
53 the position by reason of his or her extensive education
54 and experience in the field of professional economic
55 development. The executive director shall serve at the will
56 and pleasure of the council. The salary of the director
57 shall be fixed by the council. The director shall have
58 overall management responsibility and administrative
59 control and supervision within the West Virginia
60 development office. It is the intention of the Legislature
61 that the director provide professional and technical
62 expertise in the field of professional economic and
63 tourism development in order to support the policy
64 making functions of the council, but that the director not
65 be a public officer, agent, servant or contractor within the
66 meaning of section thirty-eight, article VI of the
67 constitution of the state and not be a statutory officer

68 within the meaning of section one, article two, chapter
69 five-f of this code. Subject to the provisions of the
70 contract provided for in section four of this article, the
71 director may hire and fire economic development
72 representatives employed pursuant to the provisions of
73 section five of this article.

§5B-2-3. Powers and duties of council for community and economic development.

1 (a) The council for community and economic
2 development shall enhance economic growth and
3 development through the development of a
4 comprehensive economic development strategy for West
5 Virginia. "Comprehensive economic development
6 strategy" means a plan that outlines strategies and activities
7 designed to continue, diversify or expand the economic
8 base of the state as a whole; create jobs; develop a highly
9 skilled work force; facilitate business access to capital,
10 including venture capital; advertise and market the
11 resources offered by the state with respect to the needs of
12 business and industry; facilitate cooperation among local,
13 regional and private economic development enterprises;
14 improve infrastructure on a state, regional and community
15 level; improve the business climate generally; and leverage
16 funding from sources other than the state, including
17 federal and private sources.

18 (b) The council shall develop a certified development
19 community program and provide funding assistance to the
20 participating economic development corporations or
21 authorities through a matching grant program. The
22 council shall establish criteria for awarding matching
23 grants to the corporations or authorities within the limits
24 of funds appropriated by the Legislature for the program.
25 The matching grants to corporations or authorities eligible
26 under the criteria shall be in the amount of thirty thousand
27 dollars for each fiscal year, if sufficient funds are
28 appropriated by the Legislature. The West Virginia
29 development office shall recognize existing county,
30 regional or multi-county corporations or authorities where
31 appropriate.

32 In developing its plan, the West Virginia development
33 office shall consider resources and technical support
34 available through other agencies, both public and private,
35 including, but not limited to, the state college and
36 university systems; the West Virginia housing development
37 fund; the West Virginia economic development authority;
38 the West Virginia parkways, economic development and
39 tourism authority; the West Virginia round table; the West
40 Virginia chamber of commerce; regional planning and
41 development councils; regional partnership for progress
42 councils; and state appropriations.

43 (c) The council shall promulgate rules to carry out the
44 purposes and programs of the West Virginia development
45 office to include generally the programs available, and the
46 procedure and eligibility of applications relating to
47 assistance under the programs. These rules are not subject
48 to the provisions of chapter twenty-nine-a of this code, but
49 shall be filed with the secretary of state.

§5B-2-4a. State allocation to regional councils.

1 The West Virginia development office may enter into
2 contractual agreements with the regional councils formed
3 under the provisions of section five, article twenty-five,
4 chapter eight of this code to provide funding to the
5 regional councils to be used to obtain federal matching
6 grants and for other purposes determined to be
7 appropriate by the development office. The maximum
8 state allocation to each eligible regional council shall be
9 forty thousand dollars: *Provided*, That the amount of the
10 allocation shall be determined by dividing the number of
11 eligible regional councils into the total amount of funds
12 made available for allocation by the Legislature. The West
13 Virginia development office shall develop criteria to
14 determine a regional council's eligibility for the state
15 allocation.

CHAPTER 80

(Com. Sub. for S. B. 70—By Senators Tomblin, Mr. President, Craigo, Plymale, Jackson, Prezioso, Snyder, Ross, Sprouse, Ball, Hunter, Schoonover, Kimble, Dittmar, Anderson, Oliverio and Sharpe)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve-a, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact article thirty, chapter eighteen of said code; and to amend and reenact section four, article ten, chapter thirty-eight of said code, all relating to the creation of a prepaid higher education tuition program; repealing provisions which will no longer apply to the tuition trust; providing an additional modification reducing federal adjusted gross income; the West Virginia prepaid tuition trust act; providing a title, legislative findings and definitions; board of trustees composition, proceedings, powers and oversight by the legislative oversight commission on education accountability; creating the West Virginia prepaid tuition trust fund; providing a state income tax deduction for purchasers; requiring reports, accounts and annual audits; liberal construction; expiration of article; and to exempt from bankruptcy proceedings payments made to the prepaid tuition trust fund.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 11. Taxation.**
- 18. Education.**
- 38. Liens.**

CHAPTER 11. TAXATION.**ARTICLE 21. PERSONAL INCOME TAX.****§11-21-12a. Additional modification reducing federal adjusted gross income.**

1 In addition to amounts authorized to be subtracted
2 from federal adjusted gross income pursuant to subsection
3 (c), section twelve of this article, any payment made under
4 a prepaid tuition contract as provided under section seven,
5 article thirty, chapter eighteen of this code, is also an
6 authorized modification reducing federal adjusted gross
7 income, but only to the extent the amount is not allowable
8 as a deduction when arriving at the taxpayer's federal
9 adjusted gross income for the taxable year in which the
10 payment is made.

CHAPTER 18. EDUCATION.**ARTICLE 30. WEST VIRGINIA PREPAID TUITION TRUST ACT.**

§18-30-1. Title.

§18-30-2. Legislative findings and purpose.

§18-30-3. Definitions.

§18-30-4. Appointment of board of trustees; terms; compensation;
proceedings generally.

§18-30-5. Powers of the board.

§18-30-6. West Virginia prepaid tuition trust created.

§18-30-7. Income tax deduction for purchasers.

§18-30-8. Report and account; annual audit.

§18-30-9. Expiration of article.

§18-30-1. Title.

1 This article shall be known and may be cited as the
2 "West Virginia Prepaid Tuition Trust Act".

§18-30-2. Legislative findings and purpose.

1 The Legislature hereby finds and determines that the
2 advancement and improvement of higher education in the
3 state of West Virginia is a proper governmental function
4 and purpose of the state. The Legislature also finds that
5 the creation of a prepaid tuition trust fund, to assist
6 qualified students and their families in financing a portion
7 of the costs of attending an accredited higher education
8 institution or program in the state of West Virginia will
9 increase the number of qualified students who will seek to
10 attend such accredited higher education institutions and
11 programs, which will be of benefit to students, families and
12 to such accredited higher education institutions and
13 programs, and will therefore advance and improve higher
14 education in the state of West Virginia. It is, therefore, the
15 legislative intent of this article to establish a higher
16 education prepaid tuition trust fund to assist qualified
17 students to pay in advance the tuition costs of attending
18 accredited higher education institutions and programs and
19 thereby to encourage such qualified students to attend
20 accredited higher education institutions and programs in
21 the state of West Virginia. The Legislature finds and
22 declares that prepaid tuition trust fund contracts neither
23 contain nor obligate any general revenue funds.

§18-30-3. Definitions.

1 For the purpose of this article, the following terms
2 have the meanings ascribed to them, unless the context
3 clearly indicates otherwise:

4 (a) “Accredited higher education institution or
5 program” means any accredited higher education
6 institution or accredited higher education program offered
7 through an accredited provider.

8 (b) “Beneficiary” means any intended or unintended
9 beneficiary of the prepaid tuition contract between the
10 purchaser and the board, including any beneficiary
11 designated by the purchaser, his agent or his estate in the
12 event that the intended beneficiary is unable or unwilling
13 to benefit under the terms of the trust fund.

14 (c) "Board" means the board of trustees of the
15 prepaid higher education tuition trust fund as provided in
16 section four of this article.

17 (d) "Outside tuition fee" means the amount of tuition
18 or fees, or both, payable to an accredited higher education
19 institution or program outside the state or independent
20 state institutions or programs upon the election by a
21 beneficiary to attend such institutions or programs. This
22 fee shall generally be the amount of the average public
23 tuition costs or fees, or both, of state institutions of higher
24 learning as determined by the board of trustees on an
25 annual basis.

26 (e) "Prepaid tuition contract" means a contract
27 entered into by the board of the trust fund and a
28 purchaser pursuant to this article.

29 (f) "Purchaser" means an individual, corporation or
30 other entity who makes or is obligated to make payments
31 in accordance with a prepaid tuition contract entered into
32 pursuant to this chapter.

33 (g) "Trust fund" means the prepaid higher education
34 tuition trust fund.

35 (h) "Tuition" means the quarter, semester or term
36 charges imposed by an accredited higher education
37 institution or program and all mandatory fees required as
38 a condition of enrollment by all students.

§18-30-4. Appointment of board of trustees; terms; compensation; proceedings generally.

1 (a) The board of the prepaid college expense trust
2 fund shall consist of nine members and shall include the
3 secretary of education and the arts and the state treasurer,
4 who shall serve as ex officio voting members of the board,
5 and seven other members with knowledge, skill and
6 experience in an academic, business or financial field.
7 The seven appointed members shall be residents of the
8 state. One member shall be a representative of the
9 university of West Virginia board of trustees selected by
10 the board of trustees from its members as defined in
11 section one, article two, chapter eighteen-b of this code

12 and one member shall be a representative of the board of
13 directors of the state college system selected by the board
14 of directors from its members as defined in section one,
15 article three, chapter eighteen-b of this code. The
16 governor shall appoint three members from nominations
17 as follows: One member shall be a private citizen not
18 employed by, or an officer of, the state or any political
19 subdivision of the state appointed from one or more
20 nominees of the speaker of the House of Delegates; one
21 member shall be a private citizen not employed by, or an
22 officer of, the state or any political subdivision of the state
23 appointed from one or more nominees of the president of
24 the Senate; and one member shall represent the interests of
25 private institutions of higher education located in this state
26 who shall be appointed from one or more nominees of the
27 West Virginia association of private colleges. The
28 governor also shall appoint two members who are
29 representatives of the public. The public members and the
30 member representing the interests of private institutions of
31 higher education shall be appointed by the governor with
32 the advice and consent of the Senate.

33 (b) Appointed members shall serve a term of five
34 years and may be reappointed at the expiration of their
35 terms. In the event of a vacancy among appointed
36 members, the governor shall appoint a person representing
37 the same interests to fill the unexpired term. Of the initial
38 appointments, the governor shall appoint one member to a
39 one-year term, one member to a two-year term, one
40 member to a three-year term, one member to a four-year
41 term and one member to a five-year term. Thereafter, all
42 terms shall be for five years.

43 (c) Members of the board of trustees shall serve
44 without compensation, but for the first twelve months after
45 the effective date of this section members shall be
46 reimbursed by the state treasurer's office for expenses,
47 including travel expenses, actually incurred by a member
48 in the official conduct of the business of the board at the
49 same rate as is paid the employees of the state. Thereafter,
50 the state treasurer may charge back to the trust fund as
51 administrative expenses all expenses, including travel

52 expenses, actually incurred and paid to board members
53 for the conduct of their official duties.

54 (d) The state treasurer shall be the trustee chairman
55 and presiding officer of the board, and may appoint such
56 other employees as the board considers advisable or
57 necessary. A majority of the members of the board
58 constitute a quorum for the transaction of the business of
59 the trust fund.

§18-30-5. Powers of the board.

1 In addition to the powers granted by any other
2 provision of this article, the board shall have the powers
3 necessary or convenient to carry out the purposes and
4 provisions of this article, the purposes and objectives of
5 the trust and the powers delegated by any other law of the
6 state or any executive order of the state including, but not
7 limited to, the following express powers:

8 (a) To adopt and amend bylaws;

9 (b) To propose legislative rules for promulgation in
10 accordance with the provisions of article three-a, chapter
11 twenty-nine-a of this code to effectuate the purposes of
12 this article: *Provided*, That the board may not promulgate
13 emergency rules;

14 (c) To invest any funds of the trust fund, at the
15 board's discretion, with the West Virginia state board of
16 investments in accordance with applying the provisions of
17 article six, chapter twelve of this code. Any investments
18 made under this article shall be made with the care, skill,
19 prudence and diligence under the circumstances then
20 prevailing that a prudent person acting in a like capacity
21 and familiar with such matters would use in the conduct of
22 an enterprise of a like character and with like aims.
23 Fiduciaries shall diversify plan investments to the extent
24 permitted by law so as to minimize the risk of large losses,
25 unless under the circumstances it is clearly prudent not to
26 do so;

27 (d) To execute contracts and other necessary
28 instruments;

- 29 (e) To enter into prepaid tuition contracts;
- 30 (f) To impose reasonable limits on the number of
31 prepaid tuition contract purchasers participating in the
32 trust fund at any given period of time;
- 33 (g) To impose reasonable requirements for residency
34 for qualified beneficiaries at the time of purchase of the
35 prepaid tuition contract. However, nothing in this
36 subdivision shall be construed to establish residency
37 requirements for matriculation at state institutions of
38 higher education;
- 39 (h) To contract for necessary goods and services, to
40 employ necessary personnel and to engage the services of
41 private persons for administrative and technical assistance
42 in carrying out the responsibilities of the trust fund;
- 43 (i) To solicit and accept gifts, including bequests or
44 other testamentary gifts made by will, trust or other
45 disposition, grants, loans and other aids from any source
46 or to participate in any other way in any federal, state or
47 local governmental programs in carrying out the purposes
48 of this article;
- 49 (j) To define the terms and conditions under which
50 payments may be withdrawn from the trust fund and
51 impose reasonable charges for such withdrawal: *Provided,*
52 That payments made by employers on behalf of
53 beneficiaries selected by their employees are deemed fully
54 vested in the employees from time of receipt of such
55 payments by the board;
- 56 (k) To devise and offer to purchasers other
57 educational programs, such as the purchase of books and
58 other educational supplies;
- 59 (l) To impose reasonable time limits on the use of the
60 tuition benefits provided by the program;
- 61 (m) To provide for the receipt of contributions to the
62 trust fund in lump sums or installment payments; and
- 63 (n) To establish other policies, procedures and criteria
64 necessary to implement and administer the provisions of
65 this article.

§18-30-6. West Virginia prepaid tuition trust created.

1 (a) There is hereby created within the accounts held
2 by the state treasurer the prepaid tuition trust fund account
3 to be administered by the board until and unless the
4 Legislature shall determine otherwise, and titled the
5 "Prepaid Tuition Trust Fund".

6 (b) The location of the trust fund shall be the state
7 treasurer's office, and the facilities of the state treasurer
8 shall be used and employed in the administration of the
9 trust fund including, but without limitation thereto, the
10 keeping of records, the management of bank accounts and
11 other investments, the transfer of funds and the
12 safekeeping of securities evidencing investments.

13 (c) Payments received by the board from purchasers
14 on behalf of beneficiaries or from any other source,
15 public or private, shall be placed in the trust fund.

16 (d) The corpus, assets and income of the trust fund do
17 not constitute public funds of the state.

18 (e) The trust fund, through the trustee chairman, is
19 authorized to receive any gift or transfer of property, real
20 or personal of any nature, from any source as may be
21 approved by the board, or any terms and conditions as
22 may be imposed by the board: *Provided*, That all
23 property received by the trust shall be converted into cash
24 within ninety days of receipt.

25 (f) The board shall cause an actuarial study to be
26 periodically performed to ensure that sufficient funds are
27 being deposited to the fund to meet the obligations of the
28 trust fund. Specifically, the board shall annually evaluate
29 or cause to be evaluated, the actuarial soundness of the
30 trust fund. If the board finds that additional contributions
31 are needed in order to preserve the actuarial soundness of
32 the fund, it may adjust the terms of pre-existing and
33 subsequent prepaid tuition contracts to ensure such
34 soundness: *Provided*, That any necessary adjustment to
35 pre-existing contracts may only be assessed on future
36 payments and not retroactively upon previous payments
37 made by the purchaser or donors to the trust fund. There

38 shall be no obligation of state general revenue funds to the
39 trust fund for any purpose whatsoever.

40 (g) In order to fulfill the charitable and public
41 purposes of this article, neither the income nor the
42 property of the trust fund shall be subject to taxation by
43 the state or any of its political subdivisions.

44 (h) The board is hereby empowered to propose rules
45 to provide for the withdrawal and disbursement of contract
46 funds on an actuarially sound basis. The board may
47 propose rules to provide a tuition guarantee for
48 beneficiaries attending state institutions of higher
49 education: *Provided*, That this rule may not be
50 promulgated as an emergency rule subject to oversight by
51 the legislative oversight commission on education
52 accountability as provided by section eleven, article three-
53 a, chapter twenty-nine-a of this code.

54 (i) There is hereby created a separate account within
55 the state treasurer's office to be known as the "Prepaid
56 Tuition Trust Fund Administrative Account" for the
57 purposes of implementing and maintaining the trust fund
58 accounts pursuant to this article. The board may charge
59 against the fees collected and interest earned from the trust
60 fund accounts, amounts as are reasonable and customary
61 for the state treasurer to fund the administrative costs of
62 maintaining the trust fund accounts. The charges shall be
63 subject to review by the legislative oversight commission
64 on education accountability. Expenditures from the fund
65 are not authorized from collections, but may only be
66 made upon appropriation by the Legislature.

§18-30-7. Income tax deduction for purchasers.

1 As provided in section twelve-a, article twenty-one,
2 chapter eleven of this code, a purchaser of a prepaid
3 tuition contract, under the provisions of this article, is
4 eligible for a tax deduction.

§18-30-8. Report and account; annual audit.

1 (a) In addition to any other requirements of this
2 article, the board shall:

3 (1) Provide annually summary information on the
4 financial condition of the trust fund to all purchasers of
5 prepaid tuition contracts;

6 (2) Prepare, or cause to be prepared, an annual
7 accounting and actuarial report of the trust fund and
8 transmit a copy of same to the governor, the president of
9 the Senate, the speaker of the House of Delegates and the
10 legislative oversight commission on education
11 accountability; and

12 (3) Make all necessary and appropriate arrangements
13 with accredited higher education institutions and programs
14 in order to fulfill its obligations under the prepaid tuition
15 contracts which arrangements shall include the satisfaction
16 by the trust fund of current applicable tuition and fee
17 charges on behalf of a beneficiary to the accredited higher
18 education institution or program.

19 (b) All accounts of the board, including the trust fund
20 accounts, are subject to an annual external audit, by a
21 nationally recognized accounting firm in conjunction with
22 the annual federal audit.

§18-30-9. Expiration of article.

1 This article shall become void upon the first day of
2 January, two thousand two, if the trust has not entered into
3 a prepaid tuition contract with a purchaser before that
4 date.

CHAPTER 38. LIENS.

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

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

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

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

8 (a) The debtor's interest, not to exceed fifteen
9 thousand dollars in value, in real property or personal
10 property that the debtor or a dependent of the debtor uses
11 as a residence, in a cooperative that owns property that the
12 debtor or a dependent of the debtor uses as a residence or
13 in a burial plot for the debtor or a dependent of the
14 debtor.

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

17 (c) The debtor's interest, not to exceed four hundred
18 dollars in value in any particular item, in household
19 furnishings, household goods, wearing apparel, appliances,
20 books, animals, crops or musical instruments, that are held
21 primarily for the personal, family or household use of the
22 debtor or a dependent of the debtor: *Provided*, That the
23 total amount of personal property exempted under this
24 subsection shall not exceed eight thousand dollars.

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

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

33 (f) The debtor's interest, not to exceed one thousand
34 five hundred dollars in value, in any implements,
35 professional books or tools of the trade of the debtor or
36 the trade of a dependent of the debtor.

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

39 (h) The debtor's interest, not to exceed in value eight
40 thousand dollars less any amount of property of the estate
41 transferred in the manner specified in 11 U.S.C. 542(d), in
42 any accrued dividend or interest under, or loan value of,
43 any unmaturred life insurance contract owned by the
44 debtor under which the insured is the debtor or an
45 individual of whom the debtor is a dependent.

46 (i) Professionally prescribed health aids for the debtor
47 or a dependent of the debtor.

48 (j) The debtor's right to receive:

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

51 (2) A veterans' benefit;

52 (3) A disability, illness or unemployment benefit;

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

56 (5) A payment under a stock bonus, pension, profit
57 sharing, annuity or similar plan or contract on account of
58 illness, disability, death, age or length of service, to the
59 extent reasonably necessary for the support of the debtor
60 and any dependent of the debtor, unless:

61 (A) Such plan or contract was established by or under
62 the auspices of an insider that employed the debtor at the
63 time the debtor's rights under such plan or contract arose;

64 (B) Such payment is on account of age or length of
65 service; and

66 (C) Such plan or contract does not qualify under
67 Section 401(a), 403(a), 403(b), 408 or 409 of the Internal
68 Revenue Code of 1954.

69 (k) The debtor's right to receive, or property that is
70 traceable to:

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

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

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

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

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

91 (6) Payments made to the prepaid tuition trust fund on
92 behalf of any beneficiary.

93 This section shall not be construed to affect the
94 applicability of any provision of the federal bankruptcy
95 law other than 11 U.S.C. 552(d).

CHAPTER 81

(Com. Sub. for H. B. 2204—By Delegates Williams, Michael, Mezzatesta,
Dempsey, Ennis, Manuel and Osborne)

[Passed April 12, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to repeal section six, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article five of said chapter by adding thereto a new section, designated section eighteen-d; to amend and reenact sections three, four, seven and eleven, article eight of said chapter; to amend sections six-a, six-b and fifteen, article nine-a of said chapter; and to amend article four, chapter eighteen-a of said code by adding thereto a new section, designated section eight-i, all relating to study on programs for children under the age of five; requiring preparation of attendance reports upon request of county superintendent; eliminating the board of educations' power of removal of the attendance director; providing that attendance director shall ascertain reasons for absences of

students of sixteen years of age as well as those under sixteen years of age; authorizing service of summons; requiring attendance director to serve as liaison for homeless children and youth; prohibiting the inducement of a student to be absent from school of any age; reducing the appropriation determined by the actuarial evaluation for the teachers' retirement fund by the amount resulting from an increase in local share; allowance for increased enrollment; and seniority rights for professional educators and school service personnel in cases of intercounty transfer arrangements.

Be it enacted by the Legislature of West Virginia:

That section six, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended be repealed; that article five of said code be amended by adding thereto a new section, designated section eighteen-d; that sections three, four, seven and eleven, article eight of said chapter be amended and reenacted; that sections six-a, six-b and fifteen, article nine-a of said chapter be amended and reenacted; and that article four, chapter eighteen-a be amended by adding thereto a new section, designated section eight-i, all to read as follows:

Chapter

18. Education.

18A. School Personnel.

CHAPTER 18. EDUCATION.

Article

5. County Board of Education.

8. Compulsory School Attendance.

9A. Public School Support.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-18d. Study on programs for children under the age of five.

- 1 The state department of education and the department
- 2 of health and human resources, in consultation with the
- 3 governor's cabinet on children and families, shall conduct

4 a comprehensive study on programs for children under
 5 the age of five. Such study shall consider issues including,
 6 but not limited to, curriculum, acquiring federal dollars,
 7 welfare reform, relation to day care centers, relation to
 8 kindergarten programs, involvement of the private sector,
 9 involvement of the public sector and cost effectiveness.
 10 The state department of education and the department of
 11 health and human resources shall submit a report to the
 12 legislative oversight commission on education
 13 accountability by the first day of December, one thousand
 14 nine hundred ninety-seven.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-3. Employment of county director of school attendance and assistants; qualifications; salary and traveling expenses; removal.

§18-8-4. Duties of attendance director and assistant directors; complaints, warrants and hearings.

§18-8-7. Aiding or abetting violations of compulsory attendance; penalty.

§18-8-11. School attendance as condition of licensing for privilege of operation of motor vehicle.

§18-8-3. Employment of county director of school attendance and assistants; qualifications; salary and traveling expenses; removal.

1 (a) The county board of education of every county,
 2 not later than the first day of August of each year, shall
 3 employ the equivalent of a full-time county director of
 4 school attendance if such county has a net enrollment of
 5 more than four thousand pupils, at least a half-time
 6 director of school attendance if such county has a net
 7 enrollment equal to or less than four thousand pupils and
 8 such assistant attendance directors as deemed necessary.
 9 All persons to be employed as attendance directors shall
 10 have the written recommendation of the county
 11 superintendent.

12 (b) The county board of education may establish
 13 special and professional qualifications for attendance
 14 directors and assistants as are deemed expedient and
 15 proper and are consistent with regulations of the state
 16 board of education relating thereto.

17 (c) The attendance director or assistant director shall
18 be paid a monthly salary as fixed by the county board.
19 The attendance director or assistant director shall prepare
20 attendance reports, and such other reports as the county
21 superintendent may request.

22 (d) The county board of education shall reimburse the
23 attendance directors or assistant directors for their
24 necessary traveling expenses upon presentation of a
25 monthly, itemized, sworn statement approved by the
26 county superintendent.

**§18-8-4. Duties of attendance director and assistant directors;
complaints, warrants and hearings.**

1 The county attendance director and the assistants shall
2 diligently promote regular school attendance. They shall
3 ascertain reasons for inexcusable absences from school of
4 pupils of compulsory school age and students who remain
5 enrolled beyond the sixteenth birthday as defined under
6 this article and shall take such steps as are, in their
7 discretion, best calculated to correct attitudes of parents
8 and pupils which results in absences from school even
9 though not clearly in violation of law.

10 In the case of five consecutive or ten total unexcused
11 absences of a child during a school year, the attendance
12 director or assistant shall serve written notice to the parent,
13 guardian or custodian of such child that the attendance of
14 such child at school is required and that within ten days of
15 receipt of the notice the parent, guardian or custodian,
16 accompanied by the child, shall report in person to the
17 school the child attends for a conference with the principal
18 or other designated representative of the school in order to
19 discuss and correct the circumstances causing the
20 inexcusable absences of the child; and if the parent,
21 guardian or custodian does not comply with the provisions
22 of this article, then the attendance director or assistant shall
23 make complaint against the parent, guardian or custodian
24 before a magistrate of the county. If it appears from the
25 complaint that there is probable cause to believe that an
26 offense has been committed and that the accused has
27 committed it, a summons or a warrant for the arrest of the
28 accused shall issue to any officer authorized by law to

29 serve the summons or to arrest persons charged with
30 offenses against the state. More than one summons or
31 warrant may be issued on the same complaint. The
32 summons or warrant shall be executed within ten days of
33 its issuance.

34 The magistrate court clerk, or the clerk of the circuit
35 court performing the duties of the magistrate court as
36 authorized in section eight, article one, chapter fifty of this
37 code, shall assign the case to a magistrate within ten days
38 of execution of the summons or warrant. The hearing
39 shall be held within twenty days of the assignment to the
40 magistrate, subject to lawful continuance. The magistrate
41 shall provide to the accused at least ten days' advance
42 notice of the date, time and place of the hearing.

43 When any doubt exists as to the age of a child absent
44 from school, the attendance director shall have authority
45 to require a properly attested birth certificate or an
46 affidavit from the parent, guardian or custodian of such
47 child, stating age of the child. The county attendance
48 director or assistant shall, in the performance of his or her
49 duties, have authority to take without warrant any child
50 absent from school in violation of the provisions of this
51 article and to place such child in the school in which such
52 child is or should be enrolled.

53 The county attendance director shall devote such time
54 as is required by section three of this article to the duties
55 of attendance director in accordance with this section
56 during the instructional term and at such other times as the
57 duties of an attendance director are required. All
58 attendance directors hired for more than two hundred
59 days may be assigned other duties determined by the
60 superintendent during the period in excess of two hundred
61 days. The county attendance director shall be responsible
62 under direction of the county superintendent for the
63 efficient administration of school attendance in the
64 county.

65 In addition to those duties directly relating to the
66 administration of attendance, the county attendance
67 director and assistant directors shall also perform the
68 following duties:

69 (a) Assist in directing the taking of the school census
70 to see that it is taken at the time and in the manner
71 provided by law;

72 (b) Confer with principals and teachers on the
73 comparison of school census and enrollment for the
74 detection of possible nonenrollees;

75 (c) Cooperate with existing state and federal agencies
76 charged with enforcement of child labor laws;

77 (d) Prepare a report for submission by the county
78 superintendent to the state superintendent of schools on
79 school attendance, at such times and in such detail as may
80 be required; also, file with the county superintendent and
81 county board of education at the close of each month a
82 report showing activities of the school attendance office
83 and the status of attendance in the county at the time;

84 (e) Promote attendance in the county by the
85 compilation of data for schools and by furnishing
86 suggestions and recommendations for publication through
87 school bulletins and the press, or in such manner as the
88 county superintendent may direct;

89 (f) Participate in school teachers' conferences with
90 parents and students;

91 (g) Assist in such other ways as the county
92 superintendent may direct for improving school
93 attendance;

94 (h) Make home visits of students who have excessive
95 unexcused absences, as provided above, or if requested by
96 the chief administrator, principal or assistant principal.

97 (i) The attendance director shall serve as the liaison
98 for homeless children and youth.

§18-8-7. Aiding or abetting violations of compulsory attendance; penalty.

1 Any person who induces or attempts to induce any
2 child or student unlawfully to absent himself or herself
3 from school, or who harbors or employs any child or
4 student of compulsory school age or any student over

5 sixteen years of age who is enrolled in a school while the
6 school to which he or she belongs and which he or she is
7 required to attend is in session, or who employs such child
8 or student within the term of such school on any day such
9 school is in session without the written permission of the
10 county superintendent of schools, or for a longer period
11 than such work permit may specify shall be guilty of a
12 misdemeanor and, upon conviction thereof, shall be fined
13 not less than twenty-five nor more than fifty dollars and
14 may be confined in jail not less than ten nor more than
15 thirty days.

**§18-8-11. School attendance as condition of licensing for
privilege of operation of motor vehicle.**

1 (a) In accordance with the provisions of sections three
2 and five, article two, chapter seventeen-b of this code, the
3 division of motor vehicles shall deny a license or
4 instruction permit for the operation of a motor vehicle to
5 any person under the age of eighteen who does not at the
6 time of application present a diploma or other certificate
7 of graduation issued to the person from a secondary high
8 school of this state or any other state or documentation
9 that the person: (1) Is enrolled and making satisfactory
10 progress in a course leading to a general educational
11 development certificate (GED) from a state approved
12 institution or organization, or has obtained such
13 certificate; (2) is enrolled in a secondary school of this
14 state or any other state; (3) is excused from such
15 requirement due to circumstances beyond his or her
16 control; or (4) is enrolled in an institution of higher
17 education as a full-time student in this state or any other
18 state.

19 (b) The attendance director or chief administrator
20 shall provide documentation of enrollment status on a
21 form approved by the department of education to any
22 student fifteen years of age but less than eighteen years of
23 age or older upon request who is properly enrolled in a
24 school under the jurisdiction of the official for
25 presentation to the division of motor vehicles on
26 application for or reinstatement of an instruction permit or

27 license to operate a motor vehicle. Whenever a student
28 fifteen years of age but less than eighteen years of age
29 withdraws from school, except as provided in subsection
30 (d) of this section, the attendance director or chief
31 administrator shall notify the division of motor vehicles of
32 the withdrawal not later than five days from the withdrawal
33 date. Within five days of receipt of the notice, the division
34 of motor vehicles shall send notice to the licensee that the
35 license will be suspended under the provisions of section
36 three, article two, chapter seventeen-b of this code on the
37 thirtieth day following the date the notice was sent unless
38 documentation of compliance with the provisions of this
39 section is received by the division of motor vehicles
40 before such time.

41 (c) For the purposes of this section, withdrawal shall
42 be defined as more than ten consecutive or fifteen days
43 total unexcused absences during a school year. For the
44 purposes of this section, suspension or expulsion from
45 school or imprisonment in a jail or a penitentiary is not a
46 circumstance beyond the control of such person.

47 (d) Whenever the withdrawal from school of such
48 student, or such student's failure to enroll in a course
49 leading to or to obtain a GED or high school diploma, is
50 beyond the control of such student, or is for the purpose
51 of transfer to another school as confirmed in writing by
52 the student's parent or guardian, no such notice shall be
53 sent to the division of motor vehicles to suspend the
54 student's motor vehicle operator's license, and if the
55 student is applying for a license, the attendance director or
56 chief administrator shall provide the student with
57 documentation to present to the division of motor
58 vehicles to excuse the student from the provisions of this
59 section. The school district superintendent (or the
60 appropriate school official of any private secondary
61 school) with the assistance of the county attendance
62 director and any other staff or school personnel shall be
63 the sole judge of whether such withdrawal is due to
64 circumstances beyond the control of such person.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-6a. Teachers retirement fund allowance; unfunded liability allowance.

§18-9A-6b. Allocation of growth of local share.

§18-9A-15. Allowance for increased enrollment.

§18-9A-6a. Teachers retirement fund allowance; unfunded liability allowance.

1 (a) The total teachers retirement fund allowance shall
2 be the sum of the basic foundation allowance for
3 professional educators and the basic foundation allowance
4 for service personnel, as provided in sections four and five
5 of this article; all salary equity appropriations authorized
6 in section five, article four of chapter eighteen-a; and such
7 amounts as are to be paid by the counties pursuant to
8 sections five-a and five-b of said article to the extent such
9 county salary supplements are equal to the amount
10 distributed for salary equity among the counties,
11 multiplied by fifteen percent.

12 (b) The teachers retirement fund allowance amounts
13 provided for in subsection (a) of this section shall be
14 accumulated in the employers accumulation fund of the
15 state teachers retirement system pursuant to section
16 eighteen, article seven-a of this chapter, and shall be in lieu
17 of the contribution required of employers pursuant to
18 subsection (b) of said section as to all personnel included
19 in the allowance for state aid in accordance with sections
20 four and five of this article.

21 (c) In addition to the teachers retirement fund
22 allowance provided for in subsection (a) of this section,
23 there shall be an allowance for the reduction of any
24 unfunded liability of the teachers retirement fund in
25 accordance with the following provisions of this
26 subsection. On or before the thirty-first day of December
27 of each year, the actuary or actuarial firm employed in
28 accordance with the provisions of section four, article ten-
29 d, chapter five of this code shall submit a report to the
30 president of the Senate and the speaker of the House of
31 Delegates which sets forth an actuarial valuation of the
32 teachers retirement fund as of the preceding thirtieth day
33 of June. Each annual report shall recommend the

34 actuary's best estimate, at that time, of the funding
35 necessary to both eliminate the unfunded liability over a
36 forty-year period beginning on the first day of July, one
37 thousand nine hundred ninety-four, and to meet the cash
38 flow requirements of the fund in fulfilling its future
39 anticipated obligations to its members. In determining the
40 amount of funding required, the actuary shall take into
41 consideration all funding otherwise available to the fund
42 for that year from any source: *Provided*, That the
43 appropriation and allocation to the teachers' retirement
44 fund made pursuant to the provisions of section six-b of
45 this article shall be included in the determination of the
46 requisite funding amount. In any year in which the
47 actuary determines that the teachers retirement fund is not
48 being funded in such a manner, the allowance made for
49 the unfunded liability for the next fiscal year shall be not
50 less than the amount of the actuary's best estimate of the
51 amount necessary to conform to the funding requirements
52 set forth in this subsection.

§18-9A-6b. Allocation of growth of local share.

1 Beginning with the first day of July, one thousand
2 nine hundred ninety-five, and thereafter, an appropriation
3 and allocation due to the increase in local share not to
4 exceed seven million dollars above that computed for the
5 previous year, which increase may be attributable to any
6 increase in the tax rate as enacted by the Legislature in
7 accordance with the provisions of subsection (b), section
8 six-f, article eight, chapter eleven of this code, shall be
9 allocated to the state teachers retirement system, which
10 appropriation and allocation shall be used to reduce the
11 amounts required by section six-a of this article or any
12 other retirement contributions as may be required to the
13 state teachers retirement system set forth in article seven-a
14 of this chapter and which shall be accumulated in the
15 employers accumulation fund created in section eighteen
16 of said article seven-a.

§18-9A-15. Allowance for increased enrollment.

1 To provide for the support of increased net
2 enrollments in the counties in a school year over the net
3 enrollments used in the computation of total state aid for

4 that year, there shall be appropriated for that purpose
5 from the general revenue fund an amount equal to the
6 average total state aid per net pupil multiplied by the total
7 of all of the increases in the net enrollments of the
8 counties made by comparing the most recent reports of
9 net enrollment for the second school month to the
10 immediately previous year's reports for the same school
11 month.

12 Upon determination of the several increases in the
13 respective counties' net enrollments, as of the close of the
14 second school month, each county showing such increase
15 shall be allocated an amount equal to that county's
16 average per net pupil total state aid multiplied by the
17 increase in that county's net enrollment determined as
18 provided heretofore. Such allocations shall be distributed
19 not later than the thirty-first day of December of each
20 year to the counties having increases in net enrollment as
21 heretofore provided. If the amount appropriated for this
22 purpose shall not be sufficient to provide payment in full
23 for the total of these several allocations, each county
24 allocation shall be reduced to an amount which is
25 proportionate to the appropriation compared to the total
26 of the several allocations, and the allocations as thus
27 adjusted shall be distributed to the counties as provided in
28 this section: *Provided*, That the governor shall request a
29 supplemental appropriation at the next legislative session
30 for the reduced amount.

31 No provision of this section shall be construed to in
32 any way affect the allocation of moneys for educational
33 purposes to a county under other provisions of law.

34 Except for those students who are enrolled in special
35 education programs, students who have not attained the
36 age of five prior to the first day of September shall not be
37 included for any purpose of this section.

38 Nothing in this section shall be construed to require
39 any specific level of funding by the Legislature.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8i. Seniority rights for professional educators and school service personnel in cases of intercounty transfer arrangements.

1 Notwithstanding any other provisions of this code to
2 the contrary, if students are required to attend school in a
3 county other than the county of their residence as a result
4 of an intercounty transfer arrangement, then the following
5 terms, rules and procedures shall apply:

6 (a) For the purposes of this section, the following
7 terms have the following meanings:

8 (1) "Intercounty transfer arrangement" means those
9 cases in which students are required to attend school in a
10 county other than the county of their residence;

11 (2) "Receiving county" means the county, other than
12 the county of residence, where students are required to
13 attend school; and

14 (3) "Sending county" means the county of resi-
15 dence of students involved in intercounty transfer
16 arrangements.

17 (b) The state board shall determine the number of
18 professional educator and school service personnel
19 positions to be created in facilities receiving students or in
20 any facility affected by an intercounty transfer
21 arrangement. The state board shall prepare a certified list
22 of positions and shall provide the list to both the sending
23 and receiving counties involved in the intercounty transfer
24 arrangement.

25 (c) The state board shall prepare a certified list
26 containing the names and seniority of the professional
27 educators and service personnel in the sending county
28 whose employment has been terminated as a result of an
29 intercounty transfer arrangement. Those eligible to
30 appear on the certified list shall be limited to the following
31 classifications of employees:

32 (1) Those persons whose positions were eliminated as
33 a direct result of an intercounty transfer arrangement and:
34 (i) Who choose not to exercise their right to displace

4 that year, there shall be appropriated for that purpose
5 from the general revenue fund an amount equal to the
6 average total state aid per net pupil multiplied by the total
7 of all of the increases in the net enrollments of the
8 counties made by comparing the most recent reports of
9 net enrollment for the second school month to the
10 immediately previous year's reports for the same school
11 month.

12 Upon determination of the several increases in the
13 respective counties' net enrollments, as of the close of the
14 second school month, each county showing such increase
15 shall be allocated an amount equal to that county's
16 average per net pupil total state aid multiplied by the
17 increase in that county's net enrollment determined as
18 provided heretofore. Such allocations shall be distributed
19 not later than the thirty-first day of December of each
20 year to the counties having increases in net enrollment as
21 heretofore provided. If the amount appropriated for this
22 purpose shall not be sufficient to provide payment in full
23 for the total of these several allocations, each county
24 allocation shall be reduced to an amount which is
25 proportionate to the appropriation compared to the total
26 of the several allocations, and the allocations as thus
27 adjusted shall be distributed to the counties as provided in
28 this section: *Provided*, That the governor shall request a
29 supplemental appropriation at the next legislative session
30 for the reduced amount.

31 No provision of this section shall be construed to in
32 any way affect the allocation of moneys for educational
33 purposes to a county under other provisions of law.

34 Except for those students who are enrolled in special
35 education programs, students who have not attained the
36 age of five prior to the first day of September shall not be
37 included for any purpose of this section.

38 Nothing in this section shall be construed to require
39 any specific level of funding by the Legislature.

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2 the contrary, if students are required to attend school in a
3 county other than the county of their residence as a result
4 of an intercounty transfer arrangement, then the following
5 terms, rules and procedures shall apply:

6 (a) For the purposes of this section, the following
7 terms have the following meanings:

8 (1) "Intercounty transfer arrangement" means those
9 cases in which students are required to attend school in a
10 county other than the county of their residence;

11 (2) "Receiving county" means the county, other than
12 the county of residence, where students are required to
13 attend school; and

14 (3) "Sending county" means the county of resi-
15 dence of students involved in intercounty transfer
16 arrangements.

17 (b) The state board shall determine the number of
18 professional educator and school service personnel
19 positions to be created in facilities receiving students or in
20 any facility affected by an intercounty transfer
21 arrangement. The state board shall prepare a certified list
22 of positions and shall provide the list to both the sending
23 and receiving counties involved in the intercounty transfer
24 arrangement.

25 (c) The state board shall prepare a certified list
26 containing the names and seniority of the professional
27 educators and service personnel in the sending county
28 whose employment has been terminated as a result of an
29 intercounty transfer arrangement. Those eligible to
30 appear on the certified list shall be limited to the following
31 classifications of employees:

32 (1) Those persons whose positions were eliminated as
33 a direct result of an intercounty transfer arrangement and:
34 (i) Who choose not to exercise their right to displace

35 another employee with lesser seniority; or (ii) whose
36 seniority is insufficient to allow them to displace other
37 employees; and

38 (2) Those persons, as determined by the state board,
39 who would have retained a position with the sending
40 county if the intercounty transfer arrangement had not
41 occurred.

42 (d) The receiving county may not fill any position on
43 the list of positions created pursuant to the provisions of
44 subsection (b) of this section until the receiving county
45 has received the list of employees created pursuant to the
46 provisions of subsection (c) of this section. When the
47 receiving county has been provided copies of both the
48 certified list of positions and the certified list of
49 employees, the receiving county shall begin filling the
50 vacancies by selecting employees from the certified list.
51 In filling these positions, the receiving county shall
52 comply with all provisions of law relevant to the filling of
53 professional educator or service personnel vacancies.

54 (e) For the remainder of the school year immediately
55 following the effective date of an intercounty transfer
56 arrangement, but in no case less than six months, the
57 receiving county may fill positions on the certified list of
58 positions only by selecting employees from the certified
59 list of employees.

60 (f) For the purposes of this section only, professional
61 educators and service personnel whose names appear on
62 the certified list of employees created pursuant to the
63 provisions of subsection (c) of this section and who are
64 hired by the county board of the receiving county shall
65 accrue seniority in both the sending and the receiving
66 counties during the time in which they continue to be
67 employed by the county board of the receiving county.

68 (g) The state board shall promulgate legislative rules
69 to implement the provisions of this section pursuant to the
70 provisions of article three-b, chapter twenty-nine-a of this
71 code. The rules shall be filed with the office of the
72 secretary of state no later than the first day of October,
73 one thousand nine hundred ninety-seven.

CHAPTER 82

(Com. Sub. for S. B. 532—By Senators Craig, Jackson and Wooton)

[Passed April 11, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article nine-d, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the school building authority; and empowering the authority to administer all federal funds provided for the construction and major improvement of school facilities.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article nine-d, 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 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-15. Legislative intent; distribution of money.

1 (a) It is the intent of the Legislature to empower the
2 school building authority to facilitate and provide state
3 funds and to administer all federal funds provided for the
4 construction and major improvement of school facilities
5 so as to meet the educational needs of the people of this
6 state in an efficient and economical manner. The authority
7 shall make funding determinations in accordance with the
8 provisions of this article and shall assess existing school
9 facilities and each facility's school major improvement
10 plan in relation to the needs of the individual student, the
11 general school population, the communities served by the
12 facilities and facility needs statewide.

13 (b) An amount that is no more than three percent of
14 the sum of moneys that are determined by the authority to
15 be available for distribution during the then current fiscal
16 year from: (1) Moneys paid into the school building
17 capital improvements fund pursuant to section ten, article
18 nine-a of this chapter; (2) the issuance of revenue bonds

19 for which moneys in the school building debt service fund
20 are pledged as security; (3) moneys paid into the school
21 construction fund pursuant to section six of this article;
22 and (4) any other moneys received by the authority,
23 except moneys paid into the school major improvement
24 fund pursuant to section six of this article, may be
25 allocated and may be expended by the authority for
26 projects that service the educational community statewide
27 or, upon application by the state board, for educational
28 programs that are under the jurisdiction of the state board.
29 In addition, upon application by the state board or the
30 administrative council of an area vocational educational
31 center established pursuant to article two-b of this chapter,
32 the authority may allocate and expend under this section
33 moneys for school major improvement projects proposed
34 by the state board or an administrative council for school
35 facilities under the direct supervision of the state board or
36 an administrative council, respectively: *Provided*, That the
37 authority may not expend any moneys for a school major
38 improvement project proposed by the state board or the
39 administrative council of an area vocational educational
40 center unless the state board or an administrative council
41 has submitted a ten-year school major improvement plan,
42 to be updated annually, pursuant to section sixteen of this
43 article: *Provided, however*, That the authority shall,
44 before allocating any moneys to the state board or the
45 administrative council of an area vocational educational
46 center for a school improvement project, consider all other
47 funding sources available for the project.

48 (c) An amount that is no more than two percent of the
49 moneys that are determined by the authority to be
50 available for distribution during the current fiscal year
51 from: (1) Moneys paid into the school building capital
52 improvements fund pursuant to section ten, article nine-a
53 of this chapter; (2) the issuance of revenue bonds for
54 which moneys in the school building debt service fund are
55 pledged as security; (3) moneys paid into the school
56 construction fund pursuant to section six of this article;
57 and (4) any other moneys received by the authority,
58 except moneys deposited into the school major
59 improvement fund, shall be set aside by the authority as an
60 emergency fund to be distributed in accordance with the
61 guidelines adopted by the authority.

62 (d) The remaining moneys determined by the
63 authority to be available for distribution during the then
64 current fiscal year from: (1) Moneys paid into the school
65 building capital improvements fund pursuant to section
66 ten, article nine-a of this chapter; (2) the issuance of
67 revenue bonds for which moneys in the school building
68 debt service fund are pledged as security; (3) moneys paid
69 into the school construction fund pursuant to section six
70 of this article; and (4) any other moneys received by the
71 authority, except moneys deposited into the school major
72 improvement fund, shall be allocated and expended on the
73 basis of need and efficient use of resources, the basis to be
74 determined by the authority in accordance with the
75 provisions of section sixteen of this article.

76 (e) If a county board of education proposes to finance
77 a project that is approved pursuant to section sixteen of
78 this article through a lease with an option to purchase
79 leased premises upon the expiration of the total lease
80 period pursuant to an investment contract, the authority
81 may allocate no moneys to the county board in
82 connection with the project: *Provided*, That the authority
83 may transfer moneys to the state board of education,
84 which, with the authority, shall lend the amount transferred
85 to the county board to be used only for a one-time
86 payment due at the beginning of the lease term, made for
87 the purpose of reducing annual lease payments under the
88 investment contract, subject to the following conditions:

89 (1) The loan shall be secured in the manner required
90 by the authority, in consultation with the state board, and
91 shall be repaid in a period and bear interest at a rate as
92 determined by the state board and the authority and shall
93 have such terms and conditions as are required by the
94 authority, all of which shall be set forth in a loan
95 agreement among the authority, the state board and the
96 county board;

97 (2) The loan agreement shall provide for the state
98 board and the authority to defer the payment of principal
99 and interest upon any loan made to the county board
100 during the term of the investment contract, and annual
101 renewals of the investment contract, among the state board,
102 the authority, the county board and a lessor: *Provided*,
103 That in the event a county board, which has received a

104 loan from the authority for a one-time payment at the
105 beginning of the lease term, does not renew the subject
106 lease annually until performance of the investment
107 contract in its entirety is completed, the county board is in
108 default and the principal of the loan, together with all
109 unpaid interest accrued to the date of the default, shall at
110 the option of the authority, in consultation with the state
111 board, become due and payable immediately or subject to
112 renegotiation among the state board, the authority and the
113 county board: *Provided, however,* That if a county board
114 renews the lease annually through the performance of the
115 investment contract in its entirety, the county board shall
116 exercise its option to purchase the leased premises:
117 *Provided further,* That the failure of the county board to
118 make a scheduled payment pursuant to the investment
119 contract constitutes an event of default under the loan
120 agreement: *And provided further,* That upon a default by
121 a county board, the principal of the loan, together with all
122 unpaid interest accrued to the date of the default, shall at
123 the option of the authority, in consultation with the state
124 board, become due and payable immediately or subject to
125 renegotiation among the state board, the authority and the
126 county board: *And provided further,* That if the loan
127 becomes due and payable immediately, the authority, in
128 consultation with the state board, shall use all means
129 available under the loan agreement and law to collect the
130 outstanding principal balance of the loan, together with all
131 unpaid interest accrued to the date of payment of the
132 outstanding principal balance; and

133 (3) The loan agreement shall provide for the state
134 board and the authority to forgive all principal and
135 interest of the loan upon the county board purchasing the
136 leased premises pursuant to the investment contract and
137 performance of the investment contract in its entirety.

138 (f) To encourage county boards to proceed promptly
139 with facilities planning and to prepare for the expenditure
140 of any state moneys derived from the sources described in
141 this subsection, any county board failing to expend
142 money within three years of the allocation to the county
143 board shall forfeit the allocation and thereafter is
144 ineligible for further allocations pursuant to this
145 subsection until the county board is ready to expend

146 funds in accordance with an approved facilities plan:
147 *Provided*, That the authority may authorize an extension
148 beyond the three-year forfeiture period not to exceed an
149 additional two years. Any amount forfeited shall be
150 added to the total funds available in the school
151 construction fund of the authority for future allocation
152 and distribution.

153 (g) The remaining moneys that are determined by the
154 authority to be available for distribution during the then
155 current fiscal year from moneys paid into the school
156 major improvement fund pursuant to section six of this
157 article shall be allocated and distributed on the basis of
158 need and efficient use of resources, the basis to be
159 determined by the authority in accordance with the
160 provisions of section sixteen of this article: *Provided*,
161 That the moneys may not be distributed to any county
162 board that does not have an approved school major
163 improvement plan or to any county board that is not
164 prepared to commence expenditures of the funds during
165 the fiscal year in which the moneys are distributed:
166 *Provided, however*, That any moneys allocated to a
167 county board and not distributed to that county board
168 shall be deposited in an account to the credit of that
169 county board, the principal amount to remain to the credit
170 of and available to the county board for a period of two
171 years. Any moneys which are unexpended after a two-
172 year period shall be redistributed on the basis of need
173 from the school major improvement fund in that fiscal
174 year.

175 (h) No local matching funds may be required under
176 the provisions of this section. However, the responsibilities
177 of the county boards of education to maintain school
178 facilities are negated by the provisions of this article. To
179 be eligible to receive an allocation of school major
180 improvement funds from the authority, a county board
181 must have expended in the previous year an amount
182 of county moneys equal to or exceeding the lowest
183 average amount of money included in the county board's
184 maintenance budget over any three of the previous five
185 years and must have budgeted an amount equal to or
186 greater than the average in the current fiscal year:
187 *Provided*, That the state board of education shall

188 promulgate rules relating to county boards' maintenance
189 budgets, including items which shall be included in the
190 budgets.

191 (i) Any county board may use moneys provided by
192 the authority under this article in conjunction with local
193 funds derived from bonding, special levy or other sources.
194 Distribution to a county board, or to the state board or the
195 administrative council of an area vocational educational
196 center pursuant to subsection (b) of this section, may be in
197 a lump sum or in accordance with a schedule of payments
198 adopted by the authority pursuant to guidelines adopted
199 by the authority.

200 (j) Funds in the school construction fund shall first be
201 transferred and expended as follows:

202 Any funds deposited in the school construction fund
203 shall be expended first in accordance with an
204 appropriation by the Legislature. To the extent that funds
205 are available in the school construction fund in excess of
206 that amount appropriated in any fiscal year, the excess
207 funds may be expended in accordance with the provisions
208 of this article. Any projects which the authority identified
209 and announced for funding on or before the first day of
210 August, one thousand nine hundred ninety-five, or
211 identified and announced for funding on or before the
212 thirty-first day of December, one thousand nine hundred
213 ninety-five, shall be funded by the authority in an amount
214 which is not less than the amount specified when the
215 project was identified and announced.

216 (k) It is the intent of the Legislature to encourage
217 county boards to explore and consider arrangements with
218 other counties that may facilitate the highest and best use
219 of all available funds, which may result in improved
220 transportation arrangements for students, or which
221 otherwise may create efficiencies for county boards and
222 the students. In order to address the intent of the
223 Legislature contained in this subsection, the authority shall
224 grant preference to those projects which involve multi-
225 county arrangements as the authority shall determine
226 reasonable and proper.

CHAPTER 83

(H. B. 2510—By Delegates Manuel and Doyle)

[Passed April 12, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact sections eight and nine, article three, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to carry-over of funds for staff development councils.

Be it enacted by the Legislature of West Virginia:

That sections eight and nine, article three, chapter eighteen-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. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-8. County professional staff development councils.

§18A-3-9. County service personnel staff development councils.

§18A-3-8. County professional staff development councils.

1 The Legislature finds the professional expertise and
2 insight of the classroom teacher to be an invaluable ingre-
3 dient in the development and delivery of staff develop-
4 ment programs which meet the needs of classroom teach-
5 ers.

6 Therefore, a professional staff development council
7 comprised of proportional representation from the major
8 school levels and from vocational, special education and
9 other specialties in proportion to their employment num-
10 bers in the county shall be established in each school dis-
11 trict in the state in accordance with rules adopted by the
12 state board of education. Nominations of instructional
13 personnel to serve on the county staff development coun-
14 cil may be submitted by the faculty senates of the district
15 to the county superintendent who shall prepare and dis-
16 tribute ballots and tabulate the votes of the counties in-
17 structional personnel voting on the persons nominated.
18 Each county staff development council shall consist of
19 between nine and fifteen members at the discretion of the

20 county superintendent based on the size of the county.
21 The councils have final authority to propose staff develop-
22 ment programs for their peers based upon rules estab-
23 lished by statute and the council on professional educa-
24 tion.

25 The county superintendent or a designee has an advi-
26 sory, nonvoting role on the council. The county board
27 shall make available an amount equal to one tenth of one
28 percent of the amounts provided in accordance with sec-
29 tion four, article nine-a, chapter eighteen of this code and
30 credit the funds to an account to be used by the council to
31 fulfill its objectives. The local board has final approval of
32 all proposed disbursements.

33 Any funds credited to the council during a fiscal year,
34 but not used by the council, shall be carried over in the
35 council account for use in the next fiscal year. These
36 funds are separate and apart from, and in addition to,
37 those funds to be credited to the council pursuant to this
38 section. At the end of each fiscal year, the council shall
39 report to each faculty senate chairperson the amount of
40 funds carried over into the next fiscal year.

41 The professional staff development project of the cen-
42 ter for professional development shall assist in the devel-
43 opment and delivery of staff development programs by
44 the county staff development councils and shall coordi-
45 nate staff development efforts statewide.

**§18A-3-9. County service personnel staff development coun-
cils.**

1 The Legislature finds the professional expertise and
2 insight of service personnel to be an invaluable ingredient
3 in the development and delivery of staff development
4 programs which meet the needs of service personnel.

5 Therefore, a service personnel staff development coun-
6 cil comprised of representation from the various catego-
7 ries of service personnel employment shall be established
8 in each school district in the state in accordance with rules
9 adopted by the state board of education. Nominations of
10 service personnel to serve on the county service personnel
11 staff development council may be submitted by the six
12 groups, as defined in subsection (e), section one, article
13 one of this chapter, of the district to the county superin-
14 tendent who shall prepare and distribute ballots and tabu-
15 late the votes of the counties service personnel voting on

16 the persons nominated. Each county staff service
17 personnel development council shall consist of two
18 employees from each category of employment. The
19 councils have final authority to propose staff development
20 programs for their peers based upon rules established by
21 statute and the council on service personnel education.
22 The county superintendent or a designee has an advisory,
23 nonvoting role on the council. The county board shall
24 make available an amount equal to one tenth of one
25 percent of the amounts provided in accordance with
26 section five, article nine-a, chapter eighteen of this code
27 and credit the funds to an account to be used by the
28 council to fulfill its objectives. The local board has the
29 final approval of all proposed disbursements. Any funds
30 credited to the council during a fiscal year, but not used
31 by the council, shall be carried over in the council account
32 for use in the next fiscal year. Any carried-over funds
33 shall be separate and apart from, and in addition to, the
34 funds to be credited to the council pursuant to this section.

CHAPTER 84

(Com. Sub. for S. B. 427—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed April 12, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to repeal section six, article three-a, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one and two of said article, all relating to public school professional development; repealing obsolete provisions relating to a task force on teacher preparation; clarifying that advanced placement is under the center; recognizing importance of principals and administrators skilled in modern management principles; changing the membership of the center for professional development board and eliminating the advisory council; making the secretary of education and the arts the chair of the center board; providing qualification

for center executive director and making executive director at will and pleasure of the secretary; requiring the center to assist in the delivery of programs and activities to meet local needs; providing for required fees and creating a special fund in the state treasury; focusing mission of professional development project of center on identifying, coordinating, arranging and otherwise assisting in the delivery of professional development for teachers, principals and administrators based on laws, policies and regulations adopted for public schools of West Virginia; authorizing center to permit classroom aides, other school personnel and higher education faculty to participate in appropriate professional development; requiring center to advise teacher education programs of changes in law and policy that affect professional educator job performance; and requiring center to assist in delivery of programs and activities to meet expressed needs of school districts.

Be it enacted by the Legislature of West Virginia:

That section six, article three-a, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one and two of said article be amended and reenacted, all to read as follows:

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 3A. CENTER FOR PROFESSIONAL DEVELOPMENT.

§18A-3A-1. Center for professional development continued; intent; advisory council.

§18A-3A-2. Professional development project.

§18A-3A-1. Center for professional development continued; intent; advisory council.

1 (a) Teaching is a profession that directly correlates to
 2 the social and economic well-being of a society and its
 3 citizens. Superior teaching is essential to a well educated
 4 and productive populace. Strong academic leadership
 5 provided by principals and administrators skilled in mod-
 6 ern management principles is also essential. The intent of
 7 this article is to recognize the value of professional in-
 8 volvement by experienced educators, principals and ad-
 9 ministrators in building and maintaining a superior force
 10 of professional educators and to establish avenues for
 11 applying such involvement.

12 In furtherance of this intent, the center for profession-
13 al development is continued and reestablished. The gen-
14 eral mission of the center is to study matters relating to the
15 quality of teaching and management in the schools of
16 West Virginia and to promote the implementation of pro-
17 grams and practices to assure the highest quality in teach-
18 ing and management. The center shall also perform such
19 duties as are assigned to it by law.

20 Nothing in this article shall be construed to require
21 any specific level of funding by the Legislature.

22 (b) The center board existing before the effective date
23 of this section is abolished. The center board, after the
24 effective date of this section, shall consist of a board of
25 eleven persons as members as follows: The secretary of
26 education and the arts, ex officio, who shall be the board
27 chair, and the state superintendent of schools, ex officio,
28 both of whom shall be entitled to vote; three members of
29 the state board of education, elected by the state board;
30 three experienced educators, of whom two shall be work-
31 ing classroom teachers and one of whom shall be a school
32 or county administrator, appointed by the governor by
33 and with the advice and consent of the Senate; and three
34 citizens of the state who are knowledgeable in matters
35 relevant to the issues addressed by the center, including,
36 but not limited to, professional development and manage-
37 ment principles, appointed by the governor by and with
38 the advice and consent of the Senate. Not more than two
39 appointees shall be residents within the same congressional
40 district. The secretary of education and the arts shall con-
41 vene the first meeting of the center board.

42 The election and appointment of members shall be
43 made as soon as possible after the effective date of this
44 section. Of the initial members from the state board of
45 education, one shall be elected for a term of one year and
46 two shall be elected for terms of two years. All successive
47 elections shall be for two-year terms. The state board of
48 education shall elect another member to fill the unexpired
49 term of any person so elected who subsequently vacates
50 state board membership. Of the initial appointed mem-
51 bers, three shall be appointed for one-year terms and three
52 shall be appointed for two-year terms. All successive
53 appointments shall be for two-year terms. The governor

54 shall appoint a new member to fill the unexpired term of
55 any vacancy in the appointed membership.

56 The center for professional development board shall
57 meet at least quarterly and the appointed members shall be
58 reimbursed for reasonable and necessary expenses actual-
59 ly incurred in the performance of their official duties
60 from funds appropriated or otherwise made available for
61 such purposes upon submission of an itemized statement
62 therefor.

63 The secretary of education and the arts, with the advice
64 of the center board, from appropriations to the center for
65 professional development, may employ and fix the com-
66 pensation of an executive director with knowledge and
67 experience in professional development and management
68 principles and such other persons as may be necessary to
69 carry out the mission and duties of the center. When prac-
70 tical, personnel employed by state higher education agen-
71 cies and state, regional and county public education agen-
72 cies shall be made available to the center to assist in the
73 operation of projects of limited duration.

74 The center shall assist in the delivery of programs and
75 activities pursuant to this article to meet the local profes-
76 sional development needs of teachers, principals and ad-
77 ministrators and may contract with existing agencies or
78 agencies created after the effective date of this section or
79 others to provide training programs in the most efficient
80 manner. Existing programs currently based in agencies of
81 the state shall be continued in the agency of their origin
82 unless the center establishes a compelling need to transfer
83 or cancel the existing program. The center shall recom-
84 mend to the governor the transfer of funds to the provid-
85 ing agency, if needed, to provide programs approved by
86 the center.

87 Pursuant to the provisions of article ten, chapter four
88 of this code, the center for professional development
89 board shall continue to exist until the first day of July, two
90 thousand one.

91 (c) On or before the first day of January, one thou-
92 sand nine hundred ninety-eight, the center for profession-
93 al development shall develop and communicate to the state
94 board of education a curriculum for the principals acade-

95 my. The curriculum shall be based upon the minimum
96 qualities, proficiencies and skills necessary for principals
97 and recommended by the state board, pursuant to the
98 terms of section two-c, article three of this chapter.

99 (d) In accordance with section two-c, article three of
100 this chapter, the center shall be responsible for paying
101 reasonable and necessary expenses for persons attending
102 the principals academy: *Provided*, That nothing in this
103 section shall be construed to require any specific level of
104 funding by the Legislature.

105 (e) Persons attending the professional development
106 offerings of the center and such other courses as shall be
107 offered by the center for professional development, except
108 the principals academy, shall be assessed fees which shall
109 be less than the full cost of attendance. There is hereby
110 created in the state treasury a special revenue account
111 known as the "center for professional development
112 fund". All moneys collected by the center shall be depos-
113 ited in the fund for expenditure by the center board for
114 the purposes specified in this section. Moneys remaining
115 in the fund at the end of the fiscal year are subject to reap-
116 propriation by the Legislature.

§18A-3A-2. Professional development project.

1 Through this project the center shall:

2 (1) Identify, coordinate, arrange and otherwise assist in
3 the delivery of professional development programs and
4 activities that help professional educators acquire the
5 knowledge, skills, attitudes, practices and other such perti-
6 nent complements deemed essential for an individual to
7 demonstrate appropriate performance as a professional
8 personnel in the public schools of West Virginia. The
9 basis for such performance shall be the laws, policies and
10 regulations adopted for the public schools of West Virgin-
11 ia, and amendments thereto. The center may also permit
12 and encourage school personnel such as classroom aides,
13 higher education teacher education faculty and higher
14 education faculty in programs such as articulated tech
15 prep associate degree and other programs to participate in
16 appropriate professional development programs and activ-
17 ities with public school professional educators;

18 (2) Identify, coordinate, arrange and otherwise assist in

19 the delivery of professional development programs and
20 activities that help principals and administrators acquire
21 knowledge, skills, attitudes and practices in academic lead-
22 ership and management principles for principals and ad-
23 ministrators and such other pertinent complements
24 deemed essential for principals and administrators to dem-
25 onstrate appropriate performance in the public schools of
26 West Virginia. The basis for such performance shall be
27 the laws, policies and regulations adopted for the public
28 schools of West Virginia, and amendments thereto;

29 (3) Serve in a coordinating capacity to assure that the
30 knowledge, skills, attitude and other pertinent comple-
31 ments of appropriate professional performance which
32 evolve over time in the public school environment are
33 appropriately reflected in the programs approved for the
34 education of professional personnel, including, but not
35 limited to, advising the teacher education programs of
36 major statutory and policy changes in the public schools
37 which affect the job performance requirements of profes-
38 sional educators, including principals and administrators;

39 (4) Provide for the routine updating of professional
40 skills of professional educators, including principals and
41 administrators, through in-service and other programs.
42 Such routine updating may be provided by the center
43 through statewide or regional institutes which may require
44 a registration fee; and

45 (5) Provide consultation and assistance to county staff
46 development councils established under the provisions of
47 section eight, article three of this chapter in planning,
48 designing, coordinating, arranging for and delivering
49 professional development programs to meet the needs of
50 the professional educators of their district. From
51 legislative appropriations to the center for professional
52 development, exclusive of such amounts required for the
53 expenses of the principals academy, the center shall, unless
54 otherwise directed by the Legislature, provide assistance in
55 the delivery of programs and activities to meet the
56 expressed needs of the school districts for professional
57 development to help teachers, principals and adminis-
58 trators demonstrate appropriate performance based on the
59 laws, policies and regulations adopted for the public
60 schools of West Virginia.

CHAPTER 85

(Com. Sub. for S. B. 67—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed April 4, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to repeal section four, article two, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two and eight-b, article one of said chapter; and to amend and reenact sections two, three and four, article six of said chapter, all relating to restructuring the Marshall university graduate school and the West Virginia graduate college into the Marshall university graduate college; providing definitions; repealing the establishment of the West Virginia graduate college; providing for the adoption and review of policies, procedures, programs, standards and the appointment of a head of the graduate college; providing legislative intent with respect to impact on fund allocations and strategic plans; and providing for election of members to advisory councils of students, faculty and classified staff and to governing body from advisory councils of faculty, students and classified staff by the graduate college and by the regional campuses of West Virginia university.

Be it enacted by the Legislature of West Virginia:

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

Article

1. **Governance.**
6. **Advisory Councils of Faculty.**

ARTICLE 1. GOVERNANCE.

§18B-1-2. Definitions.

§18B-1-8b. Marshall university graduate college.

§18B-1-2. Definitions.

1 The following words when used in this chapter and
2 chapter eighteen-c of this code shall have the meaning
3 hereinafter ascribed to them unless the context clearly
4 indicates a different meaning:

5 (a) "Governing board" or "board" means the uni-
6 versity of West Virginia board of trustees or the board of
7 directors of the state college system, whichever is applica-
8 ble within the context of the institution or institutions
9 referred to in this chapter or in other provisions of law;

10 (b) "Governing boards" or "boards" means both the
11 board of trustees and the board of directors;

12 (c) "Freestanding community colleges" means south-
13 ern West Virginia community and technical college and
14 West Virginia northern community and technical college,
15 which shall not be operated as branches or off-campus
16 locations of any other state institution of higher education;

17 (d) "Community college" or "community colleges"
18 means community and technical college or colleges as
19 those terms are defined in this section;

20 (e) "Community and technical college", in the singu-
21 lar or plural, means the freestanding community and tech-
22 nical colleges, community and technical education pro-
23 grams of regional campuses of West Virginia university
24 and divisions of state institutions of higher education
25 which have a defined community and technical college
26 district and offer community and technical college educa-
27 tion in accordance with the provisions of section three-a,
28 article three of this chapter;

29 (f) "Community and technical college education"
30 means the programs, faculty, administration and funding
31 associated with the mission of community and technical
32 colleges as provided in section three-a, article three of this
33 chapter, and also shall include post-secondary vocational

34 education programs in the state as those terms are defined
35 in this section. Community and technical college educa-
36 tion shall be delivered through a system which includes
37 eleven community and technical college districts assigned
38 to state institutions of higher education under the jurisdic-
39 tion of the board of directors and the board of trustees,
40 respectively;

41 (g) "Directors" or "board of directors" means the
42 board of directors of the state college system created pur-
43 suant to article three of this chapter or the members there-
44 of;

45 (h) "Higher educational institution" means any insti-
46 tution as defined by Sections 401(f), (g) and (h) of the
47 federal Higher Education Facilities Act of 1963, as
48 amended;

49 (i) "Post-secondary vocational education programs"
50 means any college-level course or program beyond the
51 high school level provided through an institution of high-
52 er education which results in or may result in the awarding
53 of a two-year associate degree, under the jurisdiction of
54 the board of directors;

55 (j) "Rule" or "rules" means a regulation, standard,
56 policy or interpretation of general application and future
57 effect;

58 (k) "Senior administrator" means the person hired by
59 the governing boards in accordance with section one,
60 article four of this chapter, with powers and duties as may
61 be provided for in section two of said article;

62 (l) "State college" means Bluefield state college, Con-
63 cord college, Fairmont state college, Glenville state college,
64 Shepherd college, West Liberty state college or West Vir-
65 ginia state college;

66 (m) "State college system" means the state colleges
67 and community and technical colleges, and also shall
68 include post-secondary vocational education programs in
69 the state as those terms are defined in this section;

70 (n) "State college system community and technical
71 colleges" means the freestanding community and techni-
72 cal colleges and community and technical colleges operat-
73 ed on the campuses of state colleges under the jurisdiction
74 of the board of directors of the state college system and all
75 of their associated branches, centers and off-campus loca-
76 tions;

77 (o) "State institution of higher education" means any
78 university, college or community and technical college in
79 the state university system or the state college system as
80 those terms are defined in this section;

81 (p) "Trustees" and "board of trustees" means the
82 university of West Virginia board of trustees created pur-
83 suant to article two of this chapter or the members thereof;

84 (q) "University", "university of West Virginia" and
85 "state university system" means the multi-campus, inte-
86 grated university of the state, consisting of West Virginia
87 university, including West Virginia university at
88 Parkersburg, Potomac state college of West Virginia uni-
89 versity, West Virginia university institute of technology
90 and the West Virginia university school of medicine; Mar-
91 shall university, including the Marshall university school
92 of medicine, and the Marshall university community and
93 technical college, the Marshall university graduate college;
94 and the West Virginia school of osteopathic medicine;

95 (r) "University system community and technical col-
96 leges" means Marshall university community and techni-
97 cal college, community and technical education programs
98 at West Virginia university at Parkersburg, community and
99 technical education programs at Potomac state college of
100 West Virginia university and West Virginia university insti-
101 tute of technology community and technical college un-
102 der the jurisdiction of the university of West Virginia
103 board of trustees and all their associated branches, centers
104 and off-campus locations;

105 (s) "Regional campus" means West Virginia universi-
106 ty at Parkersburg, Potomac state college of West Virginia
107 university, and West Virginia university institute of tech-

108 nology. The chief executive officer of a regional campus
109 shall be known as "campus president", shall serve at the
110 will and pleasure of the president of West Virginia univer-
111 sity, and shall report to the president of West Virginia
112 university or his or her designee in the method specified
113 by West Virginia university. The board of advisors for
114 West Virginia university established pursuant to section
115 one, article six of this chapter shall serve as the advisory
116 board for West Virginia university and its regional cam-
117 puses. The advisory boards previously appointed for each
118 regional campus shall be known as "boards of visitors"
119 and shall provide guidance to the regional campus presi-
120 dents. Each regional campus shall adopt separate strategic
121 plans required by section one-c of this article; and

122 (t) The advisory board previously appointed for the
123 West Virginia graduate college shall be known as the
124 "board of visitors" and shall provide guidance to the
125 Marshall university graduate college.

§18B-1-8b. Marshall university graduate college.

1 (a) Notwithstanding any other provisions of this code
2 to the contrary, the West Virginia graduate college shall
3 cease to be an individual higher education institution, as
4 defined by subsection (h), section two, article one of this
5 chapter and shall be merged and consolidated with Mar-
6 shall university, effective the first day of July, one thou-
7 sand nine hundred ninety-seven.

8 (b) The graduate programs of Marshall university shall
9 be operated under the same procedures, policies, rules and
10 practices utilized by Marshall university and the board of
11 trustees in operating Marshall university: *Provided*, That
12 the board of trustees shall assure that the president of
13 Marshall university adopts policies, procedures and stan-
14 dards for its graduate programs that facilitate the multiple
15 missions of the graduate college in serving traditional and
16 nontraditional students and providing graduate instruction
17 throughout the state. Nothing herein shall be interpreted
18 to abrogate the power or responsibility of the board of
19 trustees to approve and review graduate programs offered
20 within the university system, nor to limit the statewide

21 mission of West Virginia university or any other institu-
22 tion.

23 (c) The president of Marshall university shall appoint
24 the head of the graduate college, who shall report directly
25 to the president of Marshall university.

26 (d) Nothing contained herein shall be interpreted to
27 authorize the provision or expansion of any four-year
28 programs offered by Marshall university to any sites for-
29 merly offering graduate school courses by the West Vir-
30 ginia graduate college.

31 (e) It is the intent of the Legislature that the program
32 review and approval process for campus offerings for
33 graduate education by the graduate college of Marshall
34 university be separate and distinct from the process for the
35 approval of undergraduate education program offerings.

36 (f) It is the Legislature's intent that, through the fiscal
37 year two thousand--two thousand one, the proportionate
38 share of the funds which would have been generated by
39 the board of trustees resource allocation policy for the
40 West Virginia graduate college shall be allocated to the
41 Marshall university graduate college. It is further the
42 intent of the Legislature that the merger and consolidation
43 of West Virginia graduate college and Marshall university
44 shall not result in any financial gain or loss to the board of
45 trustees or any institution within the university system in
46 the appropriation decisions by the Legislature.

47 (g) It is the intent of the Legislature that Marshall
48 university and the Marshall university graduate college
49 each receive any increase in state appropriated funds for
50 the fiscal year beginning the first day of July, one thou-
51 sand nine hundred ninety-seven, set out in section one-c,
52 article one of this chapter, and further, that they shall not
53 be denied any increases because of the need for changes
54 in their strategic plans necessitated by the merger and
55 consolidation of the two institutions: *Provided*, That Mar-
56 shall university shall prepare a revised strategic plan and
57 submit it to the board of trustees for approval by the first

58 day of November, one thousand nine hundred ninety-
59 seven.

60 (h) Each valid agreement, obligation or claim entered
61 into or incurred by the board of trustees on behalf of the
62 West Virginia graduate college is hereby undertaken by
63 the board of trustees on behalf of Marshall university.

ARTICLE 6. ADVISORY COUNCILS OF FACULTY.

§18B-6-2. Advisory councils of faculty.

§18B-6-3. Advisory councils of students.

§18B-6-4. Advisory councils of classified employees.

§18B-6-2. Advisory councils of faculty.

1 Effective the first day of July, one thousand nine hun-
2 dred eighty-nine, each governing board shall be assisted
3 by an advisory council of faculty.

4 During the month of April of each even-numbered
5 year, each president or other administrative head of a state
6 institution of higher education, including Potomac state
7 college of West Virginia university, West Virginia universi-
8 ty at Parkersburg, West Virginia university institute of
9 technology, Robert C. Byrd health sciences Charleston
10 division of West Virginia university and the Marshall uni-
11 versity graduate college, at the direction of the councils
12 and in accordance with procedures established by the
13 councils, shall convene a meeting or otherwise institute a
14 balloting process to elect one faculty to serve on the ap-
15 propriate governing board's advisory council of faculty,
16 which shall consist of one faculty, so elected, from each
17 institution under the appropriate governing board. Terms
18 of the members of each council shall be for two years and
19 shall begin on the first day of July of each even-numbered
20 year and members of each advisory council shall be eligi-
21 ble to succeed themselves.

22 The advisory councils of faculty shall meet at least
23 once each quarter. One of the quarterly meetings shall be
24 during the month of July, at which meeting each council
25 shall elect a chairman, who shall be by virtue of the office
26 a voting member of the appropriate governing board:
27 *Provided*, That the chair shall serve no more than two

28 consecutive terms. No member may vote by proxy at the
29 election. In the event of a tie in the last vote taken for
30 such election, a member authorized by the council shall
31 select the chairman by lot from the names of those per-
32 sons tied. Immediately following the election of a chair-
33 man, each council shall elect, in the manner prescribed by
34 this section for the election of a chairman, a member of
35 that council to preside over meetings of the council in the
36 chairman's absence. Should the chairman vacate the
37 position, the council shall meet and elect a new chairman
38 to fill the unexpired term within thirty days following the
39 vacancy.

40 Each advisory council of faculty, through its chairman
41 and in any other appropriate manner, shall consult and
42 advise its governing board in matters of higher education
43 in which the faculty members may have an interest.

44 Members of each advisory council shall serve without
45 compensation, but shall be entitled to reimbursement for
46 actual and necessary expenses incurred in the perfor-
47 mance of their official duties from funds allocated to the
48 state institution of higher education served.

49 Each governing board shall furnish secretarial services
50 to its advisory council of faculty, and each advisory coun-
51 cil shall cause to be prepared minutes of its meetings,
52 which minutes shall be available, upon request, to any
53 faculty member of a state institution of higher education
54 represented on the council. The minutes shall be forward-
55 ed to the advisory council of faculty serving the other
56 governing board.

§18B-6-3. Advisory councils of students.

1 Effective the first day of July, one thousand nine hun-
2 dred eighty-nine, each governing board shall be assisted
3 by an advisory council of students.

4 The student government organization at each state
5 institution of higher education shall elect a student, who
6 may be the elected head or president of the organization,
7 to serve on the appropriate governing board's advisory
8 council of students, which are hereby created, consisting

9 of the elected representatives of each institution under the
10 appropriate governing board: *Provided*, That the student
11 government organization at each institution in the univer-
12 sity system, including Potomac state college of West Vir-
13 ginia university, West Virginia university at Parkersburg,
14 West Virginia university institute of technology, the Robert
15 C. Byrd health sciences Charleston division of West Vir-
16 ginia university and Marshall university graduate college
17 shall elect one student per three thousand students en-
18 rolled at each institution with a minimum of one represen-
19 tative from each institution. The student government of
20 each institution shall determine how its representatives
21 shall be elected. Terms of the members of the council
22 shall be for one year and shall begin on the first day of
23 May of each year, and members of the advisory councils
24 shall be eligible to succeed themselves.

25 Each institution shall have only one vote in all matters.
26 The advisory councils of students shall meet at least once
27 each quarter, and shall meet during each month of June, at
28 which meeting each council shall elect a chairman, who
29 prior to the elections must be entitled to vote in the state of
30 West Virginia. By virtue of the office, the chairman shall
31 be a voting member of the appropriate governing board.
32 No member may vote by proxy at the election. In the
33 event of a tie in the last vote taken for the election, a mem-
34 ber authorized by the council shall select the chairman by
35 lot from the names of those persons tied. Immediately
36 following the election of a chairman, each council shall
37 elect, in the manner prescribed by this section for the
38 election of a chairman, a member of that council to pre-
39 side over meetings of the council in the chairman's ab-
40 sence. Should the chairman vacate the position, the coun-
41 cil shall meet and elect a new chairman to fill the unex-
42 pired term within thirty days following the vacancy.

43 Each advisory council of students, through its chair-
44 man and in any other appropriate manner, shall consult
45 and advise its governing board in matters of higher educa-
46 tion in which the students may have an interest.

47 Members of each advisory council shall serve without
48 compensation, but shall be entitled to reimbursement for

49 actual and necessary expenses incurred in the perfor-
50 mance of their official duties from funds allocated to the
51 state institution of higher education served.

52 Each governing board shall furnish secretarial services
53 to its advisory council of students, and each advisory
54 council shall cause to be prepared minutes of its meetings,
55 which minutes shall be available, upon request, to any
56 student of a state institution of higher education represent-
57 ed on the council. The minutes shall be forwarded to the
58 advisory council of students serving the other governing
59 board.

§18B-6-4. Advisory councils of classified employees.

1 Effective the first day of July, one thousand nine hun-
2 dred eighty-nine, each governing board shall be assisted
3 by an advisory council of classified employees.

4 During the month of April of each even-numbered
5 year, each president or other administrative head of a state
6 institution of higher education, including Potomac state
7 college of West Virginia university, West Virginia universi-
8 ty at Parkersburg, West Virginia university institute of
9 technology, the Robert C. Byrd health sciences Charleston
10 division of West Virginia university and the Marshall uni-
11 versity graduate college, at the direction of the councils
12 and in accordance with procedures established by the
13 councils, shall convene a meeting or otherwise institute a
14 balloting process to elect one classified employee to serve
15 on the appropriate governing board's advisory council of
16 classified employees, which shall consist of one classified
17 employee, so elected, from each institution under the ap-
18 propriate governing board. Terms of the members of the
19 councils shall be for two years and shall begin on the first
20 day of July of each even-numbered year, and members of
21 the advisory councils shall be eligible to succeed them-
22 selves. For the purpose of this section the term "institu-
23 tion of higher education" includes the facilities and staff
24 supervised by the senior administrator employed by the
25 governing boards, which is a part of the state college sys-
26 tem, and the West Virginia network for telecomputing,
27 which is a part of the state university system.

28 Each advisory council of classified employees shall
29 meet at least once each quarter. One of the quarterly
30 meetings shall be during the month of July, at which meet-
31 ing each council shall elect a chairman, who shall be by
32 virtue of the office a voting member of the appropriate
33 governing board: *Provided*, That the chair shall serve no
34 more than two consecutive terms: *Provided, however*,
35 That the board of directors' advisory council for classified
36 employees' chairman shall not be a member of the staff
37 supervised by the central administrative official. No mem-
38 ber may vote by proxy at the election. In the event of a
39 tie in the last vote taken for the election, a member autho-
40 rized by the council shall select the chairman by lot from
41 the names of those persons tied. Immediately following
42 the election of a chairman, each council shall elect, in the
43 manner prescribed by this section for the election of a
44 chairman, a member of the council to preside over meet-
45 ings of the council in the chairman's absence. Should the
46 chairman vacate the position, the council shall meet and
47 elect a new chairman to fill the unexpired term within
48 thirty days following the vacancy.

49 Each advisory council of classified employees,
50 through its chairman and in any other appropriate man-
51 ner, shall consult and advise its governing board in matters
52 of higher education in which the classified employees may
53 have an interest.

54 Members of each advisory council shall serve without
55 compensation, but shall be entitled to reimbursement for
56 actual and necessary expenses incurred in the perfor-
57 mance of their official duties from funds allocated to the
58 state institution of higher education served.

59 Each governing board shall furnish secretarial services
60 to its advisory council of classified employees, and each
61 advisory council shall cause to be prepared minutes of its
62 meetings, which minutes shall be available, upon request,
63 to any classified employee of a state institution of higher
64 education represented on the council. The minutes shall
65 be forwarded to the advisory council of classified employ-
66 ees serving the other governing board.

CHAPTER 86

(Com. Sub. for H. B. 2049—By Delegate Mezzatesta)

[Passed April 12, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section one, article four, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five, article eleven of said chapter, all relating to higher education; eliminating the single vice chancellor for instructional technology and having these duties performed by the chancellor of the university of West Virginia board of trustees and the chancellor of the board of directors of the state college system.

Be it enacted by the Legislature of West Virginia:

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

Article

4. **General Administration.**

11. **Miscellaneous Institutes and Centers.**

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-1. Officers of governing boards; employment of chancellors and senior administrator; offices.

1 (a) At its annual meeting in June of each year, each
 2 governing board shall elect from its members appointed
 3 by the governor a president and other officers as it may
 4 consider necessary or desirable: *Provided*, That the initial
 5 annual meeting shall be held during July, one thousand
 6 nine hundred eighty-nine. The president and other
 7 officers shall be elected for a one-year term commencing
 8 on the first day of July following the annual meeting and
 9 ending on the thirtieth day of June of the following year.
 10 The president of the board shall serve no more than two
 11 consecutive terms.

12 (b) Each governing board shall employ a chancellor
13 who shall serve at the will and pleasure of the employing
14 board and shall assist the governing board in the
15 performance of its duties and responsibilities. No
16 chancellor may hold or retain any other administrative
17 position within the system of higher education while
18 employed as chancellor. Each chancellor is responsible
19 for carrying out the directives of the governing board by
20 which he or she is employed and shall work with the board
21 in developing policy options. For the purpose of
22 developing or evaluating policy options, the chancellors
23 may request the assistance of the presidents and other
24 administrative heads of the institutions under their
25 jurisdiction and their staffs. The respective chancellors
26 shall jointly agree to and shall hire one senior
27 administrator who shall serve at their will and pleasure in
28 accordance with section two of this article.

29 (c) The vice chancellor for health sciences shall
30 coordinate the West Virginia university school of
31 medicine, the Marshall university school of medicine and
32 the West Virginia school of osteopathic medicine.

33 (d) Suitable offices for the senior administrator and
34 other staff shall be provided in Charleston.

35 (e) The chancellor of the university of West Virginia
36 board of trustees and the chancellor of the board of
37 directors of the state college system shall establish a plan
38 and funding recommendations for development and
39 implementation of a multifaceted instructional technology
40 strategy that includes, but is not limited to, a goal that
41 every full-time freshman student beginning in the fall
42 semester, one thousand nine hundred ninety-six, and
43 thereafter, and as many other students and faculty as
44 possible will own or lease a computer, and alternatively
45 that computers be available for part-time students through
46 on-site labs; the integration of computer usage into all
47 course work; the involvement of faculty in the
48 development and use of technology-based instruction and
49 instructional courseware for community and technical
50 colleges, colleges and universities; and the expansion of
51 distance learning and technology networks throughout the
52 higher education systems to enhance teaching and
53 learning, promote access to quality educational offerings

54 with minimum duplication of effort, increase the delivery
55 of instruction to nontraditional students, provide services
56 to business and industry, and increase the management
57 capabilities of the higher education system. The
58 chancellors shall submit the plan to the Legislature on or
59 before the first day of July, one thousand nine hundred
60 ninety-seven.

61 The chancellor of the university of West Virginia
62 board of trustees and the chancellor of the board of
63 directors of the state college system shall supervise the
64 administration, oversight, coordination and implementa-
65 tion of the plan, or portions of the plan, subject to the
66 availability of funds and the direction of the governing
67 boards. In addition, the chancellors shall review all
68 technology related matters within the department of
69 education and the arts and suggest appropriate integration
70 and compatibility of the technology systems within the
71 department and the institutions governed by the board.

72 (f) The governing boards shall jointly employ a vice
73 chancellor for community and technical education
74 pursuant to the provisions of section three-a, article three
75 of this chapter.

ARTICLE 11. MISCELLANEOUS INSTITUTES AND CENTERS.

§18B-11-5. Institute for instructional technology.

1 The governing boards are hereby authorized to
2 create an institute for instructional technology which shall
3 be located within the higher education central office. The
4 governing boards are hereby authorized to enter into
5 research agreements pursuant to article twelve of this
6 chapter with respect to the institute for instructional
7 technology. The chancellor of the university of West
8 Virginia board of trustees and the chancellor of the board
9 of directors of the state college system shall perform
10 functions, tasks and duties as may be prescribed by law
11 and shall share resources with the higher education central
12 office, the state institutions of higher education and other
13 agencies to the extent practical to avoid unnecessary
14 duplication of staff and other administrative efforts.

CHAPTER 87

(H. B. 2786—By Delegates Mezzatesta, Jenkins and Michael)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend article ten, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-b, relating to fee waivers for students in health science and technology academy programs.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-4b. Additional fee waivers for health sciences and technology academy programs.

1 (a) In addition to the number of fee waivers
2 permitted in sections five and six of this article for
3 undergraduate, graduate and professional schools, each
4 state institution of higher education may waive all fees or
5 any part thereof for students who are residents of West
6 Virginia and who successfully complete the health
7 sciences and technology academy affiliated programs, as
8 defined in chapter eighteen-b, article one, section two of
9 the code of West Virginia.

10 (b) For purposes of section four-b, article ten,
11 chapter eighteen-b of this code, "Health Sciences and
12 Technology Academy Programs" means programs for
13 health sciences to assist junior high and high school
14 students, in conjunction with their parents and teachers, to
15 enhance their knowledge and abilities in subject matters
16 which would further a career in the field of health
17 sciences.

CHAPTER 88

(H. B. 2821—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed April 12, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four and five, article four, chapter eighteen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the Underwood-Smith teacher scholarship program; requiring particular efforts in scholarship selection to reflect present and projected teacher needs; requiring the higher education governing boards to promulgate rules for the program in consultation with the state superintendent; providing for designation of a selection panel by the governor; clarifying that the program includes middle school teaching; providing eligibility for paraprofessionals; requiring the senior administrator to make an effort to attract certain underrepresented classes of students; revising the terms of the scholarship agreement with respect to loan forgiveness for teaching in the public schools and providing additional alternatives; allowing for extension of the obligation period for extenuating circumstances; and providing for institution financial aid officers in consultation with scholarship recipients to determine assistance package when amounts from different sources exceed cost of attendance.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four and five, article four, chapter eighteen-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 4. UNDERWOOD-SMITH TEACHER SCHOLARSHIP PROGRAM.

- §18C-4-1. Scholarship fund created; purposes; funding.
- §18C-4-2. Selection criteria and procedures.
- §18C-4-3. Scholarship agreement.
- §18C-4-4. Renewal conditions; noncompliance; deferral; excusal.
- §18C-4-5. Amount and duration of scholarship; relation to other assistance.

§18C-4-1. Scholarship fund created; purposes; funding.

1 (a) It is the purpose of this article to improve the
2 quality of education in the public schools of West Virginia
3 by encouraging and enabling West Virginia resident
4 individuals who have demonstrated outstanding academic
5 abilities to pursue teaching careers at the preschool,
6 elementary, middle or secondary levels in the public
7 schools of this state. In addition, of those individuals who
8 have demonstrated outstanding academic abilities to
9 pursue teaching careers, for scholarships initially awarded
10 for the fall semester, one thousand nine hundred ninety-
11 eight, and thereafter, particular efforts will be made in the
12 scholarship selection criteria and procedures to reflect the
13 state's present and projected teacher needs, including
14 needs statewide and in different geographic areas and for
15 teachers with education and training in specific disciplines.

16 (b) The higher education governing boards shall, in
17 consultation with the state superintendent of schools,
18 promulgate reasonable legislative rules in accordance with
19 the provisions of article three-a, chapter twenty-nine-a of
20 this code, for the administration of the Underwood-Smith
21 teacher scholarship program by the senior administrator in
22 furtherance of the purposes of this article, including, but
23 not limited to, scholarship selection criteria and
24 procedures, renewal, compliance, noncompliance and
25 repayment, deferral and excusal. In accordance with such
26 rules, the senior administrator shall establish appropriate
27 guidelines for program operation.

28 (c) There is hereby created in the state treasury a
29 special revolving fund to be known as the
30 "Underwood-Smith Teacher Scholarship Fund" to be
31 administered by the senior administrator solely for
32 granting scholarships to prospective teachers in
33 accordance with this article. Any moneys which may be
34 appropriated by the Legislature, or received by the senior
35 administrator from other sources, for the purposes of this
36 article shall be deposited in the fund. Any moneys
37 remaining in the fund at the close of a fiscal year shall be
38 carried forward for use in the next fiscal year. Any
39 moneys repaid to the senior administrator by reason of

40 default of a scholarship agreement under this article shall
41 also be deposited in the fund. Fund balances shall be
42 invested with the state's consolidated investment fund, and
43 any and all interest earnings on these investments shall be
44 used solely for the purposes for which moneys invested
45 were appropriated or otherwise received.

46 (d) The senior administrator may accept and expend
47 any gift, grant, contribution, bequest, endowment or other
48 money for the purposes of this article and shall make a
49 reasonable effort to encourage external support for the
50 scholarship program.

51 (e) For the purpose of encouraging support for the
52 scholarship program from private sources, the senior
53 administrator may set aside no more than half of the funds
54 appropriated by the Legislature for Underwood-Smith
55 teacher scholarships to be used to match two state dollars
56 to each private dollar from a nonstate source contributed
57 on behalf of a specific institution of higher education in
58 this state.

§18C-4-2. Selection criteria and procedures.

1 (a) The governor shall designate an existing
2 scholarship selection agency or panel to select the
3 recipients of Underwood-Smith teacher scholarships who
4 meet the eligibility criteria set forth in subsection (b) of
5 this section. If no such agency or panel exists, the
6 governor shall appoint a scholarship selection panel for
7 this purpose which shall consist of seven persons
8 representative of public school administrators, teachers,
9 including preschool teachers, and parents.

10 (b) Eligibility for an Underwood-Smith teacher
11 scholarship award shall be limited to West Virginia
12 resident students who:

13 (1) Have graduated or are graduating from high
14 school, and rank in the top ten percent of their graduating
15 class or the top ten percent statewide of those West
16 Virginia students taking the American college test;

17 (2) Have a cumulative grade point average of at least
18 three and twenty-five one hundredths on a possible scale

19 of four after successfully completing two years of course
20 work at an approved institution of higher education;

21 (3) Are public school aides or paraprofessionals as
22 defined in section eight, article four, chapter eighteen-a of
23 this code, and who have a cumulative grade point average
24 of at least three and twenty-five one hundredths on a
25 possible scale of four after successfully completing two
26 years of course work at an approved institution of higher
27 education; or

28 (4) Are graduate students at the master's degree level
29 who have graduated or are graduating in the top ten
30 percent of their college graduating class.

31 (c) In accordance with the rules of the governing
32 boards, the senior administrator shall develop criteria and
33 procedures for the selection of scholarship recipients that
34 reflect the purposes of this article and the areas in which
35 particular efforts will be made in the selection of scholars
36 as set forth in section one of this article and which also
37 may include, but not be limited to, the grade point average
38 of the applicant, involvement in extracurricular activities,
39 financial need, current academic standing and an
40 expression of interest in teaching as expressed in an essay
41 written by the applicant. Such criteria and procedures
42 further may require the applicant to furnish letters of
43 recommendation from teachers and others. It is the intent
44 of the Legislature that academic abilities be the primary
45 criteria for selecting scholarship recipients.

46 (d) In developing the selection criteria and procedures
47 to be used by the panel, the senior administrator shall
48 solicit the views of public and private education agencies
49 and institutions and other interested parties. These views:
50 (1) Shall be solicited by means of written and published
51 selection criteria and procedures in final form for
52 implementation; and (2) may be solicited by means of
53 public hearings on the present and projected teacher needs
54 of the state or such other methods as the senior
55 administrator may determine to be appropriate to gather
56 such information.

57 (e) The senior administrator shall make application
58 forms for Underwood-Smith teacher scholarships available
59 to public and private high schools in the state and in other
60 locations convenient to applicants, parents and others, and
61 shall make an effort to attract students from low-income
62 backgrounds, ethnic or racial minority students, students
63 with disabilities, and women or minority students who
64 show interest in pursuing teaching careers in mathematics
65 and science and who are underrepresented in those fields.

§18C-4-3. Scholarship agreement.

1 (a) Each recipient of an Underwood-Smith teacher
2 scholarship shall enter into an agreement with the senior
3 administrator under which the recipient shall:

4 (1) Provide the board with evidence of compliance
5 with subsection (a), section four of this article;

6 (2) Within a ten-year period after completing the
7 teacher education for which the scholarship was awarded:
8 and

9 (A) Teach full-time under contract with a county
10 board of education in a public education program in the
11 state for a period of not less than two years for each year
12 for which a scholarship was received, or teach full-time
13 under contract with a county board of education in this
14 state in a teacher shortage area as determined by the state
15 board of education, in an exceptional children program in
16 this state, in a school having less than average academic
17 results, or in a school in an economically disadvantaged
18 area of this state for not less than one year for each year
19 for which a scholarship was received; or

20 (B) Within such ten-year period while seeking and
21 unable to secure a full-time teaching position under
22 contract with a county board of education which satisfies
23 the conditions of paragraph (A) of this subdivision: (i)
24 Teach full-time in a private school, parochial or other
25 school approved under exemptions (A) or (K) for the
26 instruction of students of compulsory school age pursuant
27 to section one, article eight, chapter eighteen of this code,
28 or in a higher educational institution in this state or post-

29 secondary vocational education program in this state as
30 defined in section two, article one, chapter eighteen-b of
31 this code, for a period of not less than two years for each
32 year for which a scholarship was received; or (ii) perform
33 alternative service or employment in this state pursuant to
34 guidelines adopted in accordance with the rules of the
35 governing boards in federal, state, county or local
36 supported programs with an educational component,
37 including mental or physical health care, or with bona fide
38 tax exempt charitable organizations dedicated to the
39 above, for a period of not less than two years for each year
40 for which a scholarship was received.

41 Any teaching time accrued as a substitute teacher for a
42 county board of education under paragraphs (A) or (B) of
43 this subdivision shall be credited pro rata in accordance
44 with rules of the governing boards; or

45 (3) Repay all or part of an Underwood-Smith teacher
46 scholarship received under this article plus interest and, if
47 applicable, reasonable collection fees, in accordance with
48 subsection (b), section four of this article, except as
49 provided in subsections (c) and (d) of said section four.

50 (b) Scholarship agreements shall fully disclose the
51 terms and conditions under which assistance under this
52 article is provided and under which repayment may be
53 required, including:

54 (1) A description of the conditions and procedures to
55 be established under section four of this article; and

56 (2) A description of the appeals procedure required to
57 be established under section four of this article.

58 (c) Individuals who were awarded an Underwood-
59 Smith teacher scholarship prior to the effective date of this
60 section may apply the provisions of paragraphs (A) or (B),
61 subdivision (2), subsection (a) of this section to teaching
62 or other service performed by them after the first day of
63 July, one thousand nine hundred ninety-seven.

**§18C-4-4. Renewal conditions; noncompliance; deferral;
excusal.**

1 (a) The recipient of an Underwood-Smith teacher
2 scholarship is eligible for scholarship renewal only during
3 such periods that the recipient is:

4 (1) Enrolled as a full-time student in an accredited
5 institution of higher education in this state;

6 (2) Pursuing a course of study leading to teacher
7 certification at the preschool, elementary, middle or
8 secondary level in this state;

9 (3) Maintaining satisfactory progress as determined
10 by the institution of higher education the recipient is
11 attending; and

12 (4) Complying with such other standards as the boards
13 may establish by rule.

14 (b) Recipients found to be in noncompliance with the
15 agreement entered into under section three of this article
16 shall be required to repay the amount of the scholarship
17 awards received, plus interest, and, where applicable,
18 reasonable collection fees, on a schedule and at a rate of
19 interest prescribed in the program guidelines. Such
20 guidelines shall also provide for proration of the amount
21 to be repaid by a recipient who teaches for part of the
22 period required under subsection (a), section three of this
23 article and for appeal procedures under which a recipient
24 may appeal any determination of noncompliance.

25 (c) A recipient shall not be considered in violation of
26 the agreement entered into under section three of this
27 article during any period in which the recipient is:

28 (1) Pursuing a full-time course of study at an
29 accredited institution of higher education;

30 (2) Serving, not in excess of four years, as a member
31 of the armed services of the United States;

32 (3) Seeking and unable to find full-time employment
33 in accordance with paragraph (A), subdivision (2),
34 subsection (a), section three of this article and is fulfilling
35 any of the alternatives specified in paragraph (B) of said
36 subdivision; or

37 (4) Satisfying the provisions of additional repayment
38 exemptions that may be prescribed by the boards by rule.

39 (d) A recipient shall be excused from repayment of a
40 teacher scholarship received under this article if the
41 recipient dies or becomes permanently and totally
42 disabled as established by sworn affidavit of a qualified
43 physician.

44 (e) The rules adopted by the governing boards may
45 provide guidelines under which the senior administrator
46 may, if extenuating circumstances exist, extend the period
47 for fulfilling the obligation to fifteen years.

§18C-4-5. Amount and duration of scholarship; relation to other assistance.

1 (a) Subject to subsection (b) of this section, each
2 recipient of an Underwood-Smith teacher scholarship is
3 eligible to receive assistance of up to five thousand dollars
4 for each academic year of higher education in preparation
5 for becoming a preschool, elementary, middle or
6 secondary teacher in the public schools of this state. No
7 individual may receive scholarship assistance for more
8 than four academic years for the completion of a
9 bachelor's degree and two academic years for completion
10 of a master's degree.

11 (b) No individual shall receive a scholarship award
12 under this article which exceeds the cost of attendance at
13 the institution the individual is attending. The cost of
14 attendance shall be based upon the actual cost of tuition
15 and fees, and reasonable allowances for books, educational
16 supplies, room and board and other expenses necessitated
17 by individual circumstances, in accordance with the
18 program guidelines. For the purposes of establishing an
19 award amount, the senior administrator shall take into
20 account the amount of financial aid assistance the
21 recipient has or will receive from all other sources. If the
22 amount of the Underwood-Smith teacher scholarship
23 assistance award and the amount of assistance awards
24 which the recipient has received from all other sources
25 exceed the cost of attendance, the institution's financial
26 aid officer, in consultation with the scholar, will determine
27 what aid is to be reduced and shall do so in a manner to
28 the best advantage of the scholar.

CHAPTER 89

(H. B. 2236—By Delegates Douglas, Collins, Tucker, Prunty, Claypole,
Stalnaker and Capito)

[Passed April 1, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article three-a, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to striking language calling for sunset review of the legislative oversight commission on education accountability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3A. HIGHER EDUCATION RULE MAKING.

§29A-3A-11. Creation of a legislative oversight commission on education accountability.

1 (a) There is hereby created a joint commission of the
2 Legislature known as the legislative oversight commission
3 on education accountability to review all legislative rules
4 of the board and such other rules as the commission
5 deems appropriate. The commission shall be composed
6 of six members of the Senate appointed by the president
7 of the Senate and six members of the House of Delegates
8 appointed by the speaker of the House of Delegates. No
9 more than five of the six members appointed by the
10 president of the Senate and the speaker of the House of
11 Delegates, respectively, may be members of the same
12 political party. In addition, the president of the Senate
13 and the speaker of the House of Delegates shall be ex
14 officio nonvoting members of the commission and shall
15 designate the cochairmen. At least one of the Senate
16 members and one of the House members shall be
17 members of the committee on education of the Senate and
18 House, respectively, and at least one of the Senate
19 members and at least one of the House members shall be a

20 member of the committee on finance of the Senate and
21 House, respectively. The members shall serve until their
22 successors shall have been appointed as heretofore
23 provided. Members of the commission shall receive such
24 compensation and expenses as provided in article two-a,
25 chapter four of this code. Such expenses and all other
26 expenses including those incurred in the employment of
27 legal, technical, investigative, clerical, stenographic,
28 advisory and other personnel shall be paid from an
29 appropriation to be made expressly for the legislative
30 oversight commission on education accountability, but if
31 no such appropriation be made, such expenses shall be
32 paid from the appropriation under "Account No. 103 for
33 Joint Expenses", but no expense of any kind whatever
34 payable under said account for joint expenses shall be
35 incurred unless first approved by the joint committee on
36 government and finance. The commission shall meet at
37 any time both during sessions of the Legislature and in the
38 interim.

39 (b) The commission may adopt such rules of
40 procedure as it considers necessary for the submission,
41 presentation and consideration of rules.

CHAPTER 90

(H. B. 2686—By Delegates Fleischauer, Buchanan and Beach)

[Passed April 12, 1997; in effect ninety days from passage.]

AN ACT to amend and reenact section eleven, article three, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the clerks of the circuit courts to affix their signatures on absentee ballots by facsimile.

Be it enacted by the Legislature of West Virginia:

That section eleven, article three, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, be amended and reenacted to read as follows:

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-11. Preparation, number and handling of absent voters' ballots.

1 Absent voters' ballots shall be in all respects like other
2 ballots. Not less than seventy days before the date on
3 which any primary, general or special election is to be
4 held, unless a lesser number of days is provided for in any
5 specific election law in which case the lesser number of
6 days applies, the clerks of the circuit courts of the several
7 counties shall estimate and determine the number of
8 absent voters' ballots of all kinds which will be required in
9 their respective counties for that election. The ballots for
10 the election of all officers, or the ratification, acceptance
11 or rejection of any measure, proposition or other public
12 question to be voted on by the voters, shall be prepared
13 and printed under the direction of the board of ballot
14 commissioners constituted as provided in article one of
15 this chapter. The several county boards of ballot
16 commissioners shall prepare and have printed, in the
17 number they may determine, absent voters' ballots that are
18 to be printed under their directions as hereinbefore
19 provided, and those ballots shall be delivered to the clerk
20 of the circuit court of the county not less than forty-two
21 days before the day of the election at which they are to be
22 used. Before any ballot is mailed or delivered, the clerk
23 of the circuit court shall affix his or her official seal and
24 he or she and the other members of the board of ballot
25 commissioners shall place their signatures near the lower
26 left-hand corner on the back thereof. The clerks of the
27 circuit courts are authorized to have their signatures
28 affixed by a facsimile printed on the back of absentee
29 ballots, by a facsimile signature stamp, or by signing their
30 original signatures. An absent voter's ballot not
31 containing the seal and signatures is invalid and is subject
32 to challenge by any election commissioner or poll clerk.

33 The clerk of the circuit court shall be primarily
34 responsible for the preparation, mailing, receiving,
35 delivering and otherwise handling of all absent voters'
36 ballots. He or she shall keep a record, as may be

37 prescribed by the secretary of state, of all ballots so
38 delivered for the purpose of absentee voting, as well as all
39 ballots, if any, marked before him or her, and shall deliver
40 to the commissioner of election to whom the ballots for
41 the precinct are delivered and at the time of the delivery of
42 those ballots a certificate stating the number of ballots
43 delivered or mailed to absent voters, and those marked
44 before him or her, if any, and the names of the voters to
45 whom those ballots have been delivered or mailed, or by
46 whom they have been marked, if marked before him or
47 her.

CHAPTER 91

(Com. Sub. for S. B. 278—By Senators Love, Bailey and Wooton)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, four and eight, article six, 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 two new sections, designated sections six-b and eleven, all relating to local emergency telephone systems; defining terms; requiring telephone companies to provide capability for an emergency telephone system if consistent with federal law and regulations; providing for a wireless enhanced 911 fee; public service commission to issue order concerning fee; setting fee; collection and distribution of fee; limiting liability for telephone companies participating in an emergency telephone system; and providing for confidentiality of information.

Be it enacted by the Legislature of West Virginia:

That sections two, four and eight, article six, 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 two new sections, designated sections six-b and eleven, all to read as follows:

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-2. Definitions.

§24-6-4. Creation of emergency telephone systems.

§24-6-6b. Wireless enhanced 911 fee.

§24-6-8. Limitation of liability.

§24-6-11. Confidentiality of proprietary information.

§24-6-2. Definitions.

1 As used in this article, unless the context clearly
2 requires a different meaning:

3 (1) "Commercial mobile radio service provider" or
4 "CMRS provider", means cellular licensees, broadband
5 personal communications services (PCS) licensees and
6 specialized mobile radio (SMR) providers, as those terms
7 are defined by the federal Communication Commission,
8 which offer real-time, two-way switched voice service that
9 is interconnected with the public switched network, and
10 includes resellers of any commercial mobile radio service.

11 (2) "County answering point" means a facility to
12 which enhanced emergency telephone system calls for a
13 county are initially routed for response, and where county
14 personnel respond to specific requests for emergency
15 service by directly dispatching the appropriate emergency
16 service provider, relaying a message to the appropriate
17 provider or transferring the call to the appropriate provid-
18 er.

19 (3) "Emergency services organization" means the
20 organization established under article five, chapter fifteen
21 of this code.

22 (4) "Emergency service provider" means any
23 emergency services organization or public safety unit.

24 (5) "Emergency telephone system" means a tele-
25 phone system which through normal telephone service
26 facilities automatically connects a person dialing the
27 primary emergency telephone number to an established

28 public agency answering point, but does not include an
29 enhanced emergency telephone system.

30 (6) "Enhanced emergency telephone system" means
31 a telephone system which automatically connects the
32 person dialing the primary emergency number to the
33 county answering point and in which the telephone
34 network system automatically provides to personnel
35 receiving the call, immediately on answering the call,
36 information on the location and the telephone number
37 from which the call is being made, and upon direction
38 from the personnel receiving the call routes or dispatches
39 the call by telephone, radio or any other appropriate
40 means of communication to emergency service providers
41 that serve the location from which the call is made.

42 (7) "Public agency" means the state, and any munici-
43 pality, county, public district or public authority which
44 provides or has authority to provide fire fighting, police,
45 ambulance, medical, rescue or other emergency services.

46 (8) "Public safety unit" means a functional division
47 of a public agency which provides fire fighting, police,
48 medical, rescue or other emergency services.

49 (9) "Telephone company" means any public utility
50 and any CMRS provider, which is engaged in the provi-
51 sion of telephone service whether primarily by means of
52 wire or wireless facilities.

53 (10) "Comprehensive plan" means a plan pertaining
54 to the installing, modifying or replacing of telephone
55 switching equipment; a telephone utility's response in a
56 timely manner to requests for emergency telephone
57 service by a public agency; a telephone utility's responsi-
58 bility to report to the public service commission; charges
59 and tariffs for the services and facilities provided by a
60 telephone utility; and access to an emergency telephone
61 system by emergency service organizations.

62 (11) "Technical and operational standards" means
63 those standards of telephone equipment and processes
64 necessary for the implementation of the comprehensive
65 plan as defined in subdivision (10) of this subsection.

§24-6-4. Creation of emergency telephone systems.

1 (a) Upon the adoption by the public service commis-
2 sion of a comprehensive plan, the public agency may
3 establish, consistent with the comprehensive plan, an
4 emergency telephone system within its jurisdiction.
5 Nothing contained in this section shall be construed to
6 prohibit or discourage in any way the establishment of
7 multijurisdiction or regional systems, and any emergency
8 telephone system established pursuant to this article may
9 include the territory of more than one public agency, or
10 may include only a portion of the territory of a public
11 agency. To the extent feasible, emergency telephone
12 systems shall be centralized.

13 (b) Every emergency telephone system shall provide
14 access to emergency services organizations, police, fire
15 fighting and emergency medical and ambulance services
16 and may provide access to other emergency services. The
17 system may also provide access to private ambulance
18 services. The emergency telephone system shall provide
19 the necessary mechanical equipment at the established
20 public agency answering point to allow deaf persons
21 access to the system. In those areas in which a public
22 safety unit of the state provides emergency services, the
23 system shall provide access to the public safety unit.

24 (c) The primary emergency telephone number to the
25 extent possible shall be uniform throughout the state.

26 (d) Insofar as it is consistent with applicable federal
27 law and federal communications commission regulations
28 and orders, a telephone company in the normal course of
29 replacing or making major modifications to its switching
30 equipment shall include the capability of providing for the
31 emergency telephone system and shall bear all costs
32 related to including that capability. All charges for other
33 services and facilities provided by the telephone company,
34 including the provision of distribution facilities and station
35 equipment, shall be paid for by the public agency or
36 public safety unit in accordance with the applicable tariff
37 rates then in effect for those services and facilities. Other
38 costs pursuant to the emergency telephone system shall be

39 allocated as determined by the applicable comprehensive
40 plan of the public service commission.

41 (e) All coin-operated telephones within the state shall
42 be of a design that will permit a caller to initiate, without
43 first having to insert a coin (dial tone first or post-pay
44 systems), local calls to the long distance and directory
45 assistance operators, calls to the emergency telephone
46 number answering point, if one has been established in his
47 or her local calling area, and to other numbers for services
48 as the telephone company may from time to time make
49 available to the public.

§24-6-6b. Wireless enhanced 911 fee.

1 (a) Beginning on the first day of January, one thou-
2 sand nine hundred ninety-eight, all CMRS providers, as
3 defined in section two of this article, shall, on a monthly
4 basis, collect from each of their in-state two-way service
5 subscribers a wireless enhanced 911 fee. No later than the
6 first day of August, one thousand nine hundred ninety-
7 eight, the public service commission, shall, after the receipt
8 of comments and the consideration of evidence presented
9 at a hearing, issue an order which directs the CMRS
10 providers regarding all relevant details of wireless en-
11 hanced 911 fee collection, including the determination of
12 who is considered an in-state two-way service subscriber
13 and which shall specify how the CMRS providers shall
14 deal with fee collection shortfalls caused by uncollectible
15 accounts. The public service commission shall solicit the
16 views of the wireless telecommunications utilities prior to
17 issuing the order.

18 (b) The wireless enhanced 911 fee is seventy-five
19 cents per month for each valid retail commercial mobile
20 radio service subscription, as that term is defined by the
21 public service commission in its order issued under
22 subsection (a) of this section.

23 (c) Beginning in the year one thousand nine hundred
24 ninety-seven, and every two years thereafter, the public
25 service commission shall conduct an audit of the wireless
26 enhanced 911 fee and shall recalculate the fee so that it is
27 the weighted average rounded to the nearest penny, as of

28 the first day of March of the respecification year, of all of
29 the enhanced 911 fees imposed by the counties which
30 have adopted an enhanced 911 ordinance: *Provided*, That
31 the wireless enhanced 911 fee may never be increased by
32 more than twenty-five percent of its value at the beginning
33 of the respecification year.

34 (d) The CMRS providers shall, after retaining a three
35 percent billing fee, send the wireless enhanced 911 fee
36 moneys collected, on a monthly basis, to the public service
37 commission. The public service commission shall, on a
38 quarterly and approximately evenly staggered basis,
39 disburse the fee revenue in the following manner:

40 (1) Each county that does not have a 911 ordinance in
41 effect as of the effective date of this section or has enacted
42 a 911 ordinance within the five years prior to the effective
43 date of this section shall receive one percent of the fee
44 revenues received by the public service commission and
45 from the remainder of the revenues, each county shall
46 receive a pro rata portion of the fee revenues received by
47 the public service commission based on that county's
48 percentage of the total number of local exchange tele-
49 phone access lines and line equivalents in service in the
50 state. The public service commission shall recalculate the
51 county disbursement percentages on a yearly basis, with
52 the changes effective on the first day of July, and using
53 data as of the preceding first day of March. The public
54 utilities which normally provide local exchange telecom-
55 munications service by means of lines, wires, cables,
56 optical fibers or by other means extended to subscriber
57 premises shall supply the data to the public service
58 commission on a county specific basis no later than the
59 first day of June of each year;

60 (2) Counties which have an enhanced 911 ordinance
61 in effect shall receive their share of the wireless enhanced
62 911 fee revenue for use in the same manner as the en-
63 hanced 911 fee revenues received by those counties
64 pursuant to their enhanced 911 ordinances;

65 (3) The public service commission shall deposit the
66 wireless enhanced 911 fee revenue for each county which
67 does not have an enhanced 911 ordinance in effect into an

68 escrow account which it has established for that county.
69 Any county with an escrow account may, immediately
70 upon adopting an enhanced 911 ordinance, receive the
71 moneys which have accumulated in the escrow account for
72 use as specified in subdivision (2), subsection (d) of this
73 section: *Provided*, That a county that adopts a 911
74 ordinance after the effective date of this section or has
75 adopted a 911 ordinance within five years of the effective
76 date of this section shall continue to receive one percent of
77 the 911 fee revenue for a period of five years following
78 the adoption of the ordinance and thereafter shall receive
79 that county's portion of the fee revenue being disbursed
80 to counties on a pro rata basis: *Provided, however*, That
81 every five years from the year one thousand nine hundred
82 ninety-seven, all fee revenue residing in escrow accounts
83 shall be disbursed on the pro rata basis specified in
84 subdivision (1), subsection (d) of this section, except that
85 data for counties without enhanced 911 ordinances in
86 effect shall be omitted from the calculation and all escrow
87 accounts shall begin again with a zero balance.

88 (e) CMRS providers have the same rights and respon-
89 sibilities as other telephone service suppliers in dealing
90 with the failure by a subscriber of a CMRS provider to
91 timely pay the wireless enhanced 911 fee.

92 (f) Notwithstanding the provisions of section one-a
93 of this article, for the purposes of this section, the term
94 "county" means one of the counties provided for in
95 section one, article one, chapter one of this code.

96 (g) From any funds distributed to a county pursu-
97 ant to this section, a total of three percent quarter shall be
98 set aside in a special fund to be used exclusively for the
99 purchase of equipment that will provide information
100 regarding the x and y coordinates of persons who call an
101 emergency telephone system through a commercial
102 mobile radio service: *Provided*, That upon purchase of the
103 necessary equipment, the special fund shall be dissolved
104 and any surplus shall be used for general operation of the
105 emergency telephone system as may otherwise be provid-
106 ed by law.

§24-6-8. Limitation of liability.

1 A public agency or a telephone company participating
2 in an emergency telephone system or a county which has
3 established an enhanced emergency telephone system, and
4 any officer, agent or employee of the public agency,
5 telephone company or county is not liable for damages in
6 a civil action for injuries, death or loss to persons or
7 property arising from any act or omission, except willful
8 or wanton misconduct, in connection with developing,
9 adopting or approving any final plan or any agreement
10 made pursuant to this article, or otherwise bringing into
11 operation or participating in the operation of an
12 emergency telephone system or an enhanced emergency
13 telephone system pursuant to this article.

§24-6-11. Confidentiality of proprietary information.

1 In recognition of the fact that information pertaining
2 to numbers of customers and revenues collected by the
3 CMRS providers is obtained and maintained in a
4 competitive environment and that information pertaining
5 to the providers' subscribers could be used to the
6 disadvantage of the participating CMRS provider, the
7 Legislature declares that any such information provided
8 by the public service commission and any county or
9 enhanced 911 program, is not subject to disclosure under
10 the provisions of chapter twenty-nine-b of this code.

CHAPTER 92

(S. B. 47—By Senators Dittmar, Craig and Hunter)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two and four, article three of said chapter; to amend and reenact sections one and fifteen, article four-a of said chapter; and to amend and reenact section one, article six of

said chapter, all relating to factory-built homes, including house trailers, mobile homes and manufactured homes; redefining terms; requiring certificate of title, annual registration and license plates and providing exemptions therefrom; requiring certificate of title for factory-built homes; exempting mobile homes or manufactured homes from the requirements of annual registration, license plates and fees; allowing house trailers to be registered and licensed; providing for the crime of failing to provide a certificate of title and providing criminal penalties therefor; revising the tax on the privilege of certificate of title; requiring certificate of titles to show lienholders; extending the expiration date of liens on mobile homes and manufactured homes; and revising certain terms.

Be it enacted by the Legislature of West Virginia:

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

Article

1. Words and Phrases Defined.
3. Original and Renewal of Registration: Issuance of Certificates of Title.
- 4A. Liens and Encumbrances on Vehicles to Be Shown on Certificate of Title; Notice to Creditors and Purchasers.
6. Licensing of Dealers and Wreckers or Dismantlers; Special Plates; Temporary Plates or Markers, Etc.

ARTICLE 1. WORDS AND PHRASES DEFINED.

*§17A-1-1. Definitions.

- 1 Except as otherwise provided in this chapter the
- 2 following words and phrases when used in this chapter
- 3 shall have the meanings respectively ascribed to them in
- 4 this article:

*Clerk's Note: This section was also amended by S.B. 74 (Chapter 138), which passed prior to this act.

5 (a) "Vehicle" means every device in, upon or by
6 which any person or property is or may be transported or
7 drawn upon a highway, excepting devices moved by
8 human power or used exclusively upon stationary rails or
9 tracks.

10 (b) "Motor vehicle" means every vehicle which is
11 self-propelled and every vehicle which is propelled by
12 electric power obtained from overhead trolley wires, but
13 not operated upon rails.

14 (c) "Motorcycle" means every motor vehicle,
15 including motor-driven cycles and mopeds as defined in
16 sections five and five-a, article one, chapter seventeen-c of
17 this code, having a saddle for the use of the rider and
18 designed to travel on not more than three wheels in
19 contact with the ground but excluding a tractor.

20 (d) "School bus" means every motor vehicle owned
21 by a public governmental agency and operated for the
22 transportation of children to or from school or privately
23 owned and operated for compensation for the
24 transportation of children to or from school.

25 (e) "Bus" means every motor vehicle designed to
26 carry more than seven passengers and used to transport
27 persons; and every motor vehicle, other than a taxicab,
28 designed and used to transport persons for compensation.

29 (f) "Truck tractor" means every motor vehicle
30 designed and used primarily for drawing other vehicles
31 and not so constructed as to carry a load other than a part
32 of the weight of the vehicle and load so drawn.

33 (g) "Farm tractor" means every motor vehicle
34 designed and used primarily as a farm implement for
35 drawing plows, mowing machines and other implements of
36 husbandry.

37 (h) "Road tractor" means every motor vehicle
38 designed, used or maintained for drawing other vehicles
39 and not so constructed as to carry any load thereon either
40 independently or any part of the weight of a vehicle or
41 load so drawn.

42 (i) "Truck" means every motor vehicle designed,
43 used or maintained primarily for the transportation of
44 property.

45 (j) "Trailer" means every vehicle with or without
46 motive power designed for carrying persons or property
47 and for being drawn by a motor vehicle and so
48 constructed that no part of its weight rests upon the towing
49 vehicle but excluding recreational vehicles.

50 (k) "Semitrailer" means every vehicle with or without
51 motive power designed for carrying persons or property
52 and for being drawn by a motor vehicle and so
53 constructed that some part of its weight and that of its load
54 rests upon or is carried by another vehicle.

55 (l) "Pole trailer" means every vehicle without motive
56 power designed to be drawn by another vehicle and
57 attached to the towing vehicle by means of a reach, or
58 pole, or by being boomed or otherwise secured to the
59 towing vehicle, and ordinarily used for transporting long
60 or irregularly shaped loads such as poles, pipes or
61 structural members capable, generally, of sustaining
62 themselves as beams between the supporting connections.

63 (m) "Specially constructed vehicles" means every
64 vehicle of a type required to be registered hereunder not
65 originally constructed under a distinctive name, make,
66 model or type by a generally recognized manufacturer of
67 vehicles and not materially altered from its original
68 construction.

69 (n) "Reconstructed vehicle" means every vehicle of a
70 type required to be registered hereunder materially altered
71 from its original construction by the removal, addition or
72 substitution of essential parts, new or used.

73 (o) "Essential parts" means all integral and body
74 parts of a vehicle of a type required to be registered
75 hereunder, the removal, alteration or substitution of which
76 would tend to conceal the identity of the vehicle or
77 substantially alter its appearance, model, type or mode of
78 operation.

79 (p) "Foreign vehicle" means every vehicle of a type
80 required to be registered hereunder brought into this state
81 from another state, territory or country other than in the
82 ordinary course of business by or through a manufacturer
83 or dealer and not registered in this state.

84 (q) "Implement of husbandry" means every vehicle
85 which is designed for or adapted to agricultural purposes
86 and used by the owner thereof primarily in the conduct of
87 his agricultural operations, including, but not limited to,
88 trucks used for spraying trees and plants: *Provided*, That
89 the vehicle may not be let for hire at any time.

90 (r) "Special mobile equipment" means every self-
91 propelled vehicle not designed or used primarily for the
92 transportation of persons or property and incidentally
93 operated or moved over the highways, including, without
94 limitation, road construction or maintenance machinery,
95 ditch-digging apparatus, stone crushers, air compressors,
96 power shovels, graders, rollers, well-drillers, wood-sawing
97 equipment, asphalt spreaders, bituminous mixers, bucket
98 loaders, ditchers, leveling graders, finishing machines,
99 motor graders, road rollers, scarifiers, earth-moving
100 carryalls, scrapers, drag lines, rock-drilling equipment and
101 earth-moving equipment. The foregoing enumeration
102 shall be deemed partial and may not operate to exclude
103 other such vehicles which are within the general terms of
104 this subdivision.

105 (s) "Pneumatic tire" means every tire in which
106 compressed air is designed to support the load.

107 (t) "Solid tire" means every tire of rubber or other
108 resilient material which does not depend upon compressed
109 air for the support of the load.

110 (u) "Metal tire" means every tire the surface of which
111 in contact with the highway is wholly or partly of metal or
112 other hard, nonresilient material.

113 (v) "Commissioner" means the commissioner of
114 motor vehicles of this state.

115 (w) "Department" means the department of motor
116 vehicles of this state acting directly or through its duly
117 authorized officers and agents.

118 (x) "Person" means every natural person, firm,
119 copartnership, association or corporation.

120 (y) "Owner" means a person who holds the legal title
121 to a vehicle, or in the event a vehicle is the subject of an
122 agreement for the conditional sale or lease thereof with the
123 right of purchase upon performance of the conditions
124 stated in the agreement and with an immediate right of
125 possession vested in the conditional vendee or lessee, or in
126 the event a mortgagor of a vehicle is entitled to possession,
127 then the conditional vendee or lessee or mortgagor shall
128 be deemed the owner for the purpose of this chapter.

129 (z) "Nonresident" means every person who is not a
130 resident of this state.

131 (aa) "Dealer" or "dealers" is a general term
132 meaning, depending upon the context in which used,
133 either a new motor vehicle dealer, used motor vehicle
134 dealer, factory-built home dealer, recreational vehicle
135 dealer, trailer dealer or motorcycle dealer, as defined in
136 section one, article six of this chapter, or all of the dealers
137 or a combination thereof, and in some instances a new
138 motor vehicle dealer or dealers in another state.

139 (bb) "Registered dealer" or "registered dealers" is a
140 general term meaning, depending upon the context in
141 which used, either a new motor vehicle dealer, used motor
142 vehicle dealer, house trailer dealer, trailer dealer,
143 recreational vehicle dealer or motorcycle dealer, or all of
144 the dealers or a combination thereof, licensed under the
145 provisions of article six of this chapter.

146 (cc) "Licensed dealer" or "licensed dealers" is a
147 general term meaning, depending upon the context in
148 which used, either a new motor vehicle dealer, used motor
149 vehicle dealer, house trailer dealer, trailer dealer,
150 recreational vehicle dealer or motorcycle dealer, or all of
151 the dealers or a combination thereof, licensed under the
152 provisions of article six of this chapter.

153 (dd) "Transporter" means every person engaged in
154 the business of delivering vehicles of a type required to be
155 registered hereunder from a manufacturing, assembling or
156 distributing plant to dealers or sales agents of a
157 manufacturer.

158 (ee) "Manufacturer" means every person engaged in
159 the business of constructing or assembling vehicles of a
160 type required to be registered hereunder at a place of
161 business in this state which is actually occupied either
162 continuously or at regular periods by the manufacturer
163 where his books and records are kept and a large share of
164 his business is transacted.

165 (ff) "Street" or "highway" means the entire width
166 between boundary lines of every way publicly maintained
167 when any part thereof is open to the use of the public for
168 purposes of vehicular travel.

169 (gg) "Motorboat" means any vessel propelled by an
170 electrical, steam, gas, diesel or other fuel propelled or
171 driven motor, whether or not the motor is the principal
172 source of propulsion, but may not include a vessel which
173 has a valid marine document issued by the bureau of
174 customs of the United States government or any federal
175 agency successor thereto.

176 (hh) "Motorboat trailer" means every vehicle
177 designed for or ordinarily used for the transportation of a
178 motorboat.

179 (ii) "All-terrain vehicle" (ATV) means any motor
180 vehicle designed for off-highway use and designed for
181 operator use only with no passengers, having a seat or
182 saddle designed to be straddled by the operator, and
183 handlebars for steering control.

184 (jj) "Travel trailer" means every vehicle, mounted on
185 wheels, designed to provide temporary living quarters for
186 recreational, camping or travel use of such size or weight
187 as not to require special highway movement permits when
188 towed by a motor vehicle and of gross trailer area less than
189 four hundred square feet.

190 (kk) "Fold down camping trailer" means every
191 vehicle consisting of a portable unit mounted on wheels
192 and constructed with collapsible partial sidewalls which
193 fold for towing by another vehicle and unfold at the camp
194 site to provide temporary living quarters for recreational,
195 camping or travel use.

196 (ll) "Motor home" means every vehicle, designed to
197 provide temporary living quarters, built into an integral
198 part of or permanently attached to a self-propelled motor
199 vehicle, chassis or van including: (1) Type A motor home
200 built on an incomplete truck chassis with the truck cab
201 constructed by the second stage manufacturer; (2) Type B
202 motor home consisting of a van-type vehicle which has
203 been altered to provide temporary living quarters; and (3)
204 Type C motor home built on an incomplete van or truck
205 chassis with a cab constructed by the chassis manufacturer.

206 (mm) "Snowmobile" means a self-propelled vehicle
207 intended for travel primarily on snow and driven by a
208 track or tracks in contact with the snow and steered by a
209 ski or skis in contact with the snow.

210 (nn) "Recreational vehicle" means a motorboat,
211 motorboat trailer, all-terrain vehicle, travel trailer, fold
212 down camping trailer, motor home or snowmobile.

213 (oo) "Mobile equipment" means every self-propelled
214 vehicle not designed or used primarily for the
215 transportation of persons or property over the highway
216 but which may infrequently or incidentally travel over the
217 highways among job sites, equipment storage sites or
218 repair sites, including farm equipment, implements of
219 husbandry, well-drillers, cranes and wood-sawing
220 equipment.

221 (pp) "Factory-built home" includes mobile homes,
222 house trailers and manufactured homes.

223 (qq) "Manufactured home" has the same meaning as
224 the term is defined in section two, article nine, chapter
225 twenty-one of this code which meets the National
226 Manufactured Housing Construction and Safety Standards
227 Act of 1974 (42 U.S.C. §5401 et seq.), effective on the

228 fifteenth day of June, one thousand nine hundred
229 seventy-six, and the federal manufactured home
230 construction and safety standards and regulations
231 promulgated by the secretary of the United States
232 department of housing and urban development.

233 (rr) "Mobile home" means a transportable structure
234 that is wholly, or in substantial part, made, fabricated,
235 formed or assembled in manufacturing facilities for
236 installation or assembly and installation on a building site
237 and designed for long-term residential use and built prior
238 to enactment of the federal Manufactured Housing
239 Construction and Safety Standards Act of 1974 (42 U.S.C.
240 §5401 et seq.), effective on the fifteenth day of June, one
241 thousand nine hundred seventy-six, and usually built to
242 the voluntary industry standard of the American national
243 standards institute (ANSI) — A119.1 standards for mobile
244 homes.

245 (ss) "House trailers" means all trailers designed and
246 used for human occupancy on a continual nonrecreational
247 basis, but may not include fold down camping and travel
248 trailers, mobile homes or manufactured homes.

249 (tt) "Parking Enforcement Vehicle" means a motor
250 vehicle which does not fit into any other classification of
251 vehicle in this chapter, has three or four wheels and is
252 designed for use in an incorporated municipality by a city,
253 county, state or other governmental entity primarily for
254 parking enforcement or other governmental purposes with
255 an operator area with sides permanently enclosed with
256 rigid construction and a top which may be convertible,
257 sealed beam headlights, turn signals, brake lights, horn, at
258 least one rear view mirror on each side and such other
259 equipment that will enable it to pass a standard motorcycle
260 vehicle inspection.

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.

§17A-3-4. Application for certificate of title; tax for privilege of certification of title; penalty for false swearing.

***§17A-3-2. Every motor vehicle, etc., subject to registration and certificate of title provisions; exceptions.**

1 (a) Every motor vehicle, trailer, semitrailer, pole trailer
2 and recreational vehicle when driven or moved upon a
3 highway shall be subject to the registration and certificate
4 of title provisions of this chapter except:

5 (1) Any vehicle driven or moved upon a highway in
6 conformance with the provisions of this chapter relating to
7 manufacturers, transporters, dealers, lienholders or
8 nonresidents or under a temporary registration permit
9 issued by the department as hereinafter authorized;

10 (2) Any implement of husbandry upon which is
11 securely attached a machine for spraying fruit trees and
12 plants of the owner or lessee or for any other implement
13 of husbandry which is used exclusively for agricultural or
14 horticultural purposes on lands owned or leased by the
15 owner thereof and which is not operated on or over any
16 public highway of this state for any other purpose other
17 than for the purpose of operating it across a highway or
18 along a highway other than an expressway as designated
19 by the commissioner of the division of highways from one
20 point of the owner's land to another part thereof,
21 irrespective of whether or not the tracts adjoin: *Provided,*
22 That the distance between the points may not exceed
23 twenty-five miles, or for the purpose of taking it or other
24 fixtures thereto attached, to and from a repair shop for
25 repairs. The foregoing exemption from registration and
26 license requirements shall also apply to any vehicle
27 hereinbefore described or to any farm trailer owned by
28 the owner or lessee of the farm on which the trailer is used,
29 when the trailer is used by the owner thereof for the
30 purpose of moving farm produce and livestock from the
31 farm along a public highway for a distance not to exceed
32 twenty-five miles to a storage house or packing plant,
33 when the use is a seasonal operation:

*Clerk's Note: This section was also amended by S.B. 74 (Chapter 138), which passed prior to this act.

34 (A) The exemptions contained in this section shall also
35 apply to farm machinery and tractors: *Provided*, That the
36 machinery and tractors may use the highways in going
37 from one tract of land to another tract of land regardless
38 of whether the land be owned by the same or different
39 persons.

40 (B) Any vehicle exempted hereunder from the
41 requirements of annual registration certificate and license
42 plates and fees therefor may not be permitted to use the
43 highways between sunset and sunrise.

44 (C) Any vehicle exempted hereunder from the
45 requirements of annual registration certificate and license
46 plates shall be permitted to use the highways as herein
47 provided whether the exempt vehicle is self-propelled,
48 towed by another exempt vehicle or towed by another
49 vehicle for which registration is required.

50 (D) Any vehicle used as an implement of husbandry
51 exempt hereunder must have the words "farm use"
52 affixed to both sides of the implement in ten inch letters.
53 Any vehicle which would be subject to registration as a
54 Class A or B vehicle if not exempted by this section shall
55 display a farm use exemption certificate on the lower
56 driver's side of the windshield:

57 (i) The farm use exemption certificate shall be
58 provided by the commissioner and shall be issued
59 annually by the assessor of the applicant's county of
60 residence. The assessor shall issue a farm use exemption
61 certificate upon his or her determination pursuant to an
62 examination of the property books or documentation
63 provided by the applicant that the vehicle has been
64 properly assessed as Class I personal property. The
65 assessor shall charge a fee of two dollars for each
66 certificate, one dollar of the fee shall be retained by the
67 assessor and one dollar shall be remitted by the assessor to
68 the commissioner of the division of motor vehicles to be
69 deposited in a special revolving fund to be used in the
70 administration of this section.

71 (ii) A farm use exemption certificate in no way
72 exempts the applicant from maintaining the security as

73 required by chapter seventeen-d of this code on any
74 vehicle being operated on the roads or highways of this
75 state.

76 (iii) No person charged with operating a vehicle
77 without a farm use exemption certificate, if required under
78 this section, shall be convicted if he or she produces in
79 court, or in the office of the arresting officer, a valid farm
80 use exemption certificate for the vehicle in question within
81 five days;

82 (3) Any vehicle which is propelled exclusively by
83 electric power obtained from overhead trolley wires
84 though not operated upon rails;

85 (4) Any vehicle of a type subject to registration owned
86 by the government of the United States;

87 (5) Any wrecked or disabled vehicle which is being
88 towed by a licensed wrecker or dealer on the public
89 highways of this state;

90 (6) The following recreational vehicles shall be
91 exempt from the requirements of annual registration,
92 license plates and fees, unless otherwise specified by law,
93 but shall be subject to the certificate of title provisions of
94 this chapter regardless of highway use: Motorboats,
95 all-terrain vehicles and snowmobiles; and

96 (7) Any special mobile equipment as defined in
97 subsection (r), section one, article one of this chapter.

98 (b) The provisions of this article relating to
99 recreational vehicles shall become effective on the first
100 day of July, one thousand nine hundred eighty-nine.

101 (c) Notwithstanding the provisions of subsections (a)
102 and (b) of this section:

103 (1) Mobile homes or manufactured homes are exempt
104 from the requirements of annual registration, license plates
105 and fees;

106 (2) House trailers may be registered and licensed; and

107 (3) Factory-built homes are subject to the certificate of
108 title provisions of this chapter.

***§17A-3-4. Application for certificate of title; tax for privilege
of certification of title; penalty for false
swearing.**

1 (a) Certificates of registration of any vehicle or
2 registration plates therefor, whether original issues or
3 duplicates, may not be issued or furnished by the division
4 of motor vehicles or any other officer charged with the
5 duty, unless the applicant therefor already has received, or
6 at the same time makes application for and is granted, an
7 official certificate of title of the vehicle. The application
8 shall be upon a blank form to be furnished by the division
9 of motor vehicles and shall contain a full description of
10 the vehicle, which description shall contain a
11 manufacturer's serial or identification number or other
12 number as determined by the commissioner and any
13 distinguishing marks, together with a statement of the
14 applicant's title and of any liens or encumbrances upon
15 the vehicle, the names and addresses of the holders of the
16 liens and any other information as the division of motor
17 vehicles may require. The application shall be signed and
18 sworn to by the applicant.

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

24 (1) If the vehicle is new, the actual purchase price or
25 consideration to the purchaser thereof is the value of the
26 vehicle. If the vehicle is a used or secondhand vehicle, the
27 present market value at time of transfer or purchase is the
28 value thereof for the purposes of this section: *Provided,*
29 That so much of the purchase price or consideration as is
30 represented by the exchange of other vehicles on which
31 the tax imposed by this section has been paid by the
32 purchaser shall be deducted from the total actual price or

***Clerk's Note:** This section was also amended by S.B. 74 (Chapter 138),
which passed prior to this act.

33 consideration paid for the vehicle, whether the vehicle be
34 new or secondhand. If the vehicle is acquired through
35 gift, or by any manner whatsoever, unless specifically
36 exempted in this section, the present market value of the
37 vehicle at the time of the gift or transfer is the value
38 thereof for the purposes of this section.

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

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

63 (4) The division of motor vehicles shall issue a
64 certificate of registration and title to an applicant without
65 payment of the tax imposed by this section if the applicant
66 is a corporation, partnership or limited liability company
67 transferring the vehicle to another corporation, partnership
68 or limited liability company when the entities involved in
69 the transfer are members of the same controlled group
70 and the transferring entity has previously paid the tax on
71 the vehicle transferred. For the purposes of this section,
72 control means ownership, directly or indirectly, of stock or

73 equity interests possessing fifty percent or more of the
74 total combined voting power of all classes of the stock of a
75 corporation or equity interests of a partnership or limited
76 liability company entitled to vote or ownership, directly or
77 indirectly, of stock or equity interests possessing fifty
78 percent or more of the value of the corporation,
79 partnership or limited liability company.

80 (5) The tax imposed by this section does not apply to
81 vehicles to be registered as Class H vehicles or Class M
82 vehicles, as defined in section one, article ten of this
83 chapter, which are used or to be used in interstate
84 commerce. Nor does the tax imposed by this section
85 apply to the titling of Class B, Class K or Class E vehicles
86 registered at a gross weight of fifty-five thousand pounds
87 or more, or to the titling of Class C or Class L semitrailers,
88 full trailers, pole trailers and converter gear: *Provided,*
89 That if an owner of a vehicle has previously titled the
90 vehicle at a declared gross weight of fifty-five thousand
91 pounds or more and the title was issued without the
92 payment of the tax imposed by this section, then before
93 the owner may obtain registration for the vehicle at a gross
94 weight less than fifty-five thousand pounds, the owner
95 shall surrender to the commissioner the exempted
96 registration, the exempted certificate of title, and pay the
97 tax imposed by this section based upon the current market
98 value of the vehicle: *Provided, however,* That
99 notwithstanding the provisions of section nine, article
100 fifteen, chapter eleven of this code, the exemption from
101 tax under this section for Class B, Class K or Class E
102 vehicles in excess of fifty-five thousand pounds and Class
103 C or Class L semitrailers, full trailers, pole trailers and
104 converter gear may not subject the sale or purchase of the
105 vehicles to the consumers sales tax.

106 (6) The tax imposed by this section does not apply to
107 titling of vehicles leased by residents of West Virginia. A
108 tax is hereby imposed upon the monthly payments for the
109 lease of any motor vehicle leased by a resident of West
110 Virginia, which tax is equal to five percent of the amount
111 of the monthly payment, applied to each payment, and
112 continuing for the entire term of the initial lease period.

113 The tax shall be remitted to the division of motor vehicles
114 on a monthly basis by the lessor of the vehicle.

115 (7) The tax imposed by this section does not apply to
116 titling of vehicles by a registered dealer of this state for
117 resale only, nor does the tax imposed by this section apply
118 to titling of vehicles by this state or any political
119 subdivision thereof, or by any volunteer fire department
120 or duly chartered rescue or ambulance squad organized
121 and incorporated under the laws of the state of West
122 Virginia as a nonprofit corporation for protection of life
123 or property. The total amount of revenue collected by
124 reason of this tax shall be paid into the state road fund and
125 expended by the commissioner of highways for matching
126 federal funds allocated for West Virginia. In addition to
127 the tax, there is a charge of five dollars for each original
128 certificate of title or duplicate certificate of title so issued:
129 *Provided*, That this state or any political subdivision
130 thereof, or any volunteer fire department, or duly
131 chartered rescue squad is exempt from payment of the
132 charge.

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

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

142 (10) A person who has paid the tax imposed by this
143 section may not be required to pay the tax a second time
144 for the same motor vehicle, but is required to pay a charge
145 of five dollars for the certificate of retitle of that motor
146 vehicle, except that the tax shall be paid by the person
147 when the title to the vehicle has been transferred either in
148 this or another state from the person to another person
149 and transferred back to the person.

150 (c) Notwithstanding any provisions of this code to the
151 contrary, the owners of trailers, semitrailers, recreational

152 vehicles and other vehicles not subject to the certificate of
153 title tax prior to the enactment of this chapter are subject
154 to the privilege tax imposed by this section: *Provided,*
155 That the certification of title of any recreational vehicle
156 owned by the applicant on the thirtieth day of June, one
157 thousand nine hundred eighty-nine, is not subject to the
158 tax imposed by this section: *Provided, however,* That
159 mobile homes, manufactured homes, modular homes and
160 similar nonmotive propelled vehicles, except recreational
161 vehicles and house trailers, susceptible of being moved
162 upon the highways but primarily designed for habitation
163 and occupancy, rather than for transporting persons or
164 property, or any vehicle operated on a nonprofit basis and
165 used exclusively for the transportation of mentally
166 retarded or physically handicapped children when the
167 application for certificate of registration for the vehicle is
168 accompanied by an affidavit stating that the vehicle will be
169 operated on a nonprofit basis and used exclusively for the
170 transportation of mentally retarded and physically
171 handicapped children, are not subject to the tax imposed
172 by this section, but are taxable under the provisions of
173 articles fifteen and fifteen-a, chapter eleven of this code.

174 (d) Any person making any affidavit required under
175 any provision of this section, who knowingly swears
176 falsely, or any person who counsels, advises, aids or abets
177 another in the commission of false swearing is on the first
178 offense guilty of a misdemeanor and, upon conviction
179 thereof, shall be fined not more than five hundred dollars
180 or be imprisoned in the county or regional jail for a
181 period not to exceed six months or, in the discretion of the
182 court, both fined and imprisoned. For a second or any
183 subsequent conviction within five years, that person is
184 guilty of a felony and, upon conviction thereof, shall be
185 fined not more than five thousand dollars or be
186 imprisoned in the penitentiary for not less than one year
187 nor more than five years or, in the discretion of the court,
188 fined and imprisoned.

189 (e) Notwithstanding any other provisions of this
190 section, any person in the military stationed outside West
191 Virginia, or his or her dependents who possess a motor
192 vehicle with valid registration, are exempt from the

193 provisions of this article for a period of nine months from
194 the date that that person returns to this state or the date his
195 or her dependent returns to this state, whichever is later.

196 (f) After the first day of July, one thousand nine
197 hundred ninety-seven, no person may transfer, purchase
198 or sell a factory-built home without a certificate of title
199 issued by the commissioner in accordance with the
200 provisions of this article:

201 (1) Any person who fails to provide a certificate of
202 title upon the transfer, purchase or sale of a factory-built
203 home is guilty of a misdemeanor and, upon conviction
204 thereof, shall for the first offense be fined not less than
205 one hundred dollars nor more than one thousand dollars,
206 or be imprisoned in the county or regional jail for not
207 more than one year or, both fined and imprisoned. For
208 each subsequent offense, the fine may be increased to not
209 more than two thousand dollars, with imprisonment in the
210 county or regional jail not more than one year or, both
211 fined and imprisoned.

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

**ARTICLE 4A. LIENS AND ENCUMBRANCES ON VEHICLES TO
BE SHOWN ON CERTIFICATE OF TITLE;
NOTICE TO CREDITORS AND PURCHASERS.**

§17A-4A-1. Certificate to show liens or encumbrances.

§17A-4A-15. Expiration of lien or encumbrance; refiling.

§17A-4A-1. Certificate to show liens or encumbrances.

1 The department upon receiving an application for a
2 certificate of title to a vehicle, trailer, semitrailer, pole
3 trailer, factory-built home or recreational vehicle for
4 which a certificate of title is required under article three of
5 this chapter, all of which are hereinafter in this article
6 referred to as vehicles, showing liens or encumbrances
7 upon the vehicle, shall, upon issuing to the owner thereof a
8 certificate of title therefor, show upon the face of the

9 certificate of title all liens or encumbrances disclosed by
10 the application. All liens or encumbrances shall be shown
11 in the order of their priority being according to the
12 information contained in the application. When an
13 application shows liens and encumbrances, the
14 information as evidence of the lien in connection
15 therewith as the department may deem necessary shall also
16 be furnished. The information shall include the name and
17 address of the lienholder, the nature and kind of the lien,
18 the date thereof and the amount thereby secured.
19 However, only the name and address of the lienholder will
20 be endorsed on the title certificate. Upon issuing the
21 certificate, the department shall thereupon send or deliver
22 it to the holder of the first lien.

§17A-4A-15. Expiration of lien or encumbrance; refiling.

1 The filing of any lien or encumbrance and its
2 recordation upon the face of a certificate of title to any
3 vehicle as provided in this article shall be valid for a
4 period of ten years only from the date of filing, unless the
5 lien or encumbrance is refiled in the manner provided in
6 this article for filing and recordation in the first instance,
7 in which event the lien or encumbrance shall be valid for
8 successive additional periods of two years from the date of
9 each refiling: *Provided*, That in the case of a mobile
10 home or manufactured home, the filing of any lien or
11 encumbrance and its recordation upon the face of a
12 certificate of title to the mobile home or manufactured
13 home shall be valid for a period of thirty-three years from
14 the date of filing.

15 When the last lien or encumbrance shown on a
16 certificate of title becomes invalid by the passage of time
17 as provided in this section, the commissioner of motor
18 vehicles shall not be required to maintain a lien index as to
19 the certificate of title.

**ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR
DISMANTLERS; SPECIAL PLATES; TEMPO-
RARY PLATES OR MARKERS, ETC.**

§17A-6-1. Definitions.

1 (a) Unless the context in which used clearly requires a
2 different meaning, as used in this article:

3 (1) "New motor vehicle dealer" means every person
4 (other than agents and employees, if any, while acting
5 within the scope of their authority or employment),
6 engaged in, or held out to the public to be engaged in, the
7 business in this state of selling five or more new motor
8 vehicles or new and used motor vehicles in any fiscal year
9 of a type required to be registered under the provisions of
10 this chapter, except, for the purposes of this article only,
11 motorcycles.

12 (2) "Used motor vehicle dealer" means every person
13 (other than agents and employees, if any, while acting
14 within the scope of their authority or employment),
15 engaged in, or held out to the public to be engaged in, the
16 business in this state of selling five or more used motor
17 vehicles in any fiscal year of a type required to be
18 registered under the provisions of this chapter, except, for
19 the purposes of this article only, motorcycles.

20 (3) "House trailer dealer" means every person (other
21 than agents and employees, if any, while acting within the
22 scope of their authority or employment), engaged in, or
23 held out to the public to be engaged in, the business in this
24 state of selling new and/or used house trailers, or new or
25 used or both house trailers and trailers or new or used, or
26 both manufactured homes and mobile homes.

27 (4) "Trailer dealer" means every person (other than
28 agents and employees, if any, while acting within the scope
29 of their authority or employment), engaged in, or held out
30 to the public to be engaged in, the business in this state of
31 selling new or used trailers.

32 (5) "Motorcycle dealer" means every person (other
33 than agents and employees, if any, while acting within the
34 scope of their authority or employment), engaged in, or
35 held out to the public to be engaged in, the business in this
36 state of selling new or used motorcycles.

37 (6) "Used parts dealer" means every person (other
38 than agents and employees, if any, while acting within the

39 scope of their authority or employment), engaged in, or
40 held out to the public to be engaged in, the business in this
41 state of selling any used appliance, accessory, member,
42 portion or other part of any vehicle.

43 (7) "Wrecker/dismantler/rebuilder" means every
44 person (other than agents and employees, if any, while
45 acting within the scope of their authority or employment),
46 engaged in, or held out to the public to be engaged in, the
47 business in this state of dealing in wrecked or damaged
48 motor vehicles or motor vehicle parts for the purpose of
49 selling the parts thereof or scrap therefrom or who is in
50 the business of rebuilding salvage motor vehicles for the
51 purpose of resale to the public.

52 (8) "New motor vehicles" means all motor vehicles,
53 except motorcycles and used motor vehicles, of a type
54 required to be registered under the provisions of this
55 chapter.

56 (9) "Used motor vehicles" means all motor vehicles,
57 except motorcycles, of a type required to be registered
58 under the provisions of this chapter which have been sold
59 and operated, or which have been registered or titled, in
60 this or any other state or jurisdiction.

61 (10) "House trailers" means all trailers designed and
62 used for human occupancy on a continual nonrecreational
63 basis, but may not include fold down camping and travel
64 trailers, mobile homes or manufactured homes.

65 (11) "Trailers" means all types of trailers other than
66 house trailers, and shall include, but not be limited to, pole
67 trailers and semitrailers but excluding recreational
68 vehicles.

69 (12) "Sales instrument" means any document
70 resulting from the sale of a vehicle, which shall include,
71 but not be limited to, a bill of sale, invoice, conditional
72 sales contract, chattel mortgage, chattel trust deed, security
73 agreement or similar document.

74 (13) "Sell", "sale" or "selling" shall, in addition to
75 the ordinary definitions of the terms, include offering for
76 sale, soliciting sales of, negotiating for the sale of,

77 displaying for sale or advertising for sale, any vehicle,
78 whether at retail, wholesale or at auction. "Selling" shall,
79 in addition to the ordinary definition of that term, also
80 include buying and exchanging.

81 (14) "Applicant" means any person making
82 application for an original or renewal license certificate
83 under the provisions of this article.

84 (15) "Licensee" means any person holding any
85 license certificate issued under the provisions of this
86 article.

87 (16) "Predecessor" means the former owner or
88 owners or operator or operators of any new motor vehicle
89 dealer business or used motor vehicle dealer business.

90 (17) "Established place of business" means, in the
91 case of a new motor vehicle dealer, a permanent location,
92 not a temporary stand or other temporary quarters, owned
93 or leased by the licensee or applicant and actually
94 occupied or to be occupied by him or her, as the case may
95 be, which is or is to be used exclusively for the purpose of
96 selling new motor vehicles or new and used motor
97 vehicles, which shall have space under roof for the display
98 of at least one new motor vehicle and facilities and space
99 therewith for the servicing and repair of at least one motor
100 vehicle, which servicing and repair facilities and space
101 shall be adequate and suitable to carry out servicing and to
102 make repairs necessary to keep and carry out all
103 representations, warranties and agreements made or to be
104 made by the dealer with respect to motor vehicles sold by
105 him or her, which shall be easily accessible to the public,
106 which shall conform to all applicable laws of this state and
107 the ordinances of the municipality in which it is located, if
108 any, which shall display thereon at least one permanent
109 sign, clearly visible from the principal public street or
110 highway nearest the location and clearly stating the
111 business which is or shall be conducted thereat, and which
112 shall have adequate facilities to keep, maintain and
113 preserve records, papers and documents necessary to carry
114 on the business and to make the business available to
115 inspection by the commissioner at all reasonable times:
116 *Provided*, That each established place of business shall

117 have a display area which may be outside or inside or a
118 combination thereof of at least twelve hundred square feet
119 which is to be used exclusively for the display of vehicles
120 which are offered for sale by the dealer, office space of at
121 least one hundred forty-four square feet and a telephone
122 listed in the name of the dealership. Each established
123 place of business shall be open to the public a minimum
124 of twenty hours per week at least forty weeks per calendar
125 year with at least ten of those hours being between the
126 hours of nine-thirty a.m. and eight-thirty p.m., Monday
127 through Saturday: *Provided, however,* That the require-
128 ment of exclusive use shall be met even though: (A)
129 Some new and any used motor vehicles sold or to be sold
130 by the dealer or sold or are to be sold at a different
131 location or locations not meeting the definition of an
132 established place of business of a new motor vehicle
133 dealer, if each location is or is to be served by other
134 facilities and space of the dealer for the servicing and
135 repair of at least one motor vehicle, adequate and suitable
136 as aforesaid, and each location used for the sale of some
137 new and any used motor vehicles otherwise meets the
138 definition of an established place of business of a used
139 motor vehicle dealer; (B) house trailers, trailers or
140 motorcycles are sold or are to be sold thereat, if, subject to
141 the provisions of section five of this article, a separate
142 license certificate is obtained for each type of vehicle
143 business, which license certificate remains unexpired,
144 unsuspended and unrevoked; (C) farm machinery is sold
145 thereat; and (D) accessory, gasoline and oil, or storage
146 departments are maintained thereat, if the departments are
147 operated for the purpose of furthering and assisting in the
148 licensed business or businesses.

149 (18) "Farm machinery" means all machines and tools
150 used in the production, harvesting or care of farm
151 products.

152 (19) "Established place of business" shall, in the case
153 of a used motor vehicle dealer, mean a permanent
154 location, not a temporary stand or other temporary
155 quarters, owned or leased by the licensee or applicant and
156 actually occupied or to be occupied by him or her, as the
157 case may be, which is or is to be used exclusively for the

158 purpose of selling used motor vehicles, which shall have
159 facilities and space therewith for the servicing and repair
160 of at least one motor vehicle, which servicing and repair
161 facilities and space shall be adequate and suitable to carry
162 out servicing and to make repairs necessary to keep and
163 carry out all representations, warranties and agreements
164 made or to be made by the dealer with respect to used
165 motor vehicles sold by him or her, which shall be easily
166 accessible to the public, shall conform to all applicable
167 laws of this state, and the ordinances of the municipality in
168 which it is located, if any, which shall display thereon at
169 least one permanent sign, clearly visible from the principal
170 public street or highway nearest the location and clearly
171 stating the business which is or shall be conducted thereat,
172 and which shall have adequate facilities to keep, maintain
173 and preserve records, papers and documents necessary to
174 carry on the business and to make the business available to
175 inspection by the commissioner at all reasonable times:
176 *Provided*, That each established place of business shall
177 have a display area which may be outside or inside or a
178 combination thereof of at least twelve hundred square feet
179 which is to be used exclusively for the display of vehicles
180 which are offered for sale by the dealer, office space of at
181 least one hundred forty-four square feet and a telephone
182 listed in the name of the dealership. Each established
183 place of business shall be open to the public a minimum
184 of twenty hours per week at least forty weeks per calendar
185 year with at least ten of those hours being between the
186 hours of nine-thirty a.m. and eight-thirty p.m., Monday
187 through Saturday: *Provided, however*, That if a used
188 motor vehicle dealer has entered into a written agreement
189 or agreements with a person or persons owning or
190 operating a servicing and repair facility or facilities
191 adequate and suitable as aforesaid, the effect of which
192 agreement or agreements is to provide the servicing and
193 repair services and space in like manner as if the servicing
194 and repair facilities and space were located in or on the
195 dealer's place of business, then, so long as the agreement
196 or agreements are in effect, it shall not be necessary for
197 the dealer to maintain the servicing and repair facilities
198 and space at the place of business in order for the place of
199 business to be an established place of business as herein

200 defined: *Provided further*, That the requirement of
201 exclusive use shall be met even though: (A) House
202 trailers, trailers or motorcycles are sold or are to be sold
203 thereat, if, subject to the provisions of section five of this
204 article, a separate license certificate is obtained for each
205 type of vehicle business, which license certificate remains
206 unexpired, unsuspended and unrevoked; (B) farm
207 machinery is sold thereat; and (C) accessory, gasoline and
208 oil, or storage departments are maintained thereat, if the
209 departments are operated for the purpose of furthering
210 and assisting in the licensed business or businesses.

211 (20) "Established place of business" shall, in the case
212 of a house trailer dealer, trailer dealer, recreational vehicle
213 dealer, motorcycle dealer, used parts dealer and wrecker or
214 dismantler, mean a permanent location, not a temporary
215 stand or other temporary quarters, owned or leased by the
216 licensee or applicant and actually occupied or to be
217 occupied by the licensee, as the case may be, which shall
218 be easily accessible to the public, which shall conform to
219 all applicable laws of this state and the ordinances of the
220 municipality in which it is located, if any, which shall
221 display thereon at least one permanent sign, clearly visible
222 from the principal public street or highway nearest the
223 location and clearly stating the business which is or shall
224 be conducted thereat, and which shall have adequate
225 facilities to keep, maintain and preserve records, papers
226 and documents necessary to carry on the business and to
227 make the business available to inspection by the
228 commissioner at all reasonable times.

229 (21) "Manufacturer" means every person engaged in
230 the business of reconstructing, assembling or reassembling
231 vehicles with a special type body required by the
232 purchaser if the vehicle is subject to the title and
233 registration provisions of this code.

234 (22) "Transporter" means every person engaged in
235 the business of transporting vehicles to or from a
236 manufacturing, assembling or distributing plant to dealers
237 or sales agents of a manufacturer, or purchasers.

238 (23) "Recreational vehicle dealer" means every
239 person (other than agents and employees, if any, while

240 acting within the scope of their authority or employment),
241 engaged in, or held out to the public to be engaged in, the
242 business in this state of selling new or used recreational
243 vehicles, or both.

244 (24) "Motorboat" means any vessel propelled by an
245 electrical, steam, gas, diesel or other fuel propelled or
246 driven motor, whether or not the motor is the principal
247 source of propulsion, but may not include a vessel which
248 has a valid marine document issued by the bureau of
249 customs of the United States government or any federal
250 agency successor thereto.

251 (25) "Motorboat trailer" means every vehicle
252 designed for or ordinarily used for the transportation of a
253 motorboat.

254 (26) "All-terrain vehicle" (ATV) means any motor
255 vehicle designed for off-highway use and designed for
256 operator use only with no passengers, having a seat or
257 saddle designed to be straddled by the operator, and
258 handlebars for steering control.

259 (27) "Travel trailer" means every vehicle, mounted
260 on wheels, designed to provide temporary living quarters
261 for recreational, camping or travel use of such size or
262 weight as not to require special highway movement
263 permits when towed by a motor vehicle and of gross trailer
264 area less than four hundred square feet.

265 (28) "Fold down camping trailer" means every
266 vehicle consisting of a portable unit mounted on wheels
267 and constructed with collapsible partial sidewalls which
268 fold for towing by another vehicle and unfold at the camp
269 site to provide temporary living quarters for recreational,
270 camping or travel use.

271 (29) "Motor home" means every vehicle, designed to
272 provide temporary living quarters, built into an integral
273 part of or permanently attached to a self-propelled motor
274 vehicle, chassis or van including: (1) Type A motor home
275 built on an incomplete truck chassis with the truck cab
276 constructed by the second stage manufacturer; (2) Type B
277 motor home consisting of a van-type vehicle which has

278 been altered to provide temporary living quarters; and (3)
279 Type C motor home built on an incomplete van or truck
280 chassis with a cab constructed by the chassis manufacturer.

281 (30) "Snowmobile" means a self-propelled vehicle
282 intended for travel primarily on snow and driven by a
283 track or tracks in contact with the snow and steered by a
284 ski or skis in contact with the snow.

285 (31) "Recreational vehicle" means a motorboat,
286 motorboat trailer, all-terrain vehicle, travel trailer, fold
287 down camping trailer, motor home or snowmobile.

288 (32) "Major component" means any one of the
289 following subassemblies of a motor vehicle: (A) Front
290 clip assembly consisting of fenders, grille, hood, bumper
291 and related parts; (B) engine; (C) transmission; (D) rear
292 clip assembly consisting of quarter panels and floor panel
293 assembly; or (E) two or more doors.

294 (33) "Factory-built home" includes mobile homes,
295 house trailers and manufactured homes.

296 (34) "Manufactured home" has the same meaning as
297 the term is defined in section two, article nine, chapter
298 twenty-one of this code which meets the National
299 Manufactured Housing Construction and Safety Standards
300 Act of 1974 (42 U.S.C. §5401 et seq.), effective on the
301 fifteenth day of June, one thousand nine hundred
302 seventy-six, and the federal manufactured home
303 construction and safety standards and regulations
304 promulgated by the secretary of the United States
305 department of housing and urban development.

306 (35) "Mobile home" means a transportable structure
307 that is wholly, or in substantial part, made, fabricated,
308 formed or assembled in manufacturing facilities for
309 installation or assembly and installation on a building site
310 and designed for long-term residential use and built prior
311 to enactment of the federal manufactured housing
312 construction and safety standards institute (ANSI) —
313 A119.1 standards for mobile homes.

314 (b) Under no circumstances whatever may the terms
315 "new motor vehicle dealer", "used motor vehicle dealer",

316 "house trailer dealer", "trailer dealer", "recreational
317 vehicle dealer", "motorcycle dealer", "used parts
318 dealer" or "wrecker/dismantler/rebuilder" be construed
319 or applied under this article in such a way as to include a
320 banking institution, insurance company, finance company,
321 or other lending or financial institution, or other person,
322 the state or any agency or political subdivision thereof, or
323 any municipality, who or which owns or comes in
324 possession or ownership of, or acquires contract rights, or
325 security interests in or to, any vehicle or vehicles or any
326 part thereof and sells the vehicle or vehicles or any part
327 thereof for purposes other than engaging in and holding
328 out to the public to be engaged in the business of selling
329 vehicles or any part thereof.

330 (c) It is recognized that throughout this code the term
331 "trailer" or "trailers" is used to include, among other
332 types of trailers, house trailers. It is also recognized that
333 throughout this code the term "trailer" or "trailers" is
334 seldom used to include semitrailers or pole trailers.
335 However, for the purposes of this article only, the term
336 "trailers" has the meaning ascribed to it in subsection (a)
337 of this section.

CHAPTER 93

(S. B. 380—By Senators Chafin, Buckalew, Snyder, Bailey, Kimble, Deem,
Sprouse, Scott, Dugan, Boley, White, Dittmar and Minear)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and twenty, article four, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to appointing family law masters to serve for geographical regions; providing that conclusions of law of family law masters are subject to de novo review; providing that findings of facts are not subject to de novo review; and providing that

the circuit court is not held to a "clearly erroneous" standard in reviewing findings of fact.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. PROCEEDINGS BEFORE A MASTER.

§48A-4-1. Appointment of family law masters; term of office; vacancy; removal.

§48A-4-20. Circuit court review of master's recommended order.

§48A-4-1. Appointment of family law masters; term of office; vacancy; removal.

1 (a) The family law masters holding office on the
 2 effective date of this section by virtue of appointments
 3 made under the prior enactments of this article shall
 4 continue their service for a term of office ending on the
 5 thirtieth day of June, one thousand nine hundred ninety-
 6 eight. Before the first day of July, one thousand nine
 7 hundred ninety-eight, the governor shall appoint family
 8 law masters in such numbers and to serve for geographical
 9 regions of the state as provided for under the provisions of
 10 section four of this article, with terms commencing on the
 11 first day of July, one thousand nine hundred ninety-eight,
 12 and on a like date in every fourth year thereafter, and
 13 ending on the thirtieth day of June, two thousand two, and
 14 on a like date in every fourth year thereafter. Upon the
 15 expiration of his or her term, a family law master may
 16 continue to perform the duties of the office until the
 17 governor makes the appointment, or for sixty days after
 18 the date of the expiration of the master's term, whichever is
 19 earlier. If a vacancy occurs in the office of family law
 20 master, the governor shall, within thirty days after such
 21 vacancy occurs, fill the vacancy by appointment for the
 22 unexpired term: *Provided*, That if the remaining portion
 23 of the unexpired term to be filled is less than one year, the
 24 governor may, in his or her discretion, simultaneously
 25 appoint an individual to the unexpired term and to the
 26 next succeeding full four-year term.

27 (b) An individual may be reappointed to succeeding
 28 terms as a family law master to serve in the same or a
 29 different region of the state.

30 (c) Removal of a master during the term for which he
31 or she is appointed shall be as follows:

32 (1) Upon a recommendation by the judicial hearing
33 board created pursuant to the rules of procedure for the
34 handling of complaints against justices, judges, magistrates
35 and family law masters, if the supreme court of appeals
36 shall find that a family law master has violated the judicial
37 code of ethics or that the master, because of advancing
38 years and attendant physical or mental incapacity, should
39 not continue to serve, the supreme court of appeals may,
40 in lieu of or in addition to any disposition authorized by
41 such rules, remove the family law master from office; and

42 (2) The supreme court of appeals may remove a
43 master when conduct of the family law master evidences
44 incompetence, unsatisfactory performance, misconduct,
45 neglect of duty or physical or mental disability.

§48A-4-20. Circuit court review of master's recommended order.

1 (a) The circuit court shall proceed to a review of the
2 recommended order of the master when:

3 (1) No petition has been filed within the time allowed,
4 or the parties have expressly waived the right to file a
5 petition;

6 (2) A petition and an answer in opposition have been
7 filed, or the time for filing an answer in opposition has
8 expired, or the parties have expressly waived the right to
9 file an answer in opposition, as the case may be.

10 (b) To the extent necessary for decision and when
11 presented, the circuit court shall decide all relevant
12 questions of law, interpret constitutional and statutory
13 provisions and determine the appropriateness of the terms
14 of the recommended order of the master.

15 (c) The circuit court shall examine the recommended
16 order of the master, along with the findings and
17 conclusions of the master, and may enter the
18 recommended order, may recommit the case, with
19 instructions, for further hearing before the master or may,
20 in its discretion, enter an order upon different terms, as the
21 ends of justice may require. Conclusions of law of the
22 family law master shall be subject to de novo review by the

23 circuit court. Nothing in this subsection shall be construed
24 to authorize a de novo review of the facts; however, the
25 circuit court shall not be held to the clearly erroneous
26 standard in reviewing findings of fact. The circuit court
27 shall not follow the recommendation, findings and
28 conclusions of a master found to be:

29 (1) Arbitrary, capricious, an abuse of discretion or
30 otherwise not in conformance with the law;

31 (2) Contrary to constitutional right, power, privilege or
32 immunity;

33 (3) In excess of statutory jurisdiction, authority or
34 limitations or short of statutory right;

35 (4) Without observance of procedure required by law;

36 (5) Unsupported by substantial evidence; or

37 (6) Unwarranted by the facts.

38 (d) In making its determinations under this section,
39 the circuit court shall review the whole record or those
40 parts of it cited by a party. If the circuit court finds that a
41 master's recommended order is deficient as to matters
42 which might be affected by evidence not considered or
43 inadequately developed in the master's recommended
44 order, the court may recommit the recommended order to
45 the master, with instructions indicating the court's opinion,
46 or the circuit court may proceed to take such evidence
47 without recommitting the matter.

48 (e) The order of the circuit court entered pursuant to
49 the provisions of subsection (d) of this section shall be
50 entered not later than ten days after the time for filing
51 pleadings or briefs has expired or after the filing of a
52 notice or notices waiving the right to file such pleading or
53 brief.

54 (f) If a case is recommitted by the circuit court, the
55 master shall retry the matter within twenty days.

56 (g) At the time a case is recommitted, the circuit court
57 shall enter appropriate temporary orders awarding
58 custody, visitation, child support, spousal support or such
59 other temporary relief as the circumstances of the parties
60 may require.

CHAPTER 94

(S. B. 358—By Senators Tomblin, Mr. President, Wooton,
Jackson, Ball and Bailey)

[Passed April 10, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article four, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the annual salary of the secretary-clerk of family law masters, effective the first day of July, one thousand nine hundred ninety-seven.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. PROCEEDINGS BEFORE A MASTER.

§48A-4-3. Compensation and expenses of family law masters and their staffs.

1 (a) Prior to the first day of July, one thousand nine
2 hundred ninety-four, a family law master shall receive as
3 full compensation for his or her services an annual salary
4 of thirty-five thousand dollars.

5 (b) After the first day of July, one thousand nine
6 hundred ninety-four, a full-time family law master shall
7 receive as full compensation for his or her services an
8 annual salary of fifty thousand dollars and a part-time
9 family law master shall receive as full compensation for
10 his or her services an annual salary of thirty-seven
11 thousand five hundred dollars.

12 (c) The secretary-clerk of the family law master shall
13 be appointed by the family law master and serve at his or
14 her will and pleasure and shall receive an annual salary of
15 seventeen thousand five hundred dollars: *Provided*, That
16 beginning the first day of July, one thousand nine
17 hundred ninety-seven, the secretary-clerk of the family
18 law master appointed by the family law master shall
19 receive an annual salary of twenty-two thousand three
20 hundred eight dollars: *Provided, however*, That
21 subsequent to the first day of July, one thousand nine
22 hundred ninety-three, the secretary-clerk may receive such
23 percentage or proportional salary increases as may be
24 provided for by general law for other public employees
25 and shall receive the annual incremental salary increase as
26 provided for in article five, chapter five of this code.

27 (d) A temporary or special family law master shall be
28 compensated by the supreme court of appeals at an hourly
29 rate not to exceed the hourly rate paid to panel attorneys
30 for performing work in court pursuant to the provisions of
31 section thirteen-a, article twenty-one, chapter twenty-nine
32 of this code.

33 (e) Disbursement of salaries for family law masters
34 and members of their staffs shall be made by or pursuant
35 to the order of the director of the administrative office of
36 the supreme court of appeals.

37 (f) Family law masters, members of their staffs and
38 temporary family law masters shall be allowed their actual
39 and necessary expenses incurred in the performance of
40 their duties. Such expenses and compensation shall be
41 determined and paid by the director of the administrative
42 office of the supreme court of appeals under such
43 guidelines as he or she may prescribe as approved by the
44 supreme court of appeals.

CHAPTER 95

(S. B. 563—By Senator Craigo)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to repeal section thirteen, article four, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal sections nine-g and eighteen, article six of said chapter; to repeal sections two and two-a, article eight, chapter twenty-seven of said code; to repeal article six-b, chapter forty-four of said code; to amend and reenact section six, article two, chapter five-f of said code; to amend and reenact section one, article seven, chapter six of said code; to amend and reenact section one, article five, chapter seven of said code; to amend and reenact section fifteen, article thirteen, chapter eight of said code; to amend and reenact sections one, two, four, five, seven, eight, nine, ten, eleven, twelve and thirteen, article one, chapter twelve of said code; to amend and reenact sections two, three, four and five, article two of said chapter; to amend and reenact sections one, one-a, one-b, four, ten-a and thirteen-b, article three of said chapter; to further amend said article by adding thereto two new sections, designated sections ten-c and ten-d; to amend and reenact sections two, three, four, six, seven, eight and nine, article four of said chapter; to further amend said article by adding thereto two new sections, designated sections three-a and eight-a; to amend and reenact sections two, four, five and six, article five of said chapter; to further amend said article by adding thereto a new section, designated section seven; to amend and reenact sections one, one-a, two, three, four, five, eight, nine-c, nine-e, twelve, thirteen, fifteen, sixteen and nineteen, article six of said chapter; that said article be further amended by adding thereto four new sections, designated sections six, nine, nine-a and eleven; to amend and reenact sections two, three, five and six, article six-a of said chapter; to further amend said chapter by adding thereto a new article, designated article six-b; to amend and reenact section three, article three, chapter

thirteen of said code; to amend and reenact section two-a, article three, chapter fifty of said code; to amend and reenact section seven-a, article one, chapter fifty-seven of said code; and to amend and reenact section twelve, article one, chapter fifty-nine of said code, all relating generally to the financial and investment procedures in this state; repealing provisions relating to unreconciled items on bank accounts; repealing provisions relating to budgeting for state hospitals and local mental health programs; repealing the West Virginia trust fund act; providing for the consolidation and organization of certain boards and commissions; authorizing state officials, officers and employees to be paid twice per month; providing for collection of moneys due a county, district, municipality, magistrate court and circuit courts; establishing duties and responsibilities of the state treasurer in relation to state depositories; changing the method for the payment and deposit of taxes and other amounts due the state or any political subdivision; establishing duties and responsibilities of the state auditor and treasurer in relation to appropriations, expenditures and deductions; clarifying the accounts of treasurer and auditor; providing that the auditor is to certify condition of revenues and funds of the state; providing method for signing of checks and warrants; facsimile signatures and use of mechanical and electrical devices; providing criminal penalties for violations of signature authority; comparison of books of auditor and treasurer; requiring the changing of the office hours of auditor and treasurer; authorizing the employment of legal counsel; changing rules relating to absence of auditor or treasurer; providing for the balancing of state accounts; establishing the state treasurer's duties and responsibilities in relation to public securities; providing that the treasurer will act as financial advisor; providing for the employment or selection of bond counsel; amending the provisions relating to the repeal of the state board of investments; creating a new public body corporate called the "West Virginia investment management board"; providing that all functions and assets of the board of investments and the West Virginia trust fund are transferred to the investment management board; terminating the board of investments and the West Virginia trust fund; providing for purposes and objects; providing legislative findings; providing definitions; providing for appoint-

ments; providing that the governor, treasurer and auditor are members of the board; providing for filling of vacancies; providing for board meetings and notices of meetings; providing for beneficiary representatives; providing for management and control of funds; providing for liability of trustees; providing for powers of the board; providing for audits and reports; establishing investment funds; providing for fees for services; providing for continuation of existing trust; authorizing investments; providing standards for investments; providing for loans for industrial development; providing for standards of care in investment management; providing for duties of the board; providing for transfers of funds to the board; providing for loans by the board; providing for debt information reporting; creating a debt capacity advisory division; allowing the use of photographic copies in evidence, for state records, and papers or documents; providing for destruction or transfer to archives of original documents; destruction of canceled checks; and paid and canceled bonds and coupons.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article four, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections nine-g and eighteen, article six of said chapter be repealed; that sections two and two-a, article eight, chapter twenty-seven of said code be repealed; that article six-b, chapter forty-four of said code be repealed; that section six, article two, chapter five-f of said code be amended and reenacted; that section one, article seven, chapter six of said code be amended and reenacted; that section one, article five, chapter seven of said code be amended and reenacted; that section fifteen, article thirteen, chapter eight of said code be amended and reenacted; that sections one, two, four, five, seven, eight, nine, ten, eleven, twelve and thirteen, article one, chapter twelve of said code be amended and reenacted; that sections two, three, four and five, article two of said chapter be amended and reenacted; that sections one, one-a, one-b, four, ten-a and thirteen-b, article three of said chapter be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections ten-c and ten-d; that sections two, three, four, six, seven, eight and nine, article four of said chapter be amended and reenacted; that said article be further

amended by adding thereto two new sections, designated sections three-a and eight-a; that sections two, four, five and six, article five of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section seven; that sections one, one-a, two, three, four, five, eight, nine-c, nine-e, twelve, thirteen, fifteen, sixteen and nineteen, article six of said chapter be amended and reenacted; and that said article be further amended by adding thereto four new sections, designated sections six, nine, nine-a and eleven; that sections two, three, five and six, article six-a of said chapter be amended and reenacted; that said chapter be further amended by adding thereto a new article, designated article six-b; that section three, article three, chapter thirteen of said code be amended and reenacted; that section two-a, article three, chapter fifty of said code be amended and reenacted; that section seven-a, article one, chapter fifty-seven of said code be amended and reenacted; and that section twelve, article one, chapter fifty-nine of said code be amended and reenacted, all to read as follows:

Chapter

5F. Reorganization of the Executive Branch of State Government.

- 6. General Provisions Respecting Officers.**
- 7. County Commissions and Officers.**
- 8. Municipal Corporations.**
- 12. Public Moneys and Securities.**
- 13. Public Bonded Indebtedness.**
- 50. Magistrate Courts.**
- 57. Evidence and Witnesses.**
- 59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.**

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-6. Reorganization of boards issuing or incurring debt.

- 1 (a) The Legislature finds and declares that boards and
- 2 commissions empowered to issue bonds, incur indebted-
- 3 ness and provide financing or financial services for a
- 4 public purpose may in some cases benefit the public
- 5 interest or operate more efficiently through consolidation

6 of legal, technical and support staff or services, sharing of
7 office space, consolidation of procedures, and cooperation
8 to identify circumstances where one entity may provide
9 services for another, including, but not limited to, circum-
10 stances where one board or commission may finance the
11 programs of another. On or after the effective date of this
12 section, the treasurer shall be authorized at the request of
13 the presiding officer of the entity to provide financial
14 services, provide technical staff services, provide support
15 staff and services and provide for the sharing of office
16 space among and between the following entities:

17 (1) The staff of the municipal bond commission
18 provided for in article three, chapter thirteen of this code:
19 *Provided*, That nothing in this section shall be construed
20 to limit the independence and autonomy of the municipal
21 bond commission;

22 (2) The staff of the hospital finance authority provid-
23 ed for in article twenty-nine-a, chapter sixteen of this
24 code: *Provided*, That nothing in this section shall be
25 construed to limit the independence and autonomy of the
26 hospital finance authority; and

27 (3) The staff of the public energy authority provided
28 for in article one, chapter five-d of this code.

29 (b) In furtherance of the goal of increased efficiency
30 and cooperation, the director of the debt management
31 division of the board of investments and the secretary of
32 the department of administration are jointly charged with
33 the responsibility of developing and presenting to the
34 boards and commissions, to the board of investments, to
35 the state treasurer, to the governor and to the Legislature
36 recommendations for administrative and statutory change.

37 (c) On the effective date of this section, any funds,
38 equipment, personnel or office facilities associated with
39 those responsibilities that are transferred from the board
40 of investments or any other agency, to the treasurer's
41 office shall be transferred within thirty days of the transfer
42 of those responsibilities.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-1. State officials, officers and employees to be paid twice per month; effective date.

1 All full-time and part-time salaried and hourly
2 officials, officers and employees of the state and the board
3 of trustees of the university system of West Virginia and
4 the board of directors of the state college system shall be
5 paid twice per month, and under the same procedures and
6 in the same manner as the state auditor currently pays
7 agencies on such basis: *Provided*, That on and after the
8 first day of July, one thousand nine hundred ninety-nine,
9 or any date thereafter, as determined by the auditor, all
10 officials, officers or employees, except elected officials
11 and employees whose compensation is fixed by statute,
12 shall be paid one pay cycle in arrears. Any employee
13 whose employment with the state begins on or after the
14 first day of July, one thousand nine hundred ninety-nine,
15 as determined by the auditor, shall not receive his or her
16 first pay until the end of the second regular payroll cycle
17 after beginning employment. The auditor shall propose a
18 legislative rule in accordance with article three, chapter
19 twenty-nine-a of this code to determine the manner to
20 implement the payment of employees in arrears. Nothing
21 contained in this section is intended to increase or dimin-
22 ish the salary or wages of any official, officer or employ-
23 ee.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 5. FISCAL AFFAIRS.

§7-5-1. Sheriff ex officio county treasurer.

1 The sheriff shall be ex officio county treasurer and as
2 such treasurer shall receive, collect and disburse all
3 moneys due such county or any district thereof, and shall
4 also receive, collect and disburse to the treasurer of the
5 county board of education all school money for the
6 county, unless the sheriff is designated by the board of
7 education as its treasurer, as provided in section six, article

8 nine, chapter eighteen of this code. The sheriff shall keep
9 his office at the courthouse for the county, in a suitable
10 room or rooms provided for that purpose by the county
11 court (county commission), in which all money and
12 property in his possession shall be kept, unless deposited
13 by him in a county depository, in which case an accurate
14 daily deposit account thereof shall be kept in his office.
15 He shall keep in his office a fair and accurate account of
16 all receipts and disbursements by him, showing the time
17 when, from whom, to whom and on what account received
18 and paid, and he shall so arrange his books that the
19 amount received and paid on account of separate and
20 distinct funds, or specific appropriations, shall be exhibit-
21 ed in separate and distinct accounts, and he shall also keep
22 separate and distinct accounts for the funds of each fiscal
23 year.

24 When any money is paid to the sheriff, except for
25 taxes, the sheriff shall give to the person paying the same
26 duplicate receipts thereof, stating briefly the fund or
27 account for which paid; one of which receipts such person
28 shall forthwith deposit with the clerk of the county court
29 (county commission), who shall, in a well-bound book to
30 be kept by him in his office for the purpose, charge the
31 sheriff therewith and preserve such receipt in his office.

32 The sheriff and his sureties on his official bond shall
33 be held liable for all public moneys coming into his hands
34 as ex officio treasurer from every source whether or not
35 the same shall be deposited in a bank: *Provided*, That
36 nothing in this article prohibits the payment of funds due
37 the county treasurer by credit or check card. Allowing for
38 the collection of funds by credit or check card shall be at
39 the discretion of the county commission.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

§8-13-15. Collection of municipal taxes, fines and assessments.

1 Unless otherwise provided, it shall be the duty of the
2 treasurer of the municipality or other individual who may
3 be designated by general law, by charter provisions or by

4 the governing body, to collect and promptly pay into the
5 municipal treasury all taxes, fines, special assessments or
6 other moneys due the municipality. All such taxes, fines,
7 special assessments (except assessments for permanent or
8 semipermanent public improvements) and other moneys
9 due the municipality are hereby declared to be debts
10 owing to the municipality, for which the debtor shall be
11 personally liable, and the treasurer, or other individual so
12 designated, may enforce this liability by appropriate civil
13 action in any court of competent jurisdiction, and is
14 hereby vested with the same rights to distrain for the same
15 as is vested in the sheriff for the collection of taxes. Such
16 treasurer or other individual shall give a bond, conditioned
17 according to law, in such penalty and with such security as
18 the governing body may require: *Provided*, That nothing
19 in this article shall prohibit the payment of taxes, fines,
20 special assessments or other moneys due the municipality
21 by credit or check card. Allowing for the collection of
22 these funds by credit or check card shall be at the discre-
23 tion of the municipality.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

Article

1. State Depositories.
2. Payment and Deposit of Taxes and Other Amounts Due the State or Any Political Subdivision.
3. Appropriations, Expenditures and Deductions.
4. Accounts, Reports and General Provisions.
5. Public Securities.
6. West Virginia Investment Management Board.
- 6A. The Debt Management Act of 1991.
- 6B. Debt Capacity Advisory Division.

ARTICLE 1. STATE DEPOSITORIES.

- §12-1-1. Legislative findings and purpose.
- §12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by state treasurer.
- §12-1-4. Bonds to be given by depositories.
- §12-1-5. Limitation on amount of deposits.
- §12-1-7. Rules of the state treasurer; depositories, agreements.
- §12-1-8. Conflict of interest.

- §12-1-9. Transfer of funds by check or electronic funds transfer bank wire; requirements.
- §12-1-10. The treasurer to keep accounts with depositories; settlements with depositories; statements of depository balances; reconciliation of statements and records.
- §12-1-11. Reports by depositories to treasurer; discontinuance of depositories.
- §12-1-12. When treasurer shall make funds available to the investment management board; depositories outside the state.
- §12-1-13. Payment of banking services and litigation costs for prior investment losses.

§12-1-1. Legislative findings and purpose.

1 The Legislature finds and declares that the efficient
2 collection, disbursement, management and investment of
3 public moneys in the state treasury will benefit the citizens,
4 teachers and public employees of this state by reducing
5 the costs of government and providing sources of in-
6 creased revenue without the necessity of increased taxa-
7 tion; and to achieve these goals, the state treasurer shall
8 provide a stable and continuous source of professional
9 financial management, and shall be given the authority to
10 develop and maintain modern systems, consistent with
11 sound financial practices, for the collection, disbursement,
12 management and investment of such moneys in conjunc-
13 tion with the state treasurer.

§12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by state treasurer.

1 The state treasurer shall designate the state and
2 national banks in this state which shall serve as deposito-
3 ries for all state funds placed in demand deposits. Any
4 such state or national bank shall, upon request to the
5 treasurer, be designated as a state depository for such
6 deposits, if such bank meets the requirements set forth in
7 this chapter.

8 Demand deposit accounts shall consist of receipt and
9 disbursement. Receipt accounts shall be those accounts in
10 which are deposited moneys belonging to or due the state

11 of West Virginia or any official, department, board,
12 commission or agency thereof.

13 Disbursement accounts shall be those accounts from
14 which are paid moneys due from the state of West Virginia
15 or any official, department, board, commission, political
16 subdivision or agency thereof to any political subdivision,
17 person, firm or corporation, except moneys paid from
18 investment accounts.

19 Investment accounts shall be those accounts estab-
20 lished by the West Virginia investment management board
21 for the buying and selling of securities for investment for
22 the state of West Virginia or any official, department,
23 board, commission or agency thereof or to meet obliga-
24 tions to paying agents or for paying charges incurred for
25 the custody, safekeeping and management of such
26 securities pursuant to the provisions of section five, article
27 five of this chapter, or for paying the charges of any bank
28 or trust company acting as paying agent or copaying
29 agent for a bond issue of the state pursuant to the provi-
30 sions of section seven-a, article one, chapter fifty-seven of
31 this code.

32 The state treasurer shall promulgate rules, in accor-
33 dance with the provisions of article three, chapter twenty-
34 nine-a of this code, concerning depositories for receipt
35 accounts prescribing the selection criteria, procedures,
36 compensation and such other contractual terms as it
37 considers to be in the best interests of the state giving due
38 consideration to: (1) The activity of the various accounts
39 maintained therein; (2) the reasonable value of the
40 banking services rendered or to be rendered the state by
41 such depositories; and (3) the value and importance of
42 such deposits to the economy of the communities and the
43 various areas of the state affected thereby.

44 The state treasurer shall select depositories for dis-
45 bursement accounts through competitive bidding by
46 eligible banks in this state. The treasurer shall promulgate
47 rules and regulations, in accordance with the provisions of
48 article three, chapter twenty-nine-a of this code, prescrib-
49 ing the procedures and criteria for the bidding and
50 selection. The treasurer shall, in the invitations for bids,

51 specify the approximate amounts of deposits, the duration
52 of contracts to be awarded and such other contractual
53 terms as it considers to be in the best interests of the state,
54 consistent with obtaining the most efficient service at the
55 lowest cost.

56 The amount of money needed for current operation
57 purposes of the state government, as determined by the
58 state treasurer, shall be maintained at all times in the state
59 treasury, in cash or in disbursement accounts with banks
60 designated as depositories in accordance with the provi-
61 sions of this section. No state officer or employee shall
62 make or cause to be made any deposits of state funds in
63 banks not so designated.

§12-1-4. Bonds to be given by depositories.

1 Before allowing any money to be deposited with any
2 eligible depository in excess of the amount insured by an
3 agency of the federal government, the state treasurer shall
4 require the depository to give a collaterally secured bond,
5 in the amount of not less than ten thousand dollars,
6 payable to the state of West Virginia, conditioned upon the
7 prompt payment, whenever lawfully required, of any state
8 money, or part thereof, that may be deposited with that
9 depository, or of any accrued interest on deposits. The
10 bond shall be a continuous bond but may be increased or
11 decreased in amount or replaced by a new bond with the
12 approval of the state treasurer. The collateral security for
13 the bond shall consist of bonds of the United States, of the
14 federal land banks, of the federal home loan banks, or
15 bonds of the state of West Virginia or of any county,
16 district or municipality of this state, or other bonds or
17 securities approved by the treasurer. All bonds so secured
18 are here designated as collaterally secured bonds. With-
19 drawal or substitution of any collateral pledged as security
20 for the performance of the conditions of such bond may
21 be permitted with the approval in writing of the treasurer.
22 All depository bonds shall be recorded by the treasurer in
23 a book kept in his or her office for the purpose, and a
24 copy of the record, certified by the treasurer, shall be
25 prima facie evidence of the execution and contents of the
26 bond in any suit or legal proceeding. All collateral

27 securities shall be delivered to or deposited for the account
28 of the treasurer of the state of West Virginia, and in the
29 event said securities are delivered to the treasurer, he or
30 she shall furnish a receipt therefor to the owner thereof.
31 The treasurer and his or her bondsmen shall be liable to
32 any person for any loss by reason of the embezzlement or
33 misapplication of the securities by the treasurer or any of
34 his or her employees, and for the loss thereof due to his or
35 her negligence or the negligence of his or her employees;
36 and the securities shall be delivered to the owner thereof
37 when liability under the bond which they are pledged to
38 secure has terminated. The treasurer may permit the
39 deposit under proper receipt of the securities with one or
40 more banking institutions within or outside the state of
41 West Virginia and may contract with any such institution
42 for safekeeping and exchange of any such collateral
43 securities, and may prescribe the rules and regulations for
44 handling and protecting the collateral securities.

§12-1-5. Limitation on amount of deposits.

1 The amount of state funds on deposit in any deposito-
2 ry in excess of the amount insured by an agency of the
3 federal government shall not exceed ninety percent of the
4 value of collateral pledged on the collaterally secured
5 bond given by the depository. The value of the collateral
6 shall be determined by the treasurer.

§12-1-7. Rules of the state treasurer; depositors, agreements.

1 In addition to rules specially authorized in this article,
2 the West Virginia investment management board and state
3 treasurer are generally authorized to promulgate any rules
4 necessary to protect the interests of the state, its deposito-
5 ries and taxpayers. All rules promulgated shall be subject
6 to the provisions of article three, chapter twenty-nine-a of
7 this code. Any rules previously established by the board
8 of public works, the board of investments or the state
9 treasurer pursuant to this article shall remain in effect until
10 amended, superseded or rescinded.

11 The treasurer is also authorized to enter into any
12 depositors' agreements for the purpose of reorganizing or
13 rehabilitating any depository in which state funds are

14 deposited, and for the purpose of transferring the assets, in
15 whole or in part, of any depository to any other lawful
16 depository when, in the judgment of the treasurer, the
17 interests of the state will be promoted thereby, and upon
18 condition that no right of the state to preferred payment
19 be waived.

§12-1-8. Conflict of interest.

1 No depository in this state may serve or be eligible for
2 designation as a state depository if any member of the
3 West Virginia investment management board, or employee
4 of the treasurer's office, or a spouse or minor child of that
5 member or employee, is an officer, director or employee
6 thereof, or owns greater than two percent of the depository
7 either in his or their own name or beneficially, or an
8 interest in such depository. A member of the board or
9 employee of the treasurer's office shall disclose the
10 circumstance, if any, in the sworn statement required
11 under the provisions of section one, article one, chapter
12 six-b of this code.

§12-1-9. Transfer of funds by check or electronic funds transfer; requirements.

1 Subject to applicable banking regulations or state law,
2 the treasurer may transfer funds by check or electronic
3 funds transfer whenever actually needed to pay the
4 warrants drawn by the auditor upon the treasury, to
5 equalize deposits or to provide funds to purchase invest-
6 ments for the account of the state. All checks drawn for
7 transfer of funds shall have printed or stamped on the face
8 of same "for transfer of funds only", or if the transfer is
9 made by electronic funds transfer, the electronic funds
10 transfer and supporting documents shall be marked "for
11 transfer of funds only".

§12-1-10. The treasurer to keep accounts with depositories; settlements with depositories; statements of depository balances; reconciliation of statements and records.

1 The treasurer shall keep in his office or her office a
2 record showing the account of each depository. Under
3 the account of each depository an entry shall be made

4 showing the amount and date of each deposit, the amount
5 and date of each withdrawal and the balance on deposit.
6 The treasurer shall cause the state's account with each
7 depository to be settled at the end of every month of the
8 year and the balance in the depository to the credit of the
9 treasury to be carried forward to the account of the next
10 month.

11 All the statements and records shall be reconciled
12 monthly and the reconciled reports shall be kept in the
13 treasurer's office. The reconciled records for each month
14 shall be kept in the treasurer's office for a period of five
15 years.

§12-1-11. Reports by depositories to treasurer; discontinuance of depositories.

1 Each depository of state funds shall at the end of each
2 quarter cause its president or cashier to report to the
3 treasurer the amount of state funds on deposit and the
4 report shall be verified by the affidavit of the officer
5 making it. The form and contents of the report shall be
6 prescribed by the treasurer. For the failure to file the
7 report, or for other good cause, the treasurer may discon-
8 tinue any depository as an eligible depository and cause
9 all state funds to be withdrawn from any depository or
10 depositories so discontinued. When a depository is
11 discontinued, the treasurer shall immediately notify such
12 depository of its discontinuance, and shall immediately
13 withdraw by current checks or by transfer to another
14 depository or depositories the full amount of the deposits
15 held by any depository so discontinued. After discontinu-
16 ance, it shall be unlawful for the treasurer to deposit any
17 state funds in any depository so discontinued until such
18 time as the depository may be reinstated to eligibility.

§12-1-12. When treasurer shall make funds available to the investment management board; depositories outside the state.

1 When the funds in the treasury exceed the amount
2 needed for current operational purposes, as determined by
3 the treasurer, the treasurer shall make all of such excess
4 available for investment by the investment management

5 board which shall invest the same for the benefit of the
6 general revenue fund.

7 Whenever the funds in the treasury exceed the amount
8 for which depositories within the state have qualified, or
9 the depositories within the state which have qualified are
10 unwilling to receive larger deposits, the treasurer may
11 designate depositories outside the state, disbursement
12 accounts being bid for in the same manner as required by
13 depositories within the state, and when such depositories
14 outside the state have qualified by giving the bond
15 prescribed in section four of this article, the state treasurer
16 shall deposit funds therein in like manner as funds are
17 deposited in depositories within the state under this article.

18 The treasurer or board of investments may transfer
19 funds to banks outside the state to meet obligations to
20 paying agents outside the state and any such transfer must
21 meet the same bond requirements as set forth in this
22 article.

**§12-1-13. Payment of banking services and litigation costs for
prior investment losses.**

1 (a) The treasurer is authorized to pay for banking
2 services, and services ancillary thereto, by either a com-
3 pensating balance in a noninterest-bearing account
4 maintained at the financial institution providing the
5 services or with a state warrant as described in section one,
6 article five of this chapter.

7 (b) The investment management board is authorized
8 to pay for the investigation and pursuit of claims against
9 third parties for the investment losses incurred during the
10 period beginning on the first day of August, one thousand
11 nine hundred eighty-four, and ending on the thirty-first
12 day of August, one thousand nine hundred eighty-nine.
13 The payment may be in the form of a state warrant.

14 (c) If payment is made by a state warrant, the invest-
15 ment management board at the request of the treasurer is
16 authorized to establish within the consolidated fund an
17 investment pool which will generate sufficient income to
18 pay for all banking services provided to the state and to

19 pay for the investigation and pursuit of the prior invest-
 20 ment loss claims. All income earned by the investment
 21 pool shall be paid into a special account of the treasurer to
 22 be known as the banking services account and shall be
 23 used solely for the purpose of paying for all banking
 24 services and services ancillary to the banking services
 25 provided to the state, for the investigation and pursuit of
 26 the prior investment loss claims, amortize the balance in
 27 the investment imbalance fund.

**ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER
 AMOUNTS DUE THE STATE OR ANY POLITICAL
 SUBDIVISION.**

§12-2-2. Itemized record of moneys received for deposit; regulations govern-
 ing deposits; credit to state fund; exceptions.

§12-2-3. Deposit of moneys by state officials and employees.

§12-2-4. Duty of depositories.

§12-2-5. Deposits in correspondent banks of state depositories.

**§12-2-2. Itemized record of moneys received for deposit;
 regulations governing deposits; credit to state
 fund; exceptions.**

1 (a) All officials and employees of the state autho-
 2 rized by statute to accept moneys due the state of West
 3 Virginia shall keep a daily itemized record of moneys so
 4 received for deposit in the state treasury and shall deposit
 5 within twenty-four hours with the state treasurer all
 6 moneys received or collected by them for or on behalf of
 7 the state for any purpose whatsoever. The treasurer shall
 8 be authorized to review the procedures and methods used
 9 by officials and employees authorized to accept moneys
 10 due the state and change such procedures and methods if
 11 he or she determines it to be in the best interest of the
 12 state: *Provided*, That the treasurer shall not be authorized
 13 to review or amend the procedures by which the depart-
 14 ment of tax and revenue accepts moneys due the state.
 15 The treasurer shall propose rules, in accordance with the
 16 provisions of article three, chapter twenty-nine-a of this
 17 code governing the procedure for deposits.

18 The official or employee making such deposits with
 19 the treasurer shall prepare deposit lists in the manner and

20 upon report forms as may be prescribed by the treasurer.
21 Certified or receipted copies shall be immediately for-
22 warded by the state treasurer to the state auditor and to the
23 secretary of administration. The original of the deposit
24 report shall become a part of the treasurer's permanent
25 record.

26 (b) All moneys received by the state from appropria-
27 tions made by the Congress of the United States shall be
28 recorded in special fund accounts, in the state treasury
29 apart from the general revenues of the state, and shall be
30 expended in accordance with the provisions of article
31 eleven, chapter four of this code. All moneys, other than
32 federal funds, defined in section two, article eleven,
33 chapter four of this code, shall be credited to the state
34 fund and treated by the auditor and treasurer as part of the
35 general revenue of the state except the following funds
36 which shall be recorded in separate accounts:

37 (1) All funds excluded by the provisions of section
38 six, article eleven, chapter four of this code;

39 (2) All funds derived from the sale of farm and dairy
40 products from farms operated by any agency of the state
41 government other than the farm management commission;

42 (3) All endowment funds, bequests, donations,
43 executive emergency funds, and death and disability
44 funds;

45 (4) All fees and funds collected at state educational
46 institutions for student activities;

47 (5) All funds derived from collections from dormito-
48 ries, boardinghouses, cafeterias and road camps;

49 (6) All moneys received from counties by institutions
50 for the deaf and blind on account of clothing for indigent
51 pupils;

52 (7) All insurance collected on account of losses by
53 fire and refunds;

54 (8) All funds derived from bookstores and sales of
55 blank paper and stationery, and collections by the chief
56 inspector of public offices;

54 (8) All funds derived from bookstores and sales of
55 blank paper and stationery, and collections by the chief
56 inspector of public offices;

57 (9) All moneys collected and belonging to the
58 capitol building fund, state road fund, state road sinking
59 funds, general school fund, school fund, state fund
60 (moneys belonging to counties, districts and municipali-
61 ties), state interest and sinking funds, state compensation
62 funds, the fund maintained by the public service commis-
63 sion for the investigation and supervision of applications,
64 and all fees, money, interest or funds arising from the sales
65 of all permits and licenses to hunt, trap, fish or otherwise
66 hold or capture fish and wildlife resources and money
67 reimbursed and granted by the federal government for
68 fish and wildlife conservation;

69 (10) All moneys collected or received under any act
70 of the Legislature providing that funds collected or
71 received thereunder shall be used for specific purposes.

72 (c) All moneys, excepted as provided in subdivisions
73 (1) through (9), inclusive, subsection (b) of this section,
74 shall be paid into the state treasury in the same manner as
75 collections not so excepted, and shall be recorded in
76 separate accounts to be used and expended only for the
77 purposes for which the same are authorized to be collected
78 by law: *Provided*, That amounts collected pursuant to
79 subdivision (10), subsection (b) of this section, which are
80 found from time to time to exceed funds needed for the
81 purposes set forth in general law may be transferred to
82 other accounts or funds and redesignated for other
83 purposes by appropriation of the Legislature. The gross
84 amount collected in all cases shall be paid into the state
85 treasury, and commissions, costs and expenses of collec-
86 tion authorized by general law to be paid out of the gross
87 collection, including bank and credit or check card fees,
88 are hereby authorized to be paid out of the moneys
89 collected and paid into the state treasury in the same
90 manner as other payments are made from the state
91 treasury.

92 (d) The state treasurer shall have authority to estab-
93 lish an imprest fund or funds in the office of any state

97 three, chapter twenty-nine-a of this code. The treasurer or
98 his or her designee shall annually audit all funds and
99 prepare a list of all such funds showing the location and
100 amount as of fiscal year end, retaining the list as a perma-
101 nent record of the treasurer until the legislative auditor has
102 completed an audit of the imprest funds of all agencies
103 and institutions involved.

104 (e) The treasurer shall be authorized to develop and
105 implement a centralized receipts processing center. The
106 treasurer may request the transfer of equipment and
107 personnel from appropriate state agencies to the central-
108 ized receipts processing center in order to implement the
109 provisions of this subsection: *Provided*, That the governor
110 or appropriate constitutional officer shall have final
111 authority to authorize the transfer of equipment or
112 personnel to the centralized receipts processing center
113 from the respective agency.

§12-2-3. Deposit of moneys by state officials and employees.

1 All officials and employees of the state authorized by
2 statute to accept moneys due the state of West Virginia
3 shall deposit those moneys in the manner the treasurer
4 directs and shall promptly transmit or cause to be trans-
5 mitted the deposits, together with a certificate of deposit, as
6 soon as practicable to the depository in which they desire
7 to make the deposit, and shall retain and record the
8 deposit lists. All officials and employees of the state
9 authorized to accept moneys that they have determined
10 are not funds due the state pursuant to the provisions of
11 section two of this article, shall request the treasurer to
12 approve the deposit of the funds into an approved deposi-
13 tory. The request shall be made on forms and in accord-
14 ance with procedures as the treasurer establishes. No
15 funds shall be deposited until the written approval of the
16 treasurer is obtained. The treasurer shall be the final
17 determining authority as to whether these funds are funds
18 due or not due the state pursuant to section two of this
19 article. The treasurer shall on a quarterly basis provide the
20 legislative auditor with a report of all accounts approved
21 by him.

§12-2-4. Duty of depositories.

1 Immediately upon the receipt of a deposit from the
2 state, it shall be the duty of the depository to credit the
3 treasurer with the amount of the deposit, to date and sign
4 the certificate of deposit by some legally constituted
5 official of the depository and promptly transmit the
6 certificate to the treasurer.

§12-2-5. Deposits in correspondent banks of state depositories.

1 When any payment of money has been made to the
2 state for road bonds or other purposes outside of the state,
3 the treasurer has the authority to place the same to the
4 credit of one or more state depositories in one or more of
5 its correspondent banks located within or without the state.
6 The treasurer shall, upon making such a deposit in the
7 correspondent bank, secure from it a proper certificate of
8 deposit certifying the amount and the name of the state
9 depository to whose credit the deposit was made by the
10 treasurer. The treasurer shall forward a copy of the
11 certificate to the state depository receiving the deposit
12 through its correspondent bank, and it shall be the duty of
13 the depository immediately to issue to the state of West
14 Virginia a proper certificate of deposit for the amount
15 deposited, dated the same day the deposit was made in the
16 correspondent bank. Before making the deposit the
17 treasurer shall secure written authority from the deposito-
18 ry, designating the name and address of its correspondent
19 bank or banks in which deposits are to be made and the
20 maximum amount to be deposited in each. The deposito-
21 ry bonds of all state depositories authorizing and receiving
22 the deposits in their correspondent banks shall be liable
23 for the deposits the same as if the deposits had been made
24 with them directly, whether the bonds are so conditioned
25 or not, and all depository bonds hereafter issued shall so
26 provide.

**ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUC-
TIONS.**

§12-3-1. Manner of payment from treasury; form of checks.

§12-3-1a. Payment by deposit in bank account.

§12-3-1b. Voluntary direct deposits by auditor of salaries of employees to
banks or other financial institutions.

- §12-3-4. No check to be drawn on depository having insufficient funds; necessity of warrant and check or electronic funds transfer.
- §12-3-10a. Purchasing card program.
- §12-3-10c. Transaction fees; disposition of fees.
- §12-3-10d. Purchasing card fund created; expenditures.
- §12-3-13b. Voluntary deductions by state auditor from salaries of employees to pay association dues or fees and to pay supplemental health and life insurance premiums.

§12-3-1. Manner of payment from treasury; form of checks.

1 Every person claiming to receive money from the
2 treasury of the state shall apply to the auditor for a warrant
3 for same. The auditor shall thereupon examine the claim,
4 and the vouchers, certificates and evidence, if any, offered
5 in support thereof, and for so much thereof as he or she
6 finds to be justly due from the state, if payment thereof is
7 authorized by law, and if there is an appropriation not
8 exhausted or expired out of which it is properly payable,
9 the auditor shall issue his or her warrant on the treasurer,
10 specifying to whom and on what account the money
11 mentioned therein is to be paid, and to what appropriation
12 it is to be charged. The auditor shall present to the
13 treasurer daily reports on the number of warrants issued,
14 the amounts of the warrants and the dates on the warrants
15 for the purpose of effectuating the investment policy of
16 the investment management board. On the presentation of
17 the warrant to the treasurer, the treasurer shall ascertain
18 whether there are sufficient funds in the treasury to pay
19 that warrant, and if he or she finds it to be so, he or she
20 shall in that case, but not otherwise, endorse his or her
21 check upon the warrant, directed to some depository,
22 which check shall be payable to the order of the person
23 who is to receive the money therein specified; or the
24 treasurer may issue an electronic funds transfer in pay-
25 ment of the warrant. If the check is not presented for
26 payment within six months after it is drawn, it shall then be
27 the duty of the treasurer to credit it to the depository on
28 which it was drawn, to credit the unclaimed property fund
29 pursuant to the provisions of article eight, chapter thirty-
30 six of this code, and immediately notify the auditor to
31 make corresponding entries on the auditor's books. No
32 state depository may pay a check unless it is presented

33 within six months after it is drawn and every check shall
34 bear upon its face the words, "Void, unless presented for
35 payment within six months." All claims required by law
36 to be allowed by any court, and payable out of the state
37 treasury, shall have the seal of the court allowing or
38 authorizing the payment of the claim affixed by the clerk
39 of the court to his or her certificate of its allowance. No
40 claim may be audited and paid by the auditor unless the
41 seal of the court is thereto attached as aforesaid. No tax or
42 fee may be charged by the clerk for affixing his or her
43 seal to the certificate, referred to in this section. The
44 treasurer shall propose rules in accordance with the
45 provisions of article three, chapter twenty-nine-a of this
46 code governing the procedure for such payments from the
47 treasury.

§12-3-1a. Payment by deposit in bank account.

1 The auditor may issue his warrant on the treasurer to
2 pay any person claiming to receive money from the
3 treasury by deposit to the person's account in any bank or
4 other financial institution by electronic funds transfer, if
5 the person furnishes to the auditor written authorization of
6 the method of payment. After the authorization has been
7 approved by the auditor, it shall be forwarded to the
8 treasurer for further processing. The auditor shall pre-
9 scribe the form of the authorization. This section shall not
10 be construed to require the auditor to utilize the method
11 of payment authorized by this section; but the method is
12 authorized only as an alternative method of payment to
13 persons claiming to receive money from the treasury. A
14 written authorization furnished pursuant to this section
15 may be revoked by written notice furnished to the auditor.
16 Upon the execution of such authorization and its receipt
17 by the office of the auditor, the payment shall be made in
18 the manner specified on the form and remitted by the
19 treasurer to the designated bank or other financial institu-
20 tion: *Provided*, That after the first day of July, two
21 thousand two, the state auditor shall cease issuing paper
22 warrants except for income tax refunds. After that date all
23 warrants, except for income tax refunds, shall be issued by
24 electronic funds transfer: *Provided, however*, That the

25 auditor, in his or her discretion, may issue paper warrants
26 on an emergency basis.

§12-3-1b. Voluntary direct deposits by auditor of salaries of employees to banks or other financial institutions.

1 Any officer or employee of the state of West Virginia
2 may authorize that his net wages be deposited directly to
3 his account in any bank or other financial institution by
4 electronic funds transfer. The direct deposits may be
5 authorized on a form provided by the auditor. Upon
6 execution of such authorization and its receipt by the
7 office of the auditor, the direct deposits shall be made in
8 the manner specified on the form and remitted by the
9 treasurer to the designated bank or other financial institu-
10 tion on or before the day or days the officer or employee
11 is due his or her net wages. Direct deposit authorizations
12 may be revoked at any time thirty days prior to the date
13 on which the direct deposit is regularly made and on a
14 form to be provided by the auditor: *Provided*, That on
15 and after the first day of July, two thousand two, at the
16 option of the auditor, all wages shall be deposited directly
17 into the employees' account at any bank or financial
18 institution designated by the employee via electronic
19 funds transfer.

§12-3-4. No check to be drawn on depository having insufficient funds; necessity of warrant and check or electronic funds transfer.

1 The treasurer shall draw no check on any depository
2 unless there is money enough in the depository to the
3 credit of the treasury to pay the check when duly present-
4 ed for payment. No depository holding money to the
5 credit of the treasury shall pay out the same, or any part
6 thereof, except upon a check of the treasurer endorsed on
7 a warrant of the auditor authorizing a check or a duly
8 authorized electronic funds transfer drawn in place of
9 such check.

§12-3-10a. Purchasing card program.

1 Notwithstanding the provisions of section ten of this
2 article, payment of claims may be made through the use

3 of the state purchasing card program authorized by the
4 provisions of this section. The auditor, in cooperation
5 with the secretary of the department of administration,
6 may establish a state purchasing card program for the
7 purpose of authorizing all spending units of state govern-
8 ment to use a purchasing card as an alternative payment
9 method when making small purchases. The purchasing
10 card program shall be conducted so that procedures and
11 controls for the procurement and payment of goods and
12 services are made more efficient. The program shall
13 permit spending units to use a purchase charge card to
14 purchase goods and services. The amount of any one
15 purchase made with the purchase charge card shall not
16 exceed the amount contained in the jointly proposed rules
17 of the auditor and the purchasing division of the depart-
18 ment of administration proposed in accordance with the
19 provisions of article three, chapter twenty-nine-a of this
20 code: *Provided*, That purchasing cards may not be
21 utilized for the purpose of obtaining cash advances,
22 whether the advances are made in cash or by other
23 negotiable instrument. Purchases of goods and services
24 must be received either in advance of or simultaneously
25 with the use of a state purchasing card for payment for
26 those goods or services. The auditor, by legislative rule,
27 may eliminate the requirement for vendor invoices and
28 provide a procedure for consolidating multiple vendor
29 payments into one monthly payment to a charge card
30 vendor. Selection of a charge card vendor to provide state
31 purchase cards shall be accomplished by competitive bid.
32 The purchasing division of the department of administra-
33 tion shall contract with the successful bidder for provision
34 of state purchase charge cards. Purchase charge cards
35 issued under the program shall be used for official state
36 purchases only. The auditor and the director of the
37 purchasing division of the department of administration
38 shall jointly propose rules for promulgation in accordance
39 with the provisions of article three, chapter twenty-nine-a
40 of this code to govern the implementation of the purchase
41 card program.

§12-3-10c. Transaction fees; disposition of fees.

1 (a) In order to promote and enhance the use of the
2 state purchasing card program established by the provi-
3 sions of section ten-a of this article and in order to
4 maintain and develop the fiscal operations and accounting
5 systems of the state, the auditor and the treasurer may
6 assess joint transaction fees for all financial documents
7 that will be processed on the central accounting system.
8 Such transaction fees shall be prescribed by legislative rule
9 proposed in accordance with article three, chapter twenty-
10 nine-a of this code and may include the following:

11 (1) A penalty fee to be assessed against spending units
12 of state government who submit claims for payment of
13 goods and services when those claims are authorized to be
14 paid by use of a state purchasing card and the spending
15 unit has failed to utilize the state purchasing card; and

16 (2) A transaction fee to be assessed against spending
17 units of state government for every transaction received,
18 electronically or otherwise, by the auditor from the
19 centralized accounting system.

20 (b) All fees collected under this section shall be
21 deposited into the "Technology Support and Acquisition
22 Fund" which is hereby created in the state treasury to be
23 administered by the auditor. The auditor and treasurer
24 shall use moneys deposited in the fund to maintain and
25 develop the state purchasing card program, support the
26 fiscal operations of the state, including the state centralized
27 accounting system, and to acquire and improve the
28 technology required to support these functions: *Provided*,
29 That expenditures from the fund are authorized from
30 collections and are to be made only in accordance with an
31 appropriation by the Legislature and in accordance with
32 the provision of article three of this chapter and upon
33 fulfillment of the provisions set forth in article two,
34 chapter five-a of this code: *Provided, however*, That for
35 the fiscal year ending the thirtieth day of June, one
36 thousand nine hundred ninety-eight, expenditures from
37 the fund may be made from collections.

§12-3-10d. Purchasing card fund created; expenditures.

1 All money received by the state pursuant to any
2 agreement with vendors providing purchasing charge
3 cards shall be deposited in a special revenue revolving
4 fund designated the "Purchasing Card Administration
5 Fund", which is hereby created in the state treasury to be
6 administered by the department of administration. All
7 expenses of the purchasing division of the department of
8 administration incurred in the implementation and
9 operation of the purchasing card program shall be paid
10 from the fund. Expenditures from the fund shall be made
11 in accordance with appropriations by the Legislature
12 pursuant to the provisions of article three, chapter twelve
13 of this code and upon fulfillment of the provisions of
14 article two, chapter five-a of this code.

**§12-3-13b. Voluntary deductions by state auditor from
salaries of employees to pay association dues
or fees and to pay supplemental health and life
insurance premiums.**

1 Any officer or employee of the state of West Virginia
2 may authorize that a voluntary deduction from his net
3 wages be made for the payment of membership dues or
4 fees to an employee association. Voluntary deductions
5 may also be authorized by an officer or employee for any
6 supplemental health and life insurance premium, subject
7 to prior approval by the auditor. Such deductions shall be
8 authorized on a form provided by the auditor of the state
9 of West Virginia and shall state: (a) The identity of the
10 employee; (b) the amount and frequency of such deduc-
11 tions; and (c) the identity and address of the association or
12 insurance company to which such dues shall be paid.
13 Upon execution of such authorization and its receipt by
14 the office of the auditor, such deductions shall be made in
15 the manner specified on the form and remitted to the
16 designated association or insurance company on the tenth
17 day of each month: *Provided*, That voluntary other
18 deductions, as approved and authorized by the auditor,
19 may be made in accordance with rules proposed by the
20 auditor pursuant to article three, chapter twenty-nine-a of
21 this code: *Provided, however*, That deductions shall be
22 made either once or twice monthly at the option of the
23 employee. Deduction authorizations may be revoked at

24 any time thirty days prior to the date on which the deduc-
25 tion is regularly made and on a form to be provided by
26 the office of the state auditor: *Provided further*, That
27 nothing in this section shall interfere with or remove any
28 existing arrangement for dues deduction between an
29 employer or any political subdivision of the state and its
30 employees.

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVI- SIONS.

- §12-4-2. Accounts of treasurer and auditor; auditor to certify condition of revenues and funds of the state.
- §12-4-3. Accounts of appropriations.
- §12-4-3a. Accounts of the auditor.
- §12-4-4. Accounts of expenditures; signing of checks and warrants; facsimile signatures and use of mechanical and electrical devices; forgery; penalty.
- §12-4-6. Comparison of books of auditor and treasurer; monthly balances.
- §12-4-7. Annual report of auditor.
- §12-4-8. Office hours of auditor and treasurer.
- §12-4-8a. Employment of legal counsel.
- §12-4-9. Absence of auditor or treasurer.

§12-4-2. Accounts of treasurer and auditor; auditor to certify condition of revenues and funds of the state.

1 The treasurer shall keep in his office separate accounts
2 with each depository, and also a summary account for the
3 state, and when money is paid into the treasury, it shall be
4 charged to the proper depository and credited to a
5 summary account. The auditor shall keep in his office
6 separate accounts of the particular heads or sources of
7 revenue, and a summary account with the treasurer, beside
8 such individual accounts with officers and persons as may
9 be necessary, and shall charge every sum of money
10 received for the state as aforesaid to the treasurer's
11 account, and credit it under the particular head of revenue
12 to which it properly belongs, distinguishing especially in
13 distinct accounts the receipts on account of the capital of
14 the school fund and those on account of the income of
15 said fund subject to annual distribution. The auditor shall
16 certify annually to the commissioner of finance and
17 administration the condition of the state revenues and the

18 several funds of the state. The certification shall be used
19 by the commissioner in the preparation of a tentative state
20 budget as required of him by article two, chapter five-a of
21 this code.

§12-4-3. Accounts of appropriations.

1 The auditor and secretary of administration shall each
2 keep an account of every appropriation made by law, and
3 of the several sums drawn thereon, so that the accounts
4 may show at all times the balance undrawn on each
5 appropriation. The account so kept shall be compared
6 every month and errors, if any, corrected.

§12-4-3a. Accounts of the auditor.

1 The auditor shall at all times maintain and have
2 available for public inspection a report containing month-
3 ly balances in the treasury, which balances shall include,
4 but not be limited to, the general revenue surplus balance;
5 the general revenue surplus appropriation account bal-
6 ance; the state general revenue reappropriated account
7 balance; the state general revenue current account balance;
8 the total state account balance; and the total general
9 revenue.

§12-4-4. Accounts of expenditures; signing of checks and warrants; facsimile signatures and use of mechanical and electrical devices; forgery; penalty.

1 When the treasurer issues his check on a depository,
2 he or she shall credit the same to the account of the
3 depository, and charge it to the summary account provid-
4 ed for in section two of this article. The auditor shall keep
5 accounts of the particular heads of expenditures, and,
6 when he or she issues a warrant on the treasurer, shall
7 credit the treasurer's summary account therewith and
8 charge the same under the particular head of expenditure
9 to which it properly belongs, distinguishing especially the
10 disbursements on account of the capital and the annual
11 income of the school fund, as directed in section two of
12 this article in relation to receipts belonging to that fund.
13 All checks when issued by the treasurer shall bear his or
14 her signature, personally signed by the treasurer, or by

15 employees as are, in writing, authorized by the treasurer to
16 make his or her signature thereto, or bear a facsimile of
17 the treasurer's signature. All warrants when issued by the
18 auditor shall bear his or her signature, personally signed
19 by the auditor, or by employees as are, in writing, autho-
20 rized by the auditor to make his or her signature thereto,
21 or bear a facsimile of the auditor's signature. The
22 signature of the treasurer, or auditor, respectively, may be
23 made, however, by means of such mechanical or electrical
24 device as the treasurer, or auditor, respectively, may select.
25 Any mechanical or electrical device selected shall be
26 safely kept in the respective offices of the treasurer or
27 auditor so that no one has access to the device except the
28 treasurer, or the auditor, and the employees authorized to
29 respectively sign checks or warrants as provided by this
30 section. If any person, other than the treasurer, or auditor,
31 respectively, or their respective duly and respectively
32 authorized employees, sign the name of the treasurer or
33 the auditor, respectively, by the use of any mechanical or
34 electrical device, or otherwise, or use the facsimile of the
35 signature of either of them, on any check or warrant, or
36 utter or attempt to employ as true such forged check or
37 warrant, knowing it to be forged, he or she shall be guilty
38 of a felony and, upon conviction thereof, shall be impris-
39 oned not less than two nor more than ten years.

**§12-4-6. Comparison of books of auditor and treasurer;
monthly balances.**

1 At the end of every month of the year, the summary
2 account of the treasurer kept on the books of the auditor's
3 office shall be compared with the summary account kept
4 by the treasurer, and the errors, if there be any in either,
5 corrected. The summary account of the month shall be
6 adjusted and a balance shall be struck showing the amount
7 then in the treasury. The balance shall be carried forward
8 in the books of both offices to the account for the next
9 month.

§12-4-7. Annual report of auditor.

1 The annual report of the auditor shall be furnished to
2 the governor by the thirty-first day of December follow-
3 ing after the end of the fiscal year. It shall contain a

4 statement of the receipts and disbursements, under the
5 proper general heads, during the preceding fiscal year,
6 and show the balance in the treasury at the beginning and
7 end of that year. It shall also contain an estimate of the
8 revenue and expenditures for the current year, with similar
9 statements and estimates respecting the school fund. It
10 shall show the indebtedness of the state and the balances
11 standing at the end of the year to the credit of the several
12 unexpired appropriations, specifying in each case the date
13 when the appropriation was made. The report shall be
14 accompanied with an explanation of the amounts of
15 receipts and disbursements and the balances and estimates
16 reported. In it the auditor shall point out any defects
17 which may occur to him or her in the revenue laws.
18 Furthermore, the auditor shall suggest the remedies for
19 those deficits. If the auditor is of the opinion that the
20 future revenue is likely to prove insufficient, then the
21 auditor shall recommend plans for increasing the revenue
22 and suggest new subjects of taxation, or additional taxes
23 on the old, as he may deem proper.

§12-4-8. Office hours of auditor and treasurer.

1 The hours for transacting business in the offices of the
2 auditor and treasurer shall be from eight-thirty in the
3 morning until five o'clock in the afternoon.

§12-4-8a. Employment of legal counsel.

1 Notwithstanding the provisions of section two, article
2 three, chapter five of this code, the auditor and treasurer
3 are hereby authorized to employ legal counsel: *Provided,*
4 That the auditor and the treasurer, at their discretion, may
5 use the services of the attorney general.

§12-4-9. Absence of auditor or treasurer.

1 When it is necessary for either the auditor or treasurer
2 to be absent, the other shall be informed of the absence.
3 During the absence, the duties of the officer so absent may
4 be performed by the auditor's or treasurer's designee
5 respectively. The absent officer and his sureties shall be
6 liable for any malconduct or neglect of the person acting
7 in his or her place.

8 Notwithstanding restrictions which may otherwise be
9 provided by law concerning membership on any board,
10 agency or commission, the auditor and treasurer each may
11 designate a representative who is authorized to act for and
12 on their behalf in any and all matters relating to those
13 memberships.

ARTICLE 5. PUBLIC SECURITIES.

§12-5-2. Treasurer custodian of securities; charges to companies for care, exchange and substitution of securities.

§12-5-4. Treasurer to keep accounts and make collections.

§12-5-5. Protection and handling of securities.

§12-5-6. When notes deemed securities; appraisal.

§12-5-7. Treasurer as financial advisor; selection of necessary parties; employment of bond counsel.

§12-5-2. Treasurer custodian of securities; charges to companies for care, exchange and substitution of securities.

1 (a) The treasurer of this state, unless otherwise express-
2 ly provided by law, shall be custodian of all securities
3 required by law to be deposited with the state or held in
4 legal custody by the state, and all departments of this state,
5 commissioners or agents of the state, who hold any such
6 securities, shall transfer and deliver the same to the state
7 treasurer to be kept and held by him as legal custodian
8 thereof until released in the manner provided by law:
9 *Provided*, That the state treasurer shall establish a list of
10 which securities shall be acceptable securities and notify
11 all state agencies of the contents of that list: *Provided*,
12 *however*, That the provisions of this subsection shall not
13 apply to the investment management board.

14 (b) The treasurer may by formal order of record fix
15 fair and reasonable charges for the care, custody, ex-
16 change and substitution of securities deposited by insur-
17 ance companies and companies issuing annuity contracts.
18 The treasurer shall collect the charges from the companies
19 and shall deposit the collections in the general revenue
20 fund: *Provided*, That no charge shall be made against any
21 company depositing securities of the par value of less than
22 three hundred thousand dollars.

§12-5-4. Treasurer to keep accounts and make collections.

1 It shall be the duty of the treasurer to keep an accurate
2 account of all securities received by him or her and collect
3 and account for the interest as it becomes due and payable
4 and the principal whenever it is due.

§12-5-5. Protection and handling of securities.

1 The securities retained in the treasury shall be kept in
2 a vault. The treasurer shall use due diligence in protecting
3 the securities against loss from any cause. The treasurer
4 shall designate certain employees to take special care of
5 the securities. Only the treasurer and the designated
6 employees may have access to the securities, and at least
7 two of these persons shall be present whenever the securi-
8 ties are handled in any manner. The treasurer may
9 contract with one or more banking institutions in or
10 outside the state for the custody, safekeeping and manage-
11 ment of securities. The contract shall prescribe the rules
12 for the handling and protection of the securities.

§12-5-6. When notes deemed securities; appraisal.

1 (a) Whenever, by statute of this state, any public
2 official, board, commission or department of this state is
3 charged with the approval of securities required as collat-
4 eral for the deposit of public or other funds, or required to
5 be deposited with the state treasurer, or an investment of
6 capital or surplus or a reserve or other fund, is required to
7 be maintained consisting of designated securities deposit-
8 ed with the state treasurer, the securities shall, at the
9 discretion of that public official, board, commission or
10 department, include and mean notes executed by the
11 person or corporation required to make the deposit. The
12 securities shall be made payable to the state of West
13 Virginia upon demand, or in the event of the person or
14 corporation, for the benefit of those for whom the securi-
15 ties are deposited, when the notes are secured by duly
16 executed deeds of trust on improved, unencumbered real
17 property located in the state and owned by the person or
18 corporation executing the notes, the deeds of trust to be
19 approved by the attorney general of the state as to suffi-
20 ciency of form and manner of execution and accompa-

21 nished by proper abstracts of title and fire insurance policies
22 equal to the amounts of the notes and recorded among the
23 land records of the county in which the real property is
24 located. Whenever any note so secured by a deed of trust
25 on real property owned by any person or corporation is
26 approved by any public official, board, commission or
27 department of this state, the real property shall have an
28 appraised value of at least thirty per centum more than the
29 amount of the note. The value of the property shall be
30 determined by an appraisal of two landowners, who are
31 citizens of this state and generally recognized as experi-
32 enced real estate appraisers, appointed by the public
33 official, board, commission or department, charged with
34 the approval of the securities. The expenses of the
35 appraisal are to be borne by the person or corporation
36 required to make the deposit, and each unit of that real
37 property shall have an appraised value of at least fifty
38 thousand dollars.

39 For purposes of this section, "improved real proper-
40 ty" means all real property within the limits of an incor-
41 porated city or town on which permanent buildings
42 suitable for residential, industrial or commercial use are
43 located.

44 For purposes of this section, real property shall not be
45 deemed to be encumbered by reason of the existence of
46 instruments reserving rights-of-way, sewer rights and
47 rights in walls, nor by reason of building restrictions or
48 other restrictive covenants, nor by reason of the fact that it,
49 or any part thereof, is subject to lease under which rents or
50 profits are reserved to the owner: *Provided*, That the deed
51 of trust for such investment is a full and unrestricted first
52 lien upon the property.

53 (b) Any public official, board, commission or depart-
54 ment of this state charged with the approval of securities
55 required to be deposited in accordance with this section,
56 shall, at least annually and more often if deemed proper,
57 appoint a disinterested person or persons, not exceeding
58 three, to make an examination and appraisal of the
59 securities deposited to determine if those securities meet
60 the requirements of the law of this state. The cost of that

61 examination and appraisal and expenses shall be borne by
62 the person or corporation required to make the deposits as
63 security: *Provided*, That the total cost and expenses shall
64 not be less than ten dollars nor more than twenty-five
65 dollars per diem for each person conducting the examina-
66 tion.

§12-5-7. Treasurer as financial advisor; selection of necessary parties; employment of bond counsel.

1 Unless otherwise specifically provided by law, the
2 treasurer may select or serve as financial advisor for all
3 bonds, notes, certificates of participation, certificate
4 transactions and all other forms of securities and indebted-
5 ness issued by the state through its departments, commis-
6 sions, boards or agencies after the first day of July, one
7 thousand nine hundred ninety-seven. Unless otherwise
8 specifically provided by law, the governor shall coordinate
9 the issuance of all bonds issued by the state and its
10 departments, commissions, boards and agencies, through
11 the department of administration and the governor shall
12 select all other necessary parties, including, but not limited
13 to, bond, disclosure or other counsel, underwriters, trustee,
14 verification agent and any other professionals necessary to
15 effectuate the issuance of the bonds: *Provided*, That this
16 section shall not apply to the housing development fund
17 created pursuant to article eighteen, chapter thirty-one of
18 this code; the hospital finance authority created pursuant
19 to article twenty-nine-a, chapter sixteen of this code; the
20 West Virginia economic development authority created
21 pursuant to article fifteen, chapter thirty-one of this code;
22 the West Virginia parkways, economic development and
23 tourism authority created pursuant to article sixteen-a,
24 chapter seventeen of this code; the West Virginia public
25 energy authority created pursuant to article one, chapter
26 five-d of this code; the West Virginia solid waste manage-
27 ment board created pursuant to article three, chapter
28 twenty-two-c of this code; the West Virginia water devel-
29 opment authority created pursuant to article one, chapter
30 twenty-two-c of this code; the infrastructure and jobs
31 development council created pursuant to article fifteen-a,
32 chapter thirty-one of this code; the school building
33 authority created pursuant to article nine-d, chapter

34 eighteen of this code; and the governing boards of higher
35 education: *Provided, however,* That these entities shall be
36 governed by those provisions of law specifically designat-
37 ing financial and other professional counsel and personnel
38 for bond issuances. All selections of professionals shall be
39 competitive, but the bidding shall not be required to
40 comply with the provisions of article three, chapter five-a
41 of this code.

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

- §12-6-1. Purposes and objects; how article cited.
- §12-6-1a. Legislative findings.
- §12-6-2. Definitions.
- §12-6-3. West Virginia management investment board created; body corporate; board created; trustees; nomination and appointment of trustees, qualifications and terms of appointment, advice and consent; annual and other meetings; designation of representatives and committees; board meetings with committees regarding investment policy statement required; open meetings, qualifications.
- §12-6-4. Management and control of fund; officers; staff; fiduciary or surety bonds for trustees; liability of trustees.
- §12-6-5. Powers of the board.
- §12-6-6. Annual audits; reports and information to constitutional and legislative officers, council of finance and administration, consolidated public retirement board, workers' compensation fund and coal-workers' pneumoconiosis fund; statements and reports open for inspection.
- §12-6-8. Investment funds established; management thereof.
- §12-6-9. Fees for service.
- §12-6-9a. Trust indenture.
- §12-6-9c. Authorization of additional investments.
- §12-6-9e. Legislative findings; loans for industrial development; availability of funds and interest rates.
- §12-6-11. Standard of care.
- §12-6-12. Limitations on investments.
- §12-6-13. Board as sole agency for investments; exceptions.
- §12-6-15. Consolidated fund audits.
- §12-6-16. Existing investments.
- §12-6-19. Authorization for loans by the board.

§12-6-1. Purposes and objects; how article cited.

1 This article, which may be cited as the “West Virginia
2 Investment Management Act”, is enacted to modernize
3 the procedures for the investment of funds of the state and
4 its political subdivisions for the purpose of increasing the
5 investment return of those funds.

§12-6-1a. Legislative findings.

1 (a) The Legislature hereby finds and declares that all
2 the public employees covered by the public employees
3 retirement system, the teachers retirement system, the West
4 Virginia state police retirement system, the death, disability
5 and retirement fund of the division of public safety and
6 the judges’ retirement system should benefit from a
7 prudent and conscientious staff of financial professionals
8 dedicated to the administration, investment and manage-
9 ment of those employees’ and employer’s financial
10 contributions and that an independent board and staff
11 should be immune to changing political climates and
12 should provide a stable and continuous source of profes-
13 sional financial investment and management.

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

30 (c) The Legislature hereby finds and declares further
31 that experience has demonstrated that prudent investment
32 provides diversification and beneficial return not only for
33 public employees but for all citizens of the state and that
34 in order to have access to this sound fiscal policy, public

35 employee and employer contributions to the consolidated
36 pension plan are declared to be an irrevocable trust,
37 available for no use or purpose other than for the benefit
38 of those public employees.

39 (d) The Legislature hereby finds and declares further
40 that the workers' compensation funds and coal-workers'
41 pneumoconiosis fund are trust funds to be used exclusive-
42 ly for those workers, miners and their beneficiaries who
43 have sacrificed their health in the performance of their
44 jobs, and further finds that the assets available to pay
45 awarded benefits should be prudently invested so that
46 awards may be paid.

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

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

61 (g) The Legislature hereby finds and declares further
62 that the standard of care and prudence applied to trustees,
63 the conduct of the affairs of the irrevocable trust created
64 by this article and the investment of other state funds is
65 intended to be that applied to the investment of funds as
66 described in the "uniform prudent investor act" codified
67 as article six-c of this chapter.

68 (h) The Legislature further finds and declares that the
69 West Virginia supreme court of appeals declared the
70 "West Virginia Trust Fund Act" unconstitutional in its
71 decision rendered on the twenty-eighth day of March, one
72 thousand nine hundred ninety-seven, to the extent that it
73 authorized investments in corporate stock but the court

74 also recognized that there were other permissible constitu-
75 tional purposes of the "West Virginia Trust Fund Act",
76 and that it is the role of the Legislature to determine those
77 purposes consistent with the court's decision and the
78 constitution of West Virginia.

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

§12-6-2. Definitions.

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

3 (1) "Beneficiaries" means those individuals entitled
4 to benefits from the consolidated pension plan;

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

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

12 (4) "Consolidated pension plan" means the public
13 employees retirement system established in article ten,
14 chapter five of this code, the teachers retirement system
15 established in article seven-a, chapter eighteen of this code,
16 the West Virginia state police retirement system established
17 in article two-a, chapter fifteen of this code, the death,
18 disability and retirement fund of the department of public
19 safety established in article two, chapter fifteen of this
20 code, the judges' retirement system established in article
21 nine, chapter fifty-one of this code, the workers' compen-
22 sation fund established in article three, chapter twenty-
23 three of this code, and the coal-workers' pneumoconiosis

24 plan established in article four-b, chapter twenty-three of
25 this code;

26 (5) "Local government funds" means the moneys of
27 a political subdivision, including policemen's pension and
28 relief funds, firemen's pension and relief funds and
29 volunteer fire departments, transferred to the board for
30 deposit;

31 (6) "Participant plan" means any component system,
32 plan or fund of the consolidated pension plan within the
33 definition set forth in subdivision (4) of this section;

34 (7) "Political subdivision" means and includes a
35 county, municipality or any agency, authority, board,
36 county board of education, commission or instrumentality
37 of a county or municipality and regional councils created
38 pursuant to the provisions of section five, article twenty-
39 five, chapter eight of this code;

40 (8) "Trustee" means any member serving on the
41 West Virginia investment management board: *Provided*,
42 That in section nine-a of this article wherein the terms of
43 the trust indenture are set forth, "trustee" means the West
44 Virginia investment management board;

45 (9) "Securities" means all bonds, notes, debentures or
46 other evidences of indebtedness, and other lawful invest-
47 ment instruments; and

48 (10) "State funds" means all moneys of the state
49 which may be lawfully invested except the "school fund"
50 established by section four, article XII of the state consti-
51 tution.

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

1 (a) There is hereby created the West Virginia invest-
2 ment management board. The board is created as a public
3 body corporate and established to provide prudent fiscal
4 administration, investment and management for the
5 pension funds, workers' compensation and coal-workers'
6 pneumoconiosis funds and other state funds.

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

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

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

27 (3) The governor, the state auditor and the state
28 treasurer or their designees shall serve as members of the
29 board. They shall serve by virtue of their office and are
30 not entitled to compensation under the provisions of this
31 article. The governor, the auditor and the treasurer or
32 their designees shall be subject to all duties, responsibilities
33 and requirements of the provisions of this article, includ-
34 ing, but not limited to, the provisions of subsections (e)
35 and (f), section four of this article.

36 (c) At the end of each trustee's term, the governor
37 may reappoint or appoint a successor who shall serve for
38 six-year terms. No more than six of the ten appointed
39 trustees may belong to the same political party.

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

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

48 (f) Each trustee, other than those enumerated in
49 subsection (b), subdivision (3) of this section, shall be
50 entitled to receive, and, at the trustee's option, the board
51 shall pay to the trustee, compensation in the amount of
52 five thousand dollars per year and additional compensa-
53 tion in the amount of five hundred dollars per meeting
54 attended by the trustee in excess of the four quarterly
55 meetings required by this section. In addition, all trustees
56 shall receive reasonable and necessary expenses actually
57 incurred in discharging trustee duties pursuant to this
58 article.

59 (g) The board shall meet quarterly and may include in
60 its bylaws procedures for the calling and holding of
61 additional meetings. For any quarterly or additional
62 meeting in which the board shall review or modify its
63 securities list or its investment objectives pursuant to
64 subsection (f), section twelve of this article, the board shall
65 give ten days notice in writing to the designated represen-
66 tative of each participant plan selected pursuant to subdivi-
67 sion (1), subsection (i) of this section, and the meeting
68 shall be open to the members and beneficiaries of the
69 participant plans for that portion of the meeting in which
70 the board undertakes the review or modification.

71 (h) The board shall hold an annual meeting within
72 forty-five days after the issuance of the year-end financial
73 report. The annual meeting may also serve as a quarterly
74 meeting. The annual meeting shall be open to the public,
75 and the board shall receive oral and written comments
76 from representatives, members and beneficiaries of the
77 participant plans and from other citizens of the state. At
78 the annual meeting, the board shall adopt a fee schedule
79 and a budget reflecting fee structures for the year.

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

87 (1) The West Virginia consolidated public retirement
88 board shall promulgate procedural rules by which each
89 pension system named in paragraphs one through five,
90 inclusive, subsection (c), section nine-a of this article, shall
91 designate an individual representative of each said pension
92 system, and the West Virginia workers' compensation
93 commission shall promulgate procedural rules by which
94 the pneumoconiosis fund and the workers' compensation
95 fund shall designate an individual representative of each
96 said fund.

97 (2) On or before the first day of June of each year, the
98 consolidated public retirement board shall submit in
99 writing to the board the names of the five designated
100 representatives, and the workers' compensation commis-
101 sion shall so submit the names of the two representatives.

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

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

112 (j) At its annual meeting, the board shall meet with
113 each of the seven committees, formed pursuant to subdivi-
114 sion (1), subsection (i) of this section, for the purpose of
115 receiving input from the committees regarding the
116 board's drafting, reviewing or modifying its written
117 investment policy statement for investment of the consoli-
118 dated pension plan funds. In developing the investment

119 policy statement, the trustees shall receive each commit-
120 tee's stated objectives and policies regarding the risk
121 tolerances and return expectations of each participant
122 plan, with attention to the factors enumerated in subsection
123 (g), section twelve of this article, in order to provide for
124 the continuing financial security of the trust and its
125 participant plans. The board may meet with the commit-
126 tees or any of them at its quarterly and additional meet-
127 ings for the same purpose.

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

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

1 (a) The management and control of the board shall be
2 vested solely in the trustees in accordance with the provi-
3 sions of this article.

4 (b) The governor shall be the chairman of the board
5 and the trustees shall elect a vice-chairman who may not
6 be a constitutional officer or his or her designee to serve
7 for a term of two years. Effective with any vacancy in the

8 vice-chairmanship, the board shall elect a vice-chairman to
9 a new two-year term. The vice-chairman shall preside at
10 all meetings in the absence of the chairman. Annually, the
11 trustees shall elect a secretary, who need not be a member
12 of the board, to keep a record of the proceedings of the
13 board.

14 (c) The trustees shall appoint a chief executive officer
15 of the board and shall fix his or her duties and compensa-
16 tion. The chief executive officer shall have five years
17 experience in investment management with public or
18 private funds within the ten years next preceding the date
19 of appointment. The chief executive officer additionally
20 shall have academic degrees, professional designations and
21 other investment management or investment oversight or
22 institutional investment experience in such combination as
23 the trustees consider necessary to carry out the responsi-
24 bilities of the chief executive officer position as defined
25 by the trustees.

26 (d) The trustees shall retain an internal auditor to
27 report directly to the trustees and shall fix his or her
28 compensation. The internal auditor shall be a certified
29 public accountant with at least three years experience as an
30 auditor. The internal auditor shall develop an internal
31 audit plan, with board approval, for the testing of proce-
32 dures and the security of transactions.

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

48 and the amount of the fiduciary or surety bond shall be
49 fixed by the board. The premiums payable on all fiducia-
50 ry or surety bonds shall be an expense of the board.

51 (f) The trustees and employees of the board are not
52 liable personally, either jointly or severally, for any debt
53 or obligation created by the board: *Provided*, That the
54 trustees and employees of the board are liable for acts of
55 misfeasance or gross negligence.

56 (g) The board shall be exempt from the provisions of
57 sections seven and eleven, article three, chapter twelve of
58 this code and article three, chapter five-a of said code:
59 *Provided*, That the trustees and employees of the board
60 shall be subject to purchasing policies and procedures
61 which shall be promulgated by the board. The purchasing
62 policies and procedures may be promulgated as emergen-
63 cy rules pursuant to section fifteen, article three, chapter
64 twenty-nine-a of this code.

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

§12-6-5. Powers of the board.

1 The board may exercise all powers necessary or
2 appropriate to carry out and effectuate its corporate
3 purposes. The board may:

4 (1) Adopt and use a common seal and alter the same
5 at pleasure;

6 (2) Sue and be sued;

7 (3) Enter into contracts and execute and deliver
8 instruments;

9 (4) Acquire (by purchase, gift or otherwise), hold, use
10 and dispose of real and personal property, deeds, mort-
11 gages and other instruments;

12 (5) Promulgate and enforce bylaws and rules for the
13 management and conduct of its affairs;

14 (6) Notwithstanding any other provision of law, retain
15 and employ legal, accounting, financial and investment
16 advisors and consultants;

17 (7) Acquire (by purchase, gift or otherwise), hold,
18 exchange, pledge, lend and sell or otherwise dispose of
19 securities and invest funds in interest earning deposits and
20 in any other lawful investments;

21 (8) Maintain accounts with banks, securities dealers
22 and financial institutions both within and outside this state;

23 (9) Engage in financial transactions whereby securities
24 are purchased by the board under an agreement providing
25 for the resale of the securities to the original seller at a
26 stated price;

27 (10) Engage in financial transactions whereby securi-
28 ties held by the board are sold under an agreement
29 providing for the repurchase of the securities by the board
30 at a stated price;

31 (11) Consolidate and manage moneys, securities and
32 other assets of the other funds and accounts of the state
33 and the moneys of political subdivisions which may be
34 made available to it under the provisions of this article;

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

38 (13) Charge and collect administrative fees from
39 political subdivisions for its services;

- 40 (14) Exercise all powers generally granted to and
41 exercised by the holders of investment securities with
42 respect to management of the investment securities;
- 43 (15) Contract with one or more banking institutions in
44 or outside the state for the custody, safekeeping and
45 management of securities held by the board;
- 46 (16) Make, and from time to time, amend and repeal
47 bylaws, regulations and procedures not inconsistent with
48 the provisions of this article;
- 49 (17) Hire its own employees, consultants, managers
50 and advisors as it considers necessary and fix their com-
51 pensation and prescribe their duties;
- 52 (18) Develop, implement and maintain its own bank-
53 ing accounts and investments;
- 54 (19) Do all things necessary to implement and operate
55 the board and carry out the intent of this article;
- 56 (20) Require the state auditor and treasurer to transmit
57 state funds on a daily basis for investment: *Provided*, That
58 money held for meeting the daily obligations of state
59 government need not be transferred;
- 60 (21) Upon request of the treasurer, transmit funds for
61 deposit in the state treasury to meet the daily obligations
62 of state government; and
- 63 (22) Notwithstanding any other provision of the code
64 to the contrary, conduct investment transactions, including
65 purchases, sales, redemptions and income collections
66 which transactions shall not be treated by the auditor as
67 recordable transactions on the state's accounting system.

**§12-6-6. Annual audits; reports and information to constitu-
tional and legislative officers, council of finance
and administration, consolidated public retirement
board, workers' compensation fund and coal-
workers' pneumoconiosis fund; statements and
reports open for inspection.**

- 1 (a) The board shall cause an annual financial and
2 compliance audit of the consolidated pension fund to be

3 made by a certified public accounting firm having a
4 minimum staff of ten certified public accountants and
5 being a member of the American institute of certified
6 public accountants, and, if doing business in West Virginia,
7 being a member of the West Virginia society of certified
8 public accountants. The financial and compliance audit
9 shall be made of the board's books, accounts and records,
10 with respect to its receipts, disbursements, investments,
11 contracts and all other matters relating to its financial
12 operations. Copies of the audit report shall be furnished
13 to the governor, state treasurer, state auditor, president of
14 the Senate, speaker of the House of Delegates, council of
15 finance and administration and consolidated public
16 retirement board.

17 (b) The board shall produce monthly financial
18 statements for the consolidated pension fund and the
19 consolidated fund and cause them to be delivered to each
20 member of the board and the executive secretary of the
21 consolidated public retirement board as established in
22 sections one and two, article ten-d, chapter five of this
23 code and to the commissioner of the bureau of employ-
24 ment programs as administrator of the workers' compen-
25 sation fund and coal-workers' pneumoconiosis fund, as
26 established in section one, article one, chapter twenty-three
27 of this code, and section one, article three of said chapter
28 and section seven, article four-b of said chapter.

29 (c) The board shall deliver in each quarter to the
30 council of finance and administration and the consolidat-
31 ed public retirement board a report detailing the invest-
32 ment performance of the retirement plans.

33 (d) The board shall cause an annual performance
34 audit to be made by a nationally recognized fiduciary
35 service. The board shall furnish copies of the audit report
36 to the governor, state treasurer, state auditor, president of
37 the Senate, speaker of the House of Delegates, council of
38 finance and administration and consolidated public
39 retirement board.

40 (e) The board shall provide any other information
41 requested in writing by the council of finance and admin-
42 istration.

43 (f) All statements and reports with respect to partici-
44 pant plans required in this section shall be available for
45 inspection by the members and beneficiaries and designat-
46 ed representatives of the participant plans.

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

1 (a) There is hereby established a special investment
2 fund to be managed by the board and designated as the
3 "consolidated fund".

4 (b) Each board, commission, department, official or
5 agency charged with the administration of state funds is
6 hereby authorized to make moneys available to the board
7 for investment.

8 (c) Each political subdivision of this state through its
9 treasurer or equivalent financial officer is hereby autho-
10 rized to enter into agreements with the board for the
11 investment of moneys of the political subdivision. Any
12 political subdivision may enter into an agreement with any
13 state agency from which it receives funds to allow the
14 funds to be transferred to their investment account with
15 the investment management board.

16 (d) Moneys held in the various funds and accounts
17 administered by the board shall be invested as permitted in
18 section twelve of this article and subject to the restrictions
19 contained in that section. The treasurer shall maintain
20 records of the deposits and withdrawals of each participant
21 and the performance of the various funds and accounts.
22 The board shall report the earnings on the various funds
23 under management to the treasurer at such times as
24 determined by the treasurer. The board shall also estab-
25 lish rules for the administration of the various funds and
26 accounts established by this section as it considers neces-
27 sary for the administration of the funds and accounts,
28 including, but not limited to: (1) The specification of
29 minimum amounts which may be deposited in any fund
30 or account and minimum periods of time for which
31 deposits will be retained; and (2) creation of reserves for
32 losses: *Provided*, That in the event any moneys made
33 available to the board may not lawfully be combined for
34 investment or deposited in the consolidated funds estab-

35 lished by this section, the board may create special
36 accounts and may administer and invest those moneys in
37 accordance with the restrictions specially applicable to
38 those moneys: *Provided, however,* That the consolidated
39 fund and the moneys of the consolidated pension plan
40 shall not be combined or deposited to a single account or
41 fund.

§12-6-9. Fees for service.

1 The board shall charge fees, as adopted at the annual
2 meeting, for the reasonable and necessary expenses
3 incurred by the investment management board in render-
4 ing services to the participant plans and the consolidated
5 fund. The fees shall be subtracted from the total return of
6 the board, and the net return shall be credited to each of
7 the participant plans and the consolidated fund. All fees
8 which are dedicated or identified or readily identifiable to
9 an individual participant plan or the consolidated fund
10 shall be charged against that plan or fund, and all other
11 fees shall be charged as a percentage of assets under
12 management. At its annual meeting, the board shall adopt
13 a fee schedule and a budget reflecting fee structures.

§12-6-9a. Trust indenture.

1 On the effective date of this section, all assets of the
2 irrevocable trust entered into by the governor on the first
3 day of July, one thousand nine hundred ninety-six, with
4 the West Virginia trust fund, inc., acting as the trustee shall
5 constitute the corpus of an irrevocable trust with the board
6 as its trustee: *Provided,* That the trust shall continue to be
7 subject to the following provisions:

8 (a) The Legislature hereby reserves the following
9 rights and powers:

10 (1) The right by supplemental agreement to amend,
11 modify or alter the terms of this trust without consent of
12 the trustee, or any beneficiary; and

13 (2) The right to request and receive additional infor-
14 mation from the trustee at any time.

15 (b) The trustee shall establish a trust for the participant
16 plans specified by this article with the earnings and losses
17 accounted for and charged individually to each participant
18 plan, including, but not limited to, the following:

19 (1) The public employees retirement system;

20 (2) The teachers retirement system;

21 (3) The West Virginia state police retirement system;

22 (4) The death, disability and retirement fund of the
23 department of public safety;

24 (5) The judges' retirement system;

25 (6) The pneumoconiosis fund; and

26 (7) The workers' compensation fund.

27 (c) In the administration of the trust created by the
28 trust indenture, the trustee has the following powers:

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

33 (2) To invest and reinvest the trust estate or any part
34 thereof, in any kind of property, real or personal, includ-
35 ing, but not limited to, mortgage or mortgage
36 participations, common stocks, preferred stocks, common
37 trust funds, bonds, notes or other securities, notwithstand-
38 ing the provisions of articles five and six, chapter
39 forty-four of this code: *Provided*, That notwithstanding
40 the provisions of this act to the contrary, the board shall
41 not become a stockholder or owner of any company or
42 association for any purpose whatsoever unless and until
43 the provisions of section six, article X of the constitution
44 of West Virginia are amended to permit those investments;

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

48 (4) To vote, in person or by proxy, all securities held
49 under the trust indenture, to join in or to dissent from and

50 oppose the reorganization, recapitalization, consolidation,
51 merger, liquidation or sale of corporations or property; to
52 exchange securities for other securities issued in connec-
53 tion with or resulting from any transaction; to pay any
54 assessment or expense which the trustee considers advis-
55 able for the protection of its interest as holder of any such
56 securities; to deposit securities in any voting trust or with
57 any protective or like committee, or with a trustee deposi-
58 tory; to exercise any option appurtenant to any securities
59 for the conversion of any securities into other securities;
60 and to exercise or sell any rights issued upon or with
61 respect to the securities of any corporation, all upon terms
62 the trustee considers advisable;

63 (5) To prosecute, defend, compromise, arbitrate or
64 otherwise adjust or settle claims in favor of or against the
65 trustee or other trust estate;

66 (6) To employ and pay from the trust estate legal and
67 investment counsel, brokers and such other assistants and
68 agents as the trustee considers advisable; and

69 (7) To develop, implement and modify an asset
70 allocation plan for each participant plan. The asset
71 allocation plans shall be implemented within the manage-
72 ment and investment of the trust fund.

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

78 (e) The trustee may receive any other property, real or
79 personal, tangible or intangible, of any kind whatsoever,
80 that may be granted, conveyed, assigned, transferred,
81 devised, bequeathed or made payable to it by the state, or
82 by any other person or entity, for the purposes of the trust
83 created by the trust indenture, and all such properties shall
84 be held, managed, invested and administered by the trustee
85 as provided in the trust indenture and in the "West
86 Virginia Investment Management Act".

87 (f) The trustee shall promptly cause to be paid to the
88 state the amounts certified by the governor as necessary
89 for the monthly payment of benefits to the beneficiaries
90 of the trust.

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

94 (h) The trust will not be invalid by reason of any
95 existing law or rule against perpetuities or against accumu-
96 lations or against restraints upon the power of alienation,
97 but the trust may continue for such time as necessary to
98 accomplish the purposes for which it is established.

99 (i) If any provision of the trust indenture is void,
100 invalid or unenforceable, the remaining provisions are
101 nevertheless valid and shall be carried into effect.

§12-6-9c. Authorization of additional investments.

1 Notwithstanding the restrictions which may otherwise
2 be provided by law with respect to the investment of funds,
3 the board, all administrators, custodians or trustees of
4 pension funds, each political subdivision of this state and
5 each county board of education is authorized to invest
6 funds in the securities of or any other interest in any
7 investment company or investment trust registered under
8 the Investment Company Act of 1940, 15 U.S.C. §80a, the
9 portfolio of which is limited: (i) To obligations issued by
10 or guaranteed as to the payment of both principal and
11 interest by the United States of America or its agencies or
12 instrumentalities; and (ii) to repurchase agreements fully
13 collateralized by obligations of the United States govern-
14 ment or its agencies or instrumentalities: *Provided*, That
15 the investment company or investment trust takes delivery
16 of the collateral either directly or through an authorized
17 custodian: *Provided, however*, That the investment
18 company or investment trust is rated within one of the top
19 two rating categories of any nationally recognized rating
20 service such as Moody's or Standard & Poor's.

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

1 (a) The Legislature hereby finds and declares that the
2 citizens of the state benefit from the creation of jobs and
3 businesses within the state; that an industrial development
4 loan program will provide for economic growth and
5 stimulation within the state; and that loans from pools
6 established in the consolidated fund will assist in providing
7 the needed capital to assist industrial development. This
8 section is enacted in view of these findings.

9 (b) The board may make available, on a revolving
10 basis, up to fifteen million dollars from the consolidated
11 fund to loan the West Virginia economic development
12 authority for industrial development projects authorized
13 by section seven, article fifteen, chapter thirty-one of this
14 code: *Provided*, That the West Virginia economic devel-
15 opment authority may not loan more than two million
16 dollars for any one industrial development project. The
17 loans shall be secured by notes, security interests or bonds
18 issued by the West Virginia economic development
19 authority evidencing the indebtedness of the economic
20 development authority to the board.

21 The notes, security interests or bonds issued by the
22 economic development authority shall be secured by
23 security equal to or better than one of the three highest
24 rating grades by an agency which is nationally known in
25 the field of rating corporate securities or by a letter of
26 credit guarantee issued by a bank having an unsecured
27 legal lending limit greater than two million dollars.

28 (c) The interest rates and maturity dates on the loans
29 to the West Virginia economic development authority shall
30 be at competitive rates and maturities as determined by the
31 board. The board shall determine the financial condition
32 of pools within the consolidated fund and shall determine
33 if there is sufficient liquidity within the pools to make the
34 loans specified in this section.

§12-6-11. Standard of care.

1 Any investments made under this article shall be made
2 in accordance with the provisions of the "Uniform
3 Prudent Investor Act" codified as article six-c of this

4 chapter and shall be further subject to the following
5 requirements:

6 (a) Trustees shall discharge their duties with respect to
7 the consolidated pension plan for the exclusive purpose of
8 providing benefits to participants and their beneficiaries;

9 (b) Trustees shall diversify fund investment so as to
10 minimize the risk of large losses unless, under the circum-
11 stances, it is clearly prudent not to do so;

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

14 (d) Trustees shall discharge their duties in accordance
15 with the documents and instruments governing the trust
16 fund or other funds under management insofar as such
17 documents and instruments are consistent with the provi-
18 sions of this article.

§12-6-12. Limitations on investments.

1 (a) The board shall not become a stockholder or
2 owner of any company or association for any purpose
3 whatsoever unless and until the provisions of section six,
4 article X of the constitution of West Virginia are amended
5 to provide for those investments. If at some time, after the
6 effective date of this section, the provisions of section six,
7 article X of the constitution of West Virginia are amended
8 to allow the state to become a stockholder in a corpora-
9 tion, the board shall limit its asset allocation and types of
10 securities to the following:

11 (1) For the first twelve months following authorization
12 of the state to become a stockholder or owner of any
13 corporation, the board shall hold in equity investments no
14 more than twenty percent of its total portfolio and no
15 more than twenty percent of the assets of any individual
16 participant plan or the consolidated fund; during the
17 thirteenth through and including the twenty-fourth month
18 following the authorization, the board shall hold in equity
19 investments no more than forty percent of its total portfo-
20 lio and no more than forty percent of the assets of any
21 individual participant plan or the consolidated fund; and
22 thereafter, the board shall hold in equity investments no

23 more than sixty percent of its total portfolio and no more
24 than sixty percent of the assets of any individual partici-
25 pant plan or the consolidated fund.

26 (2) The board shall hold in international securities no
27 more than twenty percent of the consolidated fund or the
28 trust fund and no more than twenty percent of the assets
29 of any individual participant plan or the consolidated
30 fund.

31 (3) The board may not at the time of purchase hold
32 more than five percent of the trust fund or consolidated
33 fund in the equity securities of any single company or
34 association: *Provided*, That if a company or association
35 has a market weighting of greater than five percent in the
36 Standard & Poor's 500 index of companies, the board
37 may hold securities of that equity equal to its market
38 weighting.

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

41 (1) The board may not hold more than twenty percent
42 of the trust fund in commercial paper. Any commercial
43 paper at the time of its acquisition shall be in one of the
44 two highest rating categories by an agency nationally
45 known for rating commercial paper.

46 (2) At no time shall the board hold more than seven-
47 ty-five percent of the trust fund or consolidated fund in
48 corporate debt. Any corporate debt security at the time of
49 its acquisition shall be rated in one of the four highest
50 rating categories by a nationally recognized rating
51 agency.

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

58 (c) The board, at the annual meeting provided for in
59 subsection (h), section three of this article, shall review,
60 establish and modify, if necessary, the investment objec-

61 tives of the individual participant plans, as incorporated in
62 the investment policy statements of the respective trusts so
63 as to provide for the financial security of the trust funds
64 giving consideration to the following:

- 65 (1) Preservation of capital.
- 66 (2) Diversification.
- 67 (3) Risk tolerance.
- 68 (4) Rate of return.
- 69 (5) Stability.
- 70 (6) Turnover.
- 71 (7) Liquidity.
- 72 (8) Reasonable cost of fees.

§12-6-13. Board as sole agency for investments; exceptions.

1 All duties vested by law in any agency, commission,
2 official or other board of the state relating to the invest-
3 ment of moneys, and the acquisition, sale, exchange or
4 disposal of securities or any other investment are hereby
5 transferred to the board: *Provided*, That neither this
6 section nor any other section of this article applies to the
7 "board of the school fund" and the "school fund"
8 established by section 4, article XII of the state constitu-
9 tion: *Provided, however*, That funds under the control of
10 the municipal bond commission may, in the discretion of
11 the commission, be made available to the board for
12 investment to be invested by the commission as provided
13 in article three, chapter thirteen of this code.

§12-6-15. Consolidated fund audits.

1 The board shall cause to be conducted an annual
2 external audit of all investment transactions of the consoli-
3 dated fund by a nationally recognized accounting firm:
4 *Provided*, That the board shall on a monthly basis provide
5 to each state agency and any other entity investing
6 moneys in the consolidated fund an itemized statement of
7 the agency's or the entity's account in the consolidated
8 fund. The statement shall include the beginning balance,

9 contributions, withdrawals, income distributed, change in
10 value and ending balance.

§12-6-16. Existing investments.

1 The board shall be vested with ownership of all
2 securities or other investments lawfully held by the board
3 of investments or the West Virginia trust fund as of the
4 effective date of this article. All obligations and assets of
5 the board of investments and the West Virginia trust fund,
6 inc., shall be vested in the West Virginia investment
7 management board as of the effective date of this article.

§12-6-19. Authorization for loans by the board.

1 (a) The board, upon request of the state building
2 commission, shall transfer moneys as a loan to the state
3 building commission in an amount not to exceed in the
4 aggregate twenty-one million dollars for the purposes of
5 financing or refinancing the projects specified in subsec-
6 tions (b) and (d), section eight, article six, chapter five of
7 this code. The money borrowed shall bear interest during
8 the term of the loan at a fixed rate not to exceed the
9 interest rate on treasury notes, bills or bonds of the same
10 term as the term of the loan the week of closing on the
11 loan as reported by the treasury of the United States.
12 Loans made under this subsection shall be repaid in
13 regular monthly or semiannual payments and shall be
14 paid in full not later than twenty-five years from the date
15 the loans are made with terms and conditions mutually
16 agreed upon by the state building commission and the
17 investment management board.

18 (b) The board shall upon request of the state building
19 commission transfer moneys as a loan to the state building
20 commission in an amount not to exceed in the aggregate
21 eighty million dollars for the purposes of financing
22 construction of regional jails, correctional facilities, or
23 building extensions or improvements to regional jails and
24 correctional facilities. Prior to the expenditure of any
25 loan proceeds, the regional jail and correctional facility
26 authority shall certify a list of projects to the state building
27 commission and the joint committee on government and
28 finance that are to be funded from loan proceeds. This

29 certified list cannot thereafter be altered or amended other
30 than by legislative enactment. Upon receipt of the
31 certified list of projects, the state building commission
32 shall transfer the loan proceeds to the regional jail and
33 correctional facility authority. The money borrowed shall
34 bear interest during the term of the loan at a fixed rate not
35 to exceed the interest rate on treasury notes, bills or bonds
36 of the same term as the term of the loan the week of
37 closing on the loan as reported by the treasury of the
38 United States.

39 (c) Loans made under this section for the projects
40 specified in subsection (b) of this section and in subsec-
41 tion (d), section eight, article six, chapter five of this code,
42 shall be repaid in annual payments of not less than twelve
43 million dollars per year by appropriation of the Legisla-
44 ture to the board. The amount transferred for loans under
45 subsection (a) or (b) of this section shall not exceed that
46 amount which the board determines is reasonable given
47 the cash flow needs of the consolidated fund. The board
48 shall make transfers for loans first for the project specified
49 in subsection (d), section eight, article six, chapter five of
50 this code, second for the projects specified in subsection
51 (b) of this section and third for projects specified in
52 subsection (b), section eight, article six, chapter five of this
53 code, which are in imminent danger of default in pay-
54 ment. The board shall take the steps necessary to increase
55 the liquidity of the consolidated fund over a period of the
56 next five years to allow for the loans provided in this
57 section without increasing the risk of loss in the consoli-
58 dated fund.

ARTICLE 6A. THE DEBT MANAGEMENT ACT OF 1991.

§12-6A-2. Legislative findings and declaration of public necessity.

§12-6A-3. Division of debt management created; director.

§12-6A-5. Powers and duties.

§12-6A-6. Debt information reporting.

§12-6A-2. Legislative findings and declaration of public necessity.

1 (a) The Legislature hereby finds and declares that
2 efficient and effective state government requires the

3 procuring, maintaining and reporting of pertinent infor-
4 mation relating to the debt of the state and its agencies,
5 boards, commissions and authorities. The state treasurer
6 shall perform the functions and duties necessary to serve
7 as a central information source concerning the incurrence,
8 recording and reporting of debt issued by the state, its
9 agencies, boards, commissions and authorities.

10 (b) The Legislature hereby finds:

11 (1) The credit rating and acceptance of bonds, notes,
12 certificates of participation and other securities and
13 indebtedness of the state and its spending units have been
14 unstable as a result of the instability in traditional national
15 and international markets of goods and services produced
16 by the citizens of the state.

17 (2) In order to finance essential capital projects for the
18 benefit of the citizens of the state at the lowest possible
19 cost, the state must maintain high levels of acceptance of
20 the indebtedness of the state and its spending units in the
21 financial markets.

22 (3) In order to attain these goals, authorization of state
23 debt must be based on the ability of the state to meet its
24 total debt service requirements, in light of other uses of its
25 fiscal resources.

26 (c) The Legislature hereby further finds that the
27 public policies and responsibilities of the state as set forth
28 in this article cannot be fully attained without the creation
29 of a state division of debt management.

§12-6A-3. Division of debt management created; director.

1 There is hereby created within the office of the state
2 treasurer, the division of debt management.

3 The division shall be under the control of a director to
4 be appointed by the treasurer and who shall be qualified
5 by reason of exceptional training and experience in the
6 field of activities of his respective division and shall serve
7 at the will and pleasure of the treasurer.

§12-6A-5. Powers and duties.

1 The division of debt management shall perform the
2 following functions and duties:

3 (1) Develop a long-term debt plan including criteria
4 for the issuance of debt by the state and its spending units
5 and the continuous evaluation of the current and projected
6 debt of the state and its spending units.

7 (2) Evaluate cash flow projections relative to pro-
8 posed and existing revenue bond issues.

9 (3) Act as liaison with the Legislature on all debt
10 matters, including, but not limited to, new debt issues and
11 the status of debt issued by the state and its spending units.

12 (4) Assist the state and its spending units regarding
13 the issuance of debt if requested.

14 (5) Establish reporting requirements for the issuance
15 of debt by the state and its spending units pursuant to the
16 provisions of this article.

17 (6) Make and execute contracts and other instruments
18 and pay the reasonable value of services or commodities
19 rendered to the division pursuant to those contracts.

20 (7) Contract, cooperate or join with any one or more
21 other governments or public agencies, or with any political
22 subdivision of the state, or with the United States, to
23 perform any administrative service, activity or undertaking
24 which any such contracting party is authorized by law to
25 perform and to charge for providing such services and
26 expend any fees collected.

27 (8) Do all things necessary or convenient to effectuate
28 the intent of this article and to carry out its powers and
29 functions.

30 (9) Provide staff services to the debt capacity advisory
31 division established in article six-b of this chapter.

§12-6A-6. Debt information reporting.

1 (a) Within fifteen days following the end of each
2 calendar quarter, each state spending unit shall provide the
3 division and the legislative auditor, in the manner provided

4 by this article and in such form and detail as the state
5 treasurer may by regulation require, a statement of the
6 total debt of each such state spending unit incurred during
7 the calendar quarter and owing at the end of such calendar
8 quarter, which statement shall include, but not be limited
9 to, the name of the state spending unit, the amounts and
10 types of debt incurred during the calendar quarter and
11 outstanding at the end of the calendar quarter, the cost and
12 expenses of incurring the debt, the maturity date of each
13 debt, the terms and conditions of the debt, the current debt
14 service on the debt, the current interest rate on the debt,
15 the source of the proceeds utilized for repayment of the
16 debt, the amounts of repayment during the calendar
17 quarter, the repayment schedule and the security for the
18 debt. A state spending unit having no outstanding debt
19 shall not be required to provide the quarterly report but
20 shall file an annual report, on forms established by the
21 division of debt management: *Provided*, That the state
22 spending unit shall immediately notify the division of debt
23 management of any change in the spending unit's
24 outstanding debt condition.

25 (b) Not less than thirty days prior to a proposed
26 offering of debt to be issued by a state spending unit,
27 written notice of such proposed offering and the terms
28 thereof shall be given to the division by such state spend-
29 ing unit in the form as the division may by regulation
30 require. Within thirty days after closing, the terms shall be
31 reported to the division in the form as the division may by
32 regulation require.

33 (c) On or before the thirty-first day of January and
34 the thirty-first day of July of each year, the treasurer shall
35 prepare and issue a report of all debt of the state and its
36 spending units and of all proposed debt issuances of
37 which the treasurer has received notice and shall furnish a
38 copy of such report to the governor, the president of the
39 Senate, the speaker of the House of Delegates, the legisla-
40 tive auditor and upon request to any legislative committee
41 and any member of the Legislature. The report shall be
42 kept available for inspection by any citizen of the state.
43 The treasurer shall also prepare updated reports of all debt
44 of the state and its spending units which shall be available

45 for inspection at the office of the state treasurer on or
46 before the thirty-first day of March and the thirtieth day
47 of September of each year.

ARTICLE 6B. DEBT CAPACITY ADVISORY DIVISION.

§12-6B-1. Purpose.

§12-6B-2. Debt capacity advisory division created.

§12-6B-3. Definitions.

§12-6B-4. Powers and duties.

§12-6B-1. Purpose.

1 The purpose of this article is to provide a mechanism
2 by which necessary information may be provided to the
3 governor and the Legislature so that they may prudently
4 manage the state's financial resources by attempting to
5 keep the state within an average to low range of nationally
6 recognized debt limits. The ratio measurements which
7 may be taken into consideration in attempting to meet
8 these limits include, but are not limited to, outstanding net
9 tax supported debt per capita, net tax supported debt as a
10 percentage of personal income, net tax supported debt as a
11 percentage of assessed valuation, and any other criteria
12 that recognized bond rating agencies use to judge the
13 quality of issues of state bonds.

§12-6B-2. Debt capacity advisory division created.

1 There is hereby created within the offices of the state
2 treasurer a debt capacity advisory division.

§12-6B-3. Definitions.

1 For the purpose of this article:

2 (a) "Debt" means bonds, notes, certificates of partici-
3 pation, certificate transactions, capital leases and all other
4 forms of securities and indebtedness.

5 (b) "Debt impact statement" means a signed state-
6 ment from the treasurer which shall include such informa-
7 tion and be in such form, as determined by the division,
8 for the Legislature or the governor to make an informed
9 decision concerning the issuance of debt by the state or its
10 spending units.

11 (c) "Division" means the debt capacity advisory
12 division established in this article.

13 (d) "Net tax supported debt as a percentage of
14 assessed valuation" means the net tax supported debt, as
15 determined by the division, divided by the most recently
16 available estimated assessed valuation of all taxable
17 property in the state by the West Virginia department of
18 tax and revenue.

19 (e) "Net tax supported debt as a percentage of
20 personal income" means the net tax supported debt, as
21 determined by the division, divided by the most recently
22 available personal income figures for the state by the West
23 Virginia bureau of employment programs.

24 (f) "Net tax supported debt per capita" means the
25 state's net tax supported debt, as determined by the
26 division, divided by the most recently available population
27 estimate for the state by the United States department of
28 commerce.

29 (g) "Spending unit" means any of the state's agen-
30 cies, boards, commissions, committees, authorities, or other
31 of its entities with the power to issue debt and secure such
32 debt, but not including local political subdivisions of the
33 state.

34 (h) "Tax supported debt" means: (1) All obligations
35 of the state or any spending unit to which the state's full
36 faith and credit is pledged to pay directly or by guarantee
37 (provided that any such guaranteed obligations shall be
38 included only to the extent any such obligations are in
39 default); and (2) all obligations of the state or any agency
40 or authority thereof extending beyond one year with
41 respect to the lease, occupancy or acquisition of property
42 which are incurred in connection with debt financing
43 transactions, including, but not limited to, certificates of
44 participation, and which are payable from taxes, fees,
45 permits, licenses and fines imposed or approved by the
46 Legislature.

47 Tax supported obligations do not include: (1) Any
48 obligations of the West Virginia housing development

49 fund, the economic development authority, the hospital
50 finance authority, the West Virginia parkway authority, the
51 West Virginia public energy authority, the West Virginia
52 solid waste management board, and the West Virginia
53 water development authority; (2) revenue anticipation
54 notes or bonds of the state; or (3) any obligations to the
55 extent that the debt service with respect thereto is reason-
56 ably expected to be offset, as determined by the division,
57 by lease payments, user fees, federal grants or other
58 payments from some source other than the general fund.
59 Such payments shall be used expressly for the purpose of
60 paying debt service.

61 (i) "Treasurer" means the treasurer of the state of
62 West Virginia.

§12-6B-4. Powers and duties.

1 The division shall perform the following functions
2 and duties:

3 (a) Promulgate rules pursuant to article three, chapter
4 twenty-nine-a of this code, for the management and
5 conduct of its affairs;

6 (b) Annually review the size and condition of the
7 state's tax-supported debt and submit to the governor and
8 to the Legislature, on or before the first day of October of
9 each year, an estimate of the maximum amount of new
10 tax-supported debt that prudently may be authorized for
11 the next fiscal year, together with a report explaining the
12 basis for the estimate. The estimate shall be advisory and
13 in no way restrict the governor or the Legislature. In
14 preparing its annual review and estimate, the division shall,
15 at a minimum, consider:

16 (1) The amount of net tax supported debt that, during
17 the next fiscal year and annually for the following ten
18 fiscal years: (A) Will be outstanding; and (B) has been
19 authorized but not yet issued;

20 (2) Projected debt service requirements during the
21 next fiscal year and annually for the following ten fiscal
22 years based upon: (A) Existing outstanding debt; (B)

23 previously authorized but unissued debt; and (C) project-
24 ed bond authorizations;

25 (3) Any information available from the budget section
26 of the department of administration in connection with
27 anticipated capital expenditures projected for the next five
28 fiscal years;

29 (4) The criteria that recognized bond rating agencies
30 use to judge the quality of state bonds;

31 (5) Any other factor that the division finds as relevant
32 to: (A) The ability of the state to meet its projected debt
33 service requirements for the next fiscal year; (B) the
34 ability of the state to meet its projected debt service
35 requirement for the next five fiscal years; and (C) any
36 other factor affecting the marketability of such bond; and

37 (6) The effect of authorizations of new tax-supported
38 debt on each of the considerations of this subsection.

39 (c) Conduct ongoing review of the amount and
40 condition of bonds, notes and other security obligations of
41 the state's spending units: (1) Not secured by the full
42 faith and credit of the state or for which the Legislature is
43 not obligated to replenish reserve funds or make necessary
44 debt service payments; (2) for which the state has a
45 contingent or limited liability or for which the Legislature
46 is permitted to replenish reserve funds or make necessary
47 debt service payments if deficiencies occur. When
48 appropriate, the division shall recommend limits on such
49 additional obligations to the governor and to the Legisla-
50 ture. Such recommendation is advisory and shall in no
51 way restrict the governor, the Legislature or the spending
52 unit.

53 (d) The treasurer may review all proposed offerings of
54 debt, as defined in this article, submitted to the division of
55 debt management, as provided in section six, article six-a
56 of this chapter. The division may also request any
57 additional information which may be needed to issue an
58 advisory opinion to the governor, the speaker of the
59 House of Delegates and the president of the Senate as to
60 the impact of the proposed offering on the state's net tax-

61 supported debt outstanding and any other criteria which
62 the treasurer feels may be relevant to the marketability of
63 said offering and its impact on the state's credit rating.
64 Such advisory opinion shall in no way restrict the gover-
65 nor, the Legislature or the spending unit.

66 (e) Do all things necessary or convenient to effectuate
67 the intent of this article and to carry out its powers and
68 functions.

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

ARTICLE 3. MUNICIPAL BOND COMMISSION.

§13-3-3. Officers; employees; chief administrative officer; meetings; quorum; compensation and expenses; legal representation.

1 (a) The tax commissioner or his or her designee shall
2 be chair of the commission.

3 (b) The members of the commission shall appoint a
4 chief administrative officer and may fix his title and
5 duties. Notwithstanding the provisions of section two-a,
6 article seven, chapter six of this code, the commission shall
7 have the authority to set the compensation of the chief
8 administrative officer. The chief administrative officer
9 shall serve as secretary to the board and treasurer of the
10 commission. The chair may designate a board member to
11 serve as secretary in the absence of the chief administrative
12 officer. The chair is authorized with the approval of the
13 commission, to employ other employees and consultants
14 as the commission deems advisable and fix their compen-
15 sation and prescribe their duties.

16 (c) Appointed members of the commission shall be
17 paid fifty dollars for each day or substantial portion
18 thereof that they are engaged in the work of the commis-
19 sion. Each member of the commission may be reim-
20 bursed for all reasonable and necessary expenses actually
21 incurred in the performance of duties on behalf of the
22 commission.

23 (d) The commission shall hold at least three meetings
24 in each fiscal year, one of which meetings shall be within

25 sixty days of the end of the fiscal year and shall be the
26 annual meeting. The meetings shall be held on dates and
27 at places prescribed by the chair. Additional meetings
28 may be held at the call of the chair or upon the written
29 request of three members at such time and place as
30 designated in such call or request. Three members of the
31 commission constitute a quorum.

32 (e) The chair with the consent of the commission is
33 authorized to provide or designate legal advisory services
34 to the commission.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 3. COSTS, FINES AND RECORDS.

***§50-3-2a. Payment of fines by credit card or payment plan; suspension of licenses for failure to pay fines or appear or respond.**

1 (a) A magistrate court may accept credit cards in
2 payment of all costs, fines, forfeitures or penalties. The
3 supreme court of appeals shall adopt rules regarding the
4 use of credit or check cards to pay fines and any charges
5 made by the credit card company may be paid from the
6 gross credit card collections. A magistrate court may
7 collect a portion of any costs, fines, forfeitures or penalties
8 at the time the amount is imposed by the court so long as
9 the court requires the balance to be paid in accordance
10 with a payment plan which specifies: (1) The number of
11 payments to be made; (2) the dates on which such pay-
12 ments and amounts shall be made; and (3) amounts due
13 on such dates.

14 (b) If any costs, fines, forfeitures, restitution or
15 penalties imposed or ordered by the magistrate court for
16 hunting or fishing violations as described in chapter
17 twenty of this code are not paid in full as directed by the
18 magistrate court, the magistrate court clerk or, upon a
19 judgment rendered on appeal, the circuit clerk, shall notify
20 the director of the division of natural resources, of such

*Clerk's Note: This section was also amended by H. B. 2259 (Chapter 128), which passed subsequent to this act.

21 failure to pay. If any costs, fines, forfeitures, restitution or
22 penalties imposed by the magistrate court in a criminal
23 case are not paid as directed by the magistrate court, the
24 magistrate court clerk or, upon judgment rendered on
25 appeal, the circuit clerk, shall notify the director of the
26 division of motor vehicles of the failure to pay. Upon
27 notice, the division of motor vehicles shall suspend the
28 operator's or commercial driver's license and the director
29 of the division of natural resources shall suspend the
30 hunting or fishing license of the person defaulting on
31 payment until such time that the costs, fines, forfeitures,
32 restitution or penalties are paid.

33 (c) If a person charged with any criminal violation of
34 this code fails to appear or otherwise respond in court, the
35 magistrate court shall notify the director of the division of
36 motor vehicles thereof within fifteen days of the scheduled
37 date to appear, unless the person sooner appears or
38 otherwise responds in court to the satisfaction of the
39 magistrate. Upon such notice, the division of motor
40 vehicles shall suspend the operator's or commercial
41 driver's license of the person failing to appear or other-
42 wise respond in accordance with the provisions of section
43 six, article three, chapter seventeen-b of this code.

44 (d) In every criminal case which involves a misde-
45 meanor violation, a magistrate may order restitution where
46 appropriate when rendering judgment.

47 (e) If all costs, fines, forfeitures, restitution or penal-
48 ties imposed by a magistrate court and ordered to be paid
49 are not paid as ordered by the judgment of the magistrate
50 court, the clerk of the magistrate court shall notify the
51 prosecuting attorney of the county of such nonpayment
52 and provide the prosecuting attorney with an abstract of
53 judgment. The prosecuting attorney shall file the abstract
54 of judgment in the office of the clerk of the county
55 commission in the county where the defendant was
56 convicted and in any county wherein the defendant resides
57 or owns property. The clerk of the county commission
58 shall record and index the abstracts of judgment without
59 charge or fee to the prosecuting attorney, and when so

60 recorded, the amount stated to be owing in the abstract
61 shall constitute a lien against all property of the defendant.

CHAPTER 57. EVIDENCE AND WITNESSES.

ARTICLE 1. LEGISLATIVE ACTS AND RESOLUTIONS; PUBLIC RECORDS.

§57-1-7a. Use of photographic copies in evidence; state records, papers or documents; destruction or transfer to archives of originals; destruction of canceled checks and paid and canceled bonds and coupons.

1 (a) Any public officer of the state may, with the
2 approval of the state records administrator, cause any or
3 all records, papers or documents kept by him to be
4 reproduced, by any photographic, photostatic, micropho-
5 tographic or by similar miniature photographic process or
6 by nonerasable optical image disks (commonly referred to
7 as compact disks) or by other records-retention technolo-
8 gy approved by the state records administrator. These
9 reproductions by photographic, photostatic, microphoto-
10 graphic or by similar miniature photographic process or
11 by nonerasable optical image disks shall be of durable
12 material and the device used to reproduce such records on
13 such film shall be one which accurately reproduces the
14 originals thereof in all details.

15 The reproductions by photographic, photostatic,
16 microphotographic or by similar miniature photographic
17 process or nonerasable optical image disks shall be
18 deemed to be an original record for all purposes, includ-
19 ing introduction in evidence in all courts or administrative
20 agencies. A transcript, exemplification or certified copy
21 thereof shall, for all purposes recited herein, be deemed to
22 be a transcript, exemplification or certified copy of the
23 original. Whenever reproductions by photographic,
24 photostatic, microphotographic or by similar miniature
25 photographic process or nonerasable optical image disks
26 have been made and put in conveniently accessible
27 fireproof files, and provision has been made for preserv-
28 ing, examining and using the same, the respective heads of
29 the departments, divisions, institutions and agencies of the
30 state may, with the approval of the state records adminis-

31 trator, cause the records and papers so reproduced by
32 photographic, photostatic, microphotographic or by
33 similar miniature photographic process or nonerasable
34 optical image disks, or any part thereof, to be destroyed;
35 but before any records, papers or documents are autho-
36 rized to be destroyed, the state records administrator shall
37 obtain the advice and counsel of the state historian and
38 archivist, or his designated representative, as to the desir-
39 ability of placing the records, papers and documents in the
40 archives of that department. In the event the administrator
41 is of the opinion that the record has no further administra-
42 tive, legal, fiscal, research or historical value, the adminis-
43 trator may destroy or otherwise dispose of the record,
44 paper or document if otherwise permitted to do so after
45 complying with the provisions of section seventeen, article
46 eight, chapter five-a of this code.

47 (b) Notwithstanding any other provisions of this code
48 to the contrary, the state treasurer may at his discretion
49 destroy any canceled checks of the state after three years
50 have elapsed since the date of the check, whether or not
51 such checks have been reproduced by photographic,
52 photostatic, microphotographic or by similar miniature
53 photographic process or nonerasable optical image disks:
54 *Provided*, That any canceled bonds or interest coupons of
55 any bond issues of this state in the custody of the treasur-
56 er, or for which the treasurer acts as fiscal agent or paying
57 agent, may at his discretion be destroyed by one of the
58 two methods below:

59 Method I - The treasurer shall maintain a permanent
60 record for the purpose of recording the destruction of
61 bonds and coupons, showing the following: (1) With
62 respect to bonds, the purpose of issuance, the date of issue,
63 denomination, maturity date and total principal amount;
64 and (2) with respect to coupons, the purpose of issue and
65 date of the bonds to which the coupons appertain, the
66 maturity date of the coupons, and, as to each maturity
67 date, the denomination, quantity and total amount of
68 coupons.

69 After recording the specified information, the treasur-
70 er shall have the canceled bonds and coupons destroyed

71 either by burning or shredding, in the presence of an
72 employee of the treasurer and an employee of the legisla-
73 tive auditor, each of whom shall certify that he saw the
74 canceled bonds and coupons destroyed. The certificates
75 shall be made a part of the permanent record. Canceled
76 bonds or coupons shall not be destroyed until after one
77 year from the date of payment.

78 Method II - The treasurer may contract with any bank
79 or trust company acting as paying agent or copaying
80 agent for a bond issue of the state for the destruction of
81 bonds and interest coupons which have been canceled by
82 the paying agent. The contract shall require that the
83 paying agent give the treasurer a certificate containing the
84 same information required by Method I. The certificate
85 shall be made a part of the treasurer's permanent records.

86 Each contract shall also require that the paying agent
87 be responsible for proper payment and disposition of all
88 bonds and coupons, and for any duplicate payments to
89 unauthorized persons and nonpayment to authorized
90 persons occurring as a result of destruction of bonds or
91 coupons under this section. In addition, the treasurer may
92 require the paying agent to submit an indemnity bond, in
93 an amount to be determined by the treasurer, to assure
94 performance of the duties specified in this section.
95 Canceled bonds or coupons may not be destroyed until
96 one year from the date of payment.

97 For purposes of this section, the term "bonds" shall
98 include interim certificates.

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

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-12. Payment of fines by credit card or payment plan.

1 A circuit court may accept credit cards in payment of
2 all fines, cost, forfeiture, restitution or penalties. The
3 supreme court of appeals shall adopt rules regarding the
4 use of credit or check cards to pay fines, and any charges
5 made by the credit card company may be paid from the
6 gross credit card collections.

CHAPTER 96

(H. B. 2451—By Mr. Speaker, Mr. Kiss, and Delegates
Hutchins, Mahan, Seacrist and Yeager)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections sixteen and seventeen, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to probationary period for firefighters; and lengthening the probationary period from six months to one year.

Be it enacted by the Legislature of West Virginia:

That sections sixteen and seventeen, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-16. Rules for all examinations; probationary appointments.

§8-15-17. Form of application; age and residency requirements; exceptions.

§8-15-16. Rules for all examinations; probationary appointments.

1 The firemen's civil service commission in each
2 municipality shall make rules providing for both
3 competitive and medical examinations for appointments
4 and promotions to all positions in the paid fire department
5 in the municipality, and for other matters as are necessary
6 to carry out the purposes of the civil service provisions of
7 this article. Any commission shall have the power and
8 authority to require by rules a physical fitness
9 examination as a part of its competitive examination or as
10 a part of its medical examination: *Provided*, That after the
11 thirtieth day of June, one thousand nine hundred eighty-
12 one, the medical requirements for appointment to all
13 positions in the paid fire department in the municipality
14 shall include, but not be limited to, the medical

15 requirements stated in section sixteen, article twenty-two of
16 this chapter. Due notice of the contents of the rules and
17 of any modifications thereof shall be given, by mail, in
18 due season, to the appointing officer; and the rules and
19 any modifications thereof shall also be printed for public
20 distribution. All original appointments to any positions in
21 a paid fire department subject to the civil service
22 provisions of this article shall be for a probationary period
23 of one year: *Provided, however,* That at any time during
24 the probationary period the probationer may be
25 discharged for just cause, in the manner provided in
26 section twenty-five of this article. If, at the close of this
27 probationary term, the conduct or capacity of the
28 probationer has not been satisfactory to the appointing
29 officer, the probationer shall be notified, in writing, that he
30 or she will not receive absolute appointment, whereupon
31 his or her employment shall cease; otherwise, his or her
32 retention in the service shall be equivalent to his or her
33 final appointment.

§8-15-17. Form of application; age and residency requirements; exceptions.

1 The firemen's civil service commission in each
2 municipality shall require individuals applying for
3 admission to any competitive examination provided for
4 under the civil service provisions of this article or under
5 the rules of the commission to file in its office, within a
6 reasonable time prior to the proposed examination, a
7 formal application in which the applicant shall state under
8 oath or affirmation:

9 (1) His or her full name, residence and post-office
10 address;

11 (2) His or her United States citizenship, age and the
12 place and date of his or her birth;

13 (3) His or her state of health, and his or her physical
14 capacity for the public service;

15 (4) His or her business and employments and
16 residences for at least three previous years; and

17 (5) Any other information as may reasonably be
18 required, touching upon the applicant's qualifications and
19 fitness for the public service.

20 Blank forms for the applications shall be furnished by
21 the commission, without charge, to all individuals
22 requesting the same. The commission may require, in
23 connection with the application, certificates of citizens,
24 physicians and others, having pertinent knowledge
25 concerning the applicant, as the good of the service may
26 require.

27 No application for original appointment shall be
28 received if the individual applying is less than eighteen
29 years of age or more than thirty-five years of age at the
30 date of his or her application: *Provided*, That in the event
31 any applicant formerly served upon the paid fire
32 department of the municipality to which he or she makes
33 application, for a period of more than one year, and
34 resigned from the department at a time when there were
35 no charges of misconduct or other misfeasance pending
36 against the applicant, within a period of two years next
37 preceding the date of his or her application, and at the
38 time of his or her application resides within the corporate
39 limits of the municipality in which the paid fire
40 department to which he or she seeks appointment by
41 reinstatement is located, then the individual shall be
42 eligible for appointment by reinstatement in the discretion
43 of the firemen's civil service commission, even though the
44 applicant shall be over the age of thirty-five years, and the
45 applicant, providing his or her former term of service so
46 justifies, may be appointed by reinstatement to the paid
47 fire department without a competitive examination, but the
48 applicant shall undergo a medical examination; and if the
49 individual shall be so appointed by reinstatement to the
50 paid fire department, he or she shall be the lowest in rank
51 in the department next above the probationers of the
52 department.

53 Any applicant for original appointment must have
54 been a resident for one year, during some period of time
55 prior to the date of his or her application, of the
56 municipality in which he or she seeks to become a
57 member of the paid fire department: *Provided*, That if the
58 commission determines it necessary it may consider for
59 original appointment applicants who are not residents of
60 the municipality but who have been residents of
61 the county in which the municipality or any portion of the
62 territory thereof is located for a period of at least one
63 year.

CHAPTER 97

(H. B. 2629—By Delegates Caputo, Kuhn, Sparks, Linch,
Prunty, Fleischauer and Fragale)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to time lost as volunteer firemen and permitting the volunteer firemen to choose whether lost time as volunteer firemen is subtracted from regular pay or accumulated annual leave at the option of the employee.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article five, 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 5. WAGE PAYMENT AND COLLECTION.

§21-5-17. Employers prohibited from discharging employees for time lost as volunteer firemen.

1 No employer may terminate an employee who is a
2 member of a volunteer fire department and who, in the
3 line of emergency duty as a volunteer fireman, responds
4 to an emergency call prior to the time he is due to report
5 for work and which emergency results in a loss of time
6 from his employment.

7 Any time lost from employment as provided in this
8 section may be charged against the employee's regular
9 pay or against the employee's accumulated leave, if any,
10 at the option of the employee.

11 At the request of an employer, any employee losing
12 time as provided herein shall supply his employer with a
13 statement from the chief of the volunteer fire department
14 stating that the employee responded to an emergency call
15 and the time thereof.

16 As used in this section, "emergency" shall mean
17 going to, attending to or coming from: (1) A fire call; (2)
18 a hazardous or toxic materials spill and cleanup; or (3)
19 any other situation to which his or her fire department has
20 been or later could be dispatched. The term "employer"
21 includes any individual, partnership, association,
22 corporation, business trust or any person or group of
23 persons acting directly or indirectly in the interest of an
24 employer in relation to any employee.

25 Any employer who willfully and knowingly violates
26 the provisions of this section shall be required to reinstate
27 such employee to his former position and shall be
28 required to pay such employee all lost wages and benefits
29 for the period between termination and reinstatement.
30 Any action to enforce the provisions of this section shall
31 be commenced within a period of one year after the date
32 of violation and such action shall be commenced in the
33 circuit court of the county wherein the place of
34 employment is located.

CHAPTER 98

(Com. Sub. for S. B. 339—By Senators Helmick, Prezioso, Ross, Schoonover,
Sharpe, White, Plymale, Craigo, Anderson and Sprouse)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen, relating to requiring the department of health and human resources to provide payment for funeral expenses for indigent persons; providing for the filing of an affidavit; providing for payment from legislative appropriations; and establishing a criminal penalty for false swearing.

Be it enacted by the Legislature of West Virginia:

That article five, chapter nine of the code of West Virginia,

one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section eighteen, to read as follows:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-18. Funeral expenses for indigent persons; filing of affidavit to certify indigency; penalties for false swearing; payment by division.

1 (a) The department of health and human resources
2 shall pay for reasonable funeral service expenses for
3 indigent persons, in an amount not to exceed seven
4 hundred fifty dollars.

5 (b) For purposes of this section, the indigency of a
6 deceased person is determined by the filing of an affidavit
7 with the department, in a form provided by and
8 determined in accordance with the income guidelines as
9 set forth by the department: (1) Signed by the heir or
10 heirs-at-law, which states that the estate of the deceased
11 person is pecuniarily unable to pay the costs associated
12 with a funeral; or (2) signed by the county coroner or the
13 county health officer, the attending physician or other
14 person signing the death certificate, or the state medical
15 examiner, stating that the deceased person has no heirs or
16 that heirs have not been located after a reasonable search,
17 and that the deceased person had no estate or the estate is
18 pecuniarily unable to pay the costs associated with a
19 funeral.

20 (c) Payment shall be made by the department to the
21 person or persons who have furnished the services and
22 supplies for the indigent person's funeral expenses, or to
23 the persons who have advanced payment for same, as the
24 department may determine, pursuant to appropriations for
25 expenditures made by the Legislature for such purpose.

26 (d) For purposes of this section, "reasonable funeral
27 service expenses" means expenses for services provided
28 by a funeral director for the disposition of human
29 remains.

30 (e) Any person who knowingly swears falsely in an
31 affidavit required by this section shall be guilty of a
32 misdemeanor and, upon conviction thereof, shall be fined
33 not more than one thousand dollars or confined in the
34 county or regional jail for a period of not more than six
35 months, or both.

CHAPTER 99

(Com. Sub. for S. B. 100—By Senators Oliverio, Anderson, Buckalew and Deem)

[Passed April 11, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eight and nine, article one, chapter forty-four-a 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 fourteen; and to amend and reenact sections two and six, article two of said chapter, all relating generally to the guardianship and conservator appointment process; permitting judges to appoint coguardians and/or coconservators; altering guardianship and conservatorship appointment eligibility for sheriffs and the department of health and human resources; providing that bond is not required upon appointment of sheriffs and the department of health and human resources; requiring proof of bonding to be submitted to the appointing court; modifying appointment petition; allowing the appointing court authority to protect the alleged protected persons assets during the petition process; and providing for notice and opportunity for hearing before a person is appointed guardian or conservator.

Be it enacted by the Legislature of West Virginia:

That sections eight and nine, article one, chapter forty-four-a 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 fourteen; and that sections two and six, article two of said chapter be amended and reenacted, all to read as follows:

Article

1. **Definitions and General Provisions.**
2. **Procedure for Appointment.**

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.

§44A-1-8. Persons and entities qualified to serve as guardian or conservator.

§44A-1-9. Posting of bonds; actions on bond.

§44A-1-14. Temporary protective order.

§44A-1-8. Persons and entities qualified to serve as guardian or conservator.

1 (a) Any adult individual may be appointed to serve as
2 a guardian, a conservator, or both, upon determination by
3 the court that the individual is capable of providing an
4 active and suitable program of guardianship or
5 conservatorship for the protected person: *Provided*, That
6 the court may, after first determining it to be in the best
7 interest of the protected person, appoint coguardians
8 and/or coconservators: *Provided, however*, That such
9 individual is not employed by or affiliated with any public
10 agency, entity or facility which is providing substantial
11 services or financial assistance to the protected person.

12 (b) Any nonprofit corporation chartered in this state
13 and licensed as set forth in subsection (c) of this section or
14 a public agency that is not a provider of health care
15 services to the protected person may be appointed to serve
16 as a guardian, a conservator, or both: *Provided*, That such
17 entity is capable of providing an active and suitable
18 program of guardianship or conservatorship for the
19 protected person and is not otherwise providing substantial
20 services or financial assistance to the protected person.

21 (c) A nonprofit corporation chartered in this state may
22 be appointed to serve as a guardian or conservator or as a
23 limited or temporary guardian or conservator for a
24 protected person if it is licensed to do so by the secretary
25 of health and human resources. The secretary shall
26 propose legislative rules, for promulgation in accordance
27 with the provisions of chapter twenty-nine-a of this code,
28 for the licensure of such nonprofit corporations and shall
29 provide for the review of such licenses. The rules shall, at
30 a minimum, establish standards to assure that any
31 corporation licensed for such guardianship or
32 conservatorship:

33 (1) Has sufficient fiscal and administrative resources to
34 perform the fiduciary duties and make the reports and
35 accountings required by this chapter;

36 (2) Will respect and maintain the dignity and privacy
37 of the protected person;

38 (3) Will protect and advocate the legal human rights of
39 the protected person;

40 (4) Will assure that the protected person is receiving
41 appropriate educational, vocational, residential and
42 medical services in the setting least restrictive of the
43 individual's personal liberty;

44 (5) Will encourage the protected person to participate
45 to the maximum extent of his or her abilities in all
46 decisions affecting him or her and to act in his or her own
47 behalf on all matters in which he or she is able to do so;

48 (6) Does not provide educational, vocational,
49 residential or medical services to the protected person; and

50 (7) Has written provisions in effect for the distribution
51 of assets and for the appointment of temporary guardians
52 and conservators for any protected persons it serves in the
53 event the corporation ceases to be licensed by the
54 department of health and human resources or otherwise
55 becomes unable to serve as guardian.

56 (d) A duly licensed nonprofit corporation that has
57 been appointed to serve as a guardian or as a conservator
58 pursuant to the provisions of this article is entitled to
59 compensation in accordance with the provisions of section
60 thirteen of this article.

61 (e) Except as provided in section thirteen of this
62 article, no guardian or conservator nor any officer, agent,
63 director, servant or employee of any such guardian or
64 conservator shall do business with or in any way profit,
65 either directly or indirectly, from the estate or income of
66 any protected person for whom services are being
67 performed by such guardian or conservator.

68 (f) Any bank or trust company authorized to exercise
69 trust powers or to engage in trust business in this state may

70 be appointed as a conservator if the court determines it is
71 capable of providing suitable conservatorship for the
72 protected person.

73 (g) The secretary of the department of health and
74 human resources shall designate a division or agency
75 under his or her jurisdiction which may be appointed to
76 serve as a guardian, but such appointment may only be
77 made if there is no other individual, nonprofit corporation,
78 or other public agency that is equally or better qualified
79 and willing to serve: *Provided*, That when any sheriff was
80 initially appointed as guardian for the person, the
81 department may not refuse to accept the guardianship
82 appointment. If the department has been appointed as
83 conservator, it may petition the circuit court to be released
84 as conservator.

85 (h) The sheriff of the county in which a court has
86 assumed jurisdiction may be appointed as a conservator
87 but such appointment may only be made if there is no
88 other individual, nonprofit corporation or other public
89 agency that is equally or better qualified and willing to
90 serve: *Provided*, That when the department of health and
91 human resources was initially appointed as conservator for
92 the person, the sheriff may not refuse to accept the
93 conservatorship appointment. If the sheriff has been
94 appointed as guardian, he or she may petition the circuit
95 court to be released as guardian.

96 (i) Other than a bank or trust company authorized to
97 exercise trust powers or to engage in trust business in this
98 state, a person who has an interest as a creditor of a
99 protected person shall not be eligible for appointment as
100 either a guardian or conservator of the protected person.

§44A-1-9. Posting of bonds; actions on bond.

1 (a) The court shall have the discretion to determine
2 whether the posting of a bond by a guardian, once
3 appointed, is necessary. No bond is required of any sheriff
4 or representative of the department of health and human
5 resources appointed as conservator or guardian.

6 (b) The court shall require the posting of a bond by a
7 conservator upon appointment except where the
8 conservator is excused from posting bond under the
9 provisions of section eighteen, article four, chapter
10 thirty-one-a of this code. In determining the amount or
11 type of a conservator's bond, the court shall consider:

12 (1) The value of the personal estate and annual gross
13 income and other receipts within the conservator's control;

14 (2) The extent to which the estate has been deposited
15 under an arrangement requiring an order of court for its
16 removal;

17 (3) Whether an order has been entered waiving the
18 requirement that accountings be filed and presented or
19 permitting accountings to be presented less frequently
20 than annually;

21 (4) The extent to which the income and receipts are
22 payable directly to a facility responsible for or which has
23 assumed responsibility for the care or custody of the
24 protected person;

25 (5) The extent to which the income and receipts are
26 derived from state or federal programs that require
27 periodic accountings;

28 (6) Whether a guardian has been appointed, and if so,
29 whether the guardian has presented reports as required;
30 and

31 (7) Whether the conservator was appointed pursuant to
32 a nomination which requested that bond be waived.

33 (c) Any required bond shall be with such surety and in
34 such amount and form as the court may order, and the
35 court may order additional bond or reduce the bond
36 whenever the court finds that such modification is in the
37 best interests of the protected person or of the estate. The
38 court may allow a property bond in lieu of a cash bond.
39 Proof of bonding must be submitted to the court within
40 thirty days of appointment.

41 (d) In case of a breach of any condition placed on the
42 bond of any guardian or conservator, an action may be

43 instituted by any interested person for the use and benefit
44 of the protected person, for the estate of the protected
45 person or for the beneficiaries of such estate.

46 (e) The following requirements and provisions apply
47 to any bond which the court may require under this
48 section:

49 (1) Unless otherwise provided by the terms of the
50 approved bond, sureties are jointly and severally liable
51 with the guardian/conservator and with each other;

52 (2) By executing an approved bond of a guardian or
53 conservator, the surety consents to the jurisdiction of the
54 court in any proceeding pertaining to the fiduciary duties
55 of the conservator and naming the surety as a party
56 respondent. Notice of any proceeding must be delivered
57 to the surety or mailed by registered or certified mail to
58 the address of the surety listed with the court in which the
59 bond is filed. If the party initiating a proceeding
60 possesses information regarding the address of a surety
61 which would appear to be more current than the address
62 listed with the court, notice shall also be mailed by
63 registered or certified mail to the last address of the surety
64 known to the party initiating the proceeding;

65 (3) On petition of a successor guardian or conservator
66 or any interested person, a proceeding may be initiated
67 against a surety for breach of the obligation of the bond
68 of the preceding guardian or conservator; and

69 (4) The bond of the guardian or conservator is not
70 void after any recovery but may be proceeded against
71 from time to time until the whole penalty is exhausted.

72 (f) No proceeding may be commenced against the
73 surety on any matter as to which an action or proceeding
74 against the guardian or conservator is barred by
75 adjudication or limitation.

§44A-1-14. Temporary protective order.

1 The court may, at the request of a petitioner or upon
2 its own motion, issue a temporary protective order
3 prohibiting or limiting the expenditure, sale or other legal

4 transfer of any assets of the alleged protected person until
5 the appointment proceeding has been held.

ARTICLE 2. PROCEDURE FOR APPOINTMENT.

§44A-2-2. Who may file petition; contents.

§44A-2-6. Notice of hearing.

§44A-2-2. Who may file petition; contents.

1 (a) A petition for the appointment of a guardian, a
2 conservator, or both, may be filed by the individual
3 alleged to be a protected person, by a person who is
4 responsible for or has assumed responsibility for the
5 individual's care or custody, by the facility providing care
6 to the individual, by the person that the individual has
7 nominated as guardian or conservator, or by any other
8 interested person, including, but not limited to, the
9 department of health and human resources.

10 (b) A petition for the appointment of a guardian, a
11 conservator, or both, shall state the petitioner's name, place
12 of residence, post office address, and relationship to the
13 alleged protected person, and shall, to the extent known as
14 of the date of filing, include the following:

15 (1) The alleged protected person's name, date of birth,
16 place of residence or location and post office address;

17 (2) The names and post office addresses of the alleged
18 protected person's nearest relatives, in the following order:

19 (i) The spouse and children, if any; or if none

20 (ii) The parents and brothers and sisters, if any; or if
21 none

22 (iii) The nearest known relatives who would be entitled
23 to succeed to the person's estate by intestate succession as
24 set forth in article one, chapter forty-two of this code.

25 Once a relative or several relatives have been identified
26 in one of the aforementioned categories, relatives in a
27 lower category do not have to be listed in the petition;

28 (3) The name, place of residence or location and post
29 office address of the individual or facility that is

30 responsible for or has assumed responsibility for the
31 person's care or custody;

32 (4) The name, place of residence or location and post
33 office address of any person designated as a surrogate
34 decision-maker for the alleged protected person, or of any
35 representative or representatives designated under a
36 durable power of attorney, medical power of attorney or
37 living will, of which the alleged protected person is the
38 principal, and the petitioner shall attach a copy of any
39 such documents, if available;

40 (5) The name, post office address and phone number
41 of the attorney representing the petitioner in the petition
42 and appointment proceedings;

43 (6) Whether the person's incapacity will prevent
44 attendance at the hearing and the reasons therefor;

45 (7) The type of guardianship or conservatorship
46 requested and the reasons for the request;

47 (8) The proposed guardian or conservator's name, post
48 office address and, if the proposed guardian or
49 conservator is an individual, the individual's age,
50 occupation and relationship to the alleged protected
51 person;

52 (9) The name and post office address of a guardian
53 nominated by the alleged protected person if different
54 from the proposed guardian or conservator, and, if the
55 person nominated as a guardian or conservator is an
56 individual, the individual's age, occupation and
57 relationship to the alleged protected person;

58 (10) The name and post office address of any
59 guardian or conservator currently acting, whether in this
60 state or elsewhere;

61 (11) If the appointment of a limited guardian is
62 requested, the specific areas of protection and assistance to
63 be included in the order of appointment; and

64 (12) If the appointment of a limited conservator is
65 requested, the specific areas of management and assistance
66 to be included in the order of appointment.

§44A-2-6. Notice of hearing.

1 (a) Upon the filing of the petition and evaluation
2 report, the court shall promptly issue a notice fixing the
3 date, hour and location for a hearing to take place within
4 sixty days.

5 (b) The alleged protected person shall be personally
6 served with the notice, a copy of the petition, and the
7 evaluation report not less than fourteen days before the
8 hearing. The person may not waive notice, and a failure
9 to properly notify the person shall be jurisdictional.

10 (c) A copy of the notice, together with a copy of the
11 petition, shall be mailed by certified mail, return receipt
12 requested, by the petitioner, at least fourteen days before
13 the hearing to all individuals seven years of age or older
14 and to all entities whose names and post office addresses
15 appear in the petition. A copy of certified mail return
16 receipts shall be filed in the office of the circuit clerk on
17 or before the date of hearing.

18 (d) The notice shall include a brief statement in large
19 print of the purpose of the proceedings, and shall inform
20 the alleged protected person of the right to appear at the
21 hearing, the right to an attorney and the right to object to
22 the proposed appointment. Additionally, the notice shall
23 include the following statement in large print:

24 **POSSIBLE CONSEQUENCES OF A COURT**
25 **FINDING THAT YOU ARE INCAPACITATED**

26 At the hearing you may lose many of your rights. A
27 guardian may be appointed to make personal decisions
28 for you. A conservator may be appointed to make
29 decisions concerning your property and finances. The
30 appointment may affect control of how you spend your
31 money, how your property is managed and controlled,
32 who makes your medical decisions, where you live,
33 whether you are allowed to vote and other important
34 rights.

35 (e) No person may be appointed a guardian or
36 conservator without first receiving proper notice and
37 having the opportunity for a hearing.

CHAPTER 100

(S. B. 553—By Senators Wooton, Ball, Dittmar, Fanning, Hunter, Ross, Schoonover, Snyder, White, Buckalew, Deem and Kimble)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections six and nine, article one, chapter twenty-seven of said code, all relating generally to the definition of the terms “hospital”, “state hospital” and “mental health facilities” and definitions of certain terms applicable to regulation of hospitals; and clarifying that regional jail facilities and correctional centers are not hospitals or mental health facilities.

Be it enacted by the Legislature of West Virginia:

That section two, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections six and nine, article one, chapter twenty-seven of said code be amended and reenacted, all to read as follows:

Chapter

16. Public Health.

27. Mentally Ill Persons.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-2. Definitions.

1 Definitions of words and terms defined in articles five-
2 f and twenty-nine-b of this chapter are incorporated in this
3 section unless this section has different definitions.

4 As used in this article, unless otherwise indicated by
5 the context:

6 (a) "Affected person" means:

7 (1) The applicant;

8 (2) An agency or organization representing
9 consumers;

10 (3) Any individual residing within the geographic area
11 served or to be served by the applicant;

12 (4) Any individual who regularly uses the health care
13 facilities within that geographic area;

14 (5) The health care facilities which provide services
15 similar to the services of the facility under review and
16 which will be significantly affected by the proposed
17 project;

18 (6) The health care facilities which, prior to receipt by
19 the state agency of the proposal being reviewed, have
20 formally indicated an intention to provide similar services
21 in the future;

22 (7) Third-party payors who reimburse health care
23 facilities similar to those proposed for services;

24 (8) Any agency that establishes rates for health care
25 facilities similar to those proposed; or

26 (9) Organizations representing health care providers.

27 (b) "Ambulatory health care facility" means a free-
28 standing facility that provides health care to
29 noninstitutionalized and nonhomebound persons on an
30 outpatient basis. For purposes of this definition, a free-
31 standing facility is not located on the campus of an
32 existing health care facility. This definition does not
33 include the private office practice of any one or more
34 health professionals licensed to practice in this state
35 pursuant to the provisions of chapter thirty of this code:
36 *Provided*, That this exemption from review shall not be
37 construed to include practices where major medical
38 equipment otherwise subject to review under the
39 provisions of this article is acquired, offered or developed:
40 *Provided, however*, That this exemption from review shall
41 not be construed to include certain health services

42 otherwise subject to review under the provisions of
43 subdivision (1), subsection (a), section four of this article.

44 (c) "Ambulatory surgical facility" means a free-
45 standing facility that provides surgical treatment to
46 patients not requiring hospitalization. For purposes of this
47 definition, a free-standing facility is not physically
48 attached to a health care facility. This definition does not
49 include the private office practice of any one or more
50 health professionals licensed to practice surgery in this
51 state pursuant to the provisions of chapter thirty of this
52 code: *Provided*, That this exemption from review shall
53 not be construed to include practices where major medical
54 equipment otherwise subject to review under the
55 provisions of this article is acquired, offered or developed:
56 *Provided, however*, That this exemption from review shall
57 not be construed to include health services otherwise
58 subject to review under the provisions of subdivision (1),
59 subsection (a), section four of this article.

60 (d) "Applicant" means: (1) The governing body or
61 the person proposing a new institutional health service
62 who is, or will be, the health care facility licensee wherein
63 the new institutional health service is proposed to be
64 located; and (2) in the case of a proposed new institutional
65 health service not to be located in a licensed health care
66 facility, the governing body or the person proposing to
67 provide the new institutional health service. Incorporators
68 or promoters who will not constitute the governing body
69 or persons responsible for the new institutional health
70 service may not be an applicant.

71 (e) "Bed capacity" means the number of beds
72 licensed to a health care facility, or the number of adult
73 and pediatric beds permanently staffed and maintained for
74 immediate use by inpatients in patient rooms or wards in
75 an unlicensed facility.

76 (f) "Campus" means the adjacent grounds and
77 buildings, or grounds and buildings not separated by
78 more than a public right-of-way, of a health care facility.

79 (g) "Capital expenditure" means:

80 (1) An expenditure made by or on behalf of a health
81 care facility, which: (A) (i) Under generally accepted
82 accounting principles is not properly chargeable as an
83 expense of operation and maintenance; or (ii) is made to
84 obtain either by lease or comparable arrangement any
85 facility or part thereof or any equipment for a facility or
86 part; and (B) (i) Exceeds the expenditure minimum; or (ii)
87 is a substantial change to the bed capacity of the facility
88 with respect to which the expenditure is made; or (iii) is a
89 substantial change to the services of such facility; or

90 (2) The donation of equipment or facilities to a health
91 care facility, which if acquired directly by that facility
92 would be subject to review; or

93 (3) The transfer of equipment or facilities for less than
94 fair market value if the transfer of the equipment or
95 facilities at fair market value would be subject to review; or

96 (4) A series of expenditures, if the sum total exceeds
97 the expenditure minimum and if determined by the state
98 agency to be a single capital expenditure subject to review.
99 In making this determination, the state agency shall
100 consider: Whether the expenditures are for components
101 of a system which is required to accomplish a single
102 purpose; whether the expenditures are to be made over a
103 two-year period and are directed towards the
104 accomplishment of a single goal within the health care
105 facility's long-range plan; or whether the expenditures are
106 to be made within a two-year period within a single
107 department such that they will constitute a significant
108 modernization of the department.

109 (h) "Expenditure minimum" means one million
110 dollars and includes the cost of any studies, surveys,
111 designs, plans, working drawings, specifications and other
112 activities, including staff effort and consulting and other
113 services essential to the acquisition, improvement,
114 expansion or replacement of any plant or equipment.

115 (i) "Health", used as a term, includes physical and
116 mental health.

117 (j) "Health care facility" means a publicly or
118 privately owned facility, agency or entity that offers or
119 provides health care services, whether a for-profit or
120 nonprofit entity and whether or not licensed, or required
121 to be licensed, in whole or in part, and includes, but is not
122 limited to, hospitals; skilled nursing facilities; kidney
123 disease treatment centers, including free-standing
124 hemodialysis units; intermediate care facilities; ambulatory
125 health care facilities; ambulatory surgical facilities; home
126 health agencies; hospice agencies; rehabilitation facilities;
127 health maintenance organizations; and community mental
128 health and mental retardation facilities. For purposes of
129 this definition, "community mental health and mental
130 retardation facility" means a private facility which
131 provides such comprehensive services and continuity of
132 care as emergency, outpatient, partial hospitalization,
133 inpatient or consultation and education for individuals
134 with mental illness, mental retardation or drug or alcohol
135 addiction.

136 (k) "Health care provider" means a person,
137 partnership, corporation, facility, hospital or institution
138 licensed or certified or authorized by law to provide
139 professional health care service in this state to an
140 individual during that individual's medical, remedial or
141 behavioral health care, treatment or confinement.

142 (l) "Health maintenance organization" means a
143 public or private organization, organized under the laws of
144 this state, which:

145 (1) Is a qualified health maintenance organization
146 under Section 1310(d) of the Public Health Service Act, as
147 amended, Title 42 U.S.C. §300e-9(d); or

148 (2) (A) Provides or otherwise makes available to
149 enrolled participants health care services, including
150 substantially the following basic health care services: Usual
151 physician services, hospitalization, laboratory, X ray,
152 emergency and preventive services and out-of-area
153 coverage; and

154 (B) Is compensated except for copayments for the
155 provision of the basic health care services listed in

156 paragraph (A) of this subdivision to enrolled participants
157 on a predetermined periodic rate basis without regard to
158 the date the health care services are provided and which is
159 fixed without regard to the frequency, extent or kind of
160 health service actually provided; and

161 (C) Provides physicians' services: (i) Directly through
162 physicians who are either employees or partners of the
163 organization; or (ii) through arrangements with individual
164 physicians or one or more groups of physicians organized
165 on a group practice or individual practice basis.

166 (m) "Health services" means clinically related
167 preventive, diagnostic, treatment or rehabilitative services,
168 including alcohol, drug abuse and mental health services.

169 (n) "Home health agency" means an organization
170 primarily engaged in providing professional nursing
171 services either directly or through contract arrangements
172 and at least one of the following services: Home health
173 aide services, other therapeutic services, physical therapy,
174 speech therapy, occupational therapy, nutritional services
175 or medical social services to persons in their place of
176 residence on a part-time or intermittent basis.

177 (o) "Hospice agency" means a private or public
178 agency or organization licensed in West Virginia for the
179 administration or provision of hospice care services to
180 terminally ill persons in the persons' temporary or
181 permanent residences by using an interdisciplinary team,
182 including, at a minimum, persons qualified to perform
183 nursing services; social work services; the general practice
184 of medicine or osteopathy; and pastoral or spiritual
185 counseling.

186 (p) "Hospital" means a facility licensed as such
187 pursuant to the provisions of article five-b of this chapter,
188 and any acute care facility operated by the state
189 government, that primarily provides inpatient diagnostic,
190 treatment or rehabilitative services to injured, disabled or
191 sick persons under the supervision of physicians and
192 includes psychiatric and tuberculosis hospitals.

193 (q) "Intermediate care facility" means an institution
194 that provides health-related services to individuals with
195 mental or physical conditions that require services above
196 the level of room and board, but do not require the degree
197 of services provided in a hospital or skilled-nursing
198 facility.

199 (r) "Long-range plan" means a document formally
200 adopted by the legally constituted governing body of an
201 existing health care facility or by a person proposing a
202 new institutional health service, which contains the
203 information required by the state agency in rules adopted
204 pursuant to section eight of this article.

205 (s) "Major medical equipment" means a single unit
206 of medical equipment or a single system of components
207 with related functions, which is used for the provision of
208 medical and other health services and costs in excess of
209 seven hundred fifty thousand dollars. This term does not
210 include medical equipment acquired by or on behalf of a
211 clinical laboratory to provide clinical laboratory services if
212 the clinical laboratory is independent of a physician's
213 office and a hospital and it has been determined under
214 Title XVIII of the Social Security Act to meet the
215 requirements of paragraphs ten and eleven of Section
216 1861(s) of such act, Title 42 U.S.C. §1395x (10) and
217 (11). In determining whether medical equipment is major
218 medical equipment, the cost of studies, surveys, designs,
219 plans, working drawings, specifications and other activities
220 essential to the acquisition of such equipment shall be
221 included. If the equipment is acquired for less than fair
222 market value, the term "cost" includes the fair market
223 value.

224 (t) "Medically underserved population" means the
225 population of an area designated by the state agency as
226 having a shortage of personal health services. The state
227 agency may consider unusual local conditions that are a
228 barrier to accessibility or availability of health services.
229 The designation shall be in rules adopted by the state
230 agency pursuant to section eight of this article, and the
231 population so designated may include the state's medically
232 underserved population designated by the federal

233 secretary of health and human services under Section
234 330(b)(3) of the Public Health Service Act, as amended,
235 Title 42 U.S.C. §254(b)(3).

236 (u) "New institutional health service" means any
237 service as described in section three of this article.

238 (v) "Offer", when used in connection with health
239 services, means that the health care facility or health
240 maintenance organization holds itself out as capable of
241 providing, or as having the means to provide specified
242 health services.

243 (w) "Person" means an individual, trust, estate,
244 partnership, committee, corporation, association and other
245 organizations such as joint-stock companies and insurance
246 companies, a state or a political subdivision or
247 instrumentality thereof or any legal entity recognized by
248 the state:

249 (x) "Physician" means a doctor of medicine or
250 osteopathy legally authorized to practice by the state.

251 (y) "Proposed new institutional health service" means
252 any service as described in section three of this article.

253 (z) "Psychiatric hospital" means an institution that
254 primarily provides to inpatients, by or under the
255 supervision of a physician, specialized services for the
256 diagnosis, treatment and rehabilitation of mentally ill and
257 emotionally disturbed persons.

258 (aa) "Rehabilitation facility" means an inpatient
259 facility operated for the primary purpose of assisting in
260 the rehabilitation of disabled persons through an
261 integrated program of medical and other services, which
262 are provided under competent professional supervision.

263 (bb) "Review agency" means an agency of the state,
264 designated by the governor as the agency for the review of
265 state agency decisions.

266 (cc) "Skilled nursing facility" means an institution, or
267 a distinct part of an institution, that primarily provides
268 inpatient skilled nursing care and related services, or
269 rehabilitation services, to injured, disabled or sick persons.

270 (dd) "State agency" means the health care cost review
271 authority created, established and continued pursuant to
272 article twenty-nine-b of this chapter.

273 (ee) "State health plan" means the document
274 approved by the governor after preparation by the former
275 statewide health coordinating council, or that document as
276 approved by the governor after amendment by the former
277 health care planning council or the state agency.

278 (ff) "Substantial change to the bed capacity" of a
279 health care facility means any change, associated with a
280 capital expenditure, that increases or decreases the bed
281 capacity, or relocates beds from one physical facility or
282 site to another, but does not include a change by which a
283 health care facility reassigns existing beds as swing beds
284 between acute care and long-term care categories:
285 *Provided*, That a decrease in bed capacity in response to
286 federal rural health initiatives shall be excluded from this
287 definition.

288 (gg) "Substantial change to the health services" of a
289 health care facility means: (1) The addition of a health
290 service offered by or on behalf of the health care facility,
291 which was not offered by or on behalf of the facility
292 within the twelve-month period before the month in which
293 the service is first offered; or (2) the termination of a
294 health service offered by or on behalf of the facility:
295 *Provided*, That "substantial change to the health services"
296 does not include the providing of ambulance service,
297 wellness centers or programs, adult day care or respite care
298 by acute care facilities.

299 (hh) "To develop", when used in connection with
300 health services, means to undertake those activities which
301 upon their completion will result in the offer of a new
302 institutional health service or the incurring of a financial
303 obligation, in relation to the offering of such a service.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§27-1-6. State hospital.

§27-1-9. Mental health facility.

§27-1-6. State hospital.

1 "State hospital" means any hospital, center or institu-
2 tion, or part thereof, established, maintained and operated
3 by the department of health, or by the department of
4 health in conjunction with a political subdivision of the
5 state, to provide inpatient or outpatient care and treatment
6 for the mentally ill, mentally retarded or addicted. The
7 terms "hospital" and "state hospital" exclude correc-
8 tional and regional jail facilities.

§27-1-9. Mental health facility.

1 "Mental health facility" means any inpatient, residen-
2 tial or outpatient facility for the care and treatment of the
3 mentally ill, mentally retarded or addicted which is operat-
4 ed, or licensed to operate, by the department of health and
5 includes state hospitals as defined in section six of this
6 article. The term also includes veterans administration
7 hospitals, but does not include any regional jail, juvenile
8 or adult correctional facility, or juvenile detention facility.

CHAPTER 101

(H. B. 2741—By Delegates Compton, Mahan,
Hutchins, Thomas, Pino, Louisos and Capito)

[Passed April 12, 1997; 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 five-o, relating to medication administration by unlicensed personnel; short title; definitions; administration of medications by staff members in certain residential facilities; exemption from licensure; authorizing creation of a council of nurses; instructions and training requirements; eligibility requirements for authorization; oversight administration; procedures for

withdrawal of authorization; authorization for fee schedules; limitations on administration of medication and authority to promulgate emergency and legislative rules.

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 five-o, to read as follows:

ARTICLE 5O. MEDICATION ADMINISTRATION BY UNLICENSED PERSONNEL.

- §16-5O-1. Short title.
- §16-5O-2. Definitions.
- §16-5O-3. Administration of medications in facilities.
- §16-5O-4. Exemption from licensure; statutory construction.
- §16-5O-5. Instruction and training.
- §16-5O-6. Availability of records; eligibility requirements of facility staff.
- §16-5O-7. Oversight of medication administration by unlicensed personnel.
- §16-5O-8. Withdrawal of authorization.
- §16-5O-9. Fees.
- §16-5O-10. Limitations on medication administration.
- §16-5O-11. Rules.

§16-5O-1. Short title.

- 1 This article may be cited as the “Medication Adminis-
- 2 tration by Unlicensed Personnel Act.”

§16-5O-2. Definitions.

- 1 As used in this article, unless a different meaning ap-
- 2 pears from the context, the following definitions apply:

- 3 (a) “Administration of medication” means:

- 4 (1) Assisting a person in the ingestion, application or
- 5 inhalation of medications, including prescription drugs, or
- 6 in the use of universal precautions or rectal or vaginal
- 7 insertion of medication, according to the legibly written or
- 8 printed directions of the attending physician or authorized
- 9 practitioner, or as written on the prescription label; and

10 (2) Making a written record of such assistance with
11 regard to each medication administered, including the
12 time, route and amount taken: *Provided*, That for purpos-
13 es of this article, "administration" does not include
14 judgement, evaluation, assessments, injections of medica-
15 tion, monitoring of medication or self-administration of
16 medications, including prescription drugs and self-injec-
17 tion of medication by the resident.

18 (b) "Authorizing agency" means the department's
19 office of health facility licensure and certification.

20 (c) "Department" means the department of health and
21 human resources.

22 (d) "Facility" means an ICF/MR, a personal care
23 home, residential board and care home, behavioral health
24 group home, private residence in which health care servic-
25 es are provided under the supervision of a registered nurse
26 or an adult family care home that is licensed by or ap-
27 proved by the department.

28 (e) "Facility staff member" means an individual em-
29 ployed by a facility but does not include a health care
30 professional acting within the scope of a professional
31 license or certificate.

32 (f) "Health care professional" means a medical doctor
33 or doctor of osteopathy, a podiatrist, registered nurse,
34 practical nurse, registered nurse practitioner, physician's
35 assistant, dentist, optometrist or respiratory care profes-
36 sional licensed under chapter thirty of this code.

37 (g) "ICF/MR" means an intermediate care facility for
38 the mentally retarded which is certified by the department.

39 (h) "Medication" means a drug, as defined in section
40 one hundred one, article one, chapter sixty-a of this code,
41 which has been prescribed by a duly authorized health
42 care professional to be ingested through the mouth, ap-
43 plied to the outer skin, eye or ear, or applied through nose
44 drops, vaginal or rectal suppositories.

45 (i) "Registered professional nurse" means a person
46 who holds a valid license pursuant to article seven, chapter
47 thirty of this code.

48 (j) "Resident" means a resident of a facility.

49 (k) "Secretary" means the secretary of the department
50 of health and human resources or his or her designee.

51 (l) "Self-administration of medication" means the act
52 of a resident, who is independently capable of reading
53 and understanding the labels of drugs ordered by a physi-
54 cian, in opening and accessing pre-packaged drug con-
55 tainers, accurately identifying and taking the correct dos-
56 age of the drugs as ordered by the physician, at the correct
57 time and under the correct circumstances.

58 (m) "Supervision of self-administration of medica-
59 tion" means a personal service which includes reminding
60 residents to take medications, opening medication contain-
61 ers for residents, reading the medication label to residents,
62 observing residents while they take medication, checking
63 the self administered dosage against the label on the con-
64 tainer and reassuring residents that they have obtained and
65 are taking the dosage as prescribed.

§16-50-3. Administration of medications in facilities.

1 (a) The secretary is authorized to establish and imple-
2 ment a program for the administration of medications in
3 facilities. The program shall be developed and conducted
4 in cooperation with the appropriate agencies, advisory
5 bodies and boards.

6 (b) Administration of medication pursuant to this
7 article shall be performed only by:

8 (1) Registered professional nurses;

9 (2) Other licensed health care professionals; or

10 (3) Facility staff members who have been trained and
11 retrained every two years and who are subject to the super-
12 vision of and approval by a registered professional nurse.

13 (c) Subsequent to assessing the health status of an
14 individual resident, a registered professional nurse, in
15 collaboration with the resident's attending physician and
16 the facility staff member, may recommend that the facility
17 authorize a facility staff member to administer medication
18 if the staff member:

19 (1) Has been trained pursuant to the requirements of
20 this article;

21 (2) Is considered by the registered professional nurse
22 to be competent;

23 (3) Consults with the registered professional nurse or
24 attending physician on a regular basis; and

25 (4) Is monitored or supervised by the registered pro-
26 fessional nurse.

27 (d) Nothing in this article may be construed to pro-
28 hibit any facility staff member from administering medi-
29 cations or providing any other prudent emergency assis-
30 tance to aid any person who is in acute physical distress or
31 requires emergency assistance.

32 (e) Supervision of self-administration of medication by
33 facility staff members who are not licensed health care
34 professionals may be permitted in certain circumstances,
35 when the substantial purpose of the setting is other than
36 the provision of health care.

§16-50-4. Exemption from licensure; statutory construction.

1 (a) Any individual who is not otherwise authorized by
2 law to administer medication may administer medication
3 in a facility if he or she meets the requirements and provi-
4 sions of this article. Any person who administers medica-
5 tion pursuant to the provisions of this article shall be ex-
6 empt from the licensing requirements of chapter thirty of
7 this code.

8 (b) All licensed health care professionals as defined in
9 this article remain subject to the provisions of their respec-
10 tive licensing laws.

11 (c) Notwithstanding any other provision of law to the
12 contrary, the provisions of this article shall not be con-
13 strued to violate or be in conflict with any of the provi-
14 sions of articles seven or seven-a, chapter thirty of this
15 code.

§16-50-5. Instruction and training.

1 (a) The office of health facility licensure and certifica-
2 tion shall establish a council of nurses to represent the
3 facilities and registered professional nurses affected by the
4 provisions of this article. The council of nurses shall pre-
5 pare a procedural manual and recommendations regard-
6 ing a training course to the secretary of the department of
7 health and human resources. The council shall meet every
8 two years to review the training curricula, competency
9 evaluation procedures and rules implemented by the sec-
10 retary, and shall make recommendations as deemed neces-
11 sary.

12 (b) The department shall develop and approve train-
13 ing curricula and competency evaluation procedures for
14 facility staff members who administer medication pursuant
15 to the provisions of this article. The department shall
16 consider the recommendations of the council of nurses
17 and shall consult with the West Virginia board of examin-
18 ers for registered nurses in developing the training curric-
19 ula and competency evaluation procedures.

20 (c) The program developed by the department shall
21 require that any person who applies to act as a facility staff
22 member authorized to administer medications pursuant to
23 the provisions of this article shall:

24 (1) Hold a high school diploma or general education
25 diploma;

26 (2) Be trained or certified in cardiopulmonary resusci-
27 tation and first aid;

28 (3) Participate in the initial training program devel-
29 oped by the department;

30 (4) Pass a competency evaluation developed by the
31 department; and

32 (5) Subsequent to initial training and evaluation, par-
33 ticipate in a retraining program every two years.

34 (d) Any facility may offer the training and competen-
35 cy evaluation program developed by the department to its
36 facility staff members. The training and competency
37 programs shall be provided by the facility through a regis-
38 tered professional nurse.

39 (e) A registered nurse who is authorized to train facili-
40 ty staff members to administer medications in facilities
41 shall:

42 (1) Possess a current active West Virginia license in
43 good standing to practice as a registered nurse;

44 (2) Have practiced as a registered professional nurse in
45 a position or capacity requiring knowledge of medications
46 for the immediate two years prior to being authorized to
47 train facility staff members; and

48 (3) Be familiar with the nursing care needs of resi-
49 dents of facilities as described in this article.

**§16-50-6. Availability of records; eligibility requirements of
facility staff.**

1 (a) Any facility which authorizes unlicensed staff
2 members to administer medications pursuant to the provi-
3 sions of this article shall make available to the authorizing
4 agency a list of the individual facility staff members au-
5 thorized to administer medications.

6 (b) A facility may permit a facility staff member to
7 administer medications in a single specific agency only
8 after compliance with all of the following:

9 (1) The staff member has successfully completed a
10 training program and received a satisfactory competency
11 evaluation as required by the provisions of this article;

12 (2) The facility determines there is no statement on
13 the state administered nurse aide registry indicating that
14 the staff member has been the subject of finding of abuse
15 or neglect of a long-term care facility resident or convict-
16 ed of the misappropriation of such a resident's property;

17 (3) The facility staff member has had a criminal back-
18 ground check or if applicable, a check of the state police
19 abuse registry, establishing that the individual has been
20 convicted of no crimes against persons or drug related
21 crimes;

22 (4) The medication to be administered is received and
23 maintained by the facility staff member in the original
24 container in which it was dispensed by a pharmacist or the
25 prescribing health care professional; and

26 (5) The facility staff member has complied with all
27 other applicable requirements of this article, the rules
28 adopted pursuant to this article and such other criteria,
29 including minimum competency requirements, as are
30 specified by the authorizing agency.

§16-50-7. Oversight of medication administration by unlicensed personnel.

1 (a) Each facility in which medication is administered
2 by unlicensed personnel shall establish in policy an ad-
3 ministrative monitoring system. The specific requirements
4 of the administrative policy shall be established by the
5 department through rules proposed pursuant to section
6 eleven of this article.

7 (b) Monitoring of facility staff members authorized
8 pursuant to this article shall be performed by a registered
9 professional nurse employed or contracted by the facility.

§16-50-8. Withdrawal of authorization.

1 The registered professional nurse who monitors or
2 supervises the facility staff members authorized to admin-
3 ister medication pursuant to this article may withdraw
4 authorization for a facility staff member if the nurse deter-
5 mines that the facility staff member is not performing

6 medication administration in accordance with the training
7 and written instructions. The withdrawal of the authoriza-
8 tion shall be documented and shall be relayed to the facili-
9 ty and the department in order to remove the facility staff
10 member from the list of authorized individuals.

§16-50-9. Fees.

1 The department may set and collect fees necessary for
2 the implementation of the provisions of this article pursu-
3 ant to rules authorized by section eleven of this article.

§16-50-10. Limitations on medication administration.

1 The following limitations apply to the administration
2 of medication by facility staff members:

3 (a) Injections or any parenteral medications may not
4 be administered;

5 (b) Irrigations or debriding agents used in the treat-
6 ment of a skin condition or minor abrasions may not be
7 administered;

8 (c) No verbal medication orders may be accepted, no
9 new medication orders shall be transcribed and no drug
10 dosages may be converted and calculated; and

11 (d) No medications ordered by the physician or a
12 health care professional with legal prescriptive authority to
13 be given "as needed" may be administered unless the
14 order is written with specific parameters which preclude
15 independent judgment.

§16-50-11. Rules.

1 The department shall promulgate emergency rules
2 pursuant to the provisions of section fifteen, article three,
3 chapter twenty-nine-a of this code as may be necessary to
4 implement the provisions of this article. Subsequently, the
5 department may propose rules for legislative approval in
6 accordance with the provisions of article three, chapter
7 twenty-nine-a of this code.

CHAPTER 102

(Com. Sub. for S. B. 458—By Senators Tomblin, Mr. President, and Buckalew,
By Request of the Executive)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section sixteen, article twenty-nine-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, three, five, eight, nine, eleven, seventeen, eighteen, nineteen, nineteen-a, twenty, twenty-three, twenty-five, twenty-six, twenty-seven and twenty-eight of said article; and to further amend said article by adding thereto a new section, designated section six, all relating to the West Virginia health care authority; including additional legislative findings and purpose; changing the agency's title; amending and adding certain definitions; amending conflicting employment prohibition for board members and former board members to comply with the governmental ethics act; deleting the review council; authorizing information gathering and coordination; creating a data advisory group and expanding the board's powers generally; changing annual reporting requirements; related programs and priorities; including utilization reporting with uniform system of accounts and financing; defining entities subject to annual reporting requirements; requiring review and reporting for alternatives to present rate-setting; legislative directives, studies, findings and recommendations; explaining discount and risk-bearing contract review and authorizing promulgation of rules; creating a quality assurance advisory group; modifying public disclosure, exemptions from state antitrust laws and penalties for violations to include health care providers; and extending termination date.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article twenty-nine-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, two, three, five,

eight, nine, eleven, seventeen, eighteen, nineteen, nineteen-a, twenty, twenty-three, twenty-five, twenty-six, twenty-seven and twenty-eight of said article be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section six, all to read as follows:

ARTICLE 29B. HEALTH CARE AUTHORITY.

- §16-29B-1. Legislative findings; purpose.
- §16-29B-2. Short title.
- §16-29B-3. Definitions.
- §16-29B-5. West Virginia health care authority; composition of the board; qualifications; terms; oath; compensation and expenses of members; vacancies; appointment of chairman, and meetings of the board.
- §16-29B-6. Information gathering and coordination; data advisory group.
- §16-29B-8. Powers generally; budget expenses of the board.
- §16-29B-9. Annual report.
- §16-29B-11. Related programs.
- §16-29B-17. Uniform system of financial reporting.
- §16-29B-18. Annual reporting.
- §16-29B-19. Rate-setting powers generally.
- §16-29B-19a. Additional legislative directives; studies, findings and recommendations.
- §16-29B-20. Rate determination.
- §16-29B-23. Utilization review and quality assurance; quality assurance advisory group.
- §16-29B-25. Public disclosure.
- §16-29B-26. Exemptions from state antitrust laws.
- §16-29B-27. Penalties for violations.
- §16-29B-28. Termination date.

§16-29B-1. Legislative findings; purpose.

1 The Legislature hereby finds and declares that the
2 health and welfare of the citizens of this state is being
3 threatened by unreasonable increases in the cost of health
4 care services, a fragmented system of health care, lack of
5 integration and coordination of health care services, un-
6 equal access to primary and preventative care, lack of a
7 comprehensive and coordinated health information system
8 to gather and disseminate data to promote the availability
9 of cost-effective, high-quality services and to permit effec-
10 tive health planning and analysis of utilization, clinical

11 outcomes and cost and risk factors. In order to alleviate
12 these threats: (1) Information on health care costs must be
13 gathered; (2) a system of cost control must be developed;
14 and (3) an entity of state government must be given au-
15 thority to ensure the containment of health care costs, to
16 gather and disseminate health care information; to analyze
17 and report on changes in the health care delivery system
18 as a result of evolving market forces, including the imple-
19 mentation of managed care; and to assure that the state
20 health plan, certificate of need program, rate regulation
21 program and information systems serve to promote cost
22 containment, access to care, quality of services and preven-
23 tion. Therefore, the purpose of this article is to protect the
24 health and well-being of the citizens of this state by guard-
25 ing against unreasonable loss of economic resources as
26 well as to ensure the continuation of appropriate access to
27 cost-effective, high-quality health care services.

§16-29B-2. Short title.

1 This article may be cited as the "West Virginia Health
2 Care Authority".

§16-29B-3. Definitions.

1 Definitions of words and terms defined in articles two-
2 d and five-f of this chapter are incorporated in this section
3 unless this section has different definitions.

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

6 (a) "Charges" means the economic value established
7 for accounting purposes of the goods and services a hos-
8 pital provides for all classes of purchasers;

9 (b) "Class of purchaser" means a group of potential
10 hospital patients with common characteristics affecting the
11 way in which their hospital care is financed. Examples of
12 classes of purchasers are medicare beneficiaries, welfare
13 recipients, subscribers of corporations established and
14 operated pursuant to article twenty-four, chapter thirty-
15 three of this code, members of health maintenance organi-
16 zations and other groups as defined by the board;

17 (c) "Board" means the three-member board of direc-
18 tors of the West Virginia health care authority, an autono-
19 mous division within the state department of health and
20 human resources;

21 (d) "Health care provider" means a person, partner-
22 ship, corporation, facility, hospital or institution licensed,
23 certified or authorized by law to provide professional
24 health care service in this state to an individual during this
25 individual's medical, remedial, or behavioral health care,
26 treatment or confinement. For purposes of this article,
27 "health care provider" shall not include the private office
28 practice of one or more health care professionals licensed
29 to practice in this state pursuant to the provisions of chap-
30 ter thirty of this code.

31 (e) "Hospital" means a facility subject to licensure as
32 such under the provisions of article five-b of this chapter,
33 and any acute care facility operated by the state govern-
34 ment which is primarily engaged in providing to inpa-
35 tients, by or under the supervision of physicians, diagnos-
36 tic and therapeutic services for medical diagnosis, treat-
37 ment and care of injured, disabled or sick persons, and
38 does not include state mental health facilities or state long-
39 term care facilities;

40 (f) "Person" means an individual, trust, estate, part-
41 nership, committee, corporation, association or other orga-
42 nization such as a joint stock company, a state or political
43 subdivision or instrumentality thereof or any legal entity
44 recognized by the state;

45 (g) "Purchaser" means a consumer of patient care
46 services, a natural person who is directly or indirectly
47 responsible for payment for such patient care services
48 rendered by a health care provider, but does not include
49 third-party payers;

50 (h) "Rates" means all value given or money payable
51 to health care providers for health care services, including
52 fees, charges and cost reimbursements;

53 (i) "Records" means accounts, books and other data
54 related to health care costs at health care facilities subject

55 to the provisions of this article which do not include privi-
56 leged medical information, individual personal data, confi-
57 dential information, the disclosure of which is prohibited
58 by other provisions of this code and the laws enacted by
59 the federal government, and information, the disclosure of
60 which would be an invasion of privacy;

61 (j) "Third-party payor" means any natural person,
62 person, corporation or government entity responsible for
63 payment for patient care services rendered by health care
64 providers; and

65 (k) "Related organization" means an organization,
66 whether publicly owned, nonprofit, tax-exempt or for
67 profit, related to a health care provider through common
68 membership, governing bodies, trustees, officers, stock
69 ownership, family members, partners or limited partners
70 including, but not limited to, subsidiaries, foundations,
71 related corporations and joint ventures. For the purposes
72 of this subsection family members shall mean brothers
73 and sisters, whether by the whole or half blood, spouse,
74 ancestors and lineal descendants.

**§16-29B-5. West Virginia health care authority; composition
of the board; qualifications; terms; oath; com-
pensation and expenses of members; vacancies;
appointment of chairman, and meetings of the
board.**

1 The "West Virginia Health Care Cost Review Authori-
2 ty", heretofore created as an autonomous division of the
3 department of health, is hereby continued as an auton-
4 omous division of the department of health and human
5 resources and shall be known as the "West Virginia Health
6 Care Authority", hereinafter referred to as the board.
7 Any references in this code to the West Virginia health
8 care cost review authority shall mean the West Virginia
9 health care authority.

10 (a) The board shall consist of three members, appoint-
11 ed by the governor, with the advice and consent of the
12 Senate. The board members shall be citizens and residents
13 of this state. No more than two of said board members
14 may be members of the same political party. One board

15 member shall have a background in health care finance or
16 economics, one board member shall have previous em-
17 ployment experience in human services, business adminis-
18 tration or substantially related fields and one board mem-
19 ber shall be a consumer of health services with a demon-
20 strated interest in health care issues.

21 (b) Each board member shall, before entering upon
22 the duties of his or her office, take and subscribe to the
23 oath provided by section five, article IV of the constitution
24 of the state of West Virginia, which oath shall be filed in
25 the office of the secretary of state. The governor shall
26 designate one of the board members to serve as chairman
27 at the governor's will and pleasure. The chairman shall be
28 the chief administrative officer of the board. The gover-
29 nor may remove any board member only for incompeten-
30 cy, neglect of duty, gross immorality, malfeasance in of-
31 fice or violation of the provisions of this article. The gov-
32 ernor shall appoint three board members, one for a term
33 of two years, one for a term of four years and one for a
34 term of six years, with all the terms beginning on the
35 twelfth day of March, one thousand nine hundred eighty-
36 three. All future appointments shall be for terms of six
37 years, except that an appointment to fill a vacancy shall be
38 for the unexpired term only.

39 (c) No person while in the employ of, or holding any
40 official relation to, any hospital or health care provider
41 subject to the provisions of this article, or who has any
42 pecuniary interest therein, may serve as a member of the
43 board or as an employee thereof. Nor may any such
44 board member be a candidate for or hold public office or
45 be a member of any political committee while acting as
46 such board member; nor may any board member or em-
47 ployee of said board receive anything of value, either
48 directly or indirectly, from any third-party payor or health
49 care provider. Should any of the board members become
50 a candidate for any public office or for membership on
51 any political committee, the governor shall remove said
52 board member from the board and shall appoint a new
53 board member to fill the vacancy created. No board
54 member or former board member may accept employ-
55 ment with any hospital or health care provider subject to

56 the jurisdiction of the board in violation of the West Vir-
57 ginia governmental ethics act, chapter six-b of this code:
58 *Provided*, That such act shall not apply to employment
59 accepted after termination of the board.

60 (d) The concurrent judgment of two of the board
61 members when in session as the board shall be deemed the
62 action of the board. A vacancy in the board shall not
63 affect the right or duty of the remaining board members
64 to function as a board.

65 (e) In order to adequately compensate the chairman of
66 the board and other members of the board for additional
67 duties newly imposed by law and not heretofore required
68 by law, the annual salary of the chairman of the board
69 shall be sixty-five thousand dollars and the annual salary
70 of the other board members shall be sixty thousand dol-
71 lars.

**§16-29B-6. Information gathering and coordination; data
advisory group.**

1 (a) The board shall: Coordinate and oversee the
2 health data collection of state agencies; lead state agencies'
3 efforts to make the best use of emerging technology to
4 effect the expedient and appropriate exchange of health
5 care information and data, including patient records and
6 reports; and coordinate data base development, analysis
7 and reporting to facilitate cost management, utilization
8 review and quality assurance efforts by state payor and
9 regulatory agencies, insurers, consumers, providers and
10 other interested parties. Agencies of the state collecting
11 health data shall work together through the board to de-
12 velop an integrated system for the efficient collection,
13 responsible use and dissemination of such data and to
14 facilitate and support the development of statewide health
15 information systems that will allow for the electronic trans-
16 mittal of all health information and claims processing
17 activities of state agencies within the state and that will
18 coordinate the development and use of electronic health
19 information systems within state government. The board
20 shall establish minimum requirements and issue reports
21 relating to information systems of all state health pro-
22 grams, including simplifying and standardizing forms,

23 establishing information standards and reports for
24 capitated managed care programs to be managed by the
25 insurance commission, and shall develop a comprehensive
26 system to collect ambulatory health care data. The board
27 is authorized to gain access to any health-related data base
28 in state government for the purposes of fulfilling its du-
29 ties: *Provided*, That for any data base to which the board
30 gains access, the use and dissemination of information
31 from the data base shall be subject to the confidentiality
32 provisions applicable to such data base.

33 (b) To advise the board in its efforts under this section,
34 the board shall create a data advisory group and appoint
35 one of the board's members as chair of the group. The
36 group shall be composed of representatives of consumers,
37 businesses, providers, payors and state agencies. The data
38 advisory group shall assist the board in developing priori-
39 ties and protocols for data collection and the development
40 and reform of health information systems provided under
41 this section.

42 (c) The board's staff shall gather information on cost
43 containment efforts, including, but not limited to, the pro-
44 vision of alternative delivery systems, prospective payment
45 systems, alternative rate-making methods, and programs of
46 consumer education. The board shall pay particular atten-
47 tion to the economic, quality of care and health status
48 impact of such efforts on purchasers or classes of purchas-
49 ers, particularly the elderly and those on low or fixed
50 incomes.

51 (d) The board staff shall further gather information on
52 state-of-the-art advances in medical technology, the cost
53 effectiveness of such advances and their impact on ad-
54 vances in health care services and management practices,
55 and any other state-of-the-art concepts relating to health
56 care cost containment, health care improvement or other
57 issues the board finds relevant and directs staff to investi-
58 gate. The board staff shall prepare and keep a register of
59 such information and update it on an annual basis.

60 (e) The data advisory group members shall be reim-
61 bursed from the board funds for sums necessary to carry

62 out its responsibilities and for reasonable travel expenses
63 to attend meetings.

§16-29B-8. Powers generally; budget expenses of the board.

1 (a) In addition to the powers granted to the board
2 elsewhere in this article, the board may:

3 (1) Adopt, amend and repeal necessary, appropriate
4 and lawful policy guidelines and rules in accordance with
5 article three, chapter twenty-nine-a of this code: *Provided*,
6 That subsequent amendments and modifications to any
7 rule promulgated pursuant to this article and not exempt
8 from the provisions of article three, chapter twenty-nine-a
9 of this code may be implemented by emergency rule;

10 (2) Hold public hearings, conduct investigations and
11 require the filing of information relating to matters affect-
12 ing the costs of health care services subject to the provi-
13 sions of this article and may subpoena witnesses, papers,
14 records, documents and all other data in connection there-
15 with. The board may administer oaths or affirmations in
16 any hearing or investigation;

17 (3) Apply for, receive and accept gifts, payments and
18 other funds and advances from the United States, the state
19 or any other governmental body, agency or agencies or
20 from any other private or public corporation or person
21 (with the exception of hospitals subject to the provisions
22 of this article, or associations representing them, doing
23 business in the state of West Virginia, except in accordance
24 with subsection (c) of this section), and enter into agree-
25 ments with respect thereto, including the undertaking of
26 studies, plans, demonstrations or projects. Any such gifts
27 or payments that may be received or any such agreements
28 that may be entered into shall be used or formulated only
29 so as to pursue legitimate, lawful purposes of the board,
30 and shall in no respect inure to the private benefit of a
31 board member, staff member, donor or contracting party;

32 (4) Lease, rent, acquire, purchase, own, hold, construct,
33 equip, maintain, operate, sell, encumber and assign rights
34 or dispose of any property, real or personal, consistent
35 with the objectives of the board as set forth in this article:

36 *Provided*, That such acquisition or purchase of real prop-
37 erty or construction of facilities shall be consistent with
38 planning by the state building commissioner and subject
39 to the approval of the Legislature;

40 (5) Contract and be contracted with and execute all
41 instruments necessary or convenient in carrying out the
42 board's functions and duties; and

43 (6) Exercise, subject to limitations or restrictions here-
44 in imposed, all other powers which are reasonably neces-
45 sary or essential to effect the express objectives and pur-
46 poses of this article.

47 (b) The board shall annually prepare a budget for the
48 next fiscal year for submission to the governor and the
49 Legislature which shall include all sums necessary to sup-
50 port the activities of the board and its staff.

51 (c) Each hospital subject to the provisions of this arti-
52 cle shall be assessed by the board on a pro rata basis using
53 the gross revenues of each hospital as reported under the
54 authority of section eighteen of this article as the measure
55 of the hospital's obligation. The amount of such fee shall
56 be determined by the board except that in no case shall
57 the hospital's obligation exceed one tenth of one percent
58 of its gross revenue. Such fees shall be paid on or before
59 the first day of July in each year and shall be paid into the
60 state treasury and kept as a special revolving fund desig-
61 nated "health care cost review fund", with the moneys in
62 such fund being expendable after appropriation by the
63 Legislature for purposes consistent with this article. Any
64 balance remaining in said fund at the end of any fiscal
65 year shall not revert to the treasury, but shall remain in
66 said fund and such moneys shall be expendable after
67 appropriation by the Legislature in ensuing fiscal years.

68 (d) Each hospital's assessment shall be treated as an
69 allowable expense by the board.

70 (e) The board is empowered to withhold rate approv-
71 als, certificates of need and rural health system loans and
72 grants if any such fees remain unpaid, unless exempted

73 under subsection (g), section four, article two-d of this
74 chapter.

§16-29B-9. Annual report.

1 The board shall, within thirty days of the close of the
2 fiscal year, or from time to time as requested by the Legis-
3 lature, prepare and transmit to the governor and the legis-
4 lative oversight commission on health and human resourc-
5 es accountability a report of its operations and activities
6 for the preceding fiscal year. This report shall include
7 summaries of all reports made by the hospitals subject to
8 this article, together with facts, suggestions and policy
9 recommendations the board considers necessary. The
10 board shall, after rate review and determination in accor-
11 dance with the provisions of this article, include such rate
12 schedules in its annual report or other reports as may be
13 requested by the Legislature.

§16-29B-11. Related programs.

1 In addition to carrying out its duties under this article,
2 the board shall carry out its information disclosure func-
3 tions set forth in article five-f of this chapter and its func-
4 tions set forth in article two-d of this chapter, including
5 health planning, issuing grants and loans to financially
6 vulnerable health care entities located in underserved ar-
7 eas, and the review and approval or disapproval of capital
8 expenditures for health care facilities or services. In mak-
9 ing decisions in the certificate of need review process, the
10 board shall be guided by the state health plan approved by
11 the governor.

§16-29B-17. Uniform system of financial reporting.

1 (a) The board shall develop and specify a uniform
2 system of reporting utilization, accounting and financial
3 reporting, including cost allocation methods by which
4 hospitals shall record their revenues, income, expenses,
5 capital outlays, assets, liabilities and units of service. The
6 development and specification process aforementioned
7 shall be conducted in a manner determined by the board
8 to be most efficient for that purpose notwithstanding the
9 provisions of chapter twenty-nine-a of this code. Each

10 hospital shall adopt this uniform system for the purpose of
11 reporting utilization, costs and revenues to the board ef-
12 fective for the fiscal year beginning on or after twelve
13 months from the effective date of this article.

14 (b) The board may provide for modification in the
15 accounting and reporting system in order to correctly
16 reflect differences in the scope or type of services and
17 financial structures of the various categories, sizes and
18 types of hospitals and in a manner consistent with the
19 purposes of this article.

20 (c) The board may provide technical assistance to
21 those hospitals which request it and which evidence suffi-
22 cient need for assistance in the establishment of a data
23 collection system to the extent that funds are available to
24 the board for this purpose.

25 (d) The board shall, after consultation with health care
26 providers, purchasers, classes of purchasers and third-party
27 payors, adopt a mandatory form for reporting to the
28 board, at its request, medical diagnosis, treatment and
29 other services rendered to each purchaser by health care
30 providers subject to the provisions of this article.

31 (e) Following a public hearing, the board shall estab-
32 lish a program to minimize the administrative burden on
33 hospitals by eliminating unnecessary duplication of finan-
34 cial and operational reports; and to the extent possible,
35 notwithstanding any other law, coordinate reviews, reports
36 and inspections performed by federal, state, local and
37 private agencies.

§16-29B-18. Annual reporting.

1 (a) It shall be the duty of every health care provider
2 which comes under the jurisdiction of this article and
3 article five-f of this chapter to file with the board the re-
4 ports required by such article five-f and the following
5 financial statements or reports in a form and at intervals
6 specified by the board, but at least annually:

7 (1) A balance sheet detailing the assets, liabilities and
8 net worth of the hospital for its preceding fiscal year;

9 (2) A statement of income and expenses for the pre-
10 ceding fiscal year;

11 (3) A statement of services rendered and services avail-
12 able; and

13 (4) Such other reports as the board may prescribe.

14 Where more than one licensed hospital is operated by
15 the reporting organization, the information required by
16 this section shall be reported for each hospital separately.

17 (b) It shall be the duty of every related organization to
18 file with the board, within thirty days from the effective
19 date of this section, the following financial statements or
20 reports for each of its three prior fiscal years:

21 (1) A balance sheet detailing the assets, liabilities and
22 net worth of the related organization;

23 (2) A statement of income and expenses;

24 (3) A statement of cash flows; and

25 (4) Such other information as the board may pre-
26 scribe.

27 After the initial filing of the financial information
28 required by this subsection, every related organization
29 shall thereafter file annual financial reports with the board
30 in a form specified by the board.

31 (c) The annual financial statements filed pursuant to
32 this section shall be prepared in accordance with the sys-
33 tem of accounting and reporting adopted under section
34 seventeen of this article. The board may require attesta-
35 tions from responsible officials of the hospitals or related
36 organizations that such reports have to the best of their
37 knowledge been prepared truthfully and in accordance
38 with the prescribed system of accounting and reporting.

39 (d) All reports filed under any provisions of this arti-
40 cle, except personal medical information personally iden-
41 tifiable to a purchaser and any tax return, shall be open to
42 public inspection and shall be available for examination at
43 the offices of the board during regular business hours.

44 (e) Whenever a further investigation is deemed neces-
45 sary or desirable to verify the accuracy of any information
46 set forth in any statement, schedule or report filed by a
47 health care provider or related organization under the
48 provisions of this section, the board may require a full or
49 partial audit of the records of the health care provider or
50 related organization.

§16-29B-19. Rate-setting powers generally.

1 (a) The board shall have power: (1) To initiate reviews
2 and investigations of hospital rates and establish and ap-
3 prove such rates; (2) to initiate reviews and investigations
4 of hospital rates for specific services and the component
5 factors which determine such rates; (3) to initiate reviews
6 and investigations of hospital budgets and the specific
7 components of such budgets; and (4) to approve or disap-
8 prove hospital rates and budgets taking into consideration
9 the criteria set forth in section twenty of this article.

10 (b) In the interest of promoting the most efficient and
11 effective use of hospital service, the board may adopt and
12 approve alternative methods of rate determination. The
13 board may also adopt methods of charges and payments
14 of an experimental nature which are in the public interest
15 and consistent with the purpose of this article.

16 (c) The board shall examine the need for an alterna-
17 tive to the current rate-setting method as a means of con-
18 trolling hospital costs and submit the findings, recommen-
19 dations and any proposed drafts of legislation, if neces-
20 sary, in a report to the legislative oversight commission on
21 health and human resources accountability and the gover-
22 nor on or before the first day of August, one thousand
23 nine hundred ninety-eight.

**§16-29B-19a. Additional legislative directives; studies, find-
ings and recommendations.**

1 (a) The Legislature finds and declares that changing
2 market forces require periodic changes in the regulatory
3 structure for health care providers and hereby directs the
4 board to study the following:

5 (1) The certificate of need program, including the
6 effect of any changes on managed care and access for
7 uninsured and rural consumers; determining which servic-
8 es or capital expenditures should be exempt and why; and
9 the status of similar programs in other states;

10 (2) The hospital rate-setting methodology, including
11 the need for hospital rate-setting and the development of
12 alternatives to the cost-based reimbursement methodolo-
13 gy;

14 (3) Managed care markets, including the need for
15 regulatory programs in managed care markets; and

16 (4) Barriers or obstacles, if any, presented by the cer-
17 tificate of need program or standards in the state health
18 plan to health care providers' need to reduce excess ca-
19 pacity, restructure services and integrate the delivery of
20 services.

21 (b) The board may form task forces to assist it in ad-
22 dressing these issues and it shall prepare a report on its
23 findings and recommendations, which is to be filed with
24 the governor, the president of the Senate and the speaker
25 of the House of Delegates on or before the first day of
26 October, one thousand nine hundred ninety-eight, identi-
27 fying each problem and recommendation with specificity
28 and the effect of each recommendation on cost, access and
29 quality of care. The task forces, if formed, shall be com-
30 posed of representatives of consumers, businesses, provid-
31 ers, payors and state agencies.

32 (c) The board shall report quarterly to the legislative
33 oversight commission on health and human resources
34 accountability regarding the appointment, direction and
35 progress of the studies.

§16-29B-20. Rate determination.

1 (a) Upon commencement of review activities, no rates
2 may be approved by the board nor payment be made for
3 services provided by hospitals under the jurisdiction of the
4 board by any purchaser or third-party payor to or on
5 behalf of any purchaser or class of purchasers unless:

6 (1) The costs of the hospital's services are reasonably
7 related to the services provided and the rates are reason-
8 ably related to the costs;

9 (2) The rates are equitably established among all pur-
10 chasers or classes of purchasers within a hospital without
11 discrimination unless federal or state statutes or rules and
12 regulations conflict with this requirement. On and after
13 the effective date of this section, a summary of every pro-
14 posed contract, or amendment to any existing contract, for
15 the payment of patient care services between a purchaser
16 or third-party payor and a hospital shall be filed by the
17 hospital for review by the board, which reviews shall occur
18 no less frequently than each calendar quarter: (A) If the
19 contract establishes a discount to the purchaser or
20 third-party payor, it shall not take effect until approved by
21 the board. For purposes of this article, a risk-bearing
22 contract is reviewable as a discount contract and the
23 amount computed as the discount percentage by the pro-
24 vider on the board shall be the approved amount of the
25 discount. The difference, if any, between the actual dis-
26 count percentage and amount and the approved amount,
27 shall not be considered for rate-setting purposes; (B) the
28 board may promulgate rules, in accordance with the provi-
29 sions of section eight of this article, that establish the crite-
30 ria for review of discount contracts, which shall include
31 that: (i) No discount shall be approved by the board
32 which constitutes an amount below the cost to the hospital;
33 (ii) the cost of any discount contained in the contract will
34 not be shifted to any other purchaser or third-party payor;
35 (iii) the discount will not result in a decrease in the hospi-
36 tal's average number of medicare, medicaid or uncom-
37 pensated care patients served during the previous three
38 fiscal years; and (iv) the discount is based upon criteria
39 which constitutes a quantifiable economic benefit to the
40 hospital. The board may define by rule what constitutes
41 "cost" in subparagraphs (i) and (ii) of this paragraph;
42 "purchaser" in subparagraph (iii) of this paragraph; and
43 "economic benefit" in subparagraph (iv) of this para-
44 graph. Any rules promulgated pursuant to this subsection
45 may be filed as emergency rules. All information submit-
46 ted to the board shall be certified by the hospital's chief

47 executive officer and chief financial officer as to its accu-
48 racy and truthfulness;

49 (3) The rates of payment for medicaid are reasonable
50 and adequate to meet the costs which must be incurred by
51 efficiently and economically operated hospitals subject to
52 the provisions of this article. The rates shall take into
53 account the situation of hospitals which serve dispropor-
54 tionate numbers of low income patients and assure that
55 individuals eligible for medicaid have reasonable access,
56 taking into account geographic location and reasonable
57 travel time, to inpatient hospital services of adequate quali-
58 ty;

59 (4) The rates are equitable in comparison to prevailing
60 rates for similar services in similar hospitals as determined
61 by the board; and

62 (5) In no event shall a hospital's receipt of emergency
63 disaster funds from the federal government be included in
64 the hospital's gross revenues for either rate-setting or
65 assessment purposes.

66 (b) In the interest of promoting efficient and appro-
67 priate utilization of hospital services, the board shall review
68 and make findings on the appropriateness of projected
69 gross revenues for a hospital as the revenues relate to
70 charges for services and anticipated incidence of service.

71 (c) When applying the criteria set forth in subsections
72 (a) and (b) of this section, the board shall consider all
73 relevant factors, including, but not limited to, the follow-
74 ing: The economic factors in the hospital's area; the hos-
75 pital's efforts to share services; the hospital's efforts to
76 employ less costly alternatives for delivering substantially
77 similar services or producing substantially similar or better
78 results in terms of the health status of those served; the
79 efficiency of the hospital as to cost and delivery of health
80 care; the quality of care; occupancy level; a fair return on
81 invested capital, not otherwise compensated for; whether
82 the hospital is operated for profit or not for profit; costs of
83 education; and income from any investments and assets
84 not associated with patient care, including, but not limited
85 to, parking garages, residences, office buildings, and in-

86 come from related organizations and restricted funds
87 whether or not associated with patient care.

88 (d) Wages, salaries and benefits paid to or on behalf of
89 nonsupervisory employees of hospitals subject to this
90 article are not subject to review unless the board first de-
91 termines that the wages, salaries and benefits may be un-
92 reasonably or uncustomarily high or low. This exemption
93 does not apply to accounting and reporting requirements
94 contained in this article, nor to any that may be established
95 by the board. The term "nonsupervisory personnel", for
96 the purposes of this section, means, but is not limited to,
97 employees of hospitals subject to the provisions of this
98 article who are paid on an hourly basis.

99 (e) Reimbursement of capital and operating costs for
100 new services and capital projects subject to article two-d of
101 this chapter shall not be allowed by the board if the costs
102 were incurred subsequent to the eighth day of July, one
103 thousand nine hundred seventy-seven, unless they were
104 exempt from review or approved: (i) By the state health
105 planning and development agency prior to the first day of
106 July, one thousand nine hundred eighty-four; or (ii) there-
107 after, pursuant to the provisions of article two-d of this
108 chapter.

109 (f) The board shall consult with relevant licensing
110 agencies and may require them to provide written findings
111 with regard to their statutory functions and information
112 obtained by them in the pursuit of those functions. Any
113 licensing agency empowered to suggest or mandate
114 changes in buildings or operations of hospitals shall give
115 notice to the board together with any findings.

116 (g) A hospital shall file a complete rate application
117 with the board on an annual basis a minimum of seventy-
118 five days prior to the beginning of its fiscal year. If the
119 application is filed and determined to be complete by the
120 board sixty days prior to the beginning of the hospital's
121 fiscal year, and no hearing is requested on the application,
122 the board shall set the rates in advance of the year during
123 which they apply and shall not adjust the rates for costs
124 actually incurred: *Provided*, That if the board does not
125 establish rates by the beginning of the hospital's fiscal

126 year, and a hearing has not been requested, the board shall
127 establish rates retroactively to the beginning of the hospi-
128 tal's fiscal year: *Provided, however,* That if the board
129 does not establish rates by the beginning of the hospital's
130 fiscal year, and a hearing has been requested, the board
131 may establish rates retroactively to the beginning of the
132 fiscal year. This subsection shall not apply to the proce-
133 dure set forth in subsection (c), section twenty-one of this
134 article.

135 (h) No hospital may charge for services at rates in
136 excess of those established in accordance with the require-
137 ments of and procedures set forth in this article.

138 (i) Notwithstanding any other provision of this article,
139 the board shall approve all requests for rate increases by
140 hospitals which are licensed for one hundred beds or less
141 and which are not located in a standard metropolitan sta-
142 tistical area where the rate of increase is equal to or less
143 than the lowest rate of inflation as established by a recog-
144 nized inflation index for either the national or regional
145 hospital industry. The board may, by rule, impose report-
146 ing requirements to ensure that a hospital does not exceed
147 the rate of increases permitted in this section.

148 (j) Notwithstanding any other provision of this article,
149 the board shall develop an expedited review process appli-
150 cable to all hospitals licensed for more than one hundred
151 beds or that are located in a standard metropolitan statisti-
152 cal area for rate increase requests which may be based
153 upon a recognized inflation index for the national or
154 regional hospital industry.

155 (k) The board may require hospitals to file such addi-
156 tional information as it deems necessary to evaluate a
157 market-driven system of rate setting.

§16-29B-23. Utilization review and quality assurance; quality assurance advisory group.

1 (a) In order to avoid unnecessary or inappropriate
2 utilization of health care services and to ensure high quali-
3 ty health care, the board shall establish a utilization review
4 and quality assurance program. The board shall coordi-

5 nate this program with utilization review and peer review
6 programs presently established in state agencies, hospital
7 services and health service corporations, hospitals or other
8 organizations.

9 (b) With the assistance of the above-mentioned entities,
10 and after public hearings, the board shall develop a plan
11 for the review, on a sampling basis, of the necessity of
12 admissions, length of stay and quality of care rendered at
13 said hospitals.

14 (c) The board shall monitor identified problem areas
15 and shall impose such sanctions and provide such incen-
16 tives as necessary to ensure high quality and appropriate
17 services and utilization in hospitals under the jurisdiction
18 of this article.

19 (d) To assist the board in its efforts under this section,
20 the board shall create a quality assurance advisory group
21 and appoint one of the board's members as chairman of
22 the group. The group shall be composed of representa-
23 tives of consumers, providers, payors and regulating agen-
24 cies.

§16-29B-25. Public disclosure.

1 From time to time, the board shall engage in or carry
2 out analyses and studies relating to health care costs, the
3 financial status of any health care provider subject to the
4 provisions of this article or any other appropriate related
5 matters, and it shall be empowered to publish and dissemi-
6 nate any information which would be useful to members
7 of the general public in making informed choices about
8 health care providers.

§16-29B-26. Exemptions from state antitrust laws.

1 Actions of the board shall be exempt from antitrust
2 action as provided in section five, article eighteen, chapter
3 forty-seven of this code. Any actions of health care pro-
4 viders under the board's jurisdiction, when made in com-
5 pliance with orders, directives, rules or regulations issued
6 or promulgated by the board, shall likewise be exempt.
7 Health care providers shall be subject to the antitrust
8 guidelines of the federal trade commission and the depart-
9 ment of justice.

§16-29B-27. Penalties for violations.

1 In addition to civil remedies set forth, any person or
2 health care provider violating any provision of this article
3 or any valid order or rule lawfully established hereunder
4 shall be guilty of a misdemeanor and, upon conviction
5 thereof, shall be punished by a fine of not more than one
6 thousand dollars. Each day of a continuing violation after
7 conviction shall be considered a separate offense. No
8 fines assessed may be considered part of the hospital's
9 costs in the regulation of its rates.

***§16-29B-28. Termination date.**

1 Pursuant to the provisions of section four, article ten,
2 chapter four of this code, the health care authority shall
3 continue to exist until the first day of July, one thousand
4 nine hundred ninety-nine, to allow for a completion of an
5 audit by the joint committee on government operations.

CHAPTER 103

(S. B. 318—By Senators Wooton, Ball, Bowman, Dittmar, Fanning, Hunter,
Oliverio, Ross, Snyder, White, Buckalew, Deem and Scott)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, five, six and seven, article thirty-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the health care surrogate act; updating definitions and terms; providing for the determination of incapacity by the attending physician or the advanced practice nurse in consultation with the attending physician; providing for the selection of a health care surrogate by the attending physician or the advanced practice nurse in consultation with the

***Clerk's Note:** This section was also amended by S.B. 81 (Chapter 182), which passed prior to this act.

attending physician; authorizing the surrogate to consent to organ and tissue donation; requiring the surrogate to adhere to written directives regarding autopsy or anatomical gift donations; authorizing the surrogate to request and release medical records; allowing formerly incapacitated persons to discharge a surrogate; providing methods for challenging the selection of a surrogate or the decision of a surrogate; assigning court costs regarding surrogate disputes; and requiring notice of the implementation of the surrogate's decisions unless enjoined by court order.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 30B. HEALTH CARE SURROGATE ACT.

§16-30B-2. Legislative findings and purpose.

§16-30B-3. Definitions.

§16-30B-5. Private decision-making process; authority of surrogate.

§16-30B-6. Determination of incapacity.

§16-30B-7. Selection of a surrogate.

§16-30B-2. Legislative findings and purpose.

1 (a) The Legislature hereby finds that:

2 (1) All adults have a right to make decisions relating
3 to their own medical treatment, including the right to con-
4 sent to or refuse life-prolonging intervention; and

5 (2) The right to make medical treatment decisions
6 extends to a person who is incapacitated at the moment of
7 decision. An incapacitated person who has not made his
8 or her wishes known in advance through an applicable
9 living will, medical power of attorney or through some
10 other means has the right to have health care decisions
11 made on his or her behalf by a person who will act in
12 accordance with the incapacitated person's expressed val-
13 ues and wishes, or, if those values and wishes are unknown,
14 in the incapacitated person's best interests.

15 (b) The purpose of this article is to set forth a process
16 for private health care decisionmaking for incapacitated
17 adults which reduces the need for judicial involvement and
18 defines the circumstances under which immunity shall be
19 available for health care providers and surrogate
20 decisionmakers who make health care decisions. The
21 intent of the Legislature is to establish an effective method
22 for private health care decisionmaking for incapacitated
23 adults, and to provide that the courts should not be the
24 usual venue for making decisions. It is not the intent of
25 the Legislature to legalize, condone, authorize, or approve
26 mercy killing or assisted suicide.

§16-30B-3. Definitions.

1 For the purposes of this article:

2 (a) "Adult" means a person who is eighteen years of
3 age or older, an emancipated minor who has been estab-
4 lished as such pursuant to the provisions of section
5 twenty-seven, article seven, chapter forty-nine of this code,
6 or a mature minor.

7 (b) "Attending physician" means the physician se-
8 lected by or assigned to the person who has primary re-
9 sponsibility for treatment and care of the person and who
10 is a licensed physician. If more than one physician shares
11 that responsibility, any of those physicians may act as the
12 attending physician under this article.

13 (c) "Advanced practice nurse" means a nurse with
14 substantial theoretical knowledge in a specialized area of
15 nursing practice and proficient clinical utilization of the
16 knowledge in implementing the nursing process pursuant
17 to the provisions of title 19, legislative rules for West Vir-
18 ginia board of examiners for registered professional nurs-
19 es, series 7.

20 (d) "Capable adult" means a person over the age of
21 eighteen years who is physically and mentally capable of
22 making health care decisions and who has not been
23 deemed a protected person pursuant to the provisions of
24 chapter forty-four-a of this code.

25 (e) "Close friend" means any person eighteen years
26 of age or older who has exhibited significant care and

27 concern for an incapacitated person who is willing and
28 able to become involved in the incapacitated person's
29 health care, and has maintained regular contact with the
30 incapacitated person as to be familiar with his or her activ-
31 ities, health, and religious and moral beliefs.

32 (f) "Death" means a finding made in accordance with
33 accepted medical standards of either: (1) The irreversible
34 cessation of circulatory and respiratory functions; or (2)
35 the irreversible cessation of all functions of the entire
36 brain, including the brain stem.

37 (g) "Guardian" means a person appointed by a court
38 pursuant to the provisions of chapter forty-four-a of this
39 code who is responsible for the personal affairs of a pro-
40 tected person, and includes a limited guardian or a tempo-
41 rary guardian.

42 (h) "Health care decision" means a decision to give,
43 withhold or withdraw informed consent to any type of
44 health care, including, but not limited to, medical and
45 surgical treatments, including life-prolonging interven-
46 tions, psychiatric treatment, nursing care, hospitalization,
47 treatment in a nursing home or other facility, home health
48 care and organ or tissue donation.

49 (i) "Health care facility" means a facility commonly
50 known by a wide variety of titles, including, but not limit-
51 ed to, hospital, psychiatric hospital, medical center, ambu-
52 latory health care facility, physicians' office and clinic,
53 extended care facility operated in connection with a hospi-
54 tal, nursing home, a hospital extended care facility operat-
55 ed in connection with a rehabilitation center, hospice and
56 other facility established to administer health care in its
57 ordinary course of business or practice.

58 (j) "Health care provider" means any physician, den-
59 tist, nurse, physician's assistant, paramedic, psychologist or
60 other person providing medical, dental, nursing, psycho-
61 logical or other health care services of any kind.

62 (k) "Incapacity" means the inability because of phys-
63 ical or mental impairment to appreciate the nature and
64 implications of a health care decision, to make an in-

65 formed choice regarding the alternatives presented and to
66 communicate that choice in an unambiguous manner.

67 (l) "Life-prolonging intervention" means any medi-
68 cal procedure or intervention which, when applied to a
69 person, would serve solely to artificially prolong the dying
70 process or to maintain the person in a persistent vegetative
71 state. The term "life-prolonging intervention" does not
72 include the administration of medication or the perfor-
73 mance of any other medical procedure deemed necessary
74 to provide comfort or to alleviate pain.

75 (m) "Limited guardian" means a person appointed
76 by the court pursuant to the provisions of chapter forty-
77 four-a of this code who has only those responsibilities for
78 the personal affairs of a protected person as specified in
79 the order of appointment.

80 (n) "Medical information" or "medical records"
81 means and includes without restriction those medical his-
82 tories, records, reports, summaries, diagnoses, prognoses,
83 records of treatment, records of medication ordered and
84 given, notes, entries, X rays and other written or graphic
85 data prepared, kept, made or maintained by any health
86 care facility or health care provider regarding a person's
87 confinement, services rendered, admissions, emergency
88 room care or inpatient or outpatient care. These records
89 may not include ordinary business records regarding
90 patient accounts or the administration of the facility or
91 institution.

92 (o) "Parent" means a person who is another person's
93 natural or adoptive mother or father and whose parental
94 rights have not been terminated by a court of law.

95 (p) "Person" means an individual, a corporation, a
96 business trust, a trust, a partnership, an association, a gov-
97 ernment, a governmental subdivision or agency or any
98 other legal entity.

99 (q) "Protected person" means an adult, eighteen
100 years of age or older, who, pursuant to the provisions of
101 chapter forty-four-a of this code, has been found by a
102 court, because of mental impairment, to be unable to re-
103 ceive and evaluate information effectively or to respond to

104 people, events and environments to an extent that the indi-
105 vidual lacks the capacity to: (1) Meet the essential require-
106 ments for his or her health, care, safety, habilitation or
107 therapeutic needs without the assistance or protection of a
108 guardian; or (2) manage property or financial affairs to
109 provide for his or her support or for the support of legal
110 dependents without the assistance or protection of a con-
111 servator.

112 (r) "Qualified physician" means a physician licensed
113 to practice medicine who has personally examined the
114 person.

115 (s) "Surrogate decisionmaker" or "surrogate"
116 means an adult individual who is reasonably available, is
117 willing to make health care decisions on behalf of an inca-
118 pacitated person, possesses the capacity to make health
119 care decisions and is identified by the primary care pro-
120 vider in accordance with the provisions of this article as
121 the person who is to make those decisions in accordance
122 with the provisions of this article.

123 (t) "Temporary guardian" means a person appointed
124 by a court for a limited or temporary period pursuant to
125 the provisions of section fourteen, article two, chapter
126 forty-four-a of this code who has only those powers and
127 duties specifically set forth in the order of appointment.

§16-30B-5. Private decision-making process; authority of surrogate.

1 (a) Any capable adult may make his or her own health
2 care decisions without regard to guidelines contained in
3 this article.

4 (b) Health care providers and health care facilities may
5 rely upon health care decisions on behalf of an incapaci-
6 tated person without resort to the courts or legal process, if
7 the decisions are made in accordance with the provisions
8 of this article.

9 (c) The surrogate shall have the authority to make any
10 and all health care decisions on behalf of an incapacitated
11 person and to release or authorize the release of an inca-
12 pacitated person's medical records to third parties.

13 (d) The surrogate's authority shall commence upon a
14 determination, made pursuant to section six of this article,
15 of the incapacity of the adult. In the event the person no
16 longer is incapacitated or the surrogate is unwilling or
17 unable to serve, the surrogate's authority shall cease.
18 However, the authority of the surrogate may recommence
19 if the person subsequently becomes incapacitated as deter-
20 mined pursuant to section six of this article unless during
21 the intervening period of capacity the person executes an
22 advance directive which makes a surrogate unnecessary or
23 expressly rejects the previously appointed surrogate as his
24 or her surrogate. A surrogate's authority terminates upon
25 the death of the incapacitated person except with respect
26 to decisions regarding autopsy and organ and tissue dona-
27 tion.

28 (e) The surrogate shall seek medical information nec-
29 essary to make health care decisions for an incapacitated
30 person. For the sole purpose of making health care deci-
31 sions for the incapacitated person, the surrogate shall have
32 the same right of access to the incapacitated person's
33 medical information and the same right to discuss that
34 information with the incapacitated person's health care
35 providers that the incapacitated person would have if he or
36 she was not incapacitated.

37 (f) If an incapacitated person previously expressed his
38 or her wishes regarding autopsy or the desire to make an
39 anatomical gift by a written directive such as a living will,
40 medical power of attorney, donor card, drivers' license or
41 other means, the surrogate shall follow the person's ex-
42 pressed wishes regarding autopsy and organ and tissue
43 donation. In the absence of any written directives, any
44 decision regarding anatomical gifts shall be made pursu-
45 ant to the provisions of article nineteen of this chapter.

§16-30B-6. Determination of incapacity.

1 (a) For the purposes of this article, a person may not
2 be presumed to be incapacitated merely by reason of
3 advanced age or disability. With respect to a person who
4 has a diagnosis of mental illness or mental retardation,
5 such a diagnosis is not a presumption that the person is
6 incapacitated. A determination that a person is incapaci-

7 tated shall be made by the attending physician or the ad-
8 vanced practice nurse in consultation with the attending
9 physician.

10 (b) Before implementation of a decision by a surro-
11 gate decisionmaker to withhold or withdraw life-prolong-
12 ing intervention, at least one qualified physician or a li-
13 censed psychologist who has personally examined the
14 person, in addition to the attending physician, must concur
15 in the determination of incapacity of an adult.

16 (c) The determination of incapacity shall be recorded
17 contemporaneously in the person's medical record by the
18 attending physician, and, if required, a second health care
19 provider, either a qualified physician or licensed psychol-
20 ogist. The recording shall state the basis for the determi-
21 nation of incapacity, including the cause, nature and ex-
22 pected duration of the person's incapacity, if these are
23 known.

24 (d) If the person is conscious, the attending physician
25 shall inform the person that he or she has been determined
26 to be incapacitated and that a surrogate decisionmaker
27 may be making decisions regarding life-prolonging inter-
28 vention for the person.

§16-30B-7. Selection of a surrogate.

1 (a) When a person is or becomes incapacitated, the
2 attending physician or the advanced practice nurse in
3 consultation with the attending physician shall select, in
4 writing, a surrogate with the assistance of other health care
5 providers as necessary. The attending physician shall
6 reasonably attempt to determine whether the incapacitated
7 person has appointed a representative under a medical
8 power of attorney in accordance with the provisions of
9 article thirty-a of this chapter, or if the incapacitated per-
10 son has a guardian in accordance with the provisions of
11 article one, chapter forty-four-a of this code. If no repre-
12 sentative or guardian is authorized or capable and willing
13 to serve, the attending physician or advance practice nurse
14 must make a reasonable inquiry as to the availability of a
15 surrogate from the following persons:

16 (1) The person's spouse;

- 17 (2) The person's adult children;
- 18 (3) The person's parents;
- 19 (4) The person's adult siblings;
- 20 (5) The person's adult grandchildren;
- 21 (6) The person's close friends;
- 22 (7) Any other person or entity, including, but not
23 limited to, public agencies, public guardians, public offi-
24 cials, public and private corporations and other persons or
25 entities which the department of health and human re-
26 sources may from time to time designate in rules promul-
27 gated pursuant to chapter twenty-nine-a of this code.
- 28 (b) After inquiring about the existence and availability
29 of a medical power of attorney representative or a guard-
30 ian as required by subsection (a) of this section, and deter-
31 mining that such persons either do not exist or are un-
32 available or unwilling to serve as a surrogate, the primary
33 care provider shall select and rely upon a surrogate in the
34 order of priority set forth in subsection (a) of this section,
35 subject to the following conditions:
- 36 (1) Where there are multiple possible surrogate
37 decisionmakers at the same priority level, the attending
38 physician or the advanced practice nurse in consultation
39 with the attending physician shall, after reasonable inquiry,
40 choose as the surrogate the person who reasonably ap-
41 pears to be best qualified. The following criteria shall be
42 considered in the determination of the person or entity
43 best qualified to serve as the surrogate:
- 44 (A) Whether the proposed surrogate reasonably ap-
45 pears to be better able to make decisions either in accord-
46 dance with the known wishes of the person or in accord-
47 dance with the person's best interests;
- 48 (B) The proposed surrogate's regular contact with the
49 person prior to and during the incapacitating illness;
- 50 (C) The proposed surrogate's demonstrated care and
51 concern;
- 52 (D) The proposed surrogate's availability to visit the
53 incapacitated person during his or her illness; and

54 (E) The proposed surrogate's availability to engage in
55 face-to-face contact with health care providers for the
56 purpose of fully participating in the decision-making
57 process;

58 (2) The attending physician or the advanced practice
59 nurse in consultation with the attending physician may
60 select a proposed surrogate who is ranked lower in priority
61 if, in his or her judgment, that individual is best qualified,
62 as described in this section, to serve as the incapacitated
63 person's surrogate. The attending physician or the ad-
64 vanced practice nurse shall document in the incapacitated
65 person's medical records his or her reasons for selecting a
66 surrogate in exception to the priority order provided in
67 subsection (a) of this section.

68 (c) The surrogate is authorized to make health care
69 decisions on behalf of the incapacitated person without a
70 court order or judicial involvement.

71 (d) A health care provider or health care facility may
72 rely upon the decisions of the selected surrogate if the
73 provider believes, after reasonable inquiry, that:

74 (1) A guardian or representative under a valid, appli-
75 cable medical power of attorney is unavailable, incapable
76 or is unwilling to serve;

77 (2) There is no other applicable advance directive;

78 (3) There is no reason to believe that such health care
79 decisions are contrary to the incapacitated person's reli-
80 gious beliefs; and

81 (4) The attending physician or advanced practice
82 nurse has not received actual notice of opposition to any
83 health care decisions made pursuant to the provisions of
84 this section.

85 (e) If a person who is ranked as a possible surrogate
86 pursuant to subsection (a) of this section wishes to chal-
87 lenge the selection of a surrogate or the health care deci-
88 sion of the selected surrogate, he or she may seek injunc-
89 tive relief or may file a petition for review of the selection
90 of, or decision of, the selected surrogate with the circuit
91 court of the county in which the incapacitated person
92 resides or the supreme court of appeals. There shall be a

93 rebuttable presumption that the selection of the surrogate
94 was valid, and the person who is challenging the selection
95 shall have the burden of proving the invalidity of that
96 selection. The challenging party shall be responsible for
97 all court costs and other costs related to the proceeding,
98 except attorneys' fees, unless the court finds that the at-
99 tending physician or advanced practice nurse acted in bad
100 faith, in which case the person so acting shall be responsi-
101 ble for all costs. Each party shall be responsible for his or
102 her own attorneys' fees.

103 (f) If the attending physician or advanced practice
104 nurse is advised that a person who is ranked as a possible
105 surrogate pursuant to the provisions of subsection (a) of
106 this section has an objection to a health care decision to
107 withhold or withdraw a life-prolonging intervention which
108 has been made by the selected surrogate, the attending
109 physician or advanced practice nurse shall document the
110 objection in the medical records of the patient. Once
111 notice of an objection or challenge is documented, the
112 attending physician or advanced practice nurse shall noti-
113 fy the challenging party that the decision shall be imple-
114 mented in seventy-two hours unless the attending physi-
115 cian receives a court order prohibiting or enjoining the
116 implementation of the decision as provided in subsection
117 (e) of this section. In the event that the incapacitated per-
118 son has been determined to have undergone brain death
119 and the selected surrogate has authorized organ or tissue
120 donation, the decision shall be implemented in twenty-
121 four hours unless the attending physician receives a court
122 order prohibiting or enjoining the implementation of the
123 decision as provided in subsection (e) of this section.

124 (g) If the surrogate becomes unavailable for any rea-
125 son, the surrogate may be replaced by applying the provi-
126 sions of this section.

127 (h) If a person who ranks higher in priority relative to
128 a selected surrogate becomes available and willing to be
129 the surrogate, the person with higher priority may be sub-
130 stituted for the identified surrogate unless the attending
131 physician determines that the lower ranked person is best
132 qualified to serve as the surrogate.

CHAPTER 104

(Com. Sub. for H. B. 2127—By Delegate Staton)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and seven, article five-a, chapter twenty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to suspending general notice requirements in cases involving immediate involuntary commitments; enabling the commitment of alcoholics and drug users to detoxification centers prior to their commitment to a facility for the treatment of tuberculosis; and making technical changes.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5A. TUBERCULOSIS CONTROL.

§26-5A-5. Procedure when patient is health menace to others.

§26-5A-7. Procedures for immediate involuntary commitment.

§26-5A-5. Procedure when patient is health menace to others.

1 (a) If any practicing physician, public health officer,
2 or chief medical officer having under observation or care
3 any person who is suffering from tuberculosis in a
4 communicable stage is of the opinion that the
5 environmental conditions of that person are not suitable
6 for proper isolation or control by any type of local
7 quarantine as prescribed by the state division of health of
8 the department of health and human resources or an
9 authorized designee thereof, and that the person is unable
10 or unwilling to conduct himself or herself and to live in
11 such a manner as not to expose members of his or her
12 family or household or other persons with whom he or she
13 may be associated to danger of infection, he or she shall
14 report the facts to the division of health or its designee

15 which shall forthwith investigate or have investigated the
16 circumstances alleged.

17 (b) If the division of health or its designee finds that
18 any person's physical condition is a health menace to
19 others, the division of health or its designee shall petition
20 the circuit court of the county in which the person resides,
21 or the judge thereof in vacation, alleging that the person is
22 afflicted with communicable tuberculosis and that the
23 person's physical condition is a health menace to others,
24 and requesting an order of the court committing the
25 person to one of the state institutions for the treatment of
26 tuberculosis: *Provided*, That if the division of health or its
27 designee determines that an emergency situation exists
28 which warrants the immediate detention and commitment
29 of a person suffering from tuberculosis, an application for
30 immediate involuntary commitment may be filed pursuant
31 to section seven of this article.

32 (c) Upon receiving the petition, the court shall fix a
33 date for hearing thereof and notice of the petition and the
34 time and place for hearing shall be served personally, at
35 least seven days before the hearing, upon the person who
36 is afflicted with tuberculosis and alleged to be dangerous
37 to the health of others.

38 (d) If, upon hearing, it appears that the complaint of
39 the division of health or its designee is well founded, that
40 the person is afflicted with communicable tuberculosis,
41 and that the person is a source of danger to others, the
42 court shall commit the individual to an institution
43 maintained for the care and treatment of persons afflicted
44 with tuberculosis. The person shall be deemed to be
45 committed until discharged in the manner authorized in
46 this section: *Provided*, That the hearing and notice
47 provisions of this subsection shall not apply to immediate
48 involuntary commitments as provided in section seven of
49 this article.

50 (e) The chief medical officer of the institution to
51 which any person afflicted with tuberculosis has been
52 committed may discharge that person when, in his or her
53 judgment, the person may be discharged without danger
54 to the health or life of others. The chief medical officer
55 shall report immediately to the division of health or its

56 designee each discharge of a person afflicted with
57 tuberculosis.

58 (f) Every person committed under the provisions of
59 this section shall observe all the rules of the institution.
60 Any patient so committed may, by direction of the chief
61 medical officer of the institution, be placed apart from the
62 others and restrained from leaving the institution so long
63 as he or she continues to be afflicted with tuberculosis and
64 remains a health menace.

65 (g) Nothing in this section may be construed to
66 prohibit any person committed to any institution under
67 the provisions of this section from applying to the
68 supreme court of appeals for a review of the evidence on
69 which the commitment was made. Nothing in this section
70 may be construed or operate to empower or authorize the
71 division of health, the department of health and human
72 resources or an authorized designee thereof or the chief
73 medical officer of the institution, or their representatives,
74 to restrict in any manner the individual's right to select
75 any method of tuberculosis treatment offered by the
76 institution.

§26-5A-7. Procedures for immediate involuntary commitment.

1 (a) An application for immediate involuntary
2 commitment of a person suffering from tuberculosis may
3 be filed by the commissioner of the bureau of public
4 health, or his or her designee, in the circuit court of the
5 county in which the person resides. The application shall
6 be filed under oath, and shall present information and
7 facts which establish that the person suffering from
8 tuberculosis in a communicable stage has been
9 uncooperative or irresponsible with regard to quarantine
10 or safety measures, presents a health menace to others, and
11 is in need of immediate hospitalization until his or her
12 communicable tuberculosis becomes noninfectious.

13 (b) Upon receipt of the application, the circuit court
14 may enter an order for the individual named in the action
15 to be detained and taken into custody for the purpose of
16 holding a probable cause hearing. The order shall specify
17 that the hearing be held forthwith and shall appoint
18 counsel for the individual: *Provided*, That in the event

19 immediate detention is believed to be necessary for the
20 protection of the individual or others at a time when no
21 circuit court judge is available for immediate presentation
22 of the application, a magistrate may accept the application
23 and, upon a finding that immediate detention is necessary,
24 may order the individual to be temporarily committed
25 until the earliest reasonable time that the application can
26 be presented to the circuit court, which period of time
27 shall not exceed twenty-four hours except as provided for
28 in subsection (c) of this section.

29 (c) A probable cause hearing shall be held before a
30 magistrate or circuit judge of the county of which the
31 individual is a resident or where he or she was found. If
32 requested by the individual or his or her counsel, the
33 hearing may be postponed for a period not to exceed
34 forty-eight hours.

35 (d) The individual shall be present at the probable
36 cause hearing and shall have the right to present evidence,
37 confront all witnesses and other evidence against him or
38 her, and to examine testimony offered, including
39 testimony by the bureau of public health or its designees.

40 (e) At the conclusion of the hearing the magistrate or
41 circuit court judge shall enter an order stating whether
42 there is probable cause to believe that the individual is
43 likely to cause serious harm to himself, herself or others as
44 a result of his or her disease and actions. If probable
45 cause is found, the individual shall be immediately
46 committed to an institution maintained for the care and
47 treatment of persons afflicted with tuberculosis. The
48 person shall remain so committed until discharged in the
49 manner authorized pursuant to section five of this article:
50 *Provided*, That in the case of an alcoholic or drug user,
51 the judge or magistrate shall first order the individual
52 committed to a detoxification center for detoxification
53 prior to commitment to an institution maintained for the
54 care and treatment of persons afflicted with tuberculosis.

55 (f) The bureau of public health shall promulgate rules
56 pursuant to the provisions of article three, chapter twenty-
57 nine-a of this code necessary to implement the provisions
58 of this article, including, but not limited to, rules relating
59 to the transport and temporary involuntary commitment
60 of patients.

CHAPTER 105

(Com. Sub. for H. B. 2595—By Delegates Pettit, Doyle, Manuel,
Seacrist and Faircloth)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twelve-b, twelve-c and thirteen, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to simulcasting of horse and dog races and pari-mutuel wagering on simulcast races; providing for broadcast of televised horse and dog races between racetracks within the state of West Virginia; providing for live racing dates; providing for a negotiated signal transmission fee as consideration for a host racing association's televised racing services; providing for payments into racetrack employees' pension funds, the thoroughbred development fund and purse funds; disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; stake races for dog tracks.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. HORSE AND DOG RACING.

§19-23-12b. Televised racing days; merging of pari-mutuel wagering pools.

§19-23-12c. Interstate simulcasts by licensed racetracks.

§19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; stake races for dog tracks.

§19-23-12b. Televised racing days; merging of pari-mutuel wagering pools.

1 (a) For the purposes of this section:

2 (1) "Televised racing day" means a calendar day,
3 assigned by the commission, at a licensed racetrack on

4 which pari-mutuel betting is conducted on horse or dog
5 races run at other racetracks in this state or at racetracks
6 outside of this state which are broadcast by television at a
7 licensed racetrack and which day or days have had the
8 prior written approval of the representative of the majority
9 of the owners and trainers who hold permits required by
10 section two of this article; and

11 (2) "Host racing association" means any person
12 who, pursuant to a license or other permission granted by
13 the host governmental entity, conducts the horse or dog
14 race upon which wagers are placed.

15 (b) A licensee conducting not less than two hundred
16 twenty live racing dates for each horse or dog race
17 meeting may, with the prior approval of the state racing
18 commission, contract with any legal wagering entity in this
19 state or in any other governmental jurisdiction to receive
20 telecasts and accept wagers on races conducted by the
21 legal wagering entity: *Provided*, That at those
22 thoroughbred racetracks the licensee, in applying for
23 racing dates, shall apply for not less than two hundred ten
24 live racing dates for each horse race meeting: *Provided*,
25 *however*, That at those thoroughbred racetracks that have
26 participated in the West Virginia thoroughbred
27 development fund for a period of more than four
28 consecutive calendar years prior to the thirty-first day of
29 December, one thousand nine hundred ninety-two, the
30 licensee may apply for not less than one hundred fifty-
31 nine live racing dates during the calendar year of one
32 thousand nine hundred ninety-seven. If, thereafter, for
33 reasons beyond the licensee's control, related to adverse
34 weather conditions, unforeseen casualty occurrences or a
35 shortage of thoroughbred horses eligible to compete for
36 purses, the licensee concludes that this number of racing
37 days cannot be attained, the licensee may file a request
38 with the racing commission to reduce the authorized live
39 racing days. Upon receipt of the request the racing
40 commission shall within seventy-two hours of the receipt
41 of the request notify the licensee and the representative of
42 a majority of the owners and trainers at the requesting
43 track and the representative of the majority of the mutuel
44 clerks at the requesting track that such request has been
45 received and that if no objection to the request is received
46 within ten days of the notification the request will be

47 approved: *Provided further*, That the commission shall
48 give consideration to whether there existed available
49 unscheduled potential live racing dates following the
50 adverse weather or casualty and prior to the end of the
51 race meeting which could be used as new live racing dates
52 in order to maintain the full live racing schedule
53 previously approved by the racing commission. If an
54 objection is received by the commission within the time
55 limits, the commission shall, within thirty days of receipt
56 of such objection, set a hearing on the question of
57 reducing racing days, which hearing shall be conducted at
58 a convenient place in the county in which the requesting
59 racetrack is located. The commission shall hear from all
60 parties concerned and, based upon testimony and
61 documentary evidence presented at the hearing, shall
62 determine the required number of live racing days: *And*
63 *provided further*, That the commission shall not reduce the
64 number of live racing days below one hundred eighty-five
65 days for a horse race meeting unless the licensee
66 requesting such reduction has: (i) Filed with the
67 commission a current financial statement, which shall be
68 subject to independent audit; and (ii) met the burden of
69 proving that just cause exists for such requested reduction
70 in live racing days. The telecasts may be received and
71 wagers accepted at any location authorized by the
72 provisions of section twelve-a of this article. The contract
73 must receive the approval of the representative of the
74 majority of the owners and trainers who hold permits
75 required by section two of this article at the receiving
76 thoroughbred racetrack.

77 (c) The commission may allow the licensee to
78 commingle its wagering pools with the wagering pools of
79 the host racing association. If the pools are commingled,
80 the wagering at the licensee's racetrack must be on
81 tabulating equipment capable of issuing pari-mutuel
82 tickets and be electronically linked with the equipment at
83 the sending racetrack. Subject to the approval of the
84 commission, the types of betting, licensee commissions
85 and distribution of winnings on pari-mutuel pools of the
86 sending licensee racetrack are those in effect at the
87 licensee racetrack. Breakage for pari-mutuel pools on a
88 televised racing day must be calculated in accordance with
89 the law or rules governing the sending racetrack and must

90 be distributed in a manner agreed to between the licensee
91 and the sending racetrack. For the televised racing
92 services it provides, the host racing association shall
93 receive a fee to be paid by the receiving licensee racetrack
94 which shall be in an amount to be agreed upon by the
95 receiving licensee racetrack and the host racing
96 association.

97 (d) The commission may assign televised racing
98 days at any time. When a televised racing day is assigned,
99 the commission shall assign either a steward or an auditor
100 to preside over the televised races at the licensee racetrack.

101 (e) (1) From the licensee commissions authorized by
102 subsection (c) of this section, the licensee shall pay one
103 tenth of one percent of each commission into the general
104 fund of the county, in which the racetrack is located and at
105 which the wagering occurred and there is imposed and the
106 licensee shall pay, for each televised racing day on which
107 the total pari-mutuel pool exceeds one hundred thousand
108 dollars, the greater of either: (i) The total of the daily
109 license tax and the pari-mutuel pools tax required by
110 section ten of this article; or (ii) a daily license tax of one
111 thousand two hundred fifty dollars. For each televised
112 racing day on which the total pari-mutuel pool is one
113 hundred thousand dollars or less, the licensee shall pay a
114 daily license tax of five hundred dollars plus an additional
115 license tax of one hundred dollars for each ten thousand
116 dollars, or part thereof, that the pari-mutuel pool exceeds
117 fifty thousand dollars, but does not exceed one hundred
118 thousand dollars. The calculation of the total pari-mutuel
119 pool for purposes of this subsection shall include only one
120 half of all wagers placed at a licensed racetrack in this state
121 on televised races conducted at another licensed racetrack
122 within this state. Payments of the tax imposed by this
123 section are subject to the requirements of subsection (e),
124 section ten of this article.

125 (2) From the licensee commissions authorized by
126 subsection (c) of this section, after payments are made in
127 accordance with the provisions of subdivision (1) of this
128 subsection, the licensee shall pay, for each televised racing
129 day, one fourth of one percent of the total pari-mutuel
130 pools for and on behalf of all employees of the licensed
131 racing association by making a deposit into a special fund

132 to be established by the racing commission and to be used
133 for payments into the pension plan for all employees of
134 the licensed racing association.

135 (3) From the licensee commissions authorized by
136 subsection (c) of this section, after payments are made in
137 accordance with the provisions of subdivisions (1) and (2)
138 of this subsection, thoroughbred licensees shall pay,
139 one-half percent of net simulcast income and for each
140 televised racing day on or after the first day of July, one
141 thousand nine hundred ninety-seven, an additional five
142 and one-half percent of net simulcast income into the West
143 Virginia thoroughbred development fund established by
144 the racing commission according to section thirteen-b of
145 this article: *Provided*, That no licensee qualifying for the
146 alternate tax provisions of subsection (b), section ten of
147 this article shall be required to make the payments unless
148 the licensee has participated in the West Virginia
149 thoroughbred development fund for a period of more
150 than four consecutive calendar years prior to the
151 thirty-first day of December, one thousand nine hundred
152 ninety-two. For the purposes of this section, the term "net
153 simulcast income" means the total commission deducted
154 each day by the licensee from the pari-mutuel pools on
155 simulcast horse or dog races, less direct simulcast
156 expenses, including, but not limited to, the cost of
157 simulcast signals, telecommunication costs and decoder
158 costs.

159 (f) After deducting the tax and other payments
160 required by subsection (e) of this section, the amount
161 required to be paid under the terms of the contract with
162 the host racing association and the cost of transmission,
163 the horse racing association shall make a deposit equal to
164 fifty percent of the remainder into the purse fund
165 established under the provisions of subdivision (1),
166 subsection (b), section nine of this article. After deducting
167 the tax and other payments required by subsection (e) of
168 this section, dog racetracks shall pay an amount equal to
169 two tenths of one percent of the daily simulcast pari-
170 mutuel pool to the "West Virginia Racing Commission
171 Special Account-West Virginia Greyhound Breeding
172 Development Fund".

173 (g) The provisions of the "Federal Interstate
174 Horseracing Act of 1978", also known as Public Law
175 95-515, Section 3001-3007 of Title 15, U.S. Code, as
176 amended, controls in determining the intent of this
177 section.

§19-23-12c. Interstate simulcasts by licensed racetracks.

1 (a) Any licensed racing association may be
2 authorized by the commission to transmit broadcasts of
3 races conducted at its racetrack to legal wagering entities
4 located outside this state, which legal wagering entities
5 located outside this state shall not be subject to the
6 provisions of subsection (e), section twelve-b of this
7 article: *Provided*, That as consideration for the televised
8 racing services it provides, the host racing association shall
9 receive a signal transmission fee to be paid by the
10 receiving legal wagering entity which shall be in an
11 amount agreed upon by the receiving legal wagering
12 entity and the host racing association. All broadcasts of
13 horse races shall be in accordance with all of the
14 provisions of the "Federal Interstate Horseracing Act of
15 1978", also known as Public Law 95-515, Section 3001-
16 3007 of Title 15 of the United States Code.

17 (b) One percent of the total signal transmission fee
18 provided in subsection (a) of this section shall be paid into
19 a special fund to be established by the racing commission
20 for and on behalf of all employees of the licensed racing
21 association to be used for payments into the pension plan
22 for all employees of the licensed racing association, and
23 any thoroughbred horse racetrack which has participated
24 in the West Virginia thoroughbred development fund for a
25 period of more than four consecutive calendar years prior
26 to the thirty-first day of December, one thousand nine
27 hundred ninety-two. Seven and one-half percent of the
28 signal transmission fee shall be paid into the West Virginia
29 thoroughbred development fund established by the racing
30 commission according to section thirteen-b of this article.
31 After deducting (i) the amounts required to be placed into
32 the pension plan for all employees of the licensed racing
33 association under this section, (ii) the amounts, if any,
34 required to be paid into the West Virginia thoroughbred
35 development fund under this section. The racing
36 association may deduct from the signal transmission fee

37 direct costs necessary to send a live audio and visual signal
38 of horse races or dog races from any racetrack licensed
39 under the provisions of section one of this article to any
40 legal wagering entities outside this state for the purpose of
41 pari-mutuel wagering, which direct costs shall include the
42 cost of satellite equipment necessary to transmit the signal,
43 a satellite operator and the satellite time necessary to
44 broadcast the signal and the cost of telecommunication
45 and facsimile services needed to communicate necessary
46 information to all legal wagering entities for the purpose
47 of pari-mutuel wagering. After the deductions provided
48 for in this subsection are made, thoroughbred horseracing
49 associations shall make a deposit equal to fifty percent of
50 the remainder into the purse fund established under the
51 provisions of subdivision (1), subsection (b), section nine
52 of this article.

§19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; stake races for dog tracks.

1 (a) All moneys held by any licensee for the payment
2 of outstanding and unredeemed pari-mutuel tickets, if not
3 claimed within ninety days after the close of a horse or
4 dog race meeting or the televised racing day, as the case
5 may be, in connection with which the tickets were issued,
6 shall be turned over by the licensee to the racing
7 commission within fifteen days after the expiration of
8 such ninety-day period, and the licensee shall give such
9 information as the racing commission may require
10 concerning such outstanding and unredeemed tickets. All
11 such moneys shall be deposited by the racing commission
12 in a banking institution of its choice in a special account
13 to be known as "West Virginia Racing Commission
14 Special Account — Unredeemed Pari-Mutuel Tickets".
15 Notice of the amount, date and place of such deposit shall
16 be given by the racing commission, in writing, to the state
17 treasurer. The racing commission shall then cause to be
18 published a notice to the holders of such outstanding and
19 unredeemed pari-mutuel tickets, notifying them to present
20 such tickets for payment at the principal office of the
21 racing commission within ninety days from the date of the
22 publication of such notice. Such notice shall be published
23 within fifteen days following the receipt of said moneys

24 by the commission from the licensee as a Class I legal
25 advertisement in compliance with the provisions of article
26 three, chapter fifty-nine of this code, and the publication
27 area for such publication shall be the county in which
28 such horse or dog race meeting was held and the county
29 in which the televised racing day wagering was conducted
30 in this state.

31 (b) Any such pari-mutuel tickets that shall not be
32 presented for payment within ninety days from the date of
33 the publication of the notice shall thereafter be
34 irredeemable, and the moneys theretofore held for the
35 redemption of such pari-mutuel tickets shall become the
36 property of the racing commission and shall be expended
37 as provided in this subsection. The racing commission
38 shall maintain separate accounts for each licensee and
39 shall record therein the moneys turned over by such
40 licensee and the amount expended at such licensee's track
41 for the purposes set forth in this subsection. The moneys
42 in the "West Virginia Racing Commission Special
43 Account — Unredeemed Pari-Mutuel Tickets" shall be
44 expended as follows:

45 (1) To the owner of the winning horse in any horse
46 race at a horse race meeting held or conducted by any
47 licensee: *Provided*, That the owner of such horse is at the
48 time of such horse race a bona fide resident of this state, a
49 sum equal to ten percent of the purse won by such horse.
50 The commission may require proof that the owner was, at
51 the time of the race, a bona fide resident of this state.
52 Upon proof by the owner that he filed a personal income
53 tax return in this state for the previous two years and that
54 he owned real or personal property in this state and paid
55 taxes in this state on said property for the previous two
56 years, he shall be presumed to be a bona fide resident of
57 this state; and

58 (2) To the breeder (that is, the owner of the mare) of
59 the winning horse in any horse race at a horse race
60 meeting held or conducted by any licensee: *Provided*,
61 That the mare foaled in this state, a sum equal to ten
62 percent of the purse won by such horse; and

63 (3) To the owner of the stallion which sired the
64 winning horse in any horse race at a horse race meeting

65 held or conducted by any licensee: *Provided*, That the
66 mare which foaled such winning horse was served by a
67 stallion standing and registered in this state, a sum equal to
68 ten percent of the purse won by such horse; and

69 (4) To those horse racing licensees not participating
70 in the thoroughbred development fund authorized in
71 section thirteen-b of this article the unexpended balance
72 of such licensee's account not expended as provided in
73 subdivisions (1), (2) and (3) of this subsection: *Provided*,
74 That all moneys distributed under this subdivision shall be
75 expended solely for capital improvements at the licensee's
76 track: *Provided, however*, That such capital improvements
77 must be approved, in writing, by the West Virginia racing
78 commission before funds are expended by the licensee for
79 that capital improvement; and

80 (5) When the moneys in the special account, known
81 as the "West Virginia Racing Commission Special
82 Account — Unredeemed Pari-Mutuel Tickets" will more
83 than satisfy the requirements of subdivisions (1), (2), (3)
84 and (4) of this subsection, the West Virginia racing
85 commission shall have the authority to expend the excess
86 moneys from unredeemed horse racing pari-mutuel
87 tickets as purse money in any race conditioned exclusively
88 for West Virginia bred or sired horses, and to expend the
89 excess moneys from unredeemed dog racing pari-mutuel
90 tickets in supplementing purses and establishing stake
91 races and dog racing handicaps at the dog tracks:
92 *Provided*, That during the fiscal year beginning on the
93 first day of July, one thousand nine hundred ninety-six,
94 but not thereafter, and subject to availability of funds, the
95 commission shall, after the requirements of subdivisions
96 (1), (2), (3) and (4) of this subsection have been satisfied,
97 transfer three hundred thousand dollars of such excess
98 moneys into a separate account to be used for
99 promotional activities and purses for stakes races for the
100 West Virginia thoroughbred breeders classics, which shall
101 give equal consideration to all horses qualifying under the
102 West Virginia breeders program for each stake race, based
103 solely on the horses' sex, age and earnings: *Provided*,
104 *however*, That beginning with the fiscal year beginning on
105 the first day of July, one thousand nine hundred ninety-
106 seven, and subject to the availability of funds, the

107 commission shall, after the requirements of subdivisions
108 (1), (2), (3) and (4) of this subsection have been satisfied:

109 (i) Transfer annually two hundred thousand dollars
110 to the "West Virginia Racing Commission Special
111 Account - West Virginia Greyhound Breeding
112 Development Fund"; and

113 (ii) Transfer annually two hundred thousand dollars
114 into a separate account to be used for stakes races for West
115 Virginia bred greyhounds at dog racetracks.

116 (6) Notwithstanding any limitations on use of funds
117 pursuant to subdivision (6), subsection (c), section ten,
118 article twenty-two-a, chapter twenty-nine of this code to
119 the contrary, beginning on the first day of July, one
120 thousand nine hundred ninety-seven, those funds
121 deposited into the separate account previously dedicated
122 solely to the West Virginia thoroughbred breeders classics
123 shall thereafter be allocated as follows:

124 (A) For each fiscal year, the first eight hundred
125 thousand dollars deposited in the separate account,
126 together with any balance remaining in the separate
127 account on the thirtieth day of June, one thousand nine
128 hundred ninety-seven, shall be used by the commission
129 for promotional activities, advertising, administrative costs
130 and purses for the West Virginia thoroughbred breeders
131 classics, which shall give equal consideration to all horses
132 qualifying under the West Virginia breeders program for
133 each stake race, based solely on the horses' sex, age and
134 earnings.

135 (B) For each fiscal year, the next two hundred
136 thousand dollars deposited into the separate account shall
137 be used by the commission for promotional activities and
138 purses for open stake races for a race event to be known as
139 the West Virginia derby to be held at a thoroughbred
140 racetrack which does not participate in the West Virginia
141 thoroughbred development fund.

142 (C) For each fiscal year, once the amounts provided
143 in paragraphs (A) and (B) of this subdivision have been
144 deposited into the separate account for use in connection
145 with the West Virginia thoroughbred breeders classics and
146 the West Virginia derby, the commission shall return to

147 each racetrack all additional amounts deposited which
148 originate during that fiscal year from each respective
149 racetrack pursuant to subdivision (6), subsection (c),
150 section ten, article twenty-two-a, chapter twenty-nine of
151 this code, which returned excess funds shall be used as
152 follows:

153 (i) For each dog racetrack, one half of the returned
154 excess funds shall be used for capital improvements at the
155 racetrack and one half of the returned excess funds shall
156 be deposited into the "West Virginia Racing Commission
157 Special Account - West Virginia Greyhound Breeding
158 Development Fund".

159 (ii) At those thoroughbred racetracks that have
160 participated in the West Virginia thoroughbred
161 development fund for a period of more than four
162 consecutive calendar years prior to the thirty-first day of
163 December, one thousand nine hundred ninety-two, one-
164 half of the returned excess funds shall be used for capital
165 improvements at the licensee's racetrack and one half of
166 the returned excess funds shall be equally divided between
167 the West Virginia thoroughbred breeders classics and the
168 West Virginia thoroughbred development fund.

169 (iii) At those thoroughbred horse racetracks which
170 do not participate in the West Virginia thoroughbred
171 development fund, one half of the returned excess funds
172 shall be used for capital improvements at the licensee's
173 racetrack and one half of the returned excess funds shall
174 be used for purses for the open stakes race event known as
175 the West Virginia derby as provided in paragraph (B) of
176 this subdivision.

177 (iv) All expenditures which are funded under this
178 subdivision (6) must be approved in writing by the West
179 Virginia racing commission before the funds are
180 expended for any of the purposes authorized by this
181 subdivision.

182 The commission shall submit to the legislative
183 auditor a quarterly report and accounting of the income,
184 expenditures and unobligated balance in the special
185 account created by this section known as the "West
186 Virginia Racing Commission Special Account —
187 Unredeemed Pari-Mutuel Tickets".

188 (c) Nothing contained in this article shall prohibit one
189 person from qualifying for all or more than one of the
190 aforesaid awards or for awards under section thirteen-b of
191 this article.

192 (d) The cost of publication of the notice provided for
193 in this section shall be paid from the funds in the hands of
194 the state treasurer collected from the pari-mutuel pools'
195 tax provided for in section ten of this article, when not
196 otherwise provided in the budget; but no such costs shall
197 be paid unless an itemized account thereof, under oath, be
198 first filed with the state auditor.

CHAPTER 106

(H. B. 2637—By Delegates Hutchins, L. White, Givens,
Ennis, Anderson and Manuel)

[Passed April 12, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section two, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section thirteen, article five, chapter eighteen of said code; and to amend and reenact section one, article one, chapter eighteen-a of said code, all relating to insurance benefits for county board of education employees who job-share.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.**
- 18. Education.**
- 18A. School Personnel.**

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

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-2. Definitions.

1 The following words and phrases as used in this article,
2 unless a different meaning is clearly indicated by the
3 context, have the following meanings:

4 (1) "Advisory board" means the public employees
5 insurance agency advisory board created by this article.

6 (2) "Agency" means the public employees insurance
7 agency created by this article.

8 (3) "Director" means the director of the public
9 employees insurance agency created by this article.

10 (4) "Employee" means any person, including elected
11 officers, who works regularly full time in the service of the
12 state of West Virginia and, for the purpose of this article
13 only, the term "employee" also means any person,
14 including elected officers, who works regularly full time in
15 the service of a county board of education; a county, city
16 or town in the state; any separate corporation or
17 instrumentality established by one or more counties, cities
18 or towns, as permitted by law; any corporation or
19 instrumentality supported in most part by counties, cities
20 or towns; any public corporation charged by law with the
21 performance of a governmental function and whose
22 jurisdiction is coextensive with one or more counties, cities

23 or towns; any comprehensive community mental health
24 center or comprehensive mental retardation facility
25 established, operated or licensed by the secretary of health
26 and human resources pursuant to section one, article
27 two-a, chapter twenty-seven of this code, and which is
28 supported in part by state, county or municipal funds; any
29 person who works regularly full time in the service of the
30 university of West Virginia board of trustees or the board
31 of directors of the state college system; and any person
32 who works regularly full time in the service of a combined
33 city-county health department created pursuant to article
34 two, chapter sixteen of this code. On and after the first
35 day of January, one thousand nine hundred ninety-four,
36 and upon election by a county board of education to
37 allow elected board members to participate in the public
38 employees insurance program pursuant to this article, any
39 person elected to a county board of education shall be
40 deemed to be an "employee" during the term of office
41 of the elected member: *Provided*, That the elected
42 member shall pay the entire cost of the premium if he or
43 she elects to be covered under this article. Any matters of
44 doubt as to who is an employee within the meaning of this
45 article shall be decided by the director.

46 On or after the first day of July, one thousand nine
47 hundred ninety-seven, a person shall be considered an
48 "employee" if that person meets the following criteria:

49 (i) Participates in a job-sharing arrangement as
50 defined in section one, article one, chapter eighteen-a of
51 this code;

52 (ii) Has been designated, in writing, by all other
53 participants in that job-sharing arrangement as the
54 "employee" for purposes of this section; and

55 (iii) Works at least one third of the time required for a
56 full-time employee.

57 (5) "Employer" means the state of West Virginia, its
58 boards, agencies, commissions, departments, institutions or
59 spending units; a county board of education; a county,
60 city or town in the state; any separate corporation or

61 instrumentality established by one or more counties, cities
62 or towns, as permitted by law; any corporation or
63 instrumentality supported in most part by counties, cities
64 or towns; any public corporation charged by law with the
65 performance of a governmental function and whose
66 jurisdiction is coextensive with one or more counties, cities
67 or towns; any comprehensive community mental health
68 center or comprehensive mental retardation facility
69 established, operated or licensed by the secretary of health
70 and human resources pursuant to section one, article
71 two-a, chapter twenty-seven of this code, and which is
72 supported in part by state, county or municipal funds; and
73 a combined city-county health department created
74 pursuant to article two, chapter sixteen of this code. Any
75 matters of doubt as to who is an "employer" within the
76 meaning of this article shall be decided by the director.
77 The term "employer" does not include within its
78 meaning the national guard.

79 (6) "Finance board" means the public employees
80 insurance agency finance board created by this article.

81 (7) "Plan" means the medical indemnity plan or a
82 managed care plan option offered by the agency.

83 (8) "Retired employee" means an employee of the
84 state who retired after the twenty-ninth day of April, one
85 thousand nine hundred seventy-one, and an employee of
86 the university of West Virginia board of trustees or the
87 board of directors of the state college system or a county
88 board of education who retires on or after the twenty-first
89 day of April, one thousand nine hundred seventy-two, and
90 all additional eligible employees who retire on or after the
91 effective date of this article and meet the minimum
92 eligibility requirements for their respective state retirement
93 system: *Provided*, That for the purposes of this article, the
94 employees who are not covered by a state retirement
95 system shall, in the case of education employees, meet the
96 minimum eligibility requirements of the state teachers
97 retirement system, and in all other cases, meet the
98 minimum eligibility requirements of the public employees
99 retirement system.

CHAPTER 18. EDUCATION.**ARTICLE 5. COUNTY BOARD OF EDUCATION.****§18-5-13. Authority of boards generally.**

1 The boards, subject to the provisions of this chapter
2 and the rules of the state board, have authority:

3 (1) To control and manage all of the schools and
4 school interests for all school activities and upon all school
5 property, whether owned or leased by the county,
6 including the authority to require that records be kept of
7 all receipts and disbursements of all funds collected or
8 received by any principal, teacher, student or other person
9 in connection with the schools and school interests, any
10 programs, activities or other endeavors of any nature
11 operated or carried on by or in the name of the school, or
12 any organization or body directly connected with the
13 school, to audit the records and to conserve the funds,
14 which shall be considered quasi-public moneys, including
15 securing surety bonds by expenditure of board moneys;

16 (2) To establish schools, from preschool through high
17 school, inclusive of vocational schools; and to establish
18 schools and programs, or both, for post high school
19 instruction, subject to approval of the state board of
20 education;

21 (3) To close any school which is unnecessary and to
22 assign the pupils of the school to other schools: *Provided,*
23 That the closing shall be officially acted upon and
24 teachers and service personnel involved notified on or
25 before the first Monday in April, in the same manner as
26 provided in section four of this article, except in an
27 emergency, subject to the approval of the state
28 superintendent, or under subdivision (5) of this section;

29 (4) To consolidate schools;

30 (5) To close any elementary school whose average
31 daily attendance falls below twenty pupils for two months
32 in succession and send the pupils to other schools in the
33 district or to schools in adjoining districts. If the teachers

34 in the closed school are not transferred or reassigned to
35 other schools, they shall receive one month's salary;

36 (6) (a) To provide at public expense adequate means
37 of transportation, including transportation across county
38 lines, for all children of school age who live more than two
39 miles distance from school by the nearest available road;
40 to provide at public expense and according to such rules
41 as the board may establish, adequate means of
42 transportation for school children participating in board-
43 approved curricular and extracurricular activities; and to
44 provide in addition thereto at public expense, by rules and
45 within the available revenues, transportation for those
46 within two miles distance; to provide in addition thereto, at
47 no cost to the board and according to rules established by
48 the board, transportation for participants in projects
49 operated, financed, sponsored or approved by the
50 commission on aging: *Provided*, That all costs and
51 expenses incident in any way to transportation for projects
52 connected with the commission on aging shall be borne
53 by the commission, or the local or county chapter of the
54 commission: *Provided, however*, That in all cases the
55 school buses owned by the board of education shall be
56 driven or operated only by drivers regularly employed by
57 the board of education: *Provided further*, That the
58 county board may provide, under rules established by the
59 state board, for the certification of professional employees
60 as drivers of board-owned vehicles with a seating capacity
61 of less than ten passengers used for the transportation of
62 pupils for school-sponsored activities other than
63 transporting students between school and home: *And*
64 *provided further*, That the use of the vehicles shall be
65 limited to one for each school-sponsored activity: *And*
66 *provided further*, That buses shall be used for
67 extracurricular activities as provided in this section only
68 when the insurance provided for by this section is in
69 effect;

70 (b) To enter into agreements with one another to
71 provide, on a cooperative basis, adequate means of
72 transportation across county lines for children of school

73 age subject to the conditions and restrictions of
74 subdivisions (6) and (8) of this section;

75 (7) (a) To lease school buses operated only by drivers
76 regularly employed by the board to public and private
77 nonprofit organizations or private corporations to
78 transport school-age children to and from camps or
79 educational activities in accordance with rules established
80 by the board. All costs and expenses incurred by or
81 incidental to the transportation of the children shall be
82 borne by the lessee;

83 (b) To contract with any college or university or
84 officially recognized campus organizations to provide
85 transportation for college or university students, faculty or
86 staff to and from the college or university: *Provided,*
87 That only college and university students, faculty and staff
88 are being transported. The contract shall include
89 consideration and compensation for bus operators, repairs
90 and other costs of service, insurance and any rules
91 concerning student behavior;

92 (8) To provide at public expense for insurance against
93 the negligence of the drivers of school buses, trucks or
94 other vehicles operated by the board; and if the
95 transportation of pupils is contracted, then the contract
96 for the transportation shall provide that the contractor
97 shall carry insurance against negligence in an amount
98 specified by the board;

99 (9) To provide solely from county funds for all
100 regular full-time employees of the board all or any part of
101 the cost of a group plan or plans of insurance coverage
102 not provided or available under the West Virginia public
103 employees insurance act;

104 (10) To employ teacher aides, to provide in-service
105 training for teacher aides, the training to be in accordance
106 with rules of the state board and, in the case of service
107 personnel assuming duties as teacher aides in exceptional
108 children programs, to provide a four-clock-hour program
109 of training prior to the assignment which shall, in
110 accordance with rules of the state board, consist of training

111 in areas specifically related to the education of exceptional
112 children;

113 (11) To establish and conduct a self-supporting
114 dormitory for the accommodation of the pupils attending
115 a high school or participating in a post high school
116 program and of persons employed to teach in the high
117 school or post high school program;

118 (12) To employ legal counsel;

119 (13) To provide appropriate uniforms for school
120 service personnel;

121 (14) To provide at public expense and under rules as
122 established by any county board of education for the
123 payment of traveling expenses incurred by any person
124 invited to appear to be interviewed concerning possible
125 employment by the county board of education;

126 (15) To allow or disallow their designated employees
127 to use publicly provided carriage to travel from their
128 residences to their workplace and return: *Provided*, That
129 the usage is subject to the supervision of the board and is
130 directly connected with and required by the nature and in
131 the performance of the employee's duties and
132 responsibilities;

133 (16) To provide, at public expense, adequate public
134 liability insurance, including professional liability
135 insurance for board employees;

136 (17) To enter into agreements with one another to
137 provide, on a cooperative basis, improvements to the
138 instructional needs of each county. The cooperative
139 agreements may be used to employ specialists in a field of
140 academic study or support functions or services, for the
141 academic study. The agreements are subject to approval
142 by the state board of education;

143 (18) To provide information about vocational or
144 higher education opportunities to students with
145 handicapping conditions. The board shall provide in
146 writing to the students and their parents or guardians

147 information relating to programs of vocational education
148 and to programs available at state funded institutions of
149 higher education. The information may include sources
150 of available funding, including grants, mentorships and
151 loans for students who wish to attend classes at institutions
152 of higher education;

153 (19) To enter into agreements with one another, with
154 the approval of the state board, for the transfer and receipt
155 of any and all funds determined to be fair when students
156 are permitted or required to attend school in a county
157 other than the county of their residence; and

158 (20) To enter into job-sharing arrangements, as
159 defined in section one, article one, chapter eighteen-a of
160 this code, with its professional employees: *Provided*, That
161 a job sharing arrangement shall meet all the requirements
162 relating to posting, qualifications and seniority, as
163 provided for in article four, chapter eighteen-a of this
164 code: *Provided, however*, That, notwithstanding any
165 provisions of this code to the contrary, a county board
166 which enters into a job-sharing arrangement wherein two
167 or more professional employees voluntarily share an
168 authorized full-time position shall provide the mutually
169 agreed upon employee coverage but shall not offer
170 insurance coverage to more than one of the job-sharing
171 employees, including any group plan or group plans
172 available under the state public employees insurance act:
173 *Provided further*, That all employees involved in the job-
174 sharing agreement meet the requirements of subdivision
175 (4), section two, article sixteen, chapter five of this code.

176 "Quasi-public funds" as used in this section means
177 any money received by any principal, teacher, student or
178 other person for the benefit of the school system as a
179 result of curricular or noncurricular activities.

180 The board of each county shall expend under rules it
181 establishes for each child an amount not to exceed the
182 proportion of all school funds of the district that each
183 child would be entitled to receive if all the funds were
184 distributed equally among all the children of school age in
185 the district upon a per capita basis.

CHAPTER 18A. SCHOOL PERSONNEL.**ARTICLE 1. GENERAL PROVISIONS.****§18A-1-1. Definitions.**

1 The definitions contained in section one, article one,
2 chapter eighteen shall be applicable to this chapter. In
3 addition, the following words used in this chapter and in
4 any proceedings pursuant thereto shall, unless the context
5 clearly indicates a different meaning, be construed as
6 follows:

7 (a) "School personnel" means all personnel
8 employed by a county board of education whether
9 employed on a regular full-time basis, an hourly basis or
10 otherwise. School personnel shall be comprised of two
11 categories: Professional personnel and service personnel.

12 (b) "Professional personnel" means persons who
13 meet the certification and/or licensing requirements of the
14 state, and shall include the professional educator and other
15 professional employees.

16 (c) "Professional educator" shall be synonymous
17 with and shall have the same meaning as "teacher" as
18 defined in section one, article one, chapter eighteen of this
19 code. Professional educators shall be classified as:

20 (1) "Classroom teacher" — The professional
21 educator who has direct instructional or counseling
22 relationship with pupils, spending the majority of his time
23 in this capacity.

24 (2) "Principal" — The professional educator who as
25 agent of the board has responsibility for the supervision,
26 management and control of a school or schools within the
27 guidelines established by said board. The major area of
28 such responsibility shall be the general supervision of all
29 the schools and all school activities involving pupils,
30 teachers and other school personnel.

31 (3) "Supervisor" — The professional educator who,
32 whether by this or other appropriate title, is responsible for
33 working primarily in the field with professional and/or

34 other personnel in instructional and other school
35 improvement.

36 (4) "Central office administrator" — The
37 superintendent, associate superintendent, assistant
38 superintendent and other professional educators, whether
39 by these or other appropriate titles, who are charged with
40 the administering and supervising of the whole or some
41 assigned part of the total program of the county-wide
42 school system.

43 (d) "Other professional employee" means that person
44 from another profession who is properly licensed and is
45 employed to serve the public schools and shall include a
46 registered professional nurse, licensed by the West
47 Virginia board of examiners for registered professional
48 nurses and employed by a county board of education,
49 who has completed either a two-year (sixty-four semester
50 hours) or a three-year (ninety-six semester hours) nursing
51 program.

52 (e) "Service personnel" means those who serve the
53 school or schools as a whole, in a nonprofessional
54 capacity, including such areas as secretarial, custodial,
55 maintenance, transportation, school lunch and as aides.

56 (f) "Principals academy" or "academy" means the
57 academy created pursuant to section two-b, article three-a
58 of this chapter.

59 (g) "Center for professional development" means the
60 center created pursuant to section one, article three-a of
61 this chapter.

62 (h) "Job-sharing arrangement" means a formal,
63 written agreement voluntarily entered into by a county
64 board with two or more of its professional employees who
65 wish to divide between them the duties and responsibilities
66 of one authorized full-time position.

CHAPTER 107

(S. B. 33—By Senators Ross, Anderson, Snyder, Hunter, Sharpe and Ball)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections fourteen-d and thirty-three, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the allocation of proceeds from the premium tax on fire and casualty insurance policies to volunteer and part volunteer fire departments and the teachers retirement system; altering the allocation of proceeds to municipal policemen's or firemen's pension and relief funds; and providing for a quarterly disbursement of such proceeds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14d. Additional fire and casualty insurance premium tax; allocation of proceeds; effective date.

§33-3-33. Surcharge on fire and casualty insurance policies to benefit volunteer and part volunteer fire departments; special fund created; allocation of proceeds; effective date.

§33-3-14d. Additional fire and casualty insurance premium tax; allocation of proceeds; effective date.

- 1 (a) For the purpose of providing additional revenue
- 2 for municipal policemen's and firemen's pension and
- 3 relief funds and the teachers retirement system reserve
- 4 fund and for volunteer and part volunteer fire companies
- 5 and departments, there is hereby levied and imposed an
- 6 additional premium tax equal to one percent of gross

7 direct premiums collected, less premiums returned to
8 policyholders because of cancellation of policies, for fire
9 insurance and casualty insurance policies. For purposes
10 of this section, casualty insurance does not include
11 insurance on the life of a debtor pursuant to or in
12 connection with a specific loan or other credit transaction
13 or insurance on a debtor to provide indemnity for
14 payments becoming due on a specific loan or other credit
15 transaction while the debtor is disabled as defined in the
16 policy. Except as otherwise provided in this section, all
17 provisions of this article relating to the levy, imposition
18 and collection of the regular premium tax are applicable
19 to the levy, imposition and collection of the additional tax
20 set forth in this section.

21 All moneys collected from this additional tax shall be
22 received by the commissioner and paid by him into a
23 special account in the state treasury, designated the
24 municipal pensions and protection fund. The net
25 proceeds of this tax after appropriation thereof by the
26 Legislature shall be distributed in accordance with the
27 provisions of this section.

28 (b) (1) Before the first day of August of each calendar
29 year, the treasurer of each municipality in which a
30 municipal policemen's or firemen's pension and relief
31 fund has been established shall report to the state treasurer
32 the average monthly number of members who worked at
33 least one hundred hours per month and the average
34 monthly number of retired members of municipal
35 policemen's or firemen's pension systems during the
36 preceding fiscal year.

37 (2) Before the first day of September of each calendar
38 year, the state treasurer shall allocate and authorize for
39 distribution the revenues in the municipal pensions and
40 protection fund which were collected during the preceding
41 calendar year for the purposes set forth in this section.
42 Sixty-five percent of the revenues shall be allocated to
43 municipal policemen's and firemen's pension and relief
44 funds; twenty-five percent of the revenues shall be

45 allocated to volunteer and part volunteer fire companies
46 and departments; and ten percent of such allocated
47 revenues shall be allocated to the teachers retirement
48 system reserve fund created by section eighteen, article
49 seven-a, chapter eighteen of this code: *Provided*, That in
50 any year the actuarial report required by section twenty,
51 article twenty-two, chapter eight of this code indicates no
52 actuarial deficiency in the municipal policemen's or
53 firemen's pension and relief fund, no revenues may be
54 allocated from the municipal pensions and protection
55 fund to that fund. The revenues from the municipal
56 pensions and protection fund shall then be allocated to all
57 other pension funds which have an actuarial deficiency.

58 (3) The moneys, and the interest earned thereon, in the
59 municipal pensions and protection fund allocated to
60 volunteer and part volunteer fire companies and
61 departments shall be allocated and distributed quarterly to
62 the volunteer fire companies and departments. Before
63 each distribution date, the state fire marshal shall report to
64 the state treasurer the names and addresses of all volunteer
65 and part volunteer fire companies and departments within
66 the state which meet the eligibility requirements
67 established in section eight-a, article fifteen, chapter eight
68 of this code.

69 (c) (1) Each municipal pension and relief fund shall
70 have allocated and authorized for distribution a pro rata
71 share of the revenues allocated to municipal policemen's
72 and firemen's pension and relief funds based upon the
73 corresponding municipality's average monthly number of
74 members who worked at least one hundred hours per
75 month during the preceding fiscal year. On and after the
76 first day of July, one thousand nine hundred ninety-seven,
77 from the growth in any moneys collected pursuant to the
78 tax imposed by this section there shall be allocated and
79 authorized for distribution to each municipal pension and
80 relief fund, a pro rata share of the revenues allocated to
81 municipal policemen's and firemen's pension and relief
82 funds based upon the corresponding municipalities
83 average number of members who worked at least one

84 hundred hours per month and average monthly number
85 of retired members. For the purposes of this subsection,
86 the growth in moneys collected from the tax collected
87 pursuant to this section shall be determined by subtracting
88 the amount of the tax collected during the fiscal year
89 ending the thirtieth day of June, one thousand nine
90 hundred ninety-six, from the tax collected during the
91 fiscal year for which the allocation is being made. All
92 moneys received by municipal pension and relief funds
93 under this section may be expended only for those
94 purposes described in sections sixteen through twenty-
95 eight, inclusive, article twenty-two, chapter eight of this
96 code.

97 (2) Each volunteer fire company or department shall
98 receive an equal share of the revenues allocated for
99 volunteer and part volunteer fire companies and
00 departments.

01 (3) In addition to the share allocated and distributed in
102 accordance with subdivision (1) of this subsection, each
103 municipal fire department composed of full-time paid
104 members and volunteers and part volunteer fire companies
105 and departments shall receive a share equal to the share
106 distributed to volunteer fire companies under subdivision
107 (2) of this subsection reduced by an amount equal to such
108 share multiplied by the ratio of the number of full-time
109 paid fire department members who are also members of a
110 municipal firemen's pension system to the total number of
111 members of such fire department.

112 (d) The allocation and distribution of revenues
113 provided for in this section are subject to the provisions of
114 section twenty, article twenty-two, and sections eight-a and
115 eight-b, article fifteen, chapter eight of this code.

§33-3-33. Surcharge on fire and casualty insurance policies to benefit volunteer and part volunteer fire departments; special fund created; allocation of proceeds; effective date.

1 (a) For the purpose of providing additional revenue
2 for volunteer and part volunteer fire departments, certain
3 retired teachers and the teachers retirement reserve fund,
4 there is hereby authorized and imposed on and after the
5 first day of July, one thousand nine hundred ninety-two,
6 on the policyholder of any fire and casualty insurance
7 policy, a policy surcharge equal to one percent of gross
8 direct premium paid by the policyholder for each such
9 policy. For purposes of this section, casualty insurance
10 shall not include insurance on the life of a debtor pursuant
11 to or in connection with a specific loan or other credit
12 transaction or insurance on a debtor to provide indemnity
13 for payments becoming due on a specific loan or other
14 credit transaction while the debtor is disabled as defined in
15 the policy. The policy surcharge shall not be subject to
16 premium taxes, agent commissions or any other
17 assessment against premiums.

18 The policy surcharge shall be collected and remitted
19 by the insurer to the commissioner on forms prescribed
20 by the commissioner on a quarterly basis and are due on
21 the twenty-fifth day of the month succeeding the end of
22 the quarter in which they are collected except for the
23 fourth quarter for which the surcharge shall be due and
24 payable on or before the first day of March of the
25 succeeding year. All forms required by the commissioner
26 shall be submitted under the oath of the president and
27 secretary of the insurer.

28 Any insurer failing or refusing to collect and remit to
29 the commissioner any policy surcharge and whose
30 surcharge payments are not postmarked by the due dates
31 for quarterly filing is liable for a civil penalty of up to one
32 hundred dollars for each day of delinquency, to be
33 assessed by the commissioner. The commissioner may
34 suspend the insurer until all surcharge payments and
35 penalties, should any penalty be imposed, are remitted in
36 full to the commissioner.

37 One half of all money from the policy surcharge shall
38 be collected by the commissioner who shall disburse the

39 money received from the surcharge into a special account
40 in the state treasury, designated the "fire protection
41 fund". The net proceeds of this portion of the tax after
42 appropriation by the Legislature shall be distributed in
43 accordance with the provisions of subsection (c) of this
44 section. The remaining fifty percent of the moneys
45 collected shall be transferred to the teachers retirement
46 system to be disbursed according to the provisions of
47 sections twenty-six-j, twenty-six-k and twenty-six-l, article
48 seven-a, chapter eighteen of this code. Any balance
49 remaining after the disbursements authorized by this
50 subdivision have been paid shall be paid by the teachers
51 retirement system into the teachers retirement system
52 reserve fund.

53 (b) The moneys, and the interest earned thereon, in the
54 fire protection fund shall be allocated among and
55 distributed quarterly to all volunteer and part volunteer
56 fire departments by the state treasurer. Before each
57 distribution date, the state fire marshal shall report to the
58 state treasurer the names and addresses of all volunteer
59 and part volunteer fire companies and departments within
60 the state which meet the eligibility requirements
61 established in section eight-a, article fifteen, chapter eight
62 of this code.

63 The payments hereinabove provided shall be paid on
64 the first day of the months of January, April, July and
65 October of one thousand nine hundred ninety-eight and
66 each year thereafter.

67 (c) Each volunteer fire company or department shall
68 receive on an equal share basis the revenues allocated for
69 volunteer and part volunteer fire companies and
70 departments under subdivision (1), subsection (a) of this
71 section.

72 (d) The allocation, distribution and use of revenues
73 provided in the fire protection fund are subject to the
74 provisions of sections eight-a and eight-b, article fifteen,
75 chapter eight of this code.

CHAPTER 108

(Com. Sub. for H. B. 2091—By Delegates Douglas, Hutchins, Fleischauer, Manuel and Caputo)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, 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; and to amend and reenact section twenty-four, article twenty-five-a of said chapter, all relating to prohibiting insurers from denying life or accident and sickness insurance coverage to an individual who has been or is the victim of abuse.

Be it enacted by the Legislature of West Virginia:

That article four, 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; and to amend and reenact section twenty-four, article twenty-five-a of said chapter, all to read as follows:

Article

4. General Provisions.

25A. Health Maintenance Organization Act.

ARTICLE 4. GENERAL PROVISIONS.

§33-4-20. Cancellation, nonrenewal or limitation of coverage of life or sickness and accident insurance.

1 (a) For purposes of this section, the following
2 definitions shall apply:

3 (1) "Abuse," as used in this section, means the
4 occurrence of one or more of the following acts between
5 family or household members:

6 (A) Attempting to cause or intentionally, knowingly or
7 recklessly causing physical harm to another with or
8 without dangerous or deadly weapons;

9 (B) Placing another in reasonable apprehension of
10 physical harm;

11 (C) Creating fear of physical harm by harassment,
12 psychological abuse or threatening acts;

13 (D) Committing either sexual assault or sexual abuse
14 as those terms are defined in articles eight-b and eight-d,
15 chapter sixty-one of this code;

16 (E) Holding, confining, detaining or abducting
17 another person against that person's will;

18 (F) Intentionally or recklessly damaging, destroying
19 or taking the tangible property of another individual;

20 (G) Insulting, taunting or challenging another
21 individual or engaging in a course of alarming or
22 distressing conduct in a manner which is likely to provoke
23 a violent or disorderly response or which is likely to cause
24 humiliation, degradation or fear in another individual;

25 (H) Trespassing on or in the property of another
26 individual, or on or in property from which the trespasser
27 has been excluded by court order;

28 (I) Child abuse or neglect, as defined in section three,
29 article one, chapter forty-nine of this code;

30 (J) Kidnapping, concealment or removal of a minor
31 child from his or her custodian or from a person entitled
32 to visitation, as set forth in sections fourteen through
33 fourteen-e, article two, chapter sixty-one of this code.

34 (2) "Family or household member" means current or
35 former spouses, persons living as spouses, persons who
36 formerly resided as spouses, parents, children and
37 stepchildren, current or former sexual or intimate partners,
38 other persons related by blood or marriage, persons who
39 are presently or in the past have resided or cohabited
40 together or a person with whom the victim has a child in
41 common.

42 (3) "Victim of abuse," as used in this section, means
43 an individual who has been or is subject to abuse,
44 including, but not limited to, an individual who seeks, has

45 sought or should have sought medical or psychological
46 treatment for abuse, protection from abuse or shelter from
47 abuse.

48 (b) For all policies issued or renewed after the
49 effective date of this section, no person or entity engaged
50 in the business of providing life or health insurance, or
51 both, in this state may:

52 (1) Deny, refuse to issue, refuse to renew, refuse to
53 reissue, cancel or otherwise terminate an insurance policy
54 or restrict coverage on any individual because that
55 individual is, has been or may be the victim of abuse;

56 (2) Add any surcharge or rating factor to a premium
57 of an insurance policy because an individual has been or
58 may be the victim of abuse;

59 (3) Exclude or limit coverage for losses or deny a
60 claim incurred because an individual has been or may be
61 the victim of abuse; or

62 (4) Require as part of the application process any
63 information regarding whether that individual has been or
64 may be the victim of abuse.

65 (c) Nothing in this section may be construed to
66 prohibit a person from declining to issue an insurance
67 policy insuring the life of an individual who is or has been
68 the victim of abuse if the perpetrator of abuse is the
69 applicant or would be the owner of the insurance policy.

70 (d) Nothing in this section may be construed to
71 prohibit a person from underwriting or rating a risk on the
72 basis of a preexisting physical or mental condition, even if
73 the condition had been caused by abuse: *Provided, That:*

74 (1) The person routinely underwrites or rates the
75 condition in the same manner with respect to an insured or
76 an applicant who is not a victim of abuse;

77 (2) The fact that an individual is, has been, or may be
78 the victim of abuse may not be considered a physical or
79 mental condition; and

80 (3) The underwriting or rating is not used to evade the
81 intent of this law or any other provision of law. A person
82 may not be held civilly or criminally liable for any cause
83 of action which may be brought because of compliance
84 with this section.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

***§33-25A-24. Statutory construction and relationship to other laws.**

1 (a) Except as otherwise provided in this article,
2 provisions of the insurance laws and provisions of hospital
3 or medical service corporation laws are not applicable to
4 any health maintenance organization granted a certificate
5 of authority under this article. The provisions of this
6 article shall not apply to an insurer or hospital or medical
7 service corporation licensed and regulated pursuant to the
8 insurance laws or the hospital or medical service
9 corporation laws of this state except with respect to its
10 health maintenance corporation activities authorized and
11 regulated pursuant to this article. The provisions of this
12 article shall not apply to an entity properly licensed by a
13 reciprocal state to provide health care services to employer
14 groups, where residents of West Virginia are members of
15 an employer group, and the employer group contract is
16 entered into in the reciprocal state. For purposes of this
17 subsection, a "reciprocal state" means a state which
18 physically borders West Virginia and which has subscriber
19 or enrollee hold harmless requirements substantially
20 similar to those set out in section seven-a of this article.

21 (b) Factually accurate advertising or solicitation
22 regarding the range of services provided, the premiums
23 and copayments charged, the sites of services and hours of
24 operation, and any other quantifiable, nonprofessional
25 aspects of its operation by a health maintenance
26 organization granted a certificate of authority, or its
27 representative shall not be construed to violate any
28 provision of law relating to solicitation or advertising by

*Clerk's Note: This section was also amended by S.B. 371 (Chapter 110), and H.B. 2667 (Chapter 109), which passed prior to this act.

29 health professions: *Provided*, That nothing contained in
30 this subsection shall be construed as authorizing any
31 solicitation or advertising which identifies or refers to any
32 individual provider or makes any qualitative judgment
33 concerning any provider.

34 (c) Any health maintenance organization authorized
35 under this article shall not be considered to be practicing
36 medicine and is exempt from the provisions of chapter
37 thirty of this code, relating to the practice of medicine.

38 (d) The provisions of sections fifteen and twenty,
39 article four (general provisions); section seventeen, article
40 six (noncomplying forms); article six-c (guaranteed loss
41 ratio); article seven (assets and liabilities); article eight
42 (investments); article nine (administration of deposits);
43 article twelve (agents, brokers, solicitors and excess line);
44 section fourteen, article fifteen (individual accident and
45 sickness insurance); section sixteen, article fifteen
46 (coverage of children); section eighteen, article fifteen
47 (equal treatment of state agency); section nineteen, article
48 fifteen (coordination of benefits with medicaid); article
49 fifteen-b (uniform health care administration act); section
50 three, article sixteen (required policy provisions); section
51 three-f, article sixteen (treatment of temporomandibular
52 disorder and craniomandibular disorder); section eleven,
53 article sixteen (coverage of children); section thirteen,
54 article sixteen (equal treatment of state agency); section
55 fourteen, article sixteen (coordination of benefits with
56 medicaid); article sixteen-a (group health insurance
57 conversion); article sixteen-c (small employer group
58 policies); article sixteen-d (marketing and rate practices
59 for small employers); article twenty-seven (insurance
60 holding company systems); article thirty-four-a (standards
61 and commissioner's authority for companies deemed to
62 be in hazardous financial condition); article thirty-five
63 (criminal sanctions for failure to report impairment);
64 article thirty-seven (managing general agents); article
65 thirty-nine (disclosure of material transactions); and article
66 forty-one (privileges and immunity) shall be applicable to
67 any health maintenance organization granted a certificate
68 of authority under this article. In circumstances where the
69 code provisions made applicable to health maintenance

70 organizations by this section refer to the “insurer”, the
71 “corporation” or words of similar import, the language
72 shall be construed to include health maintenance
73 organizations.

74 (e) Any long-term care insurance policy delivered or
75 issued for delivery in this state by a health maintenance
76 organization shall comply with the provisions of article
77 fifteen-a of this chapter.

78 (f) A health maintenance organization granted a
79 certificate of authority under this article shall be exempt
80 from paying municipal business and occupation taxes on
81 gross income it receives from its enrollees, or from their
82 employers or others on their behalf, for health care items
83 or services provided directly or indirectly by the health
84 maintenance organization. This exemption applies to all
85 taxable years through the thirty-first day of December,
86 one thousand nine hundred ninety-six. The commissioner
87 and the tax department shall conduct a study of the
88 appropriations of imposition of the municipal business
89 and occupation tax or other tax on health maintenance
90 organizations, and shall report to the regular session of the
91 Legislature, one thousand nine hundred ninety-seven, on
92 their findings, conclusions and recommendations, together
93 with drafts of any legislation necessary to effectuate their
94 recommendations.

CHAPTER 109

(Com. Sub. for H. B. 2667—By Mr. Speaker, Mr. Kliss, and Delegate Ashley)
[By Request of the Executive]

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to repeal section fifteen, article fifteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal article sixteen-c of said chapter; to amend and reenact sections two and twenty,

article fifteen of said chapter; to further amend said article by adding thereto eight new sections, designated sections two-a, two-b, two-c, two-d, two-e, two-f, two-g and four-e; to amend article sixteen of said chapter by adding thereto seven new sections, designated sections one-a, three-j, three-k, three-l, three-m, three-n and seventeen; to amend and reenact sections three-a and fifteen of said article; to amend and reenact sections two, four, five, seven, eight, ten, eleven and twelve, article sixteen-d of said chapter; to further amend said article by adding thereto a new section, designated section fifteen; to amend and reenact section twenty-four, article twenty-three of said chapter; to amend and reenact section four, article twenty-four of said chapter; to amend and reenact section six, article twenty-five of said chapter; and to amend and reenact section twenty-four, article twenty-five-a of said chapter, all relating to the availability and continuity of health insurance coverage for individuals, small groups and large groups in accordance with the health insurance portability and accountability act of 1996, commonly known as the Kennedy-Kassebaum bill, and related federal mandates; specifying exceptions under which an insurer may deny coverage under individual accident and sickness insurance policies; authority for the commissioner to study alternatives to guaranteed issue of individual accident and sickness insurance policies; exceptions under which an insurer may nonrenew or discontinue individual accident and sickness insurance coverage; providing for discontinuation or modification of individual accident and sickness insurance coverage; limitation of preexisting condition exclusions; establishment of individual medical savings accounts; guaranteed renewability of health insurance coverage; guaranteed issuance of health insurance coverage for eligible individuals and small groups and related premium calculation; preexisting health conditions; premium rates; credit for prior coverage; parity of physical and mental health insurance coverage for large groups; minimum hospital stays for mothers and newborns; the applicability of these provisions to entities providing accident and sickness insurance coverage; and a study of the feasibility and advisability of extending continuation coverage to groups of fewer than twenty employees.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article fifteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that article sixteen-c of said chapter be repealed; that sections two and twenty, article fifteen of said chapter be amended and reenacted; that said article be further amended by adding thereto eight new sections, designated sections two-a, two-b, two-c, two-d, two-e, two-f, two-g and four-e; that article sixteen of said chapter be amended by adding thereto seven new sections, designated sections one-a, three-j, three-k, three-l, three-m, three-n and seventeen; that sections three-a and fifteen of said article be amended and reenacted; that sections two, four, five, seven, eight, ten, eleven and twelve, article sixteen-d of said chapter be amended and reenacted; that said article be further amended by adding thereto one new section, designated section fifteen; that section twenty-four, article twenty-three of said chapter be amended and reenacted; that section four, article twenty-four of said chapter be amended and reenacted; that section six, article twenty-five of said chapter be amended and reenacted; and that section twenty-four, article twenty-five-a of said chapter be amended and reenacted, all to read as follows:

Article

- 15. Accident and Sickness Insurance.
- 16. Group Accident and Sickness Insurance.
- 16D. Marketing and Rate Practices for Small Employer Accident and Sickness Insurance Policies.
- 23. Fraternal Benefit Societies.
- 24. Hospital Service Corporations, Dental Service Corporations and Health Service Corporations.
- 25. Health Care Corporations.
- 25A. Health Maintenance Organization Act.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

- §33-15-2. Scope and format of policy.
- §33-15-2a. Definitions.
- §33-15-2b. Guaranteed issue; limitation of coverage; election; denial of coverage; network plans.
- §33-15-2c. Feasibility study for alternatives to guaranteed issue.
- §33-15-2d. Exceptions to guaranteed renewability.
- §33-15-2e. Discontinuation of particular type of coverage; uniform termination of all coverage; uniform modification of coverage.

§33-15-2f. Certification of creditable coverage.

§33-15-2g. Applicability.

§33-15-4e. Benefits for mothers and newborns.

§33-15-20. Individual medical savings accounts; definitions; ownership; trustees; regulations.

§33-15-2. Scope and format of policy.

1 No policy of accident and sickness insurance shall be
2 delivered or issued for delivery to any person in this state
3 unless:

4 (a) The entire money and other considerations
5 therefor are expressed therein; and

6 (b) The time at which the insurance takes effect and
7 terminates is expressed therein; and

8 (c) It purports to insure only one person, except that a
9 policy may insure, originally or by subsequent
10 amendment upon the application of an adult member of a
11 family who shall be deemed the policyholder, any two or
12 more eligible members of that family, including husband,
13 wife, dependent children or any children under a specified
14 age which shall not exceed nineteen years and any other
15 person dependent upon the policyholder; and

16 (d) The policy is guaranteed to be renewable at the
17 option of the insured except as provided in section two-d
18 of this article; and

19 (e) The style, arrangement and over-all appearance of
20 the policy give no undue prominence to any portion of
21 the text, and unless every printed portion of the text of the
22 policy and of any endorsements or attached papers is
23 plainly printed in light-faced type of a style in general use,
24 the size of which shall be uniform and not less than
25 ten-point with a lowercase unspaced alphabet length not
26 less than one hundred and twenty-point (the "text" shall
27 include all printed matter except the name and address of
28 the insurer, name or title of the policy, the brief
29 description, if any, and captions and subcaptions), the
30 policy shall clearly indicate on the first page the
31 conditions of renewability; and

32 (f) The exceptions and reductions of indemnity are set
33 forth in the policy and, except those which are set forth in
34 sections four and five of this article, are printed, at the
35 insurer's option, either included with the benefit
36 provisions to which they apply, or under an appropriate
37 caption such as "Exceptions," or "Exceptions and
38 Reductions": *Provided*, That if an exception or reduction
39 specifically applies only to a particular benefit of the
40 policy, a statement of such exception or reduction shall be
41 included with the benefit provision to which it applies; and

42 (g) Each such form, including riders and
43 endorsements, shall be identified by a form number in the
44 lower left-hand corner of the first part thereof; and

45 (h) It contains no provision purporting to make any
46 portion of the charter, rules, constitution, or bylaws of the
47 insurer a part of the policy unless such portion is set forth
48 in full in the policy, except in the case of the
49 incorporation of, or reference to, a statement of rates or
50 classification of risks, or short-rate table filed with the
51 commissioner; and

52 (i) Effective the first day of July, one thousand nine
53 hundred ninety-seven, the insurer offers and accepts for
54 enrollment pursuant to section two-b of this article every
55 eligible individual who applies for coverage within sixty-
56 three days after termination of the individual's prior
57 creditable coverage.

§33-15-2a. Definitions.

1 For purposes of this section and sections two-b, two-c,
2 two-d, two-e, two-f, two-g and four-e:

3 (a) "Accident and sickness insurance coverage"
4 means benefits consisting of medical care (provided
5 directly, through insurance or reimbursement, or otherwise
6 and including items and services paid for as medical care)
7 under any hospital or medical service policy of certificate,
8 hospital or medical service plan contract, or health
9 maintenance organization contract offered by an insurer,
10 but does not include short-term limited duration
11 insurance.

12 (b) "Bona fide association" means an association
13 which has been actively in existence for at least five years;
14 has been formed and maintained in good faith for
15 purposes other than obtaining insurance; does not
16 condition membership in the association on any health
17 status-related factor relating to an individual; makes
18 accident and sickness insurance coverage offered through
19 the association available to all members regardless of any
20 health status-related factor relating to the members or
21 individuals eligible for coverage through a member; does
22 not make accident and sickness insurance coverage
23 offered through the association available other than in
24 connection with a member of the association; and meets
25 any additional requirements as may be set forth in this
26 chapter or by rule.

27 (c) "COBRA continuation provision" means any of
28 the following:

29 (1) Section 4980B of the Internal Revenue Code of
30 1986, other than subsection (f)(1) of such section insofar
31 as it relates to pediatric vaccines;

32 (2) Part 6 of Subtitle B of Title I of the Employee
33 Retirement Income Security Act of 1974, other than
34 Section 609 of such act; or

35 (3) Title XXII of the Public Health Service Act.

36 (d) "Creditable coverage" means, with respect to an
37 individual, coverage of the individual under any of the
38 following:

39 (1) A group health plan;

40 (2) Accident and sickness insurance coverage;

41 (3) Part A or Part B of Title XVIII of the Social
42 Security Act;

43 (4) Title XIX of the Social Security Act, other than
44 coverage consisting solely of benefits under section 1928;

45 (5) Chapter 55 of Title 10 of the United States Code;

46 (6) A medical care program of the Indian Health
47 Service or of a tribal organization;

48 (7) A state health benefits risk pool;

49 (8) A health plan offered under Chapter 89 of Title 5
50 of the United States Code;

51 (9) A public health plan (as defined in federal
52 regulations); or

53 (10) A health benefit plan under section 5(e) of the
54 Peace Corps Act (22 U.S.C. 2504(e)).

55 The term "creditable coverage" does not include
56 those benefits set forth in section two-g of this article.

57 (e) "Eligible individual" means an individual:

58 (1) For whom, as of the date on which the individual
59 seeks coverage, the aggregate period of creditable
60 coverage is eighteen months or more and whose most
61 recent prior creditable coverage was under a group health
62 plan, governmental plan (as defined in section 3(32) of
63 the Employee Retirement Income Security Act of 1974),
64 church plan (as defined in section 3(33) of the Employee
65 Retirement Income Security Act of 1974), or accident and
66 sickness insurance coverage offered in connection with
67 any such plan;

68 (2) Who is not eligible for coverage under a group
69 health plan, Part A or Part B of Title XVIII of the Social
70 Security Act, or state plan under Title XIX of such act (or
71 any successor program), and does not have other accident
72 and sickness insurance coverage;

73 (3) With respect to whom the most recent prior
74 creditable coverage was not terminated as a result of fraud,
75 intentional misrepresentation of material fact under the
76 terms of the coverage, or nonpayment of premium;

77 (4) Who did not turn down an offer of continuation of
78 coverage under a COBRA continuation provision or under
79 a similar state program if it was offered; and

80 (5) Who, if the individual elected such continuation
81 coverage, has exhausted that coverage under the COBRA
82 continuation provision or similar state program.

83 (f) "Group health plan" means an employee welfare
84 benefit plan (as defined in section 3(1) of the Employee
85 Retirement Income Security Act of 1974) to the extent
86 that the plan provides medical care to employees and their
87 dependents (as defined under the terms of the plan)
88 directly or through insurance, reimbursement or
89 otherwise.

90 (g) "Health status-related factor" means an
91 individual's health status, medical condition (including
92 both physical and mental illnesses), claims experience,
93 receipt of health care, medical history, genetic
94 information, and evidence of insurability (including
95 conditions arising out of acts of domestic violence) or
96 disability.

97 (h) "Higher-level coverage" means a policy form for
98 which the actuarial value of the benefits under the
99 coverage is at least fifteen percent greater than the
100 actuarial value of lower-level coverage offered by the
101 insurer in this state, and the actuarial value of the benefits
102 under the coverage is at least one hundred percent but not
103 greater than one hundred twenty percent of a weighted
104 average.

105 (i) "Individual market" means the market for
106 accident and sickness insurance coverage offered to
107 individuals other than in connection with a group health
108 plan.

109 (j) "Insurer" means an entity licensed by the
110 commissioner to transact accident and sickness insurance
111 in this state and subject to this chapter, but does not
112 include a group health plan or short term limited duration
113 insurance.

114 (k) "Lower-level coverage" means a policy form for
115 which the actuarial value of the benefits under the
116 coverage is at least eighty-five percent but not greater than
117 one hundred percent of a weighted average.

118 (l) "Medical care" means amounts paid for, or paid
119 for insurance covering, the diagnosis, cure, mitigation,
120 treatment or prevention of disease, or amounts paid for the
121 purpose of affecting any structure or function of the
122 body, including the amounts paid for transportation
123 primarily for and essential to such care.

124 (m) "Network plan" means accident and sickness
125 insurance coverage of an insurer under which the
126 financing and delivery of medical care (including items
127 and services paid for as medical care) are provided, in
128 whole or in part, through a definite set of providers under
129 contract with the insurer.

130 (n) "Preexisting condition exclusion" means a
131 limitation or exclusion of benefits relating to a condition
132 based on the fact that the condition was present before the
133 date of enrollment for coverage, whether or not any
134 medical advice, diagnosis, care or treatment was
135 recommended or received before such date.

136 (o) "Weighted average" means the average actuarial
137 value of the benefits provided by all the accident and
138 sickness insurance coverage issued (as elected by the
139 insurer) either by that insurer or by all insurers in this state
140 in the individual accident and sickness market during the
141 previous year (not including coverage issued under this
142 section), weighted by enrollment for the different
143 coverage.

**§33-15-2b. Guaranteed issue; limitation of coverage; election;
denial of coverage; network plans.**

1 (a) Each insurer that offers accident and sickness
2 insurance coverage in the individual market in this state
3 may not, with respect to an eligible individual desiring to
4 enroll in individual accident and sickness insurance
5 coverage:

6 (1) Decline to offer coverage to, or deny enrollment
7 of, an eligible individual; or

8 (2) Impose any preexisting condition exclusion with
9 respect to such coverage.

10 (b) An insurer may elect to limit the coverage offered
11 under subsection (a) of this section so long as:

12 (1) The insurer offers at least two different accident
13 and sickness insurance policy forms, both of which are
14 designed for, made generally available to, and actively
15 marketed to, and enroll both eligible and other
16 individuals; and

17 (2) As elected by the insurer:

18 (A) The insurer offers the policy forms for individual
19 accident and sickness insurance coverage with the largest,
20 and next to the largest, premium volume of all such policy
21 forms offered by the insurer in this state in the period
22 involved; or

23 (B) The insurer offers a lower-level coverage policy
24 form and a higher-level coverage policy form each of
25 which includes benefits substantially similar to other
26 individual accident and sickness insurance coverage
27 offered by the insurer in this state and each of which is
28 covered under a risk adjustment, risk spreading, or
29 financial subsidization method. The actuarial value of
30 benefits under a lower-level coverage policy form and a
31 higher-level coverage policy form shall be calculated
32 based on a standardized population and a set of
33 standardized utilization and cost factors.

34 (c) The elections made by the insurer under
35 subsection (b) of this section shall apply uniformly to all
36 eligible individuals in this state for that insurer, and shall
37 be effective for policies offered during a period of at least
38 two years. Policy forms which have different riders or
39 different cost-sharing arrangements shall be considered to
40 be different policy forms.

41 (d) An insurer may deny accident and sickness
42 coverage in the individual market to an eligible individual
43 if the insurer has demonstrated to the satisfaction of the
44 commissioner that:

45 (1) It does not have the financial reserves necessary to
46 underwrite additional coverage; and

47 (2) Coverage is denied uniformly to all individuals in
48 the individual market in the state without regard to any
49 health status-related factor of the individuals and without
50 regard to whether the individuals are eligible individuals.

51 (e) An insurer denying insurance coverage pursuant to
52 the provisions of subsection (d) of this section may not
53 offer accident and sickness coverage in the individual
54 market for a period of one hundred eighty days after the
55 date coverage is denied or until the insurer has
56 demonstrated to the satisfaction of the commissioner that
57 it has sufficient financial reserves to underwrite additional
58 coverage, whichever is later.

59 (f) Insurers offering accident and sickness insurance
60 coverage in the individual market through a network plan
61 may:

62 (1) Limit the individuals who may be enrolled to those
63 who live, reside or work within the service area for the
64 network plan; and

65 (2) Deny coverage to those individuals within the
66 service area if the insurer has demonstrated to the
67 satisfaction of the commissioner that:

68 (A) It will not have the capacity to deliver services
69 adequately to additional individual enrollees because of its
70 obligations to existing group contract holders and
71 enrollees and individual enrollees; and

72 (B) It is applying this subsection uniformly to
73 individuals without regard to any health status-related
74 factor of the individuals and without regard to whether the
75 individuals are eligible individuals.

76 (g) An insurer denying accident and sickness
77 insurance coverage through a network plan pursuant to
78 the provisions of subsection (f) of this section may not
79 offer coverage in the individual market within its service
80 area for a period of one hundred eighty days after
81 coverage is denied.

82 (h) The provisions of this section shall not be
83 construed to require that an insurer offering accident and

84 sickness coverage only in connection with group health
85 plans or through one or more bona fide associations, or
86 both, offer such accident and sickness insurance coverage
87 in the individual market.

88 (i) An insurer offering accident and sickness insurance
89 coverage in connection with group health plans shall not
90 be deemed to be an insurer offering individual accident
91 and sickness insurance coverage in the individual market
92 solely because such insurer offers a conversion policy.

93 (j) The requirements of section one-b of this article do
94 not apply to policies issued pursuant to this section.
95 However, premium rate charges for individual accident
96 and sickness policies issued pursuant to this section shall
97 be filed with and approved by the commissioner pursuant
98 to the provisions of article sixteen-b of this chapter.

99 (k) This section applies to individual accident and
100 sickness insurance coverage offered, sold, issued, renewed
101 or in effect after the thirtieth day of June, one thousand
102 nine hundred ninety-seven.

§33-15-2c. Feasibility study for alternatives to guaranteed issue.

1 The Legislature finds that alternatives to the provisions
2 of this article relating to guaranteed issue of individual
3 accident and sickness insurance policies do exist but the
4 feasibility of these alternatives are not presently known.
5 Therefore, the commissioner is to perform or have
6 performed a study as to the feasibility of these alternatives
7 and their impact upon the individual market. The results
8 of this study shall be provided to the Legislature during its
9 regular session in the year one thousand nine hundred
10 ninety-eight.

§33-15-2d. Exceptions to guaranteed renewability.

1 (a) An insurer may nonrenew or discontinue accident
2 and sickness insurance coverage of an individual in the
3 individual market based only on one or more of the
4 following:

5 (1) The individual has failed to pay premiums or
6 contributions in accordance with the terms of the policy or
7 the insurer has not received timely premium payments;

8 (2) The individual has performed an act or practice
9 that constitutes fraud or made an intentional
10 misrepresentation of material fact under the terms of
11 coverage;

12 (3) The insurer is ceasing to offer coverage in
13 accordance with the provisions of section two-e of this
14 article;

15 (4) In the case of an insurer that offers coverage
16 through a network plan, the individual no longer resides,
17 lives or works in the service area but only if coverage is
18 terminated uniformly without regard to any health status-
19 related factor of covered individuals; or

20 (5) In the case of coverage made available in the
21 individual market only through one or more bona fide
22 associations, the individual's membership in the
23 association ceases but only if coverage is terminated
24 uniformly without regard to any health-status related
25 factor of covered individuals.

26 (b) This section applies to individual accident and
27 sickness insurance coverage offered, sold, issued, renewed
28 or in effect after the thirtieth day of June, one thousand
29 nine hundred ninety-seven.

**§33-15-2e. Discontinuation of particular type of coverage;
uniform termination of all coverage; uniform
modification of coverage.**

1 (a) An insurer may discontinue offering a particular
2 type of accident and sickness insurance coverage in the
3 individual market only if:

4 (1) The insurer provides written notice to each
5 individual provided this type of coverage at least ninety
6 days prior to the date of the discontinuation of coverage;

7 (2) The insurer offers to each individual in the
8 individual market provided this type of coverage the
9 option to purchase any other type of individual accident

10 and sickness insurance policy currently offered by that
11 insurer; and

12 (3) The insurer acts uniformly without regard to any
13 health status-related factor of enrolled individuals or
14 individuals who may become eligible for coverage.

15 (b) An insurer may discontinue offering all individual
16 accident and sickness insurance coverage in the individual
17 market offered in this state only if:

18 (1) The insurer provides written notice to the
19 insurance commissioner and to each insured of the
20 discontinuation at least one hundred eighty days prior to
21 the expiration of coverage; and

22 (2) All accident and sickness insurance policies issued
23 or delivered for issuance in this state in the individual
24 market are discontinued and coverage under the policies
25 in the individual market is not renewed.

26 (c) In the case of discontinuation under subsection (b)
27 of this section, the insurer may not provide for the
28 issuance of any accident and sickness insurance coverage
29 in the individual market and state during the five-year
30 period beginning on the date of the discontinuation of the
31 last accident and sickness insurance coverage not so
32 renewed.

33 (d) At the time of renewal, an insurer may modify
34 coverage under an accident and sickness policy only if the
35 modification is consistent with the provisions of this article
36 and article twenty-eight of this chapter and is effective on
37 a uniform basis among all individuals with that policy
38 form. For individuals who are eligible for medicare at the
39 time of renewal, the insurer may modify coverage to
40 reduce benefits by an amount no more than that paid by
41 medicare.

42 (e) This section applies to individual accident and
43 sickness insurance coverage offered, sold, issued, renewed
44 or in effect after the thirtieth day of June, one thousand
45 nine hundred ninety-seven.

§33-15-2f. Certification of creditable coverage.

1 An insurer offering accident and sickness insurance
2 coverage pursuant to the provisions of this article shall
3 provide certification of creditable coverage in the same
4 manner as provided in section three-m, article sixteen of
5 this chapter.

§33-15-2g. Applicability.

1 (a) The requirements of sections two-b, two-d, two-e
2 and two-f of this article do not apply to:

3 (1) Coverage only for accident, or disability income
4 insurance or any combination thereof;

5 (2) Coverage issued as a supplement to liability
6 insurance;

7 (3) Liability insurance, including general liability
8 insurance and automobile liability insurance;

9 (4) Workers' compensation or similar insurance;

10 (5) Automobile medical payment insurance;

11 (6) Credit-only insurance;

12 (7) Coverage for on-site medical clinics; and

13 (8) Other similar insurance coverage, which may be
14 specified by rule, under which benefits for medical care
15 are secondary or incidental to other insurance benefits.

16 (b) The requirements of sections two-b, two-d, two-e
17 and two-f of this article do not apply to the following if
18 provided under a separate policy, certificate, or contract of
19 insurance:

20 (1) Limited scope dental or vision benefits;

21 (2) Benefits for long-term care, nursing home care,
22 home health care, community-based care, or any
23 combination thereof;

24 (3) Coverage for only a specified disease or illness;

25 (4) Hospital indemnity or other fixed indemnity
26 insurance;

27 (5) Medicare supplement insurance (as defined under
28 section 1882(g)(1) of the Social Security Act), coverage
29 supplemental to the coverage provided under chapter 55
30 of title 10, United States Code, and similar supplemental
31 coverage provided to coverage under group accident and
32 sickness insurance; and

33 (6) Any other benefits as may be specified by rule.

§33-15-4e. Benefits for mothers and newborns.

1 (a) Nothing in this section shall be construed to
2 require a mother to give birth in a hospital or to stay in a
3 hospital for a fixed period of time following the birth of
4 her child. However, an insurer offering accident and
5 sickness insurance coverage under this article may not
6 restrict benefits for any hospital length of stay in
7 connection with childbirth for the mother or her newborn
8 child to less than forty-eight hours following a normal
9 vaginal delivery, or to less than ninety-six hours following
10 a cesarean section, or require a provider to obtain
11 authorization for such length hospital stays. The mother
12 and her newborn child may be discharged prior to the
13 expiration of the minimum length of stay required under
14 this section only in those cases in which the decision to
15 discharge is made by an attending provider in consultation
16 with the mother.

17 (b) Coverage for maternity and pediatric care shall be
18 provided in accordance with guidelines established by the
19 American College of Obstetricians and Gynecologists, the
20 American Academy of Pediatrics, or other established
21 professional medical associations.

22 (c) Benefits provided under this section may be
23 subject to deductibles, coinsurance, or other cost-sharing
24 in relation to benefits for hospital stays in connection with
25 childbirth for a mother or newborn child if the
26 coinsurance or other cost-sharing for any portion of the
27 hospital stay required under subsection (a) of this section
28 is no greater than the coinsurance or cost-sharing for any
29 preceding portion of the stay.

30 (d) Nothing in this section may be construed to
31 prevent an insurer from negotiating the level and type of
32 reimbursement with a provider for the care provided a
33 mother or newborn child in connection with childbirth.

34 (e) This section shall not apply with respect to any
35 accident and sickness insurance coverage which does not
36 provide benefits for hospital lengths of stay in connection
37 with childbirth for a mother or her newborn child.

38 (f) This section shall apply to accident and sickness
39 insurance coverage offered, sold, issued, renewed, or in
40 effect in the individual market on or after the first day of
41 January, one thousand nine hundred ninety-eight.

**§33-15-20. Individual medical savings accounts; definitions;
ownership; trustees; regulations.**

1 (a) Any individual resident of this state may establish
2 an individual medical savings account to serve as
3 self-insurance for the payment of medical expenses:
4 *Provided*, That an individual establishing an individual
5 medical savings account may designate a percentage of
6 the account assets that may be withdrawn by the individual
7 if not needed for the payment of medical expenses:
8 *Provided, however*, That any amount remaining in an
9 individual medical savings account on the earlier of the
10 date of retirement, at the age of fifty-nine and one-half
11 years or more, of the individual who established the
12 account, or the date of death of that individual, may be
13 withdrawn by the individual or by his or her personal
14 representative for a purpose other than the payment of
15 medical expenses: *Provided further*, That no withdrawal
16 pursuant to this subsection shall be subject to the
17 additional twenty percent tax as provided in subsection (d)
18 of this section. As used in this section, "individual
19 medical savings account" means a trust that meets the
20 definition of "medical savings account" set forth in
21 paragraph (1), subsection (d), section 220 of the Internal
22 Revenue Code of 1986, as amended, when that definition
23 is applied without regard to sub-subparagraph (ii),
24 subparagraph (A) of that paragraph. "Medical
25 expenses" means expenses that fall within the definition
26 of "qualified medical expenses" set forth in paragraph

27 (2), subsection (d), section 220 of the Internal Revenue
28 Code of 1986, as amended, when that definition is applied
29 without regard to subparagraph (C) of that paragraph.

30 (b) Any insurer issuing accident and sickness policies
31 in this state in accordance with the provisions of this article
32 may offer a benefit plan including deductibles or
33 copayments combined with individual self-insurance
34 through the establishment of individual medical savings
35 accounts. A benefit plan established pursuant to this
36 subsection shall provide that medical expenses included
37 within deductible or copayment provisions of the accident
38 and sickness policy for the individual or for his or her
39 covered dependents and therefore not payable under that
40 policy be paid by the trustee, either directly or as
41 reimbursement to an individual who has previously paid
42 medical expenses, from the individual medical savings
43 account. A benefit plan may limit payment of medical
44 expenses until the group plan annual deductible is met
45 from the individual medical savings account to expenses
46 which are covered services under the policy.

47 (c) Within one hundred eighty days of the passage of
48 this legislation, the tax commissioner may promulgate
49 emergency rules as to the keeping of records, the content
50 and form of returns and statements, and the filing of
51 copies of income tax returns and determination by trustees
52 of individual medical savings accounts and by individuals
53 establishing individual medical savings accounts:
54 *Provided*, That for purposes of sections fifteen, fifteen-a
55 and fifteen-b, article three, chapter twenty-nine-a of this
56 code, a sufficient emergency to justify the promulgation
57 of those rules shall be deemed to exist. The power
58 granted by this subsection shall be in addition to the rule-
59 making powers granted to the tax commissioner elsewhere
60 in this code.

61 (d) If any amount distributed out of an individual
62 medical savings account is used for any purpose other
63 than to defray medical expenses, except as specifically
64 provided in subsection (a) of this section or except for a
65 distribution of account assets pursuant to order of a
66 federal bankruptcy court, the West Virginia personal

67 income tax of the individual establishing the account, for
68 the taxable year in which the distribution is made shall be
69 increased by an amount equal to twenty percent of the
70 distribution.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-1a. Definitions.

§33-16-3a. Same — Mental health.

§33-16-3j. Hospital benefits for mothers and newborns.

§33-16-3k. Limitations on preexisting condition exclusions for health benefit plans.

§33-16-3l. Renewability and modification of health benefit plans.

§33-16-3m. Creditable coverage.

§33-16-3n. Eligibility for enrollment.

§33-16-15. Individual medical savings accounts; definitions; ownership; contributions; trustees; regulations.

§33-16-17. Commissioner to propose rules.

§33-16-1a. Definitions.

1 As used in this article:

2 (a) "Bona fide association" means an association
3 which has been actively in existence for at least five years;
4 has been formed and maintained in good faith for
5 purposes other than obtaining insurance; does not
6 condition membership in the association on any health
7 status-related factor relating to an individual; makes
8 accident and sickness insurance offered through the
9 association available to all members regardless of any
10 health status-related factor relating to members or
11 individuals eligible for coverage through a member; does
12 not make accident and sickness insurance coverage
13 offered through the association available other than in
14 connection with a member of the association; and meets
15 any additional requirements as may be set forth in this
16 chapter or by rule.

17 (b) "Commissioner" means the commissioner of
18 insurance.

19 (c) "Creditable coverage" means, with respect to an
20 individual, coverage of the individual after the thirtieth
21 day of June, one thousand nine hundred ninety-six, under

22 any of the following, other than coverage consisting solely
23 of excepted benefits:

24 (1) A group health plan;

25 (2) A health benefit plan;

26 (3) Medicare Part A or Part B, 42 U.S.C. § 1395 et
27 seq.; Medicaid, 42 U.S.C. § 1396a et seq. (other than
28 coverage consisting solely of benefits under Section 1928
29 of the Social Security Act); Civilian Health and Medical
30 Program of the Uniformed Services (CHAMPUS), 10
31 U.S.C., Chapter 55; and a medical care program of the
32 Indian Health Service or of a tribal organization;

33 (4) A health benefits risk pool sponsored by any state
34 of the United States or by the District of Columbia; a
35 health plan offered under 5 U.S.C., chapter 89; a public
36 health plan as defined in regulations promulgated by the
37 federal secretary of health and human services; or a health
38 benefit plan as defined in the Peace Corps Act, 22 U.S.C.
39 § 2504(e).

40 (d) "Dependent" means an eligible employee's
41 spouse or any unmarried child or stepchild under the age
42 of eighteen or unmarried, dependent child or stepchild
43 under age twenty-three if a full-time student at an
44 accredited school.

45 (e) "Eligible employee" means an employee,
46 including an individual who either works or resides in this
47 state, who meets all requirements for enrollment in a
48 health benefit plan.

49 (f) "Excepted benefits" means:

50 (1) Any policy of liability insurance or contract
51 supplemental thereto; coverage only for accident or
52 disability income insurance or any combination thereof;
53 automobile medical payment insurance; credit-only
54 insurance; coverage for on-site medical clinics; workers'
55 compensation insurance; or other similar insurance under
56 which benefits for medical care are secondary or
57 incidental to other insurance benefits; or

67 income tax of the individual establishing the account, for
68 the taxable year in which the distribution is made shall be
69 increased by an amount equal to twenty percent of the
70 distribution.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-1a. Definitions.

§33-16-3a. Same — Mental health.

§33-16-3j. Hospital benefits for mothers and newborns.

§33-16-3k. Limitations on preexisting condition exclusions for health benefit plans.

§33-16-3l. Renewability and modification of health benefit plans.

§33-16-3m. Creditable coverage.

§33-16-3n. Eligibility for enrollment.

§33-16-15. Individual medical savings accounts; definitions; ownership; contributions; trustees; regulations.

§33-16-17. Commissioner to propose rules.

§33-16-1a. Definitions.

1 As used in this article:

2 (a) "Bona fide association" means an association
3 which has been actively in existence for at least five years;
4 has been formed and maintained in good faith for
5 purposes other than obtaining insurance; does not
6 condition membership in the association on any health
7 status-related factor relating to an individual; makes
8 accident and sickness insurance offered through the
9 association available to all members regardless of any
10 health status-related factor relating to members or
11 individuals eligible for coverage through a member; does
12 not make accident and sickness insurance coverage
13 offered through the association available other than in
14 connection with a member of the association; and meets
15 any additional requirements as may be set forth in this
16 chapter or by rule.

17 (b) "Commissioner" means the commissioner of
18 insurance.

19 (c) "Creditable coverage" means, with respect to an
20 individual, coverage of the individual after the thirtieth
21 day of June, one thousand nine hundred ninety-six, under

22 any of the following, other than coverage consisting solely
23 of excepted benefits:

24 (1) A group health plan;

25 (2) A health benefit plan;

26 (3) Medicare Part A or Part B, 42 U.S.C. §1395 et
27 seq.; Medicaid, 42 U.S.C. §1396a et seq. (other than
28 coverage consisting solely of benefits under Section 1928
29 of the Social Security Act); Civilian Health and Medical
30 Program of the Uniformed Services (CHAMPUS), 10
31 U.S.C., Chapter 55; and a medical care program of the
32 Indian Health Service or of a tribal organization;

33 (4) A health benefits risk pool sponsored by any state
34 of the United States or by the District of Columbia; a
35 health plan offered under 5 U.S.C., chapter 89; a public
36 health plan as defined in regulations promulgated by the
37 federal secretary of health and human services; or a health
38 benefit plan as defined in the Peace Corps Act, 22 U.S.C.
39 §2504(e).

40 (d) "Dependent" means an eligible employee's
41 spouse or any unmarried child or stepchild under the age
42 of eighteen or unmarried, dependent child or stepchild
43 under age twenty-three if a full-time student at an
44 accredited school.

45 (e) "Eligible employee" means an employee,
46 including an individual who either works or resides in this
47 state, who meets all requirements for enrollment in a
48 health benefit plan.

49 (f) "Excepted benefits" means:

50 (1) Any policy of liability insurance or contract
51 supplemental thereto; coverage only for accident or
52 disability income insurance or any combination thereof;
53 automobile medical payment insurance; credit-only
54 insurance; coverage for on-site medical clinics; workers'
55 compensation insurance; or other similar insurance under
56 which benefits for medical care are secondary or
57 incidental to other insurance benefits; or

58 (2) If offered separately, a policy providing benefits
59 for long-term care, nursing home care, home health care,
60 community-based care or any combination thereof, dental
61 or vision benefits, or other similar, limited benefits; or

62 (3) If offered as independent, noncoordinated benefits
63 under separate policies or certificates, specified disease or
64 illness coverage, hospital indemnity or other fixed
65 indemnity insurance, or coverage, such as medicare
66 supplement insurance, supplemental to a group health
67 plan; or

68 (4) A policy of accident and sickness insurance
69 covering a period of less than one year.

70 (g) "Group health plan" means an employee welfare
71 benefit plan, including a church plan or a governmental
72 plan, all as defined in section three of the Employee
73 Retirement Income Security Act of 1974, 29 U.S.C.
74 §1003, to the extent that the plan provides medical care.

75 (h) "Health benefit plan" means benefits consisting
76 of medical care provided directly, through insurance or
77 reimbursement, or indirectly, including items and services
78 paid for as medical care, under any hospital or medical
79 expense incurred policy or certificate; hospital, medical or
80 health service corporation contract; health maintenance
81 organization contract; or plan provided by a
82 multiple-employer trust or a multiple-employer welfare
83 arrangement. "Health benefit plan" does not include
84 excepted benefits.

85 (i) "Health insurer" means an entity licensed by the
86 commissioner to transact accident and sickness in this state
87 and subject to this chapter. "Health insurer" does not
88 include a group health plan.

89 (j) "Health status-related factor" means an
90 individual's health status, medical condition (including
91 both physical and mental illnesses), claims experience,
92 receipt of health care, medical history, genetic
93 information, evidence of insurability (including conditions
94 arising out of acts of domestic violence) or disability.

95 (k) "Medical care" means amounts paid for, or paid
96 for insurance covering, the diagnosis, cure, mitigation,
97 treatment or prevention of disease, or amounts paid for the
98 purpose of affecting any structure or function of the
99 body, including amounts paid for transportation primarily
100 for and essential to such care.

101 (l) "Mental health benefits" means benefits with
102 respect to mental health services, as defined under the
103 terms of a group health plan or a health benefit plan
104 offered in connection with the group health plan.

105 (m) "Network plan" means a health benefit plan
106 under which the financing and delivery of medical care
107 are provided, in whole or in part, through a defined set of
108 providers under contract with the health insurer.

109 (n) "Preexisting condition exclusion" means, with
110 respect to a health benefit plan, a limitation or exclusion
111 of benefits relating to a condition based on the fact that
112 the condition was present before the enrollment date for
113 such coverage, whether or not any medical advice,
114 diagnosis, care or treatment was recommended or received
115 before the enrollment date.

§33-16-3a. Same — Mental health.

1 Any policy described in this article which shall be
2 delivered or issued or renewed in this state shall make
3 available as benefits to all individual subscribers and
4 members and to all group members if so elected by the
5 subscriber or group, for expenses arising from mental or
6 nervous conditions as hereinafter set forth. Such benefits
7 shall be as described in the standard nomenclature of the
8 American psychiatric association which are at least equal
9 to the following minimum requirements:

10 (a) In the case of benefits based upon confinement as
11 an inpatient in a mental hospital under the direction and
12 supervision of the department of mental health, or in a
13 private mental hospital licensed by the department of
14 mental health, the period of confinement for which
15 benefits shall be payable shall be at least forty-five days in
16 any calendar year.

17 (b) In the case of benefits based upon confinement as
18 an inpatient in a licensed or accredited general hospital,
19 such benefits shall be no different than for any other
20 illness.

21 (c) In the case of outpatient benefits, these shall cover
22 fifty percent of eligible expenses up to five hundred
23 dollars over a twelve-month period; services furnished: (1)
24 By a comprehensive health service organization; (2) by a
25 licensed or accredited hospital; or (3) subject to the
26 approval of the department of mental health, services
27 furnished by a community mental health center or other
28 mental health clinic or day care center which furnishes
29 mental health services; or (4) consultations or diagnostic
30 or treatment sessions, provided that such services are
31 rendered by a psychotherapist or by a psychologist and
32 do not exceed fifty such sessions over a twelve-month
33 period.

34 (d) With respect to mental health benefits furnished
35 before the thirtieth day of September, two thousand one,
36 to an enrollee of a health benefit plan offered in
37 connection with a group health plan, for a plan year
38 beginning on or after the first day of January, one
39 thousand nine hundred ninety-eight:

40 (1) Aggregate lifetime limits:

41 (A) If the health benefit plan does not include an
42 aggregate lifetime limit on substantially all medical and
43 surgical benefits, as defined under the terms of the plan
44 but not including mental health benefits, the plan may not
45 impose any aggregate lifetime limit on mental health
46 benefits;

47 (B) If the health benefit plan limits the total amount
48 that may be paid with respect to an individual or other
49 coverage unit for substantially all medical and surgical
50 benefits (in this paragraph, "applicable lifetime limit"),
51 the plan shall either apply the applicable lifetime limit to
52 medical and surgical benefits to which it would otherwise
53 apply and to mental health benefits, as defined under the
54 terms of the plan, and not distinguish in the application of
55 the limit between medical and surgical benefits and mental

56 health benefits, or not include any aggregate lifetime limit
57 on mental health benefits that is less than the applicable
58 lifetime limit;

59 (C) If a health benefit plan not previously described in
60 this subdivision includes no or different aggregate lifetime
61 limits on different categories of medical and surgical
62 benefits, the commissioner shall propose rules for
63 legislative approval in accordance with the provisions of
64 article three, chapter twenty-nine-a of this code under
65 which paragraph (B) of this subdivision shall apply,
66 substituting an average aggregate lifetime limit for the
67 applicable lifetime limit.

68 (2) Annual limits:

69 (A) If a health benefit plan does not include an annual
70 limit on substantially all medical and surgical benefits, as
71 defined under the terms of the plan but not including
72 mental health benefits, the plan may not impose any
73 annual limit on mental health benefits, as defined under
74 the terms of the plan;

75 (B) If the health benefit plan limits the total amount
76 that may be paid in a twelve-month period with respect to
77 an individual or other coverage unit for substantially all
78 medical and surgical benefits (in this paragraph,
79 "applicable annual limit"), the plan shall either apply the
80 applicable annual limit to medical and surgical benefits to
81 which it would otherwise apply and to mental health
82 benefits, as defined under the terms of the plan, and not
83 distinguish in the application of the limit between medical
84 and surgical benefits and mental health benefits, or not
85 include any annual limit on mental health benefits that is
86 less than the applicable annual limit;

87 (C) If a health benefit plan not previously described in
88 this subdivision includes no or different annual limits on
89 different categories of medical and surgical benefits, the
90 commissioner shall propose rules for legislative approval
91 in accordance with the provisions of article three, chapter
92 twenty-nine-a of this code under which paragraph (B) of
93 this subdivision shall apply, substituting an average annual
94 limit for the applicable annual limit.

95 (3) For purposes of this subsection, mental health
96 benefits do not include benefits with respect to treatment
97 of substance abuse or chemical dependency. This
98 subsection shall not apply to a health benefit plan if its
99 application results in an increase of at least one percent in
100 the cost under the plan.

101 (4) If a group health plan or a health insurer offers a
102 participant or beneficiary two or more benefit package
103 options, this subsection shall apply separately with respect
104 to coverage under each option.

§33-16-3j. Hospital benefits for mothers and newborns.

1 (a) Nothing in this section shall be construed to
2 require a mother to give birth in a hospital or to stay in the
3 hospital for a fixed period of time following the birth of
4 her child, but if a health benefit plan, for plan years
5 beginning on or after the first day of January, one
6 thousand nine hundred ninety-eight, provides inpatient
7 benefits in connection with childbirth for a mother or her
8 newborn child:

9 (1) The plan may not restrict benefits for any hospital
10 stay following a normal vaginal delivery to less than forty-
11 eight hours or following a cesarean section to less than
12 ninety-six hours, or require a provider to obtain
13 authorization for such length hospital stays;

14 (2) The plan must cover maternity and pediatric care
15 in accordance with guidelines established by the American
16 College of Obstetricians and Gynecologists, the American
17 Academy of Pediatrics or other established professional
18 medical association; and

19 (3) The mother and her newborn child may be
20 discharged prior to the expiration of the minimum length
21 of stay required under this section only in those cases in
22 which the decision to discharge is made by an attending
23 provider in consultation with the mother.

24 (b) Benefits provided for under this section may be
25 made subject to deductibles, coinsurance or other cost-
26 sharing if such cost-sharing is no greater than cost-sharing

27 for any preceding portion of the mother's or newborn
28 child's hospital stay.

29 (c) Nothing in this section shall be construed to
30 prevent a health insurer from negotiating with a provider
31 the level and type of reimbursement for inpatient
32 maternity or newborn care provided under a health benefit
33 plan.

§33-16-3k. Limitations on preexisting condition exclusions for health benefit plans.

1 (a) (1) For plan years beginning after the thirtieth day
2 of June, one thousand nine hundred ninety-seven, a health
3 benefit plan issued in connection with a group health plan
4 may not impose a preexisting condition exclusion with
5 respect to an employee or a dependent of an employee for
6 losses incurred by the employee or dependent more than
7 twelve months (or eighteen months for a late enrollee)
8 after the earlier of the individual's date of enrollment in
9 the health benefit plan or the first day of a waiting period
10 for enrollment in the plan. Genetic information may not
11 be treated as a condition for which a preexisting condition
12 exclusion may be imposed absent a diagnosis of the
13 condition related to the genetic information.

14 (2) A health benefit plan may impose a preexisting
15 condition exclusion only if such condition relates to a
16 physical or mental condition, regardless of its cause, for
17 which medical advice, diagnosis, care or treatment was
18 recommended or received within the six-month period
19 ending on the enrollee's enrollment date.

20 (3) A health benefit plan may impose no preexisting
21 condition exclusion relating to pregnancy or in the case of
22 a newborn covered under creditable coverage within thirty
23 days of birth or a child adopted before the age of eighteen
24 and covered under creditable coverage within thirty days
25 of adoption or placement for adoption.

26 (b) A health maintenance organization that does not
27 impose a preexisting condition exclusion allowed under
28 subsection (a) of this section with respect to any particular
29 coverage option may:

30 (1) Impose an affiliation period for that coverage
31 option if the affiliation period is applied uniformly
32 without regard to any health status-related factors and
33 does not exceed two months (three months for a late
34 enrollee). For purposes of this article, "affiliation
35 period" means a period that begins on an employee's or
36 dependent's enrollment date, runs concurrently with any
37 waiting period under the group health plan, must expire
38 before coverage is effective and during which the health
39 maintenance organization need not provide medical care
40 and may not charge any premium to the employee or
41 dependent; or

42 (2) Use other alternatives approved by the
43 commissioner to address adverse selection.

44 (c) Any preexisting condition exclusion period,
45 including any waiting period or affiliation period prior to
46 the effective date of coverage, shall be reduced by the
47 aggregate of the periods of creditable coverage applicable
48 to the enrollee as of the enrollment date.

§33-16-3l. Renewability and modification of health benefit plans.

1 (a) A health insurer may refuse to renew a health
2 benefit plan issued in connection with a group health plan
3 after complying with all applicable provisions of this
4 chapter and only for one of the following reasons:

5 (1) The policyholder's failure to pay premiums or the
6 carrier's failure to receive timely premium payments;

7 (2) Fraud or intentional misrepresentation of material
8 fact by the policyholder;

9 (3) The policyholder's failure to comply with a
10 material plan provision relating to contribution or group
11 participation rules;

12 (4) The health insurer elects to discontinue offering
13 health benefit plans:

14 (A) Of a particular type, if the health insurer gives
15 notice to each policyholder of such plan and to all
16 covered employees or members and dependents at least

17 ninety days before the date such coverage is discontinued:
18 *Provided*, That a health insurer electing to discontinue
19 health benefit plans to small employers shall comply with
20 the requirements of section seven, article sixteen-d of this
21 chapter. The health insurer shall offer each such
22 policyholder the option to purchase any other health
23 benefit plan offered by the health insurer to employers.
24 In electing to discontinue health benefit plans of a
25 particular type and in offering coverage under the
26 preceding sentence, the health insurer shall act uniformly
27 without regard to policyholders' claims experience or any
28 health status-related factor relating to any covered
29 employee, member or dependent or new employees,
30 members or dependents who may become eligible for
31 coverage; or

32 (B) Of all types, if the health insurer gives notice to the
33 commissioner and to each policyholder and all covered
34 employees or members and dependents at least one
35 hundred eighty days before the date plans are
36 discontinued: *Provided*, That a health insurer electing to
37 discontinue health benefit plans to small employers shall
38 comply with the requirements of section seven, article
39 sixteen-d of this chapter. The health insurer shall
40 discontinue all, and not renew any, health benefit plans
41 issued pursuant to this article. The health insurer may not
42 issue any health benefit plan pursuant to this article for a
43 five-year period beginning on the date the last
44 discontinued health benefit plan is not renewed;

45 (5) For a health insurer offering coverage under a
46 network plan, the health insurer no longer has any
47 enrollees of the network plan who live, reside or work in
48 the plan's service area; or

49 (6) For health benefit plans offered only through a
50 bona fide association, an employer ceases to be a member
51 of the bona fide association, if coverage is terminated
52 uniformly without respect to any health status-related
53 factor relating to any covered employee, association
54 member or dependent. With respect to coverage provided
55 to an employer, a reference to "policyholder" or "plan

56 sponsor” is deemed to include a reference to the
57 employer.

58 (b) Subject to other requirements of this chapter, a
59 health insurer may modify a health benefit plan issued in
60 connection with a group health plan when the health
61 benefit plan is renewed.

§33-16-3m. Creditable coverage.

1 (a) (1) A health insurer shall certify an enrollee’s
2 creditable coverage at the time an enrollee:

3 (A) Ceases to be covered under a health benefit plan
4 issued in connection with a group health plan, including
5 coverage under a COBRA continuation provision. For
6 purposes of this article, “COBRA continuation provision”
7 means any of the following:

8 (i) Section 4980B of the Internal Revenue Code of
9 1986, other than subsection (f)(1) of such section insofar
10 as it relates to pediatric vaccines;

11 (ii) Part 6 of subtitle B of Title I of the Employee
12 Retirement Income Security Act of 1974, other than
13 Section 609 of such act; or

14 (iii) Title XXII of the Public Health Service Act;

15 (B) Ceases to be covered under a COBRA continuation
16 provision; and

17 (C) Requests certification, but no later than twenty-
18 four months after cessation of coverage under the health
19 benefit plan.

20 (2) The health insurer shall provide the enrollee a
21 written certification of:

22 (A) The period of creditable coverage under the
23 health benefit plan, including coverage, if any, under a
24 COBRA continuation provision; and

25 (B) The waiting period, if any, and affiliation period, if
26 applicable, for any coverage under the health benefit plan.

27 (b) For purposes of reducing an enrollee's preexisting
 28 condition exclusion period, creditable coverage shall not
 29 be counted if, after such period and before an employee's
 30 or dependent's enrollment in a health benefit plan issued
 31 in connection with a group health plan, there was a period
 32 of sixty-three days or more during all of which the
 33 individual was not covered under any creditable coverage.
 34 For purposes of this subsection, a sixty-three-day period
 35 may not include any waiting period or affiliation period
 36 prior to the effective date of an individual's coverage.

37 (c) For purposes of reducing an enrollee's preexisting
 38 condition exclusion period, a health insurer:

39 (1) Shall count a period of creditable coverage without
 40 regard to specific benefits covered during the period; or

41 (2) May elect to apply creditable coverage based upon
 42 each of several classes or categories of benefits in
 43 accordance with rules promulgated by the commissioner.
 44 A health insurer shall make such an election on a uniform
 45 basis for all enrollees and shall count a period of
 46 creditable coverage with respect to any class or category
 47 of benefits if any level of benefits is covered within such
 48 class or category.

§33-16-3n. Eligibility for enrollment.

1 (a) Notwithstanding any provision of any policy,
 2 provision, contract, plan or agreement to which this article
 3 applies, a health insurer offering coverage in connection
 4 with a group health plan may not, for plan years
 5 beginning after the thirtieth day of June, one thousand
 6 nine hundred ninety-seven, establish rules for eligibility,
 7 including continued eligibility, of any employee or
 8 dependent to enroll under a health benefit plan based on a
 9 health status-related factor.

10 (b) For plan years beginning after the thirtieth day of
 11 June, one thousand nine hundred ninety-seven, a health
 12 benefit plan offered in connection with a group health
 13 plan shall provide that an employee or dependent of an
 14 employee who is eligible, but not enrolled, under terms of

15 a health benefit plan may enroll under terms of the plan if
16 the employee or dependent:

17 (1) Was covered under other creditable coverage when
18 coverage was previously offered to the employee or
19 dependent and, if required by the insurer, the employee
20 stated in writing that the existence of other creditable
21 coverage was the reason for declining enrollment under
22 the health benefit plan;

23 (2) Lost coverage under the other creditable coverage
24 because of legal separation, divorce, death, termination of
25 employment, reduction in the number of hours of
26 employment, exhaustion of COBRA continuation
27 coverage or termination of the employer's contributions
28 towards the other creditable coverage; and

29 (3) The employee requests enrollment no more than
30 thirty days after loss of the other creditable coverage.

31 (c) For plan years beginning after the thirtieth day of
32 June, one thousand nine hundred ninety-seven, if a health
33 benefit plan makes coverage available to an employee's
34 dependents, the plan shall provide that if an employee is
35 enrolled under the plan or has met any waiting period
36 requirement and is eligible for enrollment but for a failure
37 to enroll during a previous enrollment period:

38 (1) The employee or a person who becomes a
39 dependent of the employee through marriage, birth,
40 adoption or placement for adoption may be enrolled
41 under the plan, and in the case of the birth or adoption of
42 a child, the employee's spouse who is otherwise eligible
43 for coverage may be enrolled as a dependent, during a
44 period of at least thirty days beginning on the later of the
45 date dependent coverage is made available or the date of
46 the marriage, birth, adoption or placement for adoption;
47 and

48 (2) If the employee requests enrollment of a
49 dependent during the first thirty days that dependent
50 coverage is available, the dependent's coverage shall
51 become effective:

52 (A) In the case of marriage, no later than the first day
53 of the first month after the date the completed enrollment
54 request is received; or

55 (B) In the case of a dependent's birth, adoption or
56 placement for adoption, as of the date of birth, adoption
57 or placement for adoption.

**§33-16-15. Individual medical savings accounts; definitions;
ownership; contributions; trustees; regulations.**

1 (a) Any insurer issuing group accident and sickness
2 policies in this state, the public employees insurance
3 agency and any employer offering a health benefit plan
4 pursuant to the Employee Retirement Income Security Act
5 of 1974, as amended, may offer a benefit plan including
6 deductibles or copayments combined with employee
7 self-insurance through the establishment of individual
8 medical savings accounts. An insurer offering a benefit
9 plan consisting of deductibles or copayments combined
10 with employee self-insurance and individual medical
11 savings accounts shall not be deemed to be an insurer
12 offering individual accident and sickness insurance
13 coverage solely because the insurer offers such a benefit
14 plan. Notwithstanding any provision of this section, an
15 employer may not compel an employee as a condition of
16 employment to contribute any amount to an individual
17 medical savings account which has been established for
18 the employee, or to accept contributions to an individual
19 medical savings account in lieu of other compensation or
20 benefits. An employer may not charge an employee a fee,
21 by any name whatsoever, in return for establishing an
22 individual medical savings account for the employee:
23 *Provided*, That a reasonable fee may be charged for any
24 necessary services rendered in the establishment of the
25 individual medical savings account and which fee is fully
26 disclosed to the employee or account holder: *Provided*,
27 *however*, That any qualified person serving as trustee of
28 an individual medical savings account established for any
29 employee or account holder, may impose reasonable fees,
30 charges and expenses for administration.

31 An employee establishing an individual medical
32 savings account, or for whom an account is established by

33 an employer, may designate a percentage of the
34 employee's contributions, if any, to that account that may
35 be withdrawn by the employee if not needed for the
36 payment of medical expenses: *Provided*, That any
37 amount remaining in an individual medical savings
38 account on the earlier of the date of retirement, at the age
39 of fifty-nine and one-half years or more, of the employee
40 or the date of death of the employee, may be withdrawn
41 by the employee or by his or her personal representative
42 for a purpose other than the payment of medical
43 expenses: *Provided, however*, That no withdrawal pursuant
44 to this subsection shall be subject to the additional twenty
45 percent tax as provided in subsection (d) of this section.
46 As used in this section, "individual medical savings
47 account" means a trust that meets the definition of
48 "medical savings account" set forth in paragraph (1),
49 subsection (d), section 220 of the Internal Revenue Code
50 of 1986, as amended, when that definition is applied
51 without regard to sub-subparagraph (ii), subparagraph (A)
52 of that paragraph. "Medical expenses" means expenses
53 that fall within the definition of "qualified medical
54 expenses" set forth in paragraph (2), subsection (d),
55 Section 220 of the Internal Revenue Code of 1986, as
56 amended, when that definition is applied without regard to
57 subparagraph (C) of that paragraph.

58 (b) A benefit plan established pursuant to this section
59 shall provide that medical expenses included within
60 deductible or copayment provisions of the group accident
61 and sickness policy and therefore not payable under the
62 group policy for the employee or for his or her covered
63 dependents be paid by the trustee, either directly or as
64 reimbursement to an employee who has previously paid
65 medical expenses, from the individual medical savings
66 account. A benefit plan may limit payment of medical
67 expenses until the group plan annual deductible is met
68 from the medical savings account to expenses which are
69 covered services under the group policy. Combined plans
70 are subject to the protections afforded by article twenty-
71 six-a of this chapter.

72 (c) Within one hundred eighty days of the passage of
73 this legislation, the tax commissioner may promulgate
74 emergency rules as to the keeping of records, the content

75 and form of returns and statements, and the filing of
76 copies of income tax returns and determination by trustees
77 of individual medical savings accounts and by employees
78 establishing those accounts or for whom those accounts
79 are established: *Provided*, That for purposes of sections
80 fifteen, fifteen-a and fifteen-b, article three, chapter
81 twenty-nine-a of this code, a sufficient emergency to
82 justify the promulgation of those rules shall be deemed to
83 exist. The power granted by this subsection shall be in
84 addition to the rule-making power granted to the tax
85 commissioner elsewhere in this code.

86 (d) If any amount distributed out of an individual
87 medical savings account is used for any purpose other
88 than to defray medical expenses, except as specifically
89 provided in subsection (a) of this section or except for a
90 distribution of account assets pursuant to order of a
91 federal bankruptcy court, the West Virginia personal
92 income tax of the employee establishing the account or
93 for whom the account is established, for the taxable year
94 in which the distribution is made shall be increased by an
95 amount equal to twenty percent of the distribution.

§33-16-17. Commissioner to propose rules.

1 Pursuant to chapter twenty-nine-a of this code, the
2 commissioner shall have the power to propose rules,
3 subject to legislative approval, necessary to implement the
4 provisions of this article.

ARTICLE 16D. MARKETING AND RATE PRACTICES FOR SMALL EMPLOYER ACCIDENT AND SICK- NESS INSURANCE POLICIES.

- §33-16D-2. Definitions.
- §33-16D-4. Discrimination prohibited; guaranteed issue; filing with commissioner; violations and penalties.
- §33-16D-5. Premium rates for small employers; classes; maximum rates; eligibility for rate increases.
- §33-16D-7. Renewability of coverage; exceptions.
- §33-16D-8. Disclosure of rating practices, renewability provisions and availability of health benefit plans.
- §33-16D-10. Suspension of requirements.
- §33-16D-11. Effective date.

§33-16D-12. Equality of terms; preexisting conditions; continuous coverage restrictions, eligibility for enrollment.

§33-16D-15. Continuation of coverage under small plans.

§33-16D-2. Definitions.

1 As used in this article:

2 (a) "Actuarial certification" means a written statement
3 by an actuary, or other individual acceptable to the
4 commissioner, that a small employer carrier is in
5 compliance with the provisions of section five of this
6 article, based upon that person's examination, including a
7 review of the appropriate records and of the actuarial
8 assumptions and methods utilized by the carrier in
9 establishing premium rates for applicable health benefit
10 plans.

11 (b) "Base premium rate" means, for each class of
12 business as to a rating period, the lowest premium rate
13 charged or which could have been charged under a rating
14 system for that class of business by the small employer
15 carrier to small employers with similar case characteristics
16 for health benefit plans with the same or similar coverage.

17 (c) "Bona fide association" has the meaning set forth
18 in section one-a, article sixteen of this chapter.

19 (d) "Case characteristics" mean demographic or
20 other relevant characteristics of a small employer, as
21 determined by a small employer carrier, which are
22 considered by the carrier in the determination of premium
23 rates for the small employer. Claim experience, health
24 status and duration of coverage since issue are not case
25 characteristics for the purposes of this article.

26 (e) "Class of business" means all or any distinct
27 grouping of small employers as shown on the records of
28 the small employer carrier, which shall be subject to the
29 following requirements:

30 (1) A distinct grouping may only be established by
31 the small employer carrier on the basis that the applicable
32 health benefit plans:

33 (A) Are marketed and sold through individuals and
34 organizations which are not participating in the marketing
35 or sale of other distinct groupings of small employers for
36 such small employer carrier;

37 (B) Have been acquired from another small employer
38 carrier as a distinct grouping of plans;

39 (C) Are provided through a bona fide association; or

40 (D) Are in a class of business that meets the
41 requirements for exception to the restrictions related to
42 premium rates provided in paragraph (A), subdivision (1),
43 subsection (a), section five of this article.

44 (2) A small employer carrier may establish no more
45 than two additional groupings under subdivision (1) of
46 this subsection on the basis of underwriting criteria which
47 are expected to produce substantial variation in the health
48 care costs.

49 (3) The commissioner may approve the establishment
50 of additional distinct groupings upon application to the
51 commissioner and a finding by the commissioner that
52 such action would enhance the efficiency and fairness of
53 the small employer insurance marketplace.

54 (f) "Commissioner" means the insurance commis-
55 sioner of West Virginia.

56 (g) "Creditable coverage" has the meaning set forth
57 in section one-a, article sixteen of this chapter.

58 (h) "Dependent" has the meaning set forth in section
59 one-a, article sixteen of this chapter.

60 (i) "Group health plan" has the meaning set forth in
61 section one-a, article sixteen of this chapter.

62 (j) "Health benefit plan" has the meaning set forth in
63 section one-a, article sixteen of this chapter.

64 (k) "Health status-related factor" has the meaning set
65 forth in section one-a, article sixteen of this chapter.

66 (l) "Index rate" means for each class of business for
67 small employers with similar case characteristics the
68 arithmetic average of the applicable base premium rate
69 and the corresponding highest premium rate.

70 (m) "Medical care" has the meaning set forth in
71 section one-a, article sixteen of this chapter.

72 (n) "Network plan" has the meaning set forth in
73 section one-a, article sixteen of this chapter.

74 (o) "New business premium rate" means, for each
75 class of business as to a rating period, the premium rate
76 charged or offered by the small employer carrier to small
77 employers with similar case characteristics for newly
78 issued health benefit plans with the same or similar
79 coverage.

80 (p) "Preexisting condition exclusion" has the
81 meaning set forth in section one-a, article sixteen of this
82 chapter.

83 (q) "Rating period" means the calendar period of at
84 least twelve months for which premium rates established
85 by a small employer carrier are assumed to be in effect, as
86 determined by the small employer carrier.

87 (r) "Small employer" means any person, firm,
88 corporation, partnership or association actively engaged in
89 business in the state of West Virginia who, during the
90 preceding calendar year, employed an average of no more
91 than fifty but not fewer than two eligible employees and
92 employs at least two employees on the first day of its
93 group health plan year. A new employer, not in existence
94 for all of the preceding calendar year, shall be considered
95 a small employer if it is reasonably expected to employ an
96 average of no more than fifty but not fewer than two
97 eligible employees on business days in the current
98 calendar year. Companies which are affiliated companies
99 or which are eligible to file a combined tax return for state
100 tax purposes shall be considered one employer.

101 (s) "Small employer carrier" or "carrier" means any
102 health insurer, as defined in section one-a, article sixteen
103 of this chapter, which offers health benefit plans covering

104 the employees of a small employer situate within the state
105 of West Virginia.

§33-16D-4. Discrimination prohibited; guaranteed issue; filing with commissioner; violations and penalties.

1 (a) All carriers subject to this article are strictly
2 prohibited from marketing their product to a specific
3 group, legal occupation, locale, zip code, neighborhood,
4 race, religion, or any discriminatory group.

5 (b) For plan years beginning after the thirtieth day of
6 June, one thousand nine hundred ninety-seven, in which
7 the plan has, on the first day of the plan year, at least two
8 enrollees who are current employees, each carrier shall
9 accept every small employer that applies for coverage
10 under a health benefit plan, unless such health benefit plan
11 is made available only through a bona fide association,
12 and consistent with public law 104-191 (Public Health
13 Service Act section 2711 (a) (1) (B)), shall accept for
14 enrollment in the plan every employee of the small
15 employer, including dependents, when an employee or
16 dependent first becomes eligible to enroll under terms of
17 the plan and under the rules of the carrier that are
18 uniformly applicable to small employers. This subsection
19 shall not apply to:

20 (1) A network plan if the carrier:

21 (A) Limits coverage to a small employer's employees
22 and dependents who reside, live or work in the carrier's
23 service area; or

24 (B) Obtains the commissioner's approval to deny
25 coverage in its service area due to the carrier's lack of
26 capacity for additional enrollees, but only if the carrier
27 denies coverage uniformly to all small employers without
28 regard to their claims experience or that of their
29 employees and dependents or to any health status-related
30 factor relating to employees and their dependents. A
31 carrier may not offer small group coverage in the same
32 service area for one hundred eighty days after the date
33 coverage is denied under this paragraph; or

34 (2) A carrier that obtains the commissioner's approval
35 to deny coverage due to the carrier's insufficient financial
36 reserves for additional coverage, but only if the carrier
37 denies coverage uniformly to all small employers,
38 consistent with all requirements of this chapter and without
39 regard to the claims experience of the small employers
40 and their employees and dependents or to any health
41 status-related factor relating to employees and their
42 dependents. A carrier may not offer small group
43 coverage for one hundred eighty days after the date
44 coverage is denied under this subdivision or until the
45 carrier has obtained the commissioner's approval of the
46 level of its reserves for additional coverage, whichever is
47 later.

48 (c) All carriers subject to this article shall file any
49 marketing information upon request of the commissioner.
50 The commissioner shall review said information and shall
51 have the authority to take appropriate action to eliminate
52 discriminatory marketing practices, including imposing
53 fines on violators of this section of not more than ten
54 thousand dollars. Upon a second violation of this section,
55 the commissioner shall have the authority to revoke the
56 violator's license to transact insurance.

**§33-16D-5. Premium rates for small employers; classes;
maximum rates; eligibility for rate increases.**

1 (a) Premium rates for health benefit plans subject to
2 this article shall be subject to the following provisions:

3 (1) The index rate for a rating period for any class of
4 business shall not exceed the index rate for any other class
5 of business by more than twenty percent: *Provided*, That
6 this subdivision shall not apply to a class of business if all
7 of the following apply:

8 (A) The class of business is one for which the carrier
9 does not reject, and never has rejected, small employers
10 included within the definition of employers eligible for
11 the class of business or otherwise eligible employees and
12 dependents who enroll on a timely basis, based upon their
13 claim experience or health status;

14 (B) The carrier does not involuntarily transfer, and
15 never has involuntarily transferred, a health benefit plan
16 into or out of the class of business; and

17 (C) The class of business is currently available for
18 purchase.

19 (2) For a class of business, the premium rates charged
20 during a rating period to small employers with similar case
21 characteristics for the same or similar coverage, or the
22 rates which could be charged to such employers under the
23 rating system for that class of business, shall not vary from
24 the index rate by more than thirty percent of the index
25 rate.

26 (3) The percentage increase in the premium rate
27 charged to a small employer for a new rating period may
28 not exceed the sum of the following:

29 (A) The percentage change in the new business
30 premium rate measured from the first day of the prior
31 rating period to the first day of the new rating period. In
32 the case of a class of business for which the small
33 employer carrier is not issuing new policies, the carrier
34 shall use the percentage change in the base premium rate;

35 (B) An adjustment, not to exceed fifteen percent
36 annually and adjusted pro rata for rating periods of less
37 than one year, due to the claim experience, health status or
38 duration of coverage of the employees or dependents of
39 the small employer as determined from the carrier's rate
40 manual for the class of business; and

41 (C) Any adjustment due to change in coverage or
42 change in the case characteristics of the small employer as
43 determined from the carrier's rate manual for the class of
44 business.

45 (4) In the case of health benefit plans issued prior to
46 the effective date of this article, a premium rate for a
47 rating period may exceed the ranges described in
48 subdivision (1) or (2) of this subsection for a period of
49 five years following the effective date of this article. In
50 that case, the percentage increase in the premium rate
51 charged to a small employer in such a class of business for

52 a new rating period may not exceed the sum of the
53 following:

54 (A) The percentage change in the new business
55 premium rate measured from the first day of the prior
56 rating period to the first day of the new rating period. In
57 the case of a class of business for which the small
58 employer carrier is not issuing new policies, the carrier
59 shall use the percentage change in the base premium rate;
60 and

61 (B) Any adjustment due to change in coverage or
62 change in the case characteristics of the small employer as
63 determined from the carrier's rate manual for the class of
64 business.

65 (b) Nothing in this section is intended to affect the use
66 by a small employer carrier of legitimate rating factors
67 other than claim experience, health status or duration of
68 coverage in the determination of premium rates. Small
69 employer carriers shall apply rating factors, including case
70 characteristics, consistently with respect to all small
71 employers in a class of business.

72 (c) Adjustments in rates for claim experience, health
73 status and duration of coverage may not be charged to
74 individual employees or dependents. Any such
75 adjustment shall be applied uniformly to the rates charged
76 for all employees and dependents of the small employer.

77 (d) A small employer carrier shall utilize industry as a
78 case characteristic in establishing premium rates:
79 *Provided*, That the highest rate factor associated with any
80 industry classification shall not exceed the lowest rate
81 factor associated with any industry classification by more
82 than fifteen percent.

83 (e) Small employer carriers shall apply rating factors,
84 including case characteristics, consistently with respect to
85 all small employers in a class of business. Rating factors
86 shall produce premiums for identical groups which differ
87 only by amounts attributable to plan design and do not
88 reflect differences due to the nature of the groups
89 assumed to select particular health benefit plans.

90 (f) A small employer carrier may not involuntarily
91 transfer a small employer into or out of a class of
92 business. A small employer carrier may not offer to
93 transfer a small employer into or out of a class of business
94 unless such offer is made to transfer all small employers in
95 the class of business without regard to case characteristics,
96 claim experience, health status or duration since issue.

97 (g) To be eligible to make a rate increase request after
98 the first day of July, one thousand nine hundred
99 ninety-three, a carrier shall have a minimum anticipated
100 loss ratio of seventy-three percent. In calculating its
101 minimum anticipated loss ratio, an insurer shall include in
102 its actual incurred claims the amount of premium taxes for
103 the same experience period which are attributable to the
104 policy forms or certificates affected by this section and
105 which were paid to the state of West Virginia pursuant to
106 the provisions of article three of this chapter.

107 (h) All insurance carriers subject to this article,
108 effective the first day of July, one thousand nine hundred
109 ninety-three, shall be prohibited from distinguishing more
110 than four classes of business within its small group
111 insurance coverage.

112 (i) If any health benefit plan is provided by a carrier
113 through a bona fide association of small employers not in
114 the business of selling insurance and with not fewer than
115 two hundred cumulative employees, and if such
116 association is rated on the basis of the number of
117 employees and not on the basis of the individual small
118 employers, such association or group is exempt from the
119 provisions of this article.

§33-16D-7. Renewability of coverage; exceptions.

1 (a) A health benefit plan subject to this article shall be
2 renewable to all eligible employees at the option of the
3 small employer: *Provided*, That a carrier may refuse to
4 renew a health benefit plan for plan years beginning on or
5 before the thirtieth day of June, one thousand nine
6 hundred ninety-seven, for any of the following reasons:

7 (1) Nonpayment of required premiums;

- 8 (2) Fraud or misrepresentation by the small employer
9 or by the insured individual;
- 10 (3) Noncompliance with plan provisions;
- 11 (4) The number of individuals covered under the plan
12 is fewer than the number or less than the percentage of
13 eligible individuals necessary pursuant to the percentage
14 requirements under the plan; or
- 15 (5) The small employer is no longer actively engaged
16 in the business in which it was engaged on the effective
17 date of the plan.
- 18 (b) For plan years beginning after the thirtieth day of
19 June, one thousand nine hundred ninety-seven, in which
20 the plan has, on the first day of the plan year, at least two
21 enrollees who are current employees, a health benefit plan
22 shall be renewable to all eligible employees at the option
23 of the small employer, and a carrier may refuse to renew a
24 health benefit plan only for one of the following reasons:
- 25 (1) Nonpayment of required premiums;
- 26 (2) Fraud or misrepresentation of material fact by the
27 small employer;
- 28 (3) The number of individuals covered under the plan
29 is fewer than the number or less than the percentage of
30 eligible individuals necessary pursuant to the percentage
31 requirements under the plan;
- 32 (4) The carrier ceases to offer health benefit plans to
33 small employers as provided in subsection (d) of this
34 section;
- 35 (5) For coverage offered under a network plan, a
36 carrier no longer has any enrollees of the network plan
37 who live or work in the plan's service area, and the carrier
38 would deny coverage under the network plan to a small
39 employer with no eligible employees or dependents in its
40 service area; or
- 41 (6) For health benefit plans offered only through a
42 bona fide association, the small employer ceases to be a
43 member of the association, if plans are terminated

44 uniformly without respect to any health status-related
45 factor relating to any covered employee, association
46 member or dependent. With respect to coverage provided
47 to a small employer only through a bona fide association,
48 a reference to "policyholder" or "plan sponsor" is
49 deemed to include a reference to the small employer.

50 (c)(1) For plan years beginning on or before the
51 thirtieth day of June, one thousand nine hundred ninety-
52 seven, a small employer carrier may cease to renew all
53 plans under a class of business. Upon the small
54 employer's election of nonrenewal, the carrier shall
55 provide notice of such election not to renew to all affected
56 health benefit plans and to the commissioner in each state
57 in which an affected insured individual is known to reside
58 at least ninety days prior to termination of coverage.

59 (2) A carrier which exercises its right to cease to
60 renew all plans in a class of business pursuant to this
61 subsection may not:

62 (A) Establish a new class of business for a period of
63 five years after the nonrenewal of the plans without prior
64 approval of the commissioner; or

65 (B) Transfer or otherwise provide coverage to any of
66 the employers from the nonrenewed class of business
67 unless the carrier offers to transfer or provide coverage to
68 all affected employers and eligible employees without
69 regard to case characteristics, claim experience, health
70 status or duration of coverage.

71 (d) For plan years beginning after the thirtieth day of
72 June, one thousand nine hundred ninety-seven, in which
73 the plan has, on the first day of the plan year, at least two
74 enrollees who are current employees, a carrier may elect to
75 discontinue offering health benefit plans:

76 (1) Of a particular type, if the carrier gives notice to
77 each small employer affected and to all covered
78 employees and dependents at least ninety days before the
79 date coverage is discontinued. The carrier shall offer each
80 such small employer the option to purchase all other
81 health benefit plans offered by the carrier to small

82 employers. In electing to discontinue health benefit plans
83 of a particular type and in offering coverage under the
84 preceding sentence, the carrier shall act uniformly without
85 regard to small employers' claims experience or any
86 health status-related factor relating to any covered
87 employee or dependent or new employees or dependents
88 who may become eligible for coverage; or

89 (2) Of all types if the carrier gives notice to the
90 commissioner, to each small employer affected and to all
91 covered employees or members and dependents at least
92 one hundred eighty days before the date such plans are
93 discontinued. The carrier shall discontinue all, and not
94 renew any, health benefit plans in the small group market.
95 The carrier may not issue any health benefit plan to a
96 small employer in this state for a five-year period
97 beginning on the date the last discontinued health benefit
98 plan is not renewed.

99 (e) For plan years beginning after the thirtieth day of
100 June, one thousand nine hundred ninety-seven, in which
101 the plan has, on the first day of the plan year, at least two
102 enrollees who are current employees, a carrier may
103 modify a health benefit plan upon its renewal only if the
104 modification is consistent with the provisions of this article
105 and effective on a uniform basis among all individuals
106 with that policy form. Except for coverage available only
107 through an association, any modification shall be made
108 effective on a uniform basis among all small employers
109 with that product.

§33-16D-8. Disclosure of rating practices, renewability provisions and availability of health benefit plans.

1 (a) Each small employer carrier shall make reasonable
2 disclosure in solicitation and sales materials provided to
3 small employers of the following:

4 (1) The extent to which premium rates for a specific
5 small employer are established or adjusted due to the
6 claim experience, health status or duration of coverage of
7 the employees of the small employer;

8 (2) The provisions concerning the carrier's right to
9 change premium rates and the factors, including case
10 characteristics, which affect changes in premium rates;

11 (3) A description of the class of business in which the
12 small employer is or will be included, including the
13 applicable grouping of plans and the benefits and
14 premiums available under all health benefit plans for
15 which the small employer is qualified;

16 (4) The provisions relating to renewability of
17 coverage;

18 (5) The provisions relating to any preexisting
19 conditions limitations; and

20 (6) An explanation, if applicable, that the small
21 employer is purchasing a minimum benefits plan issued
22 pursuant to article sixteen-c of this chapter.

23 (b) All disclosure statements shall be presented in clear
24 and understandable form and format and shall be separate
25 from any policy, certificate or evidence of coverage
26 otherwise provided. No carrier may be required under
27 this section to disclose proprietary or trade secret
28 information to a small employer.

§33-16D-10. Suspension of requirements.

1 The commissioner may suspend all or part of the
2 requirements of this article, other than sections four, seven,
3 eight and twelve, applicable to one or more health benefit
4 plans for one or more rating periods upon a filing by the
5 small employer carrier and a finding by the commissioner
6 that either the suspension is reasonable in light of the
7 financial condition of the carrier or that the suspension
8 would enhance the efficiency and fairness of the
9 marketplace for small employer health insurance.

§33-16D-11. Effective date.

1 Except as otherwise provided, the provisions of this
2 article shall apply to each health benefit plan for a small
3 employer situate in the state of West Virginia that is
4 delivered, issued for delivery, renewed or continued after
5 the effective date of this article. For purposes of this

6 section, the date a plan is continued is the first rating
7 period which commences after the effective date of this
8 article.

§33-16D-12. Equality of terms; preexisting conditions; continuous coverage restrictions, eligibility for enrollment.

1 Health benefit plans and, to the extent permitted by
2 the federal Employee Retirement Income Security Act
3 (ERISA), other benefit arrangements covering small
4 employers shall be subject to the following provisions:

5 (a) Preexisting conditions provisions may not exclude
6 coverage for a period beyond twelve months following an
7 individual's effective date of coverage and may only
8 relate to conditions which had, during the twelve months
9 immediately preceding the effective date of coverage,
10 manifested themselves in such a manner as would cause an
11 ordinarily prudent person to seek medical advice,
12 diagnosis, care or treatment or for which medical advice,
13 diagnosis, care or treatment was recommended or received,
14 or as to a pregnancy existing on the effective day of
15 coverage. For plan years beginning after the thirtieth day
16 of June, one thousand nine hundred ninety-seven, in
17 which the plan has, on the first day of the plan year, at
18 least two enrollees who are current employees, a health
19 benefit plan shall meet all requirements set forth in section
20 three-k, article sixteen of this chapter (preexisting
21 condition exclusions).

22 (b) In determining whether a preexisting condition
23 limitation provision applies to an eligible employee or
24 dependent, all health benefit plans shall credit the time
25 such person was covered under a previous employer-based
26 health benefit plan, a comparable individual health benefit
27 plan, or a self-insured plan if the previous coverage was
28 continuous to a date not more than thirty days prior to the
29 effective date of the new coverage, exclusive of any
30 applicable waiting period under such plan. For plan years
31 beginning after the thirtieth day of June, one thousand
32 nine hundred ninety-seven, in which the plan has, on the
33 first day of the plan year, at least two enrollees who are
34 current employees, a health benefit plan shall meet all

35 requirements set forth in section three-m, article sixteen of
36 this chapter (creditable coverage).

37 (c) Subject to subsections (a) and (b) of this section,
38 when a small group employer converts its health benefit
39 plan from one health benefit plan to another health
40 benefit plan or from one carrier to another carrier, all
41 eligible employees who at the time of conversion are
42 covered by the health benefit plan shall be offered health
43 benefits coverage under the subsequent plan, and no
44 employee who at the time of conversion is covered by a
45 health benefit plan offered by said employer may be
46 treated any differently relative to other covered employees
47 under the new health benefit plan than he or she is treated
48 under the current health benefit plan.

49 (d) For plan years beginning after the thirtieth day of
50 June, one thousand nine hundred ninety-seven, in which
51 the plan has, on the first day of the plan year, at least two
52 enrollees who are current employees, no carrier may
53 condition eligibility or continued eligibility of any
54 employee or dependent on a health status-related factor,
55 and a health benefit plan shall meet all requirements set
56 forth in section three-n, article sixteen of this chapter
57 (eligibility for enrollment).

§33-16D-15. Continuation of coverage under small plans.

1 The Legislature finds that the provisions of this article
2 do not address continuing coverage under a health benefit
3 plan. Therefore, the commissioner is to perform or have
4 performed a study to determine the feasibility and
5 advisability of implementing continuation of coverage
6 under health benefit plans issued to small employers with
7 fewer than twenty employees. The commissioner shall
8 make a report of findings, conclusions and
9 recommendations to the Legislature during its regular
10 session in the year one thousand nine hundred ninety-
11 eight.

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.

§33-23-24. Filing and approval of accident and sickness insurance certificates.

1 (a) No domestic, foreign or alien society licensed in
2 this state shall issue or deliver in this state any certificate or
3 other evidence of any contract of accident and sickness
4 insurance unless and until the form thereof, together with
5 the form of application and all riders or endorsements for
6 use in connection therewith, shall have been filed with the
7 commissioner and approved by him or her as conforming
8 to reasonable rules from time to time in effect and as not
9 inconsistent with any other provisions of law applicable
10 thereto. The commissioner shall, within a reasonable time
11 after the filing of any form, notify the society filing the
12 form of the approval or disapproval of the form. The
13 commissioner may in his or her discretion approve any
14 form which contains provisions more favorable to the
15 members than the ones required.

16 (b) Pursuant to chapter twenty-nine-a of this code, the
17 commissioner may promulgate rules necessary to
18 implement the provisions of this section, and such rules
19 shall conform, as far as practicable, to the provisions of
20 article fifteen (Accident and Sickness Insurance) and
21 article sixteen (Group Accident and Sickness Insurance)
22 of this chapter.

23 (1) For any certificate or other evidence of coverage
24 issued before the first day of July, one thousand nine
25 hundred ninety-seven, and for any certificate or other
26 evidence of coverage under a health benefit plan issued on
27 or after the first day of July, one thousand nine hundred
28 ninety-seven, other than in connection with a group health
29 plan, where the commissioner deems inapplicable, either in
30 part or in their entirety, the provisions of articles fifteen or
31 sixteen of this chapter, the commissioner may prescribe
32 the portions or summary thereof of the contract to be
33 printed on the certificate issued to the member. For
34 purposes of this subsection, the terms "group health
35 plan" and "health benefit plan" have the meanings set
36 forth in section one-a, article sixteen of this chapter.

37 (2) For any certificate or other evidence of individual
38 coverage issued or renewed on or after the first day of
39 July, one thousand nine hundred ninety-seven, the society
40 shall comply with all provisions of article fifteen of this

41 chapter. For any certificate or other evidence of coverage
42 under a health benefit plan issued in connection with a
43 group health plan on or after the first day of July, one
44 thousand nine hundred ninety-seven, the society shall
45 comply with all provisions of article sixteen of this
46 chapter, and for a health benefit plan issued to a small
47 employer, as defined in section two, article sixteen-d of
48 this chapter, with all provisions of article sixteen-d of this
49 chapter.

50 (c) Any filing made hereunder shall be deemed
51 approved unless disapproved within sixty days from the
52 date of such filing.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL
SERVICE CORPORATIONS, DENTAL SERVICE
CORPORATIONS AND HEALTH SERVICE COR-
PORATIONS.**

***§33-24-4. Exemptions; applicability of insurance laws.**

1 Every corporation defined in section two of this article
2 is hereby declared to be a scientific, nonprofit institution
3 and exempt from the payment of all property and other
4 taxes. Every corporation, to the same extent the provisions
5 are applicable to insurers transacting similar kinds of
6 insurance and not inconsistent with the provisions of this
7 article, shall be governed by and be subject to the
8 provisions as hereinbelow indicated, of the following
9 articles of this chapter: Article two (insurance
10 commissioner), except that, under section nine of said
11 article, examinations shall be conducted at least once every
12 four years; article four (general provisions), except that
13 section sixteen of said article shall not be applicable
14 thereto; section thirty-four, article six (fee for form and
15 rate filing); article six-c (guaranteed loss ratio); article
16 seven (assets and liabilities); article eleven (unfair trade
17 practices); article twelve (agents, brokers and solicitors),
18 except that the agent's license fee shall be twenty-five
19 dollars; section two-a, article fifteen (definitions); section
20 two-b, article fifteen (guaranteed issue); section two-d,

*Clerk's Note: This section was also amended by S. B. 371 (Chapter 110),
which passed prior to this act.

21 article fifteen (exception to guaranteed renewability);
22 section two-e, article fifteen (discontinuation of coverage);
23 section two-f, article fifteen (certification of creditable
24 coverage); section two-g, article fifteen (applicability);
25 section four-e, article fifteen (benefits for mothers and
26 newborns); section fourteen, article fifteen (individual
27 accident and sickness insurance); section sixteen, article
28 fifteen (coverage of children); section eighteen, article
29 fifteen (equal treatment of state agency); section nineteen,
30 article fifteen (coordination of benefits with medicaid);
31 article fifteen-a (long-term care insurance); article
32 fifteen-c (diabetes insurance); section three, article sixteen
33 (required policy provisions); section three-a, article sixteen
34 (mental health); section three-c, article sixteen (group
35 accident and sickness insurance); section three-d, article
36 sixteen (medicare supplement insurance); section three-f,
37 article sixteen (treatment of temporomandibular joint
38 disorder and craniomandibular disorder); section three-j,
39 article sixteen (benefits for mothers and newborns);
40 section three-k, article sixteen (preexisting condition
41 exclusions); section three-l, article sixteen (guaranteed
42 renewability); section three-m, article sixteen (creditable
43 coverage); section three-n, article sixteen (eligibility for
44 enrollment); section eleven, article sixteen (coverage of
45 children); section thirteen, article sixteen (equal treatment
46 of state agency); section fourteen, article sixteen
47 (coordination of benefits with medicaid); section sixteen,
48 article sixteen (diabetes insurance); article sixteen-a
49 (group health insurance conversion); article sixteen-c
50 (small employer group policies); article sixteen-d
51 (marketing and rate practices for small employers); article
52 twenty-six-a (West Virginia life and health insurance
53 guaranty association act), after the first day of October,
54 one thousand nine hundred ninety-one; article
55 twenty-seven (insurance holding company systems);
56 article twenty-eight (individual accident and sickness
57 insurance minimum standards); article thirty-three (annual
58 audited financial report); article thirty-four (administrative
59 supervision); article thirty-four-a (standards and
60 commissioner's authority for companies deemed to be in
61 hazardous financial condition); article thirty-five (criminal
62 sanctions for failure to report impairment); and article

63 thirty-seven (managing general agents); and article forty-
64 one (privileges and immunity), and no other provision of
65 this chapter may apply to these corporations unless
66 specifically made applicable by the provisions of this
67 article. If, however, the corporation is converted into a
68 corporation organized for a pecuniary profit or if it
69 transacts business without having obtained a license as
70 required by section five of this article, it shall thereupon
71 forfeit its right to these exemptions.

ARTICLE 25. HEALTH CARE CORPORATIONS.

***§33-25-6. Supervision and regulation by insurance commis- sioner; exemption from insurance laws.**

1 Corporations organized under this article are subject
2 to supervision and regulation of the insurance
3 commissioner. The corporations organized under this
4 article, to the same extent these provisions are applicable
5 to insurers transacting similar kinds of insurance and not
6 inconsistent with the provisions of this article, shall be
7 governed by and be subject to the provisions as
8 hereinbelow indicated of the following articles of this
9 chapter: Article four (general provisions), except that
10 section sixteen of said article shall not be applicable
11 thereto; article six-c (guaranteed loss ratio); article seven
12 (assets and liabilities); article eight (investments); article
13 ten (rehabilitation and liquidation); section two-a, article
14 fifteen (definitions); section two-b, article fifteen
15 (guaranteed issue); section two-d, article fifteen (exception
16 to guaranteed renewability); section two-e, article fifteen
17 (discontinuation of coverage); section two-f, article fifteen
18 (certification of creditable coverage); section two-g, article
19 fifteen (applicability); section four-e, article fifteen
20 (benefits for mothers and newborns); section fourteen,
21 article fifteen (individual accident and sickness insurance);
22 section sixteen, article fifteen (coverage of children);
23 section eighteen, article fifteen (equal treatment of state
24 agency); section nineteen, article fifteen (coordination of
25 benefits with medicaid); article fifteen-c (diabetes

***Clerk's Note:** This section was also amended by S. B. 371 (Chapter 110), which passed prior to this act.

26 insurance); section three, article sixteen (required policy
 27 provisions); section three-a, article sixteen (mental
 28 health); section three-j, article sixteen (benefits for
 29 mothers and newborns); section three-k, article sixteen
 30 (preexisting condition exclusions); section three-l, article
 31 sixteen (guaranteed renewability); section three-m, article
 32 sixteen (creditable coverage); section three-n, article
 33 sixteen (eligibility for enrollment); section eleven, article
 34 sixteen (coverage of children); section thirteen, article
 35 sixteen (equal treatment of state agency); section fourteen,
 36 article sixteen (coordination of benefits with medicaid);
 37 section sixteen, article sixteen (diabetes insurance); article
 38 sixteen-a (group health insurance conversion); article
 39 sixteen-c (small employer group policies); article sixteen-
 40 d (marketing and rate practices for small employers);
 41 article twenty-six-a (West Virginia life and health
 42 insurance guaranty association act); article twenty-seven
 43 (insurance holding company systems); article thirty-three
 44 (annual audited financial report); article thirty-four-a
 45 (standards and commissioner's authority for companies
 46 deemed to be in hazardous financial condition); article
 47 thirty-five (criminal sanctions for failure to report
 48 impairment); article thirty-seven (managing general
 49 agents); and article forty-one (privileges and immunity);
 50 and no other provision of this chapter may apply to these
 51 corporations unless specifically made applicable by the
 52 provisions of this article.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

***§33-25A-24. Statutory construction and relationship to other laws.**

1 (a) Except as otherwise provided in this article,
 2 provisions of the insurance laws and provisions of hospital
 3 or medical service corporation laws are not applicable to
 4 any health maintenance organization granted a certificate
 5 of authority under this article. The provisions of this
 6 article shall not apply to an insurer or hospital or medical
 7 service corporation licensed and regulated pursuant to the

***Clerk's Note:** This section was also amended by S. B. 371 (Chapter 110), which passed prior to this act and H. B. 2091 (Chapter 108), which passed subsequent to this act.

8 insurance laws or the hospital or medical service
9 corporation laws of this state except with respect to its
10 health maintenance corporation activities authorized and
11 regulated pursuant to this article. The provisions of this
12 article shall not apply to an entity properly licensed by a
13 reciprocal state to provide health care services to employer
14 groups, where residents of West Virginia are members of
15 an employer group, and the employer group contract is
16 entered into in the reciprocal state. For purposes of this
17 subsection, a "reciprocal state" means a state which
18 physically borders West Virginia and which has subscriber
19 or enrollee hold harmless requirements substantially
20 similar to those set out in section seven-a of this article.

21 (b) Factually accurate advertising or solicitation
22 regarding the range of services provided, the premiums
23 and copayments charged, the sites of services and hours of
24 operation, and any other quantifiable, nonprofessional
25 aspects of its operation by a health maintenance
26 organization granted a certificate of authority, or its
27 representative shall not be construed to violate any
28 provision of law relating to solicitation or advertising by
29 health professions: *Provided*, That nothing contained in
30 this subsection shall be construed as authorizing any
31 solicitation or advertising which identifies or refers to any
32 individual provider or makes any qualitative judgment
33 concerning any provider.

34 (c) Any health maintenance organization authorized
35 under this article shall not be considered to be practicing
36 medicine and is exempt from the provisions of chapter
37 thirty of this code, relating to the practice of medicine.

38 (d) The provisions of sections fifteen and twenty,
39 article four (general provisions); section seventeen, article
40 six (noncomplying forms); article six-c (guaranteed loss
41 ratio); article seven (assets and liabilities); article eight
42 (investments); article nine (administration of deposits);
43 article twelve (agents, brokers, solicitors and excess line);
44 section two-a, article fifteen (definitions); section two-b,
45 article fifteen (guaranteed issue); section two-d, article
46 fifteen (exception to guaranteed renewability); section
47 two-e, article fifteen (discontinuation of coverage); section

48 two-f, article fifteen (certification of creditable coverage);
49 section two-g, article fifteen (applicability); section four-e,
50 article fifteen (benefits for mothers and newborns); section
51 fourteen, article fifteen (individual accident and sickness
52 insurance); section sixteen, article fifteen (coverage of
53 children); section eighteen, article fifteen (equal treatment
54 of state agency); section nineteen, article fifteen
55 (coordination of benefits with medicaid); article fifteen-b
56 (uniform health care administration act); article fifteen-c
57 (diabetes insurance); section three, article sixteen (required
58 policy provisions); section three-a, article sixteen (mental
59 health); section three-f, article sixteen (treatment of
60 temporomandibular disorder and craniomandibular
61 disorder); section three-j, article sixteen (benefits for
62 mothers and newborns); section three-k, article sixteen
63 (preexisting condition exclusions); section three-l, article
64 sixteen (guaranteed renewability); section three-m, article
65 sixteen (creditable coverage); section three-n, article
66 sixteen (eligibility for enrollment); section eleven, article
67 sixteen (coverage of children); section thirteen, article
68 sixteen (equal treatment of state agency); section fourteen,
69 article sixteen (coordination of benefits with medicaid);
70 section sixteen, article sixteen (diabetes insurance); article
71 sixteen-a (group health insurance conversion); article
72 sixteen-c (small employer group policies); article
73 sixteen-d (marketing and rate practices for small
74 employers); article twenty-seven (insurance holding
75 company systems); article thirty-four-a (standards and
76 commissioner's authority for companies deemed to be in
77 hazardous financial condition); article thirty-five (criminal
78 sanctions for failure to report impairment); article
79 thirty-seven (managing general agents); and article
80 thirty-nine (disclosure of material transactions); and article
81 forty-one (privileges and immunity) shall be applicable to
82 any health maintenance organization granted a certificate
83 of authority under this article. In circumstances where the
84 code provisions made applicable to health maintenance
85 organizations by this section refer to the "insurer", the
86 "corporation" or words of similar import, the language
87 shall be construed to include health maintenance
88 organizations.

89 (e) Any long-term care insurance policy delivered or
90 issued for delivery in this state by a health maintenance
91 organization shall comply with the provisions of article
92 fifteen-a of this chapter.

93 (f) A health maintenance organization granted a
94 certificate of authority under this article shall be exempt
95 from paying municipal business and occupation taxes on
96 gross income it receives from its enrollees, or from their
97 employers or others on their behalf, for health care items
98 or services provided directly or indirectly by the health
99 maintenance organization. This exemption applies to all
100 taxable years through the thirty-first day of December,
101 one thousand nine hundred ninety-six. The commissioner
102 and the tax department shall conduct a study of the
103 appropriations of imposition of the municipal business
104 and occupation tax or other tax on health maintenance
105 organizations, and shall report to the regular session of the
106 Legislature, one thousand nine hundred ninety-seven, on
107 their findings, conclusions and recommendations, together
108 with drafts of any legislation necessary to effectuate their
109 recommendations.

CHAPTER 110

(S. B. 371—By Senators Tomblin, Mr. President, Wooton, Jackson, Bailey, Craigo, Walker, Plymale, Wiedebusch, Bowman, Dittmar, Kimble, Dugan, Chafin, Snyder, Anderson, McKenzie, Helmick, Olliverio, Sharpe, Ross, Schoonover, Love, Ball, Sprouse, Buckalew, Deem and Scott)

[Passed April 11, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty-two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four, article twenty-four of said chapter; to amend and reenact section six, article twenty-five of said chapter; to amend and reenact section twenty-four, article twenty-five-a of said chapter; and to further amend said

chapter by adding thereto a new article, designated article forty-one, all relating to adding provisions for privileges and immunity to farmers' mutual fire insurance companies; adding provisions for privileges and immunity to hospitals, medical and dental corporations; and adding provisions that govern scientific, nonprofit institutions; increasing an agent's license fee; adding provisions to be subject to the supervision and regulation of the insurance commissioner; adding provisions for privileges and immunity to health care corporations; adding provisions of exemption for any health maintenance organization considered to be practicing medicine; adding provisions for privileges and immunity to health maintenance organizations; making technical corrections; defining legislative intent; providing for definitions; and providing for privileges and immunity for persons reporting insurance fraud.

Be it enacted by the Legislature of West Virginia:

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

Article

- 22. **Farmers' Mutual Fire Insurance Companies.**
- 24. **Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.**
- 25. **Health Care Corporations.**
- 25A. **Health Maintenance Organization Act.**
- 41. **Privileges and Immunity.**

ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.

§33-22-2. Applicability of other provisions.

- 1 Each company to the same extent such provisions are
- 2 applicable to domestic mutual insurers shall be governed
- 3 by and be subject to the following articles of this chapter:

4 Article one (definitions); article two (insurance commis-
 5 sioner); article four (general provisions) except that
 6 section sixteen of said article shall not be applicable
 7 thereto; article seven (assets and liabilities); article ten
 8 (rehabilitation and liquidation) except that under the
 9 provisions of section thirty-two of said article assessments
 10 shall not be levied against any former member of a
 11 farmers' mutual fire insurance company who is no longer
 12 a member of the company at the time the order to show
 13 cause was issued; article eleven (unfair trade practices);
 14 article twelve (agents, brokers and solicitors) except that
 15 the agent's license fee shall be five dollars; article
 16 twenty-six (West Virginia insurance guaranty association
 17 act); article twenty-seven (insurance holding company
 18 systems); article thirty (mine subsidence insurance) except
 19 that under the provisions of section six of said article, a
 20 farmers' mutual insurance company shall have the option
 21 of offering mine subsidence coverage to all of its policy-
 22 holders but shall not be required to do so; article
 23 thirty-three (annual audited financial report); article
 24 thirty-four (administrative supervision); article thirty-
 25 four-a (standards and commissioner's authority for
 26 companies deemed to be in hazardous financial condi-
 27 tion); article thirty-five (criminal sanctions for failure to
 28 report impairment); article thirty-six (business transacted
 29 with producer-controlled property/casualty insurer); article
 30 thirty-seven (managing general agents); article thirty-nine
 31 (disclosure of material transactions); article forty (risk-
 32 based capital for insurers); and article forty-one (privileg-
 33 es and immunity); but only to the extent these provisions
 34 are not inconsistent with the provisions of this article.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL
 SERVICE CORPORATIONS, DENTAL SERVICE
 CORPORATIONS AND HEALTH SERVICE COR-
 PORATIONS.**

***§33-24-4. Exemptions; applicability of insurance laws.**

1 Every corporation defined in section two of this article
 2 is hereby declared to be a scientific, nonprofit institution

*Clerk's Note: This section was also amended by H. B. 2667 (Chapter 109), which passed subsequent to this act.

3 and exempt from the payment of all property and other
4 taxes. Every corporation, to the same extent the provi-
5 sions are applicable to insurers transacting similar kinds of
6 insurance and not inconsistent with the provisions of this
7 article, shall be governed by and be subject to the provi-
8 sions as hereinbelow indicated, of the following articles of
9 this chapter: Article two (insurance commissioner), except
10 that, under section nine of said article, examinations shall
11 be conducted at least once every four years; article four
12 (general provisions), except that section sixteen of said
13 article shall not be applicable thereto; section thirty-four,
14 article six (fee for form and rate filing); article six-c
15 (guaranteed loss ratio); article seven (assets and liabilities);
16 article eleven (unfair trade practices); article twelve
17 (agents, brokers and solicitors), except that the agent's
18 license fee shall be twenty-five dollars; section two-a,
19 article fifteen (definitions); section two-b, article fifteen
20 (guaranteed issue); section two-d, article fifteen (exception
21 to guaranteed renewability); section two-e, article fifteen
22 (discontinuation of coverage); section two-f, article fifteen
23 (certification of creditable coverage); section two-g, article
24 fifteen (applicability); section four-e, article fifteen
25 (benefits for mothers and newborns); section fourteen,
26 article fifteen (individual accident and sickness insurance);
27 section sixteen, article fifteen (coverage of children);
28 section eighteen, article fifteen (equal treatment of state
29 agency); section nineteen, article fifteen (coordination of
30 benefits with medicaid); article fifteen-a (long-term care
31 insurance); article fifteen-c (diabetes insurance); section
32 three, article sixteen (required policy provisions); section
33 three-a, article sixteen (mental health); section three-c,
34 article sixteen (group accident and sickness insurance);
35 section three-d, article sixteen (medicare supplement
36 insurance); section three-f, article sixteen (treatment of
37 temporomandibular joint disorder and craniomandibular
38 disorder); section three-j, article sixteen (benefits for
39 mothers and newborns); section three-k, article sixteen
40 (preexisting condition exclusions); section three-l, article
41 sixteen (guaranteed renewability); section three-m, article
42 sixteen (creditable coverage); section three-n, article
43 sixteen (eligibility for enrollment); section eleven, article
44 sixteen (coverage of children); section thirteen, article

45 sixteen (equal treatment of state agency); section fourteen,
46 article sixteen (coordination of benefits with medicaid);
47 section sixteen, article sixteen (diabetes insurance); article
48 sixteen-a (group health insurance conversion); article
49 sixteen-c (small employer group policies); article sixteen-
50 d (marketing and rate practices for small employers);
51 article twenty-six-a (West Virginia life and health insur-
52 ance guaranty association act), after the first day of
53 October, one thousand nine hundred ninety-one; article
54 twenty-seven (insurance holding company systems);
55 article twenty-eight (individual accident and sickness
56 insurance minimum standards); article thirty-three (annual
57 audited financial report); article thirty-four (administrative
58 supervision); article thirty-four-a (standards and commis-
59 sioner's authority for companies deemed to be in hazard-
60 ous financial condition); article thirty-five (criminal
61 sanctions for failure to report impairment); article thirty-
62 seven (managing general agents); and article forty-one
63 (privileges and immunity); and no other provision of this
64 chapter may apply to these corporations unless specifical-
65 ly made applicable by the provisions of this article. If,
66 however, the corporation is converted into a corporation
67 organized for a pecuniary profit or if it transacts business
68 without having obtained a license as required by section
69 five of this article, it shall thereupon forfeit its right to
70 these exemptions.

ARTICLE 25. HEALTH CARE CORPORATIONS.

***§33-25-6. Supervision and regulation by insurance commis- sioner; exemption from insurance laws.**

1 Corporations organized under this article are subject
2 to supervision and regulation of the insurance commis-
3 sioner. The corporations organized under this article, to
4 the same extent these provisions are applicable to insurers
5 transacting similar kinds of insurance and not inconsistent
6 with the provisions of this article, shall be governed by and
7 be subject to the provisions as hereinbelow indicated of
8 the following articles of this chapter: Article four (general

*Clerk's Note: This section was also amended by H. B. 2667 (Chapter 109), which passed subsequent to this act.

9 provisions), except that section sixteen of said article shall
10 not be applicable thereto; article six-c (guaranteed loss
11 ratio); article seven (assets and liabilities); article eight
12 (investments); article ten (rehabilitation and liquidation);
13 section two-a, article fifteen (definitions); section two-b,
14 article fifteen (guaranteed issue); section two-d, article
15 fifteen (exception to guaranteed renewability); section
16 two-e, article fifteen (discontinuation of coverage); section
17 two-f, article fifteen (certification of creditable coverage);
18 section two-g, article fifteen (applicability); section four-e,
19 article fifteen (benefits for mothers and newborns); section
20 fourteen, article fifteen (individual accident and sickness
21 insurance); section sixteen, article fifteen (coverage of
22 children); section eighteen, article fifteen (equal treatment
23 of state agency); section nineteen, article fifteen (coordi-
24 nation of benefits with medicaid); article fifteen-c (diabe-
25 tes insurance); section three, article sixteen (required
26 policy provisions); section three-a, article sixteen (mental
27 health); section three-j, article sixteen (benefits for moth-
28 ers and newborns); section three-k, article sixteen (preex-
29 isting condition exclusions); section three-l, article sixteen
30 (guaranteed renewability); section three-m, article sixteen
31 (creditable coverage); section three-n, article sixteen
32 (eligibility for enrollment); section eleven, article sixteen
33 (coverage of children); section thirteen, article sixteen
34 (equal treatment of state agency); section fourteen, article
35 sixteen (coordination of benefits with medicaid); section
36 sixteen, article sixteen (diabetes insurance); article sixteen-
37 a (group health insurance conversion); article sixteen-c
38 (small employer group policies); article sixteen-d (market-
39 ing and rate practices for small employers); article twenty-
40 six-a (West Virginia life and health insurance guaranty
41 association act); article twenty-seven (insurance holding
42 company systems); article thirty-three (annual audited
43 financial report); article thirty-four-a (standards and
44 commissioner's authority for companies deemed to be in
45 hazardous financial condition); article thirty-five (criminal
46 sanctions for failure to report impairment); article thirty-
47 seven (managing general agents); and article forty-one
48 (privileges and immunity); and no other provision of this
49 chapter may apply to these corporations unless specifical-
50 ly made applicable by the provisions of this article.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.***§33-25A-24. Statutory construction and relationship to other laws.**

1 (a) Except as otherwise provided in this article,
2 provisions of the insurance laws and provisions of hospital
3 or medical service corporation laws are not applicable to
4 any health maintenance organization granted a certificate
5 of authority under this article. The provisions of this
6 article shall not apply to an insurer or hospital or medical
7 service corporation licensed and regulated pursuant to the
8 insurance laws or the hospital or medical service corpora-
9 tion laws of this state except with respect to its health
10 maintenance corporation activities authorized and regulat-
11 ed pursuant to this article. The provisions of this article
12 shall not apply to an entity properly licensed by a recip-
13 rocal state to provide health care services to employer
14 groups, where residents of West Virginia are members of
15 an employer group, and the employer group contract is
16 entered into in the reciprocal state. For purposes of this
17 subsection, a "reciprocal state" means a state which physi-
18 cally borders West Virginia and which has subscriber or
19 enrollee hold harmless requirements substantially similar
20 to those set out in section seven-a of this article.

21 (b) Factually accurate advertising or solicitation
22 regarding the range of services provided, the premiums
23 and copayments charged, the sites of services and hours of
24 operation, and any other quantifiable, nonprofessional
25 aspects of its operation by a health maintenance organiza-
26 tion granted a certificate of authority, or its representative
27 shall not be construed to violate any provision of law
28 relating to solicitation or advertising by health professions:
29 *Provided*, That nothing contained in this subsection shall
30 be construed as authorizing any solicitation or advertising
31 which identifies or refers to any individual provider or
32 makes any qualitative judgment concerning any provider.

*Clerk's Note: This section was also amended by H. B. 2667 (Chapter 109) and H.B. 2091 (Chapter 108), which passed subsequent to this act.

33 (c) Any health maintenance organization authorized
34 under this article shall not be considered to be practicing
35 medicine and is exempt from the provisions of chapter
36 thirty of this code, relating to the practice of medicine.

37 (d) The provisions of sections fifteen and twenty,
38 article four (general provisions); section seventeen, article
39 six (noncomplying forms); article six-c (guaranteed loss
40 ratio); article seven (assets and liabilities); article eight
41 (investments); article nine (administration of deposits);
42 article twelve (agents, brokers, solicitors and excess line);
43 section two-a, article fifteen (definitions); section two-b,
44 article fifteen (guaranteed issue); section two-d, article
45 fifteen (exception to guaranteed renewability); section
46 two-e, article fifteen (discontinuation of coverage); section
47 two-f, article fifteen (certification of creditable coverage);
48 section two-g, article fifteen (applicability); section four-e,
49 article fifteen (benefits for mothers and newborns); section
50 fourteen, article fifteen (individual accident and sickness
51 insurance); section sixteen, article fifteen (coverage of
52 children); section eighteen, article fifteen (equal treatment
53 of state agency); section nineteen, article fifteen (coordi-
54 nation of benefits with medicaid); article fifteen-b (uni-
55 form health care administration act); section three, article
56 sixteen (required policy provisions); section three-a, article
57 sixteen (mental health); section three-f, article sixteen
58 (treatment of temporomandibular disorder and
59 craniomandibular disorder); section three-j, article sixteen
60 (benefits for mothers and newborns); section three-k,
61 article sixteen (preexisting condition exclusions); section
62 three-l, article sixteen (guaranteed renewability); section
63 three-m, article sixteen (creditable coverage); section
64 three-n, article sixteen (eligibility for enrollment); section
65 eleven, article sixteen (coverage of children); section
66 thirteen, article sixteen (equal treatment of state agency);
67 section fourteen, article sixteen (coordination of benefits
68 with medicaid); section sixteen, article sixteen (diabetes
69 insurance); article sixteen-a (group health insurance
70 conversion); article sixteen-c (small employer group
71 policies); article sixteen-d (marketing and rate practices
72 for small employers); article twenty-seven (insurance
73 holding company systems); article thirty-four-a (standards

74 and commissioner's authority for companies deemed to be
75 in hazardous financial condition); article thirty-five
76 (criminal sanctions for failure to report impairment);
77 article thirty-seven (managing general agents); article
78 thirty-nine (disclosure of material transactions); and article
79 forty-one (privileges and immunity) shall be applicable to
80 any health maintenance organization granted a certificate
81 of authority under this article. In circumstances where the
82 code provisions made applicable to health maintenance
83 organizations by this section refer to the "insurer", the
84 "corporation" or words of similar import, the language
85 shall be construed to include health maintenance organi-
86 zations.

87 (e) Any long-term care insurance policy delivered or
88 issued for delivery in this state by a health maintenance
89 organization shall comply with the provisions of article
90 fifteen-a of this chapter.

91 (f) A health maintenance organization granted a
92 certificate of authority under this article shall be exempt
93 from paying municipal business and occupation taxes on
94 gross income it receives from its enrollees, or from their
95 employers or others on their behalf, for health care items
96 or services provided directly or indirectly by the health
97 maintenance organization. This exemption applies to all
98 taxable years through the thirty-first day of December,
99 one thousand nine hundred ninety-six. The commissioner
100 and the tax department shall conduct a study of the
101 appropriations of imposition of the municipal business
102 and occupation tax or other tax on health maintenance
103 organizations, and shall report to the regular session of the
104 Legislature, one thousand nine hundred ninety-seven, on
105 their findings, conclusions and recommendations, together
106 with drafts of any legislation necessary to effectuate their
107 recommendations.

ARTICLE 41. PRIVILEGES AND IMMUNITY.

§33-41-1. Legislative purpose and findings.

§33-41-2. Definitions.

§33-41-3. Privileges and immunity.

§33-41-1. Legislative purpose and findings.

1 It is the finding of the Legislature that the business of
2 insurance involves many transactions that have potential
3 for fraud, abuse and other illegal activities. It is the
4 further finding of the Legislature that insurance fraud is a
5 crime pursuant to state and federal statutes. The Legisla-
6 ture further finds that state, local and federal law-enforce-
7 ment and regulatory agencies may prosecute fraud in
8 accordance with these statutes, thereby ultimately reducing
9 the cost of insurance fraud to insurers and consumers. It
10 is the purpose of this article to encourage the detection,
11 investigation and prosecution of persons engaging in
12 insurance fraud by providing certain privileges and
13 immunity.

§33-41-2. Definitions.

1 The following words when used in this article shall
2 have the meanings set forth in this section, unless the
3 context clearly indicates otherwise:

4 (a) "Authorized agency" means:

5 (1) The division of public safety of this state, the
6 police department of any municipality, any county
7 sheriff's department and any duly constituted criminal
8 investigative department or agency of the United States or
9 of this state;

10 (2) The prosecuting attorney of any county of this
11 state or of the United States or any district thereof;

12 (3) The state insurance commissioner or the commis-
13 sioner's employees, agents or representatives;

14 (4) The national association of insurance commission-
15 ers; or

16 (5) A person or agency involved in the prevention and
17 detection of fraud or that person's or agency's agents,
18 employees or representatives.

19 (b) "Benefits" means money payments, goods,
20 services or any other thing of value.

21 (c) "Claim" means an application or request for
22 payment or benefits provided under an insurance policy.

23 (d) "Commissioner" means the insurance commis-
24 sioner of the state of West Virginia.

25 (e) "Insurance fraud" includes, but is not limited to,
26 instances where any person who, with the intent to injure,
27 defraud or deceive any person, insurer, or agency:

28 (i) Presents or causes to be presented to any insurer or
29 insurance representative any written or oral statement as
30 part of or in support of an application for insurance or a
31 claim for payment or other benefit pursuant to an insur-
32 ance policy, knowing that such statement contains any
33 false, incomplete or misleading information concerning
34 any fact or thing material to the application, claim or
35 benefit;

36 (ii) Submits or causes to be submitted to any autho-
37 rized agency any written or oral statement as part of or in
38 support of any application, audit, claim, report, investiga-
39 tion, valuation, statement, appraisal, estimation of loss,
40 publication, certificate, actuarial report or study, filing,
41 financial statement, tax return, rate request, petition or any
42 other such document knowing that such statement con-
43 tains any false, incomplete or misleading information
44 concerning any fact or thing material thereto;

45 (iii) Solicits, offers or receives any remuneration,
46 including any kickback, rebate or bribe, directly or
47 indirectly, with the intent of causing an expenditure of
48 moneys from any person or insurer which would not
49 otherwise be payable under an applicable insurance
50 policy; and

51 (iv) Assists, abets, solicits or conspires with another to
52 commit insurance fraud.

53 (f) "Person" means any individual, partnership, firm,
54 association, corporation, company, insurer, organization,
55 society, reciprocal, business trust or any other legal entity.
56 "Person" also includes hospital service corporations,
57 medical service corporations and dental service corpora-
58 tions as defined in article twenty-four of this chapter,
59 health care corporations as defined in article twenty-five
60 of this chapter, or a health maintenance organization
61 organized pursuant to article twenty-five-a of this chapter.

§33-41-3. Privileges and immunity.

1 (a) Any person who makes a report or furnishes
2 information, written or oral, concerning suspected,
3 anticipated or completed insurance fraud to an insurer or
4 authorized agency shall be entitled to those privileges and
5 immunities heretofore existing under the common or
6 statutory law of this state, as well as the immunity
7 established herein.

8 (b) In the absence of fraud, malice or bad faith, no
9 person or agent, employee or designee of such person
10 shall be subject to civil liability of any nature arising out
11 of such person's providing any information related to
12 suspected, anticipated or completed insurance fraud to any
13 insurer or authorized agency.

14 (c) Nothing herein shall be construed to limit,
15 abrogate or modify existing statutes or case law applicable
16 to the duties or liabilities of insurers regarding bad faith or
17 unfair trade practices.

CHAPTER 111

(Com. Sub. for H. B. 2123—By Delegates Givens, Douglas and Staton)

[Passed March 19, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections ten, seventeen and eighteen, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article seven of said chapter, all relating to waiver and transfer of jurisdiction of juvenile cases to the criminal jurisdiction of the court; eliminating the right to an interlocutory appeal of certain transfer orders; providing for public disclosure of certain juvenile records; requiring that certain juvenile records be sealed; and making technical revisions.

Be it enacted by the Legislature of West Virginia:

That sections ten, seventeen and eighteen, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section one, article seven of said chapter be amended and reenacted, all to read as follows:

Article

5. Juvenile Proceedings.

7. General Provisions.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-10. Waiver and transfer of jurisdiction.

§49-5-17. Confidentiality of juvenile records.

§49-5-18. Sealing of juvenile records.

§49-5-10. Waiver and transfer of jurisdiction.

1 (a) Upon written motion of the prosecuting attorney
2 filed at least eight days prior to the adjudicatory hearing
3 and with reasonable notice to the juvenile, his or her
4 counsel, and his or her parents, guardians or custodians,
5 the court shall conduct a hearing to determine if juvenile
6 jurisdiction should or must be waived and the proceeding
7 transferred to the criminal jurisdiction of the court. Any
8 motion filed in accordance with this section shall state,
9 with particularity, the grounds for the requested transfer,
10 including the grounds relied upon as set forth in
11 subsection (d), (e), (f) or (g) of this section and the burden
12 shall be upon the state to establish such grounds by clear
13 and convincing evidence. Any hearing held under the
14 provisions of this section shall be held within seven days
15 of the filing of the motion for transfer unless it is
16 continued for good cause.

17 (b) No inquiry relative to admission or denial of the
18 allegations of the charge or the demand for jury trial may
19 be made by or before the court until the court has
20 determined whether the proceeding is to be transferred to
21 criminal jurisdiction.

22 (c) The court shall transfer a juvenile proceeding to
23 criminal jurisdiction if a juvenile who has attained the age
24 of fourteen years makes a demand on the record to be
25 transferred to the criminal jurisdiction of the court. The
26 case may then be referred to magistrate or circuit court for

27 further proceedings, subject to the court's jurisdiction.

28 (d) The court shall transfer a juvenile proceeding to
29 criminal jurisdiction if there is probable cause to believe
30 that:

31 (1) The juvenile is at least fourteen years of age and
32 has committed the crime of treason under section one,
33 article one, chapter sixty-one of this code; the crime of
34 murder under sections one, two and three, article two of
35 said chapter; the crime of robbery involving the use or
36 presenting of firearms or other deadly weapons under
37 section twelve of said article; the crime of kidnapping
38 under section fourteen-a of said article; the crime of first
39 degree arson under section one, article three of said
40 chapter; or the crime of sexual assault in the first degree
41 under section three, article eight-b of said chapter; or

42 (2) The juvenile is at least fourteen years of age and
43 has committed an offense of violence to the person which
44 would be a felony if the juvenile were an adult: *Provided,*
45 That the juvenile has been previously adjudged delinquent
46 for the commission of an offense of violence to the person
47 which would be a felony if the juvenile were an adult; or

48 (3) The juvenile is at least fourteen years of age and
49 has committed an offense which would be a felony if the
50 juvenile were an adult: *Provided,* That the juvenile has
51 been twice previously adjudged delinquent for the
52 commission of an offense which would be a felony if the
53 juvenile were an adult.

54 (e) The court may transfer a juvenile proceeding to
55 criminal jurisdiction if there is probable cause to believe
56 that the juvenile would otherwise satisfy the provisions of
57 subdivision (1), subsection (d) of this section, but who is
58 younger than fourteen years of age.

59 (f) The court may, upon consideration of the
60 juvenile's mental and physical condition, maturity,
61 emotional attitude, home or family environment, school
62 experience and similar personal factors, transfer a juvenile
63 proceeding to criminal jurisdiction if there is probable
64 cause to believe that the juvenile would otherwise satisfy
65 the provisions of subdivision (2) or (3), subsection (d) of

66 this section, but who is younger than fourteen years of
67 age.

68 (g) The court may, upon consideration of the
69 juvenile's mental and physical condition, maturity,
70 emotional attitude, home or family environment, school
71 experience and similar personal factors, transfer a juvenile
72 proceeding to criminal jurisdiction if there is probable
73 cause to believe that:

74 (1) The juvenile, who is at least fourteen years of age,
75 has committed an offense of violence to a person which
76 would be a felony if the juvenile were an adult; or

77 (2) The juvenile, who is at least fourteen years of age,
78 has committed an offense which would be a felony if the
79 juvenile were an adult: *Provided*, That the juvenile has
80 been previously adjudged delinquent for the commission
81 of a crime which would be a felony if the juvenile were an
82 adult; or

83 (3) The juvenile, who is at least fourteen years of age,
84 used or presented a firearm or other deadly weapon
85 during the commission of a felony; or

86 (4) The juvenile has committed a violation of the
87 provisions of section four hundred one, article four,
88 chapter sixty-a of this code which would be a felony if the
89 juvenile were an adult involving the manufacture, delivery
90 or possession with the intent to deliver a narcotic drug.
91 For purposes of this subdivision, the term "narcotic
92 drug" has the same definition as that set forth in section
93 one hundred one, article one of said chapter.

94 (h) For purposes of this section, the term "offense of
95 violence" means an offense which involves the use or
96 threatened use of physical force against a person.

97 (i) If, after a hearing, the court directs the transfer of
98 any juvenile proceeding to criminal jurisdiction, it shall
99 state on the record the findings of fact and conclusions of
100 law upon which its decision is based or shall incorporate
101 such findings of fact and conclusions of law in its order
102 directing transfer.

103 (j) A juvenile who has been transferred to criminal

104 jurisdiction pursuant to the provisions of subsection (e),
105 (f) or (g) of this section, by an order of transfer entered
106 after the first day of July, one thousand nine hundred
107 ninety-seven, shall have the right to either directly appeal
108 an order of transfer to the supreme court of appeals or to
109 appeal such order of transfer following a conviction of the
110 offense of transfer. If the juvenile exercises the right to a
111 direct appeal from an order of transfer, the notice of intent
112 to appeal and a request for transcript shall be filed within
113 ten days from the date of the entry of any such order, and
114 the petition for appeal shall be presented to the supreme
115 court of appeals within forty-five days from the entry of
116 such order. The provisions of article five, chapter fifty-
117 eight of this code pertaining to the appeals of judgments
118 in civil actions shall apply to appeals under this chapter
119 except as herein modified. The court may, within forty-
120 five days of the entry of the order of transfer, by
121 appropriate order, extend and reextend the period in
122 which to file the petition for appeal for such additional
123 time, not to exceed a total extension of sixty days, as in the
124 court's opinion may be necessary for preparation of the
125 transcript: *Provided*, That the request for such transcript
126 was made by the party seeking appeal within ten days of
127 entry of such order of transfer. In the event any such
128 notice of intent to appeal and request for transcript be
129 timely filed, proceedings in criminal court shall be stayed
130 upon motion of the defendant pending final action of the
131 supreme court of appeals thereon.

§49-5-17. Confidentiality of juvenile records.

1 (a) Records of a juvenile proceeding conducted under
2 this chapter are not public records and shall not be
3 disclosed to anyone unless disclosure is otherwise
4 authorized by this section.

5 (b) Notwithstanding the provisions of subsection (a) of
6 this section, a copy of a juvenile's records shall
7 automatically be disclosed to certain school officials,
8 subject to the following terms and conditions:

9 (1) Only certain types of juvenile records shall be
10 disclosed. These include and are limited to cases in which:

11 (A) The juvenile has been charged with an offense

12 which would be a felony if the juvenile were an adult; and

13 (i) The offense involves violence against another
14 person;

15 (ii) The offense involves possession of a dangerous or
16 deadly weapon; or

17 (iii) The offense involves possession or delivery of a
18 controlled substance as that term is defined in section one
19 hundred one, article one, chapter sixty-a of this code; and

20 (B) The juvenile case has proceeded to a point where
21 one or more of the following has occurred:

22 (i) A judge, magistrate or referee has determined that
23 there is probable cause to believe that the juvenile
24 committed the offense as charged;

25 (ii) A judge, magistrate or referee has placed the
26 juvenile on probation for the offense;

27 (iii) A judge, magistrate or referee has placed the
28 juvenile into an improvement period in accordance with
29 section nine, article five, chapter forty-nine of this code; or

30 (iv) Some other type of disposition has been made of
31 the case other than dismissal.

32 (2) The circuit court for each judicial circuit in West
33 Virginia shall designate one person to supervise the
34 disclosure of juvenile records to certain school officials.

35 (3) If the juvenile attends a West Virginia public
36 school, the person designated by the circuit court shall
37 automatically disclose all records of a juvenile case to the
38 county superintendent of schools in the county in which
39 the juvenile attends school. The person designated by the
40 circuit court shall also automatically disclose all records of
41 a juvenile case to the principal of the school which the
42 juvenile attends.

43 (4) If the juvenile attends a private school in West
44 Virginia, the person designated by the circuit court shall
45 determine the identity of the highest ranking person at
46 that school, and shall automatically disclose all records of
47 a juvenile's case to that person.

48 (5) If the juvenile does not attend school at the time
49 the juvenile's case is pending, the person designated by
50 the circuit court shall not transmit the juvenile's records to
51 any school. However, the person designated by the circuit
52 court shall transmit the juvenile's records to any school in
53 West Virginia which the juvenile subsequently attends.

54 (6) The person designated by the circuit court shall
55 not automatically transmit juvenile records to a school
56 which is not located in West Virginia. Instead, the person
57 designated by the circuit court shall contact the out-of-
58 state school, inform it that juvenile records exist, and make
59 an inquiry regarding whether the laws of that state permit
60 the disclosure of juvenile records. If so, the person
61 designated by the circuit court shall consult with the
62 circuit judge who presided over the case to determine
63 whether the juvenile records should be disclosed to the
64 out-of-state school. The circuit judge shall have discretion
65 in determining whether to disclose the juvenile records,
66 and shall consider whether the other state's law regarding
67 disclosure provides for sufficient confidentiality of
68 juvenile records, using this section as a guide. If the
69 circuit judge orders the juvenile records to be disclosed,
70 they shall be disclosed in accordance with the provisions
71 of subdivision (7) of this subsection.

72 (7) The person designated by the circuit court shall
73 transmit the juvenile's records to the appropriate school
74 official under cover of a letter emphasizing the
75 confidentiality of such records and directing the official to
76 consult this section of the code. A copy of this section of
77 the code shall be transmitted with the juvenile's records
78 and cover letter.

79 (8) Juvenile records must be treated as absolutely
80 confidential by the school official to whom they are
81 transmitted, and nothing contained within the juvenile's
82 records shall be noted on the juvenile's permanent
83 educational record. The juvenile records are to be
84 maintained in a secure location and are not to be copied
85 under any circumstances. However, the principal of a
86 school to whom the records are transmitted shall have the
87 duty to disclose the contents of those records to any
88 teacher who teaches a class in which the subject juvenile is

89 enrolled and to the regular driver of a school bus in which
90 the subject juvenile is regularly transported to or from
91 school. Furthermore, any school official to whom the
92 juvenile's records are transmitted may disclose the
93 contents of such records to any adult within the school
94 system who, in the discretion of the school official, has the
95 need to be aware of the contents of those records.

96 (9) If for any reason a juvenile ceases to attend a
97 school which possesses that juvenile's records, the
98 appropriate official at that school shall seal the records
99 and return them to the circuit court which sent them to
100 that school. If the juvenile has changed schools for any
101 reason, the former school shall inform the circuit court of
102 the name and location of the new school which the
103 juvenile attends or will be attending. If the new school is
104 located within West Virginia, the person designated by the
105 circuit court shall forward the juvenile's records to the
106 juvenile's new school in the same manner as provided in
107 subdivision (7) of this subsection. If the new school is not
108 located within West Virginia, the person designated by the
109 circuit court shall handle the juvenile records in
110 accordance with subdivision (6) of this subsection.

111 If the juvenile has been found not guilty of an offense
112 for which records were previously forwarded to the
113 juvenile's school on the basis of a finding of probable
114 cause, the circuit court shall not forward those records to
115 the juvenile's new school. However, this shall not affect
116 records related to other prior or future offenses. If the
117 juvenile has graduated or quit school, or will otherwise not
118 be attending another school, the circuit court shall retain
119 the juvenile's records and handle them as otherwise
120 provided in this article.

121 (10) Under no circumstances shall one school transmit
122 a juvenile's records to another school.

123 (11) Under no circumstances shall juvenile records be
124 automatically transmitted to a college, university or other
125 post-secondary school.

126 (12) No one shall suffer any penalty, civil or criminal,
127 for accidentally or negligently attributing certain juvenile
128 records to the wrong person. However, such person shall

129 have the affirmative duty to promptly correct any mistake
130 that he or she has made in disclosing juvenile records
131 when the mistake is brought to his or her attention. A
132 person who intentionally attributes false information to a
133 certain person shall be subjected to both criminal and civil
134 penalties, in accordance with subsection (e) of this section.

135 (13) If a judge, magistrate or referee has determined
136 that there is probable cause to believe that a juvenile has
137 committed an offense but there has been no final
138 adjudication of the charge, the records which are
139 transmitted by the circuit court shall be accompanied by a
140 notice which clearly states in bold print that there has been
141 no determination of delinquency and that our legal system
142 requires a presumption of innocence.

143 (c) Notwithstanding the provisions of subsection (a) of
144 this section, juvenile records may be disclosed, subject to
145 the following terms and conditions:

146 (1) If a juvenile case is transferred to the criminal
147 jurisdiction of the circuit court pursuant to the provisions
148 of subsection (c) or (d), section ten of this article, the
149 juvenile records shall be open to public inspection.

150 (2) If a juvenile case is transferred to the criminal
151 jurisdiction of the circuit court pursuant to the provisions
152 of subsection (e), (f) or (g), section ten of this article, the
153 juvenile records shall be open to public inspection only if
154 the juvenile fails to file a timely appeal of the transfer
155 order, or the supreme court of appeals refuses to hear or
156 denies an appeal which has been timely filed.

157 (3) If a juvenile is fourteen years of age or older and a
158 court has determined there is a probable cause to believe
159 the juvenile committed an offense set forth in subsection
160 (g), section ten of this article, but the case is not
161 transferred to criminal jurisdiction, the juvenile records
162 shall be open to public inspection pending trial only if the
163 juvenile is released on bond and no longer detained or
164 adjudicated delinquent of the offense.

165 (4) If a juvenile is younger than fourteen years of age
166 and a court has determined there is probable cause to
167 believe that the juvenile committed the crime of murder

168 under section one, two or three, article two, chapter sixty-
169 one of this code, or the crime of sexual assault in the first
170 degree under section three, article eight-b of said chapter,
171 but the case is not transferred to criminal jurisdiction, the
172 juvenile records shall be open to public inspection
173 pending trial only if the juvenile is released on bond and
174 no longer detained or adjudicated delinquent of the
175 offense.

176 (5) Upon a written petition and pursuant to a written
177 order, the circuit court may permit disclosure of juvenile
178 records to:

179 (A) A court which has juvenile jurisdiction and has the
180 juvenile before it in a juvenile proceeding;

181 (B) A court exercising criminal jurisdiction over the
182 juvenile which requests such records for the purpose of a
183 presentence report or disposition proceeding;

184 (C) The juvenile, the juvenile's parents or legal
185 guardian, or the juvenile's counsel;

186 (D) The officials of a public institution to which the
187 juvenile is committed if they require such records for
188 transfer, parole or discharge; or

189 (E) A person who is conducting research. However,
190 juvenile records may be disclosed for research purposes
191 only upon the condition that information which would
192 identify the subject juvenile or the juvenile's family shall
193 not be disclosed.

194 (d) Any records open to public inspection pursuant to
195 the provisions of this section are subject to the same
196 requirements governing the disclosure of adult criminal
197 records.

198 (e) Any person who willfully violates this section shall
199 be guilty of a misdemeanor and, upon conviction thereof,
200 shall be fined not more than one thousand dollars, or
201 confined in the county or regional jail for not more than
202 six months, or both so fined and confined, and shall be
203 liable for damages in the amount of three hundred dollars
204 or actual damages, whichever is greater.

§49-5-18. Sealing of juvenile records.

1 (a) One year after the juvenile's eighteenth birthday,
2 or one year after personal or juvenile jurisdiction has
3 terminated, whichever is later, the records of a juvenile
4 proceeding conducted under this chapter, including, but
5 not limited to, law-enforcement files and records, shall be
6 sealed by operation of law.

7 (b) The records of a juvenile proceeding in which a
8 juvenile was transferred to criminal jurisdiction pursuant
9 to the provisions of section ten of this article shall be
10 sealed by operation of law if the juvenile is subsequently
11 acquitted or found guilty only of an offense other than an
12 offense upon which the waiver or order of transfer was
13 based, or if the offense upon which the waiver or order of
14 transfer was based is subsequently dismissed.

15 (c) To seal juvenile records, they shall be returned to
16 the circuit court in which the case was pending and be
17 kept in a separate confidential file. The records shall be
18 physically marked to show that they have been sealed and
19 shall be securely sealed and filed in such a manner that no
20 one can determine the identity of the juvenile.

21 (d) Sealed records may not be opened except upon
22 order of the circuit court.

23 (e) Sealing of juvenile records has the legal effect of
24 extinguishing the offense as if it never occurred.

25 (f) The records of a juvenile convicted under the
26 criminal jurisdiction of the circuit court pursuant to
27 subdivision (1), subsection (d), section ten of this article
28 may not be sealed.

29 (g) Any person who willfully violates this section shall
30 be guilty of a misdemeanor and, upon conviction thereof,
31 shall be fined not more than one thousand dollars, or
32 confined in the county or regional jail for not more than
33 six months, or both so fined and confined, and shall be
34 liable for damages in the amount of three hundred dollars
35 or actual damages, whichever is greater.

ARTICLE 7. GENERAL PROVISIONS.

§49-7-1. Confidentiality of records.

1 (a) Except as otherwise provided in this chapter, all
2 records and information concerning a child or juvenile

3 which are maintained by a state department, agency, court
4 or law-enforcement agency shall be kept confidential and
5 shall not be released or disclosed to anyone, including any
6 federal or state agency.

7 (b) Notwithstanding the provisions of subsection (a) of
8 this section or any other provision of this code to the
9 contrary, records concerning a child or juvenile, except
10 adoption records, juvenile court records and records
11 related to child abuse or neglect proceedings shall be
12 made available:

13 (1) Where otherwise authorized by this chapter;

14 (2) To the child, parent, or the attorney of the child or
15 parent;

16 (3) With the written consent of the child or of
17 someone authorized to act on the child's behalf; or

18 (4) Pursuant to a subpoena or order of a court of
19 record; however, a subpoena for such records may be
20 quashed by a court for good cause.

21 (c) Records related to child abuse or neglect
22 proceedings shall be made available for inspection only
23 by the child, his or her parents or custodian, the child's
24 counsel and other parties to the proceeding.

25 (d) Except in juvenile proceedings which are
26 transferred to criminal proceedings, law-enforcement
27 records and files concerning a child or juvenile shall be
28 kept separate from the records and files of adults and not
29 included within the court files. Law-enforcement records
30 and files concerning a child or juvenile shall only be open
31 to inspection pursuant to the provisions of sections
32 seventeen and eighteen, article five of this chapter.

33 (e) Any person who willfully violates the provisions of
34 this section is guilty of a misdemeanor and, upon
35 conviction thereof, shall be fined not more than one
36 thousand dollars, or confined in the county or regional jail
37 for not more than six months, or be both fined and
38 confined. A person convicted of violating the provisions
39 of this section shall also be liable for damages in the
40 amount of three hundred dollars or actual damages,
41 whichever is greater.

CHAPTER 112

(S. B. 535—By Senators Wooton, Ball, Bowman, Hunter, Schoonover and White)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-b, relating to estimating the number of West Virginia residents in applications and reporting of certain information for construction projects which are financed, in whole or in part, by public funds or at public expense; specifying report forms; and specifying effective and termination dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1B. REPORTING OF EMPLOYMENT.

§21-1B-1. Findings; policy.

§21-1B-2. Application of article.

§21-1B-3. Compiling of information.

§21-1B-4. Effective date; termination provisions.

§21-1B-1. Findings; policy.

1 The Legislature finds that the purpose of economic
2 development efforts is to improve the lives of West
3 Virginians, and whereas, taxpayers spend a significant
4 amount of money on economic development projects to
5 create jobs, and state, county and municipal governments
6 want to maximize employment of local citizens whenever
7 contracting for public improvements, a tracking mecha-
8 nism is needed to evaluate existing economic development
9 efforts regarding job creation to better assist the design of
10 training programs to meet the skills employers need.

§21-1B-2. Application of article.

1 This article applies to:

2 (a) Expenditures made after the first day of January,
3 one thousand nine hundred ninety-eight, by any public
4 authority made, in whole or in part, from public funds for
5 a public improvement project; and

6 (b) Any private capital project funded, in whole or in
7 part, after the first day of January, one thousand nine
8 hundred ninety-eight, by the issuance of tax incentives, tax
9 credits, or bonds or loans or other tax funded benefits
10 granted by the state or any of its political subdivisions any
11 economic development board or agency to induce or
12 encourage the undertaking of any such construction
13 project by any private person, corporation or any other
14 entity.

§21-1B-3. Compiling of information.

1 (a) Application for financial incentives from economic
2 development authorities, or other public authorities, which
3 will be used, in whole or in part, for the construction of
4 public or capital improvement projects, shall include a
5 statement estimating the number and duration of each
6 construction job which will go to West Virginia residents.

7 (b) Upon completion of any such project wherein the
8 contract for the project was awarded after the first day of
9 January, one thousand nine hundred ninety-eight, the
10 applicant shall complete a report consisting of the number
11 of individuals employed to construct such project, the
12 county and state where they reside, and the total hours
13 worked by each employee on such project and shall
14 submit such report to the state tax department within thirty
15 days of the completion of the project: *Provided*, That
16 filing of a bureau of labor statistics report on employment,
17 payroll and hours - intrastate construction, form bls 790b
18 rev Jan 93, O.M.B. form approval no. 1220-0011, meets
19 all requirements of this section when filed in accordance
20 with this article: *Provided, however*, That the filing of a
21 single annual report setting forth in the aggregate all
22 contracts in this state to which this article applies and
23 which sets forth the total number of individuals employed
24 to construct such projects and the county and state where
25 they reside shall be sufficient to fully meet the filing
26 requirements of this article.

§21-1B-4. Effective date; termination provisions.

1 The provisions of this article shall be effective for
 2 projects bid, contracted or entered into after the first day
 3 of January, one thousand nine hundred ninety-eight, and
 4 the provisions of this article shall expire and become void
 5 at midnight, the thirty-first day of December, two thou-
 6 sand one.

CHAPTER 113

(S. B. 378—By Senators Wooton, Ball, Bowman, Dittmar, Hunter, Oliverio, Ross,
 Schoonover, Snyder, White, Wiedebusch, Buckalew, Deem, Kimble and Scott)

[Passed April 10, 1997; in effect ninety days from passage. Approved by Governor.]

AN ACT to amend and reenact sections one, two and four, article twenty-five, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to encouraging private landowners to allow the public to enter private lands for recreational purposes; providing for limitation of landowner liability for injury to persons entering private property and injury to the property of persons entering such property; and providing an exception for liability for deliberate, intentional or malicious infliction of injury.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.

§19-25-1. Purpose.

§19-25-2. Limiting duty of landowner generally.

§19-25-4. Application of article.

§19-25-1. Purpose.

1 The purpose of this article is to encourage owners of
 2 land to make available to the public land and water areas

3 for military training or recreational or wildlife propaga-
4 tion purposes by limiting their liability for injury to
5 persons entering thereon and for injury to the property of
6 persons entering thereon and limiting their liability to
7 persons who may be injured or otherwise damaged by the
8 acts or omissions of persons entering thereon.

§19-25-2. Limiting duty of landowner generally.

1 Subject to the provisions of section four of this article,
2 an owner of land owes no duty of care to keep the premis-
3 es safe for entry or use by others for recreational or
4 wildlife propagation purposes, or to give any warning of a
5 dangerous or hazardous condition, use, structure or
6 activity on such premises to persons entering for such
7 purposes.

8 Subject to the provisions of section four of this article,
9 an owner of land who either directly or indirectly invites
10 or permits without charge as that term is defined in section
11 five of this article, any person to use such property for
12 recreational or wildlife propagation purposes does not
13 thereby: (a) Extend any assurance that the premises are
14 safe for any purpose; or (b) confer upon such persons the
15 legal status of an invitee or licensee to whom a duty of
16 care is owed; or (c) assume responsibility for or incur
17 liability for any injury to person or property caused by an
18 act or omission of such persons.

§19-25-4. Application of article.

1 Nothing herein limits in any way any liability which
2 otherwise exists: (a) For deliberate, willful or malicious
3 infliction of injury to persons or property; or (b) for
4 injury suffered in any case where the owner of land
5 charges the person or persons who enter or go on the land
6 other than the amount, if any, paid to the owner of the
7 land by the federal government or any agency thereof, the
8 state or any agency thereof, or any county or municipality
9 or agency thereof.

10 Nothing herein creates a duty of care or ground of
11 liability for injury to person or property.

12 Nothing herein limits in any way the obligation of a
13 person entering upon or using the land of another for
14 recreational or wildlife propagation purposes to exercise
15 due care in his or her use of such land and in his or her
16 activities thereon.

CHAPTER 114

(Com. Sub. for H. B. 2317—By Delegates Douglas, Hunt, Compton,
Faircloth, Linch and Riggs)

[Passed April 10, 1997; in effect from passage. Approved by the Governor.]

AN ACT to repeal section two, article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to reenact section one, article one of said chapter; and to amend and reenact section one, article two of said chapter, all relating to the authorization of legislative rules; continuing rules previously promulgated by state agencies; and authorizing the department of administration and the auditor to promulgate a legislative rule relating to the state purchasing card program.

Be it enacted by the Legislature of West Virginia:

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

Article

1. **General Legislative Authorization.**
2. **Authorization for Department of Administration to Promulgate Legislative Rules.**

ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.

§64-1-1. Legislative authorization.

- 1 Under the provisions of article three, chapter twenty-
- 2 nine-a of the code of West Virginia, the Legislature
- 3 expressly authorizes the promulgation of the rules
- 4 described in articles two through eleven of this chapter,
- 5 subject only to the limitations set forth with respect to each

6 such rule in the section or sections of this chapter
7 authorizing its promulgation. The Legislature declares
8 that all rules now or hereafter authorized under articles
9 two through eleven of this chapter are within the legislative
10 intent of the statute which the rule is intended to
11 implement, extend, apply or interpret. Legislative rules
12 promulgated pursuant to the provisions of articles one
13 through eleven of this chapter in effect at the effective
14 date of this section shall continue in full force and effect
15 until reauthorized in this chapter by legislative enactment,
16 or until amended by emergency rule pursuant to the
17 provisions of article three, chapter twenty-nine-a of this
18 code.

19 All proposed legislative rules for which bills of
20 authorization have been introduced in the Legislature not
21 specifically authorized under articles two through eleven
22 of this chapter are disapproved by the Legislature.

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

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

1 The legislative rule filed in the state register on the
2 thirtieth day of August, one thousand nine hundred
3 ninety-six, under the authority of section ten-a, article
4 three, chapter twelve of this code, modified by the
5 department of administration and the auditor to meet the
6 objections of the legislative rule-making review committee
7 and refiled in the state register on the sixth day of
8 February, one thousand nine hundred ninety-seven,
9 relating to the department of administration and the
10 auditor (state purchasing card program, 148 CSR 7), is
11 authorized.

CHAPTER 115

(Com. Sub. for H. B. 2333—By Delegates Douglas, Hunt, Compton,
Faircloth, Linch and Riggs)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article three, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the division of environmental protection and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by the division of environmental protection; authorizing the division of environmental protection to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing the division of environmental protection to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; directing the division of environmental protection to promulgate a legislative rule; authorizing the division of environmental protection to promulgate a legislative rule relating to hazardous waste management; authorizing the division of environmental protection to promulgate a legislative rule relating to standards of performance for new stationary sources pursuant to 40 CFR Part 60; authorizing the division of environmental protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants pursuant to 40 CFR Part 63; authorizing the division of environmental protection to promulgate a legislative rule relating to the underground storage tank insurance trust fund; authorizing the division of environmental protection to promulgate a legislative rule relating to WV/NPDES regulations for coal mining facilities; authorizing the division of environmental protection to promulgate a legislative rule relating to surface mining reclamation; authorizing the division of environmental protection to promulgate a legislative rule relating to confidential information; authorizing the division of environmen-

tal protection to promulgate a legislative rule relating to the prevention and control of air pollution from hazardous waste treatment, storage or disposal facilities; authorizing the division of environmental protection to promulgate a legislative rule relating to voluntary remediation and redevelopment; creating a legislative rule relating to the office of environmental advocate; authorizing the division of environmental protection to promulgate an emergency legislative rule amending a current legislative rule relating to the prevention and control of particulate air pollution from manufacturing process operations; and authorizing the division of environmental protection to promulgate an amendment to a legislative rule relating to yard waste composting.

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 RULE.

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

1 (a) The legislative rule filed in the state register on the
2 thirtieth day of August, one thousand nine hundred
3 ninety-six, authorized under the authority of section six,
4 article eighteen, chapter twenty-two of this code, relating
5 to the division of environmental protection (hazardous
6 waste management, 33 CSR 20), is authorized.

7 (b) The legislative rule filed in the state register on the
8 twenty-ninth day of August, one thousand nine hundred
9 ninety-six, authorized under the authority of section four,
10 article five, chapter twenty-two of this code, relating to the
11 division of environmental protection (standards of
12 performance for new stationary sources pursuant to 40
13 CFR Part 60, 45 CSR 16), is authorized.

14 (c) The legislative rule filed in the state register on the
15 twenty-ninth day of August, one thousand nine hundred
16 ninety-six, authorized under the authority of section four,
17 article five, chapter twenty-two of this code, relating to the

18 division of environmental protection (emission standards
19 for hazardous air pollutants pursuant to 40 CFR Part 63,
20 45 CSR 34), is authorized.

21 (d) The legislative rule filed in the state register on the
22 twenty-eighth day of August, one thousand nine hundred
23 ninety-six, authorized under the authority of section six,
24 article seventeen, chapter twenty-two of this code,
25 modified by the division of environmental protection to
26 meet the objections of the legislative rule-making review
27 committee and refiled in the state register on the twenty-
28 second day of October, one thousand nine hundred
29 ninety-six, relating to the division of environmental
30 protection (underground storage tank insurance trust
31 fund, 33 CSR 32), is authorized.

32 (e) The legislative rule filed in the state register on the
33 twenty-ninth day of August, one thousand nine hundred
34 ninety-six, authorized under the authority of section three,
35 article one, chapter twenty-two of this code, modified by
36 the division of environmental protection to meet the
37 objections of the legislative rule-making review committee
38 and refiled in the state register on the twentieth day of
39 December, one thousand nine hundred ninety-six, relating
40 to the division of environmental protection (WV/NPDES
41 regulations for coal mining facilities, 47 CSR 30), is
42 authorized.

43 (f) The legislative rule filed in the state register on the
44 thirtieth day of August, one thousand nine hundred
45 ninety-six, authorized under the authority of section four,
46 article three, chapter twenty-two of this code, modified by
47 the division of environmental protection to meet the
48 objections of the legislative rule-making review committee
49 and refiled in the state register on the twenty-first day of
50 February, one thousand nine hundred ninety-seven,
51 relating to the division of environmental protection
52 (surface mining and reclamation regulations, 38 CSR 2), is
53 authorized, with the following amendments:

54 "On page three, subsection 2.4, by striking out the
55 words "Coal seams commonly associated with such
56 minerals may include, but are not limited to Waynesburg,
57 Washington, Freeport, Sewickley, Redstone, Pittsburgh,

58 Kittanning, Elk Lick, Peerless, No. 2 Gas, Upper Eagle,
59 No. 5 Block and Stockton Lewiston”;

60 On page three, subsection 2.4, line eight, by striking
61 out the words “these seams are”, and inserting in lieu
62 thereof the words “the seam is”;

63 On page nine, subsection 2.43, line two, after the word
64 “highwall”, by inserting the words “except in operations
65 where the entire upper horizon above the lowest coal seam
66 is proposed to be partly or entirely removed”;

67 On page sixteen, subsection 2.95, line seven after the
68 “any”, by inserting the word “substantial”;

69 On page eighteen, subsection 2.108, line two, after the
70 word “stream.” by adding the following: Examples
71 include wildlife ponds, settling basins and all ponds and
72 facilities or structures used for water treatment.;

73 On page nineteen, subsection 2.120, line three, by
74 striking the word “or” and inserting in lieu thereof the
75 word “and”;

76 On page twenty-nine, subsection 3.2.e., after the word
77 “period” by striking the remainder of the subdivision
78 3.2.e.;

79 On page forty-nine, subsection 3.14.b.7., by striking
80 the entire paragraph;

81 On page forty-nine, subsection 3.14.b.8., by striking
82 the entire paragraph;

83 On page forty-nine, by renumbering the remaining
84 paragraphs;

85 On page fifty-one, subparagraph 3.14.b.14E, line one,
86 before the word “A”, by inserting the words “If
87 requested by the Director”;

88 On page fifty-one, subsection 3.14.b.15.B., by striking
89 the entire subparagraph, and inserting in lieu thereof the
90 following: 3.14.b.15.B. Surface water must be diverted
91 around or over the material by properly designed and
92 stabilized diversion channels which have been designed

93 using the best current technology to provide protection to
94 the environment or the health, welfare and safety of the
95 public. The channel shall be designed and constructed to
96 ensure stability of the remaining material, control erosion,
97 and minimize water infiltration into the remaining
98 material.;

99 On page seventy-two, subdivision 3.29.a, line five after
100 the word "IBR", by inserting the words "or where it has
101 been demonstrated to the satisfaction of the Director that
102 limited coal removal on areas immediately adjacent to the
103 existing permit is the only practical alternative to recovery
104 of unanticipated reserves or necessary to enhance
105 reclamation efforts or environmental protection";

106 On page eighty-six, by inserting a new subsection 3.35
107 to read as follows: 3.35. All grade measurements and
108 linear measurements in this rule shall be subject to a
109 tolerance of two percent (2%). All angles in this rule shall
110 be measured from the horizontal and shall be subject to a
111 tolerance of five percent (5%). *Provided, however,* this
112 allowable deviation from the approved plan does not
113 affect storage capacity and/or performance standards.

114 On page one hundred eight, subdivision 5.5.c., line
115 two, after the word "landowner", by striking the
116 remainder of the paragraph and inserting in lieu thereof
117 the words "requesting the permanent structures be left for
118 recreational or wildlife propagation purposes or for any
119 beneficial uses to the landowner";

120 On page one hundred twelve, subdivision 6.5.a., line
121 five, after the word "Sunday." by adding the following:
122 *Provided, however,* the Director may grant approval of a
123 request for Sunday blasting if the operator demonstrates
124 to the satisfaction of the Director that the blasting is
125 necessary and there has been an opportunity for a public
126 hearing.;

127 On page one hundred twenty-six, paragraph 9.2.i.2,
128 after the word "achieved" by inserting: An alternate
129 maximum or minimum soil pH may be approved based
130 on the optimum pH for the revegetation species.;

131 On page one hundred thirty, line one, paragraph
132 9.3.h.1., by striking out the paragraph in its entirety, and
133 inserting in lieu thereof: 9.3.h.1. The minimum stocking
134 rate of commercial tree species shall be in accordance with
135 the approved forest management plan prepared by a
136 registered professional forester. In no case may the rate
137 be less than four hundred fifty (450) stems per acre of
138 commercial tree species;

139 On page one hundred thirty, paragraph 9.3.h.2., by
140 striking out the paragraph in its entirety, and by
141 renumbering the subsequent paragraphs;

142 On page one hundred thirty, in renumbered paragraph
143 9.3.h.2., after the word "than", by striking out the words
144 "four hundred fifty (450)", and inserting in lieu thereof
145 "three hundred (300);"

146 On page one hundred thirty, in renumbered paragraph
147 9.3.h.2., after the word "acre", by inserting the words
148 "or the rate specified in the forest management plan,
149 whichever is greater,";

150 On page two hundred twenty-two, subdivision 14.11.e,
151 line 6, by striking out the word "operable" and by
152 inserting in lieu thereof "such condition that operations
153 could be resumed within sixty (60) days";

154 On page two hundred twenty-three, subdivision
155 14.11.f., line four, by striking out the word "operative",
156 and by inserting in lieu thereof the words "such condition
157 that the operations could be resumed within sixty (60)
158 days";

159 On page two hundred twenty-three, subdivision
160 14.11.f., line four, after the word "is", by inserting the
161 words "protected from unauthorized entry";

162 On page two hundred thirty-eight, subparagraph
163 14.15.b.6.A., line five, after the word "exceed", by
164 striking out the words "fifty (50) percent of the total
165 permit acreage, or four hundred (400) acres, whichever is
166 less, on operations which consist of at least three spreads
167 of equipment", and inserting in lieu thereof the words

168 “five hundred (500) acres on operations which consist of
169 multiple spreads of equipment”;

170 On page two hundred thirty-nine, subsection 14.15.c.,
171 line three, after the word “regraded”, by inserting the
172 words “and stabilized”;

173 On page two hundred thirty-nine, subsection 14.15.c.,
174 line four, after the word “plan”, by striking out the
175 “comma” and the remainder of the subparagraph, and
176 inserting in lieu thereof the words: The following shall
177 not be included in the calculation of disturbed area.;

178 On page two hundred forty, paragraph 14.15.c.2., line
179 seven, after the word “benches”, by inserting the words
180 “without regard to like thickness”;

181 On page two hundred forty, paragraph 14.15.c.5, line
182 two, after the word “graded”, by inserting the words
183 “with material placed in a stable, controlled manner which
184 will not subsequently be moved”.

185 (g) The legislative rule filed in the state register on the
186 twenty-ninth day of August, one thousand nine hundred
187 ninety-six, authorized under the authority of section ten,
188 article five, chapter twenty-two of this code, modified by
189 the division of environmental protection to meet the
190 objections of the legislative rule-making review committee
191 and refiled in the state register on the twenty-sixth day of
192 November, one thousand nine hundred ninety-six, relating
193 to the division of environmental protection (confidential
194 information, 45 CSR 31), is authorized.

195 (h) The legislative rule filed in the state register on the
196 twenty-ninth day of August, one thousand nine hundred
197 ninety-six, authorized under the authority of section four,
198 article five, chapter twenty-two of this code, modified by
199 the division of environmental protection to meet the
200 objections of the legislative rule-making review committee
201 and refiled in the state register on the sixteenth day of
202 January, one thousand nine hundred ninety-seven, relating
203 to the division of environmental protection (to prevent and
204 control air pollution from hazardous waste treatment,
205 storage or disposal facilities, 45 CSR 25), is authorized.

206 (i) The legislative rule filed in the state register on the
207 fifth day of February, one thousand nine hundred
208 ninety-seven, authorized under the authority of section
209 three, article twenty-two, chapter twenty-two of this code,
210 modified by the division of environmental protection to
211 meet the objections of the legislative rule-making review
212 committee and refiled in the state register on the twenty-
213 fifth day of February, one thousand nine hundred
214 ninety-seven, relating to the division of environmental
215 protection (voluntary remediation and redevelopment, 60
216 CSR 3), is authorized.

217 (j) That title sixty, series one of the code of state rules
218 be amended by deleting the current interpretative rule for
219 the office of environmental advocate and inserting in lieu
220 thereof the following legislative rule, to read as follows:

221 **“§61-10-1. General.**

222 **1.1. Scope.** - This legislative rule governs and controls
223 the appointment and qualifications of the position of
224 Environmental Advocate within the Division of
225 Environmental Protection.

226 **1.2. Authority** - West Virginia Code §22-1-3, 22-1-3a,
227 22-20.

228 **1.3. Filing Date** -

229 **1.4. Effective Date** - July 1, 1997.

230 **§61-10-2. Appointment, Salary and Qualifications.**

231 **2.1. Appointment.** - The position of Environmental
232 Advocate will be a full-time position, will be appointed by
233 the Director, and will serve at the will and pleasure of the
234 Director of the Division of Environmental Protection in
235 accordance with the West Virginia Code §22-20-1.

236 **2.2. Salary.** - The salary of the position of
237 Environmental Advocate will be set by the Director and is
238 subject to future adjustments at the discretion of the
239 Director.

240 **2.3. Qualifications.** - The Director will receive or
241 solicit applications for the position of Environmental

242 Advocate from persons having the following minimum
243 qualifications:

244 **2.3.a.** A citizen and resident of the State of West
245 Virginia.

246 **2.3.b.** A graduate from an accredited college or
247 university with a four-year degree in a field of study
248 directly related to the qualifications, powers, and duties of
249 the position as set forth by the director.

250 **2.3.c.** A minimum of two years full-time or
251 cumulative experience in work directly related to
252 environmental protection, or other public service work or
253 experience which demonstrates the ability to carry out the
254 powers and duties of the position as set forth by the
255 director.

256 **2.3.d.** A working familiarity with some of the legal
257 requirements and programmatic functions of the Division
258 of Environmental Protection.

259 **2.3.e.** A demonstrated ability to skillfully verbally
260 and by writing communicate in a public forum.

261 **2.3.f.** A demonstrated ability to use word processing
262 software for a computer and other necessary computer
263 skills as determined by the director.

264 **2.3.g.** A valid West Virginia driver's license.

265 **§61-10-3. Powers and Limitations.**

266 The Environmental Advocate will carry out the duties
267 of the position as set forth in this rule, and as prescribed
268 by the Director in accordance with the following:

269 **3.1.** The Environmental Advocate will be guided in all
270 actions by the policy statement and the nine purposes set
271 forth in West Virginia Code §22-1-1 (b).

272 **3.2.** The Environmental Advocate may not in any
273 official capacity represent any person in, or file on behalf
274 of any person, legal or quasi-legal actions, either in
275 support of or opposed to the Division of Environmental
276 Protection without the expressed approval of the Director,
277 and under supervision of the Division of Environmental
278 Protection's General Counsel.

279 **3.3.** The Environmental Advocate may not in any
280 official capacity organize public campaigns in support of,
281 or in opposition to official positions taken by the Division
282 of Environmental Protection on environmental matters,
283 and will not in any official capacity actively participate in
284 any such organized campaign.”

285 (k) The director of the division of environmental
286 protection is hereby authorized to propose for
287 promulgation an emergency rule to amend a current
288 legislative rule relating to monitoring of air quality (to
289 prevent and control particulate air pollution from
290 manufacturing process operation, 45 CSR 7).

291 (l) The legislative rule filed in the state register on the
292 eighteenth day of March, one thousand nine hundred
293 ninety-seven, relating to the division of environmental
294 protection (yard waste composting, 47 CSR 38E) is
295 authorized.

CHAPTER 116

(Com. Sub. for H. B. 2354—By Delegates Douglas, Hunt, Compton,
Faircloth, Linch and Riggs)

[Passed April 11, 1997; in effect from passage. Approved by the Governor.]

AN ACT to repeal sections two and three, article four, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one of said article, relating to authorizing the library commission to promulgate a legislative rule relating to administrative regulations.

Be it enacted by the Legislature of West Virginia:

That sections two and three, article four, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section one of said article 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. Library commission.

1 The legislative rule filed in the state register on the
2 twenty-fifth day of July, one thousand nine hundred
3 ninety-six, authorized under the authority of section
4 twenty, article one, chapter ten of this code, modified by
5 the library commission to meet the objections of the
6 legislative rule-making review committee and refiled in the
7 state register on the thirtieth day of September, one
8 thousand nine hundred ninety-six, (relating to the library
9 commission administrative regulations, 173 CSR 1), is
10 authorized.

CHAPTER 117

(Com. Sub. for H. B. 2345—By Delegates Douglas, Hunt, Compton,
Faircloth, Linch and Riggs)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to repeal sections four, five, six, seven and eight, article five, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two and three of said article, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and 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 legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate legislative

rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing the division of health to promulgate a legislative rule relating to nursing home licensure; authorizing the division of health to promulgate a legislative rule relating to child care centers; authorizing the division of health to promulgate a legislative rule relating to emergency medical services; authorizing the department of health and human resources to promulgate a legislative rule relating to clinical laboratory technician and technologist licensure and certification; authorizing the division of health to promulgate a legislative rule relating to residential board and care homes; authorizing the commissioner of human services to promulgate a legislative rule relating to certification requirements for family day care facilities; authorizing the support enforcement commission to promulgate a legislative rule relating to obtaining support from federal and state income tax refunds; and authorizing the support enforcement commission to promulgate a legislative rule relating to interstate income withholding.

Be it enacted by the Legislature of West Virginia:

That sections four, five, six, seven and eight, article five, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, two and three of said article be amended and reenacted, all to read as follows:

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

- §64-5-1. State board of health; division of health.
- §64-5-2. Commissioner of human services.
- §64-5-3. Child support enforcement commission.

§64-5-1. State board of health; division of health.

- 1 (a) The legislative rule filed in the state register on the
- 2 eighth day of November, one thousand nine hundred
- 3 ninety-six, authorized under the authority of section five,
- 4 article five-c, chapter sixteen of this code, modified by the
- 5 division of health to meet the objections of the legislative

6 rule-making review committee and refiled in the state
7 register on the twenty-seventh day of February, one
8 thousand nine hundred ninety-seven, relating to the
9 division of health (nursing home licensure, 64 CSR 13), is
10 authorized.

11 (b) The legislative rule filed in the state register on the
12 thirtieth day of August, one thousand nine hundred
13 ninety-six, authorized under the authority of section seven,
14 article one, chapter sixteen of this code, modified by the
15 division of health to meet the objections of the legislative
16 rule-making review committee and refiled in the state
17 register on the twenty-sixth day of February, one thousand
18 nine hundred ninety-seven, relating to the division of
19 health (child care centers, 64 CSR 21), is authorized.

20 (c) The legislative rule filed in the state register on the
21 thirtieth day of August, one thousand nine hundred
22 ninety-six, authorized under the authority of section
23 twenty-three, article four-c, chapter sixteen of this code,
24 modified by the division of health to meet the objections
25 of the legislative rule-making review committee and
26 refiled in the state register on the twenty-eighth day of
27 February, one thousand nine hundred ninety-seven,
28 relating to the division of health (emergency medical
29 services, 64 CSR 48), is authorized.

30 (d) The legislative rule filed in the state register on the
31 twenty-seventh day of November, one thousand nine
32 hundred ninety-five, authorized under the authority of
33 section five, article five-c, chapter sixteen of this code,
34 modified by the division of health to meet the objections
35 of the legislative rule-making review committee and
36 refiled in the state register on the twenty-sixth day of
37 February, one thousand nine hundred ninety-seven,
38 relating to the division of health (residential board and
39 care homes, 64 CSR 65), is authorized.

40 (e) The legislative rule filed in the state register on the
41 fifth day of October, one thousand nine hundred
42 ninety-five, under the authority of section ten, article five-
43 j, chapter sixteen of this code, modified by the director of
44 the department of health to meet the objections of the
45 legislative rule-making review committee and refiled in the

46 state register on the thirty-first day of October, one
47 thousand nine hundred ninety-six, relating to the
48 department of health (clinical laboratory technician and
49 technologist licensure and certification, 64 CSR 57), is
50 authorized until July 1, 1998: *Provided*, That the director
51 of the department of health review, revise and propose,
52 within the statutory deadline and in accordance with the
53 provisions of article three, chapter twenty-nine-a of this
54 code, a rule for legislative consideration during the
55 legislative session of one thousand nine hundred ninety-
56 eight with the following amendments:

57 "On page one, subsection 2.2.2, following the semi-
58 colon, by striking the word 'or';

59 On page one, by inserting a new 2.2.3, to read as
60 follows: '2.2.3. Any respiratory care provider licensed
61 within the state providing diagnostic testing within the
62 scope of his or her professional license who performs
63 moderate complexity testing as defined by CLIA, pursuant
64 to 42 CFR 493.17; or';

65 'On pages one and two, by renumbering the
66 subsequent subdivision.' "

67 And,

68 "On page 6, subsection 7.2, after the word
69 'Personnel', by striking the period and inserting in lieu
70 thereof the following: 'or by the International Society for
71 Clinical Laboratory Technology.' "

§64-5-2. Commissioner of human services.

1 The legislative rule filed in the state register on the
2 thirtieth day of August, one thousand nine hundred
3 ninety-six, under the authority of section four, article two-
4 b, chapter forty-nine of this code, modified by the
5 commissioner of human services to meet the objections of
6 the legislative rule-making review committee and refiled in
7 the state register on the twenty-seventh day of February,
8 one thousand nine hundred ninety-seven, relating to the
9 commissioner of human services (certification
10 requirements for family day care facilities, 78 CSR 18), is
11 authorized.

§64-5-3. Child support enforcement commission.

1 (a) The legislative rule filed in the state register on the
2 thirtieth day of August, one thousand nine hundred
3 ninety-six, under the authority of section ten, article two,
4 chapter forty-eight-a of this code, modified by the child
5 support enforcement commission to meet the objections
6 of the legislative rule-making review committee and
7 refiled in the state register on the twenty-eighth day of
8 February, one thousand nine hundred ninety-seven,
9 relating to the child support enforcement commission
10 (obtaining support from federal and state income tax
11 refunds, 97 CSR 3), is authorized.

12 (b) The legislative rule filed in the state register on the
13 thirtieth day of August, one thousand nine hundred
14 ninety-six, under the authority of section twenty-three,
15 article two, chapter forty-eight-a of this code, modified by
16 the child support enforcement commission to meet the
17 objections of the legislative rule-making review committee
18 and refiled in the state register on the twenty-eighth day of
19 February, one thousand nine hundred ninety-seven,
20 relating to the child support enforcement commission
21 (interstate income withholding, 97 CSR 4), is authorized.

CHAPTER 118

(Com. Sub. for H. B. 2337—By Delegates Douglas, Hunt, Compton,
Faircloth, Linch and Riggs)

[Passed April 10, 1997; in effect from passage. Approved by the Governor.]

AN ACT to repeal sections two, three and four, article six, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one of said article, 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 and administrative agencies of the state; authorizing certain of the agencies to promulgate legislative rules with various modifications

presented to and recommended by the legislative rule-making review committee, and authorizing the fire commission to promulgate legislative rules relating to the state building code.

Be it enacted by the Legislature of West Virginia:

That sections two, three and four, article six, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section one of said article 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.

1 The legislative rule filed in the state register on the
2 first day of August, one thousand nine hundred ninety-six,
3 modified by the fire commission to meet the objections of
4 the legislative rule-making review committee and refiled in
5 the state register on the twenty-ninth day of October, one
6 thousand nine hundred ninety-six, relating to the fire
7 commission (state building code, 87 CSR 4), is authorized.

CHAPTER 119

(Com. Sub. for S. B.157—By Senators Ross, Anderson, Macnaughtan, Boley and Buckalew)

[Passed April 20, 1997; in effect from passage. Approved by the Governor.]

AN ACT to repeal section four, article seven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two and three of said article, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promul-

gation of certain legislative rules by various executive and 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 legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; disapproving the promulgation of a legislative rule; authorizing the division of banking to promulgate a legislative rule relating to the West Virginia consumer credit and protection act and the money and interest article of chapter forty-seven; authorizing the division of banking to promulgate a legislative rule relating to the operations of state chartered financial institutions in West Virginia; authorizing the division of banking to promulgate a legislative rule relating to West Virginia regulated consumer lenders; authorizing the division of banking to promulgate a legislative rule relating to reverse mortgage loans; authorizing the insurance commissioner to promulgate a legislative rule relating to medicare supplement insurance; authorizing the insurance commissioner to promulgate a legislative rule relating to life and health reinsurance agreements; disapproving the promulgation of a legislative rule by the insurance commissioner relating to individual medical savings accounts; authorizing the insurance commissioner to promulgate a legislative rule relating to the valuation of life insurance policies; authorizing the insurance commissioner to promulgate a legislative rule relating to diabetes; authorizing the insurance commissioner to promulgate a legislative rule relating to emergency medical services; authorizing the insurance commissioner to promulgate a legislative rule relating to utilization management; authorizing the insurance commissioner to promulgate a legislative rule relating to the replacement of life insurance; authorizing the tax division to promulgate a legislative rule relating to the tax credit for qualified agricultural equipment; authorizing the tax division to promulgate a legislative rule relating to personal income tax low income exclusions; and authorizing the tax division to promulgate a legislative rule relating to charitable raffles.

Be it enacted by the Legislature of West Virginia:

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

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

§64-7-1. Division of banking.

§64-7-2. Department of tax and revenue; tax division; and state tax commissioner.

§64-7-3. Insurance commissioner.

§64-7-1. Division of banking.

1 (a) The legislative rule filed in the state register on the
2 twenty-eighth day of August, one thousand nine hundred
3 ninety-six, authorized under the authority of section four,
4 article two, chapter thirty-one-a of this code, modified by
5 the division of banking to meet the objections of the
6 legislative rule-making review committee and refiled in the
7 state register on the twenty-first day of February, one
8 thousand nine hundred ninety-seven, relating to the
9 division of banking (regulations pertaining to the West
10 Virginia consumer credit and protection act and the
11 money and interest article of chapter forty-seven, 106 CSR
12 1), is authorized.

13 (b) The legislative rule filed in the state register on the
14 twenty-eighth day of August, one thousand nine hundred
15 ninety-six, authorized under the authority of section four,
16 article two, chapter thirty-one-a of this code, modified by
17 the division of banking to meet the objections of the
18 legislative rule-making review committee and refiled in the
19 state register on the twentieth day of December, one
20 thousand nine hundred ninety-six, relating to the division
21 of banking (regulations governing the operations of state
22 chartered financial institutions in West Virginia, 106 CSR
23 3), is authorized.

24 (c) The legislative rule filed in the state register on the
25 twenty-eighth day of August, one thousand nine hundred
26 ninety-six, authorized under the authority of section four,

27 article two, chapter thirty-one-a of this code, modified by
28 the division of banking to meet the objections of the
29 legislative rule-making review committee and refiled in the
30 state register on the twentieth day of December, one
31 thousand nine hundred ninety-six, relating to the division
32 of banking (West Virginia regulated consumer lenders,
33 106 CSR 4), is authorized.

34 (d) The legislative rule filed in the state register on the
35 twenty-eighth day of August, one thousand nine hundred
36 ninety-six, authorized under the authority of section eight,
37 article twenty-four, chapter forty-seven of this code,
38 modified by the division of banking to meet the objec-
39 tions of the legislative rule-making review committee and
40 refiled in the state register on the twentieth day of Decem-
41 ber, one thousand nine hundred ninety-six, relating to the
42 division of banking (reverse mortgage loans, 106 CSR 19),
43 is authorized.

**§64-7-2. Department of tax and revenue; tax division; and
state tax commissioner.**

1 (a) The legislative rule filed in the state register on the
2 twenty-third day of July, one thousand nine hundred
3 ninety-six, authorized under the authority of section five,
4 article thirteen-j, chapter eleven of this code, modified by
5 the tax division to meet the objections of the legislative
6 rule-making review committee and refiled in the state
7 register on the thirty-first day of October, one thousand
8 nine hundred ninety-six, relating to the tax division (tax
9 credit for qualified agricultural equipment, 110 CSR 13J),
10 is authorized.

11 (b) The legislative rule filed in the state register on the
12 sixteenth day of August, one thousand nine hundred
13 ninety-six, authorized under the authority of section fifty-
14 one, article twenty-one, chapter eleven of this code,
15 modified by the tax division to meet the objections of the
16 legislative rule-making review committee and refiled in the
17 state register on the thirty-first day of October, one
18 thousand nine hundred ninety-six, relating to the tax
19 division (personal income tax low income exclusions, 110
20 CSR 21.1), is authorized.

21 (c) The legislative rule filed in the state register on the
22 sixteenth day of August, one thousand nine hundred
23 ninety-six, authorized under the authority of section
24 twenty-one, article twenty-one, chapter forty-seven of this
25 code, modified by the tax division to meet the objections
26 of the legislative rule-making review committee and
27 refiled in the state register on the twenty-seventh day of
28 February, one thousand nine hundred ninety-seven,
29 relating to the tax division (charitable raffles, 110 CSR
30 37), is authorized.

§64-7-3. Insurance commissioner.

1 (a) The legislative rule filed in the state register on the
2 second day of July, one thousand nine hundred ninety-six,
3 authorized under the authority of section ten, article two,
4 chapter thirty-three of this code, modified by the insur-
5 ance commissioner to meet the objections of the legislative
6 rule-making review committee and refiled in the state
7 register on the twentieth day of February, one thousand
8 nine hundred ninety-seven, relating to the insurance
9 commissioner (medicare supplement insurance, 114 CSR
10 24), is authorized.

11 (b) The legislative rule filed in the state register on the
12 twentieth day of August, one thousand nine hundred
13 ninety-six, authorized under the authority of section
14 fifteen, article four, chapter thirty-three of this code,
15 modified by the insurance commissioner to meet the
16 objections of the legislative rule-making review committee
17 and refiled in the state register on the thirtieth day of
18 January, one thousand nine hundred ninety-seven, relating
19 to the insurance commissioner (life and health reinsurance
20 agreements, 114 CSR 48), is authorized.

21 (c) The legislative rule filed in the state register on the
22 twenty-ninth day of August, one thousand nine hundred
23 ninety-six, authorized under the authority of section
24 twenty, article fifteen, chapter thirty-three of this code,
25 modified by the insurance commissioner to meet the
26 objections of the legislative rule-making review committee
27 and refiled in the state register on the thirty-first day of
28 January, one thousand nine hundred ninety-seven, relating
29 to the insurance commissioner (individual medical savings

30 accounts, 114 CSR 47), is disapproved and is not autho-
31 rized for promulgation.

32 (d) The legislative rule filed in the state register on the
33 twentieth day of August, one thousand nine hundred
34 ninety-six, authorized under the authority of section ten,
35 article two, chapter thirty-three of this code, modified by
36 the insurance commissioner to meet the objections of the
37 legislative rule-making review committee and refiled in the
38 state register on the eighteenth day of February, one
39 thousand nine hundred ninety-seven, relating to the
40 insurance commissioner (valuation of life insurance
41 policies, 114 CSR 49), is authorized, with the following
42 amendment:

43 "On page one, section 1.4 of the rule, by following
44 the words 'effective date' inserting the following:

45 'The portions of the rule amended as a result of
46 modifications offered by the Insurance Commissioner and
47 filed with the Secretary of State on August 20, 1996, shall
48 not become effective until January 1, 1998.'

49 (e) The legislative rule filed in the state register on the
50 twenty-ninth day of August, one thousand nine hundred
51 ninety-six, authorized under the authority of section one,
52 article fifteen-c, chapter thirty-three of this code, modified
53 by the insurance commissioner to meet the objections of
54 the legislative rule-making review committee and refiled in
55 the state register on the twentieth day of February, one
56 thousand nine hundred ninety-seven, relating to the
57 insurance commissioner (diabetes, 114 CSR 52), is
58 authorized.

59 (f) The legislative rule filed in the state register on the
60 twenty-ninth day of August, one thousand nine hundred
61 ninety-six, authorized under the authority of section
62 twenty-three, article four-c, chapter sixteen of this code,
63 modified by the insurance commissioner to meet the
64 objections of the legislative rule-making review committee
65 and refiled in the state register on the eighteenth day of
66 February, one thousand nine hundred ninety-seven,
67 relating to the insurance commissioner (emergency
68 medical services, 114 CSR 50), is authorized.

69 (g) The legislative rule filed in the state register on the
70 twenty-ninth day of August, one thousand nine hundred
71 ninety-six, authorized under the authority of section ten,
72 article two, chapter thirty-three of this code, modified by
73 the insurance commissioner to meet the objections of the
74 legislative rule-making review committee and refiled in the
75 state register on the eighteenth day of February, one
76 thousand nine hundred ninety-seven, relating to the
77 insurance commissioner (utilization management, 114
78 CSR 51), is authorized.

79 (h) The legislative rule filed in the state register on the
80 twenty-ninth day of August, one thousand nine hundred
81 ninety-six, authorized under the authority of section ten,
82 article two, chapter thirty-three of this code, modified by
83 the insurance commissioner to meet the objections of the
84 legislative rule-making review committee and refiled in the
85 state register on the eighteenth day of February, one
86 thousand nine hundred ninety-seven, relating to the
87 insurance commissioner (replacement of life insurance,
88 114 CSR 8), is authorized.

CHAPTER 120

(Com. Sub. for S. B.195—By Senators Ross, Anderson,
Macnaughtan, Boley and Buckalew)

[Passed April 8, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, 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 and 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 legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing the division of motor vehicles to promulgate a legislative rule relating to the motor vehicle inspection manual; and authorizing the division of motor vehicles to promulgate a legislative rule relating to compulsory motor vehicle insurance.

Be it enacted by the Legislature of West Virginia:

That section one, 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 motor vehicles.

1 (a) The legislative rule filed in the state register on the
2 fifteenth day of August, one thousand nine hundred
3 ninety-six, authorized under the authority of section nine,
4 article two, chapter seventeen-a of this code, modified by
5 the division of motor vehicles to meet the objections of the
6 legislative rule-making review committee and refiled in the
7 state register on the twenty-fourth day of October, one
8 thousand nine hundred ninety-six, relating to the division
9 of motor vehicles (motor vehicle inspection manual, 91
10 CSR 12), is authorized.

11 (b) The legislative rule filed in the state register on the
12 twenty-second day of August, one thousand nine hundred
13 ninety-six, authorized under the authority of section nine,
14 article two, chapter seventeen-a of this code, modified by
15 the division of motor vehicles to meet the objections of the
16 legislative rule-making review committee and refiled in the
17 state register on the twenty-eighth day of October, one
18 thousand nine hundred ninety-six, relating to the division
19 of motor vehicles (compulsory motor vehicle insurance,
20 91 CSR 13), is authorized.

CHAPTER 121

(Com. Sub. for S. B. 209—By Senators Ross, Anderson, Macnaughtan, Boley and Buckalew)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen and nineteen, article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and 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 legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; disapproving the promulgation of a legislative rule; authorizing the commissioner of agriculture to promulgate a legislative rule relating to animal disease control; authorizing the secretary of state to promulgate a legislative rule relating to agencies designated to provide registration services; authorizing the secretary of state to promulgate a legislative rule relating to procedures for the recount of election returns; authorizing the secretary of state to promulgate a legislative rule relating to trademarks and service marks; authorizing the governor's committee on crime, delinquency and correction to promulgate a legislative rule relating to the protocol for law-enforcement response to domestic violence; authorizing the governor's committee on crime, delinquency and correction to promulgate a legislative rule relating to the basic training academy and annual in-service and biennial in-service training standards; authorizing

the cable television advisory board to promulgate a legislative rule relating to implementing regulations; authorizing and directing the cable television advisory board to amend and promulgate a legislative rule relating to the calculation and collection of late fees; authorizing the auditor to promulgate a legislative rule relating to standards for requisitions for payment issued by state officers on the auditor; authorizing the commission for the deaf and hard of hearing to promulgate a legislative rule relating to fees for qualified interpreters; authorizing the board of dental examiners to promulgate a legislative rule relating to rules of the board; authorizing the board of licensed practical nurses to promulgate a legislative rule relating to legal standards of nursing practice for the licensed practical nurse; authorizing the board of medicine to promulgate a legislative rule relating to the formation and approval of professional limited liability companies; authorizing the nursing home administrators licensing board to promulgate a legislative rule relating to the board; authorizing the board of pharmacy to promulgate a legislative rule relating to the registration of pharmacy technicians; authorizing the board of pharmacy to promulgate a legislative rule relating to controlled substances monitoring; authorizing the board of accountancy to promulgate a legislative rule relating to the board and rules of professional conduct; authorizing the board of barbers and cosmetologists to promulgate a legislative rule relating to a schedule of fees; authorizing the board of barbers and cosmetologists to promulgate a legislative rule relating to procedures, criteria and curricula for the examination and licensure of barbers, cosmetologists, manicurists and aestheticians; authorizing the board of examiners of psychologists to promulgate a legislative rule relating to qualifications for licensure as a psychologist or school psychologist; disapproving the promulgation of a legislative rule of the board of examiners of psychologists relating to fees; authorizing the public service commission to promulgate a legislative rule relating to use of the number "911"; authorizing the real estate appraiser licensure and certification board to promulgate a legislative rule relating to the requirements for licensure and certification; authorizing the real estate appraiser licensure and certification board to promulgate a legislative rule relating to the renewal of licensure or

certification; authorizing the board of respiratory care to promulgate a legislative rule relating to procedures for the licensure application process; authorizing the board of respiratory care to promulgate a legislative rule relating to the establishment of fees; authorizing the board of respiratory care to promulgate a legislative rule relating to continuing education requirement; authorizing the economic development authority to promulgate a legislative rule relating to the general administration of the West Virginia capital company act: establishment of the application procedures to implement the act; and authorizing the family protection services board to promulgate a legislative rule relating to the operation of the board and the licensure and funding of domestic violence programs.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen and nineteen, article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

- §64-9-1. Commissioner of agriculture.
- §64-9-2. Secretary of state.
- §64-9-3. Governor's committee on crime, delinquency and correction.
- §64-9-4. Cable television advisory board.
- §64-9-5. Auditor.
- §64-9-6. Commission for the deaf and hard of hearing.
- §64-9-7. Board of dental examiners.
- §64-9-8. Board of licensed practical nurses.
- §64-9-9. Board of medicine.
- §64-9-10. Nursing home administrators licensing board.
- §64-9-11. Board of pharmacy.
- §64-9-12. Board of accountancy.
- §64-9-13. Board of barbers and cosmetologists.
- §64-9-14. Board of examiners of psychologists.
- §64-9-15. Public service commission.
- §64-9-16. Real estate appraiser licensure and certification board.
- §64-9-17. Board of respiratory care.

§64-9-18. Economic development authority.

§64-9-19. Family protection services board.

§64-9-1. Commissioner of agriculture.

1 The legislative rule filed in the state register on the
2 twenty-third day of April, one thousand nine hundred
3 ninety-six, authorized under the authority of section two,
4 article nine, chapter nineteen of this code, modified by the
5 commissioner of agriculture to meet the objections of the
6 legislative rule-making review committee and refiled in the
7 state register on the fourth day of October, one thousand
8 nine hundred ninety-six, relating to the commissioner of
9 agriculture (animal disease control, 61 CSR 1), is
10 authorized.

§64-9-2. Secretary of state.

1 (a) The legislative rule filed in the state register on the
2 twenty-sixth day of August, one thousand nine hundred
3 ninety-six, authorized under the authority of section
4 thirteen, article two, chapter three of this code, relating to
5 the secretary of state (agencies designated to provide voter
6 registration services, 153 CSR 28), is authorized.

7 (b) The legislative rule filed in the state register on the
8 twenty-eighth day of August, one thousand nine hundred
9 ninety-six, authorized under the authority of section six,
0 article one-a, chapter three of this code, modified by the
11 secretary of state to meet the objections of the legislative
12 rule-making review committee and refiled in the state
13 register on the twenty-fifth day of October, one thousand
14 nine hundred ninety-six, relating to the secretary of state
15 (procedures for recount of election returns, 153 CSR 20),
16 is authorized.

17 (c) The legislative rule filed in the state register on the
18 thirtieth day of August, one thousand nine hundred
19 ninety-six, authorized under the authority of section ten,
20 article two, chapter forty-seven of this code, modified by
21 the secretary of state to meet the objections of the
22 legislative rule-making review committee and refiled in the
23 state register on the twenty-fourth day of October, one
24 thousand nine hundred ninety-six, relating to the secretary

25 of state (trademarks and service marks, 153 CSR 29), is
26 authorized.

§64-9-3. Governor's committee on crime, delinquency and correction.

1 (a) The legislative rule filed in the state register on the
2 twenty-eighth day of August, one thousand nine hundred
3 ninety-six, authorized under the authority of section nine,
4 article two-a, chapter forty-eight of this code, modified by
5 the governor's committee on crime, delinquency and
6 correction to meet the objections of the legislative
7 rule-making review committee and refiled in the state
8 register on the twenty-fourth day of October, one
9 thousand nine hundred ninety-six, relating to the
10 governor's committee on crime, delinquency and
11 correction (protocol for law-enforcement response to
12 domestic violence, 149 CSR 3), is authorized.

13 (b) The legislative rule filed in the state register on the
14 twenty-eighth day of August, one thousand nine hundred
15 ninety-six, under the authority of section three, article
16 twenty-nine, chapter thirty of this code, modified by the
17 governor's committee on crime, delinquency and
18 correction to meet the objections of the legislative
19 rule-making review committee and refiled in the state
20 register on the twenty-fifth day of February, one thousand
21 nine hundred ninety-seven, relating to the governor's
22 committee on crime, delinquency and correction (basic
23 training academy, annual in-service and biennial in-service
24 training standards, 149 CSR 2), is authorized.

§64-9-4. Cable television advisory board.

1 (a) The legislative rule filed in the state register on the
2 twenty-seventh day of August, one thousand nine hundred
3 ninety-six, authorized under the authority of section
4 twenty-six, article eighteen, chapter five of this code,
5 modified by the cable television advisory board to meet
6 the objections of the legislative rule-making review
7 committee and refiled in the state register on the
8 eighteenth day of October, one thousand nine hundred
9 ninety-six, relating to the cable television advisory board
10 (implementing regulations, 187 CSR 2), is authorized.

11 (b) The Legislature hereby authorizes and directs the
12 cable television advisory board to amend and promulgate
13 the legislative rule promulgated and final filed in the state
14 register on the seventh day of June, one thousand nine
15 hundred ninety-six, under the authority of section twenty-
16 six, article eighteen, chapter five of this code, relating to
17 the cable television advisory board (calculation and
18 collection of late fees, 187 CSR 6), is authorized with the
19 following amendment:

20 "On page one, by striking out all of section three and
21 inserting in lieu thereof the following:

22 '3.1. Cable operators electing to charge late fees may
23 charge a fixed fee of not more than two dollars on the
24 unpaid balance after the scheduled due date.'"

§64-9-5. Auditor.

1 The legislative rule filed in the state register on the
2 thirtieth day of August, one thousand nine hundred
3 ninety-six, under the authority of section ten, article three,
4 chapter twelve of this code, modified by the auditor to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the fourth
7 day of December, one thousand nine hundred ninety-six,
8 relating to the auditor (standards for requisitions for
9 payment issued by state officers on the auditor, 155 CSR
10 1), is authorized.

§64-9-6. Commission for the deaf and hard of hearing.

1 The legislative rule filed in the state register on the
2 twenty-ninth day of August, one thousand nine hundred
3 ninety-six, under the authority of section nine, article
4 fourteen-a, chapter five of this code, modified by the
5 commission for the deaf and hard of hearing to meet the
6 objections of the legislative rule-making review committee
7 and refiled in the state register on the twenty-sixth day of
8 February, one thousand nine hundred ninety-seven,
9 relating to the commission for the deaf and hard of
10 hearing (fees for qualified interpreters, 192 CSR 1), is
11 authorized.

§64-9-7. Board of dental examiners.

1 The legislative rule filed in the state register on the
2 twenty-first day of June, one thousand nine hundred
3 ninety-six, under the authority of section four-a, article
4 four, chapter thirty of this code, modified by the board of
5 dental examiners to meet the objections of the legislative
6 rule-making review committee and refiled in the state
7 register on the twenty-third day of October, one thousand
8 nine hundred ninety-six, relating to the board of dental
9 examiners (rules for the West Virginia board of dental
10 examiners, 5 CSR 1), is authorized.

§64-9-8. Board of licensed practical nurses.

1 The legislative rule filed in the state register on the
2 fifteenth day of July, one thousand nine hundred
3 ninety-six, under the authority of section five, article
4 seven-a, chapter thirty of this code, modified by the board
5 of licensed practical nurses to meet the objections of the
6 legislative rule-making review committee and refiled in the
7 state register on the twenty-fourth day of September, one
8 thousand nine hundred ninety-six, relating to the board of
9 licensed practical nurses (legal standards of nursing
10 practice for the licensed practical nurse, 10 CSR 3), is
11 authorized.

§64-9-9. Board of medicine.

1 The legislative rule filed in the state register on the
2 ninth day of September, one thousand nine hundred
3 ninety-six, under the authority of section one thousand
4 three hundred four, article thirteen, chapter thirty-one-b of
5 this code, modified by the board of medicine to meet the
6 objections of the legislative rule-making review committee
7 and refiled in the state register on the thirteenth day of
8 February, one thousand nine hundred ninety-seven,
9 relating to the board of medicine (formation and approval
10 of professional limited liability companies, 11 CSR 7), is
11 authorized.

§64-9-10. Nursing home administrators licensing board.

1 The legislative rule filed in the state register on the
2 twenty-first day of May, one thousand nine hundred
3 ninety-six, under the authority of section seven, article

4 twenty-five, chapter thirty of this code, modified by the
5 nursing home administrators licensing board to meet the
6 objections of the legislative rule-making review committee
7 and refiled in the state register on the fourteenth day of
8 November, one thousand nine hundred ninety-six, relating
9 to the nursing home administrators licensing board (rules
10 of the nursing home administrators licensing board, 21
11 CSR 1), is authorized.

§64-9-11. Board of pharmacy.

1 (a) The legislative rule filed in the state register on the
2 seventh day of January, one thousand nine hundred
3 ninety-seven, under the authority of section nineteen,
4 article five, chapter thirty of this code, modified by the
5 board of pharmacy to meet the objections of the
6 legislative rule-making review committee and refiled in the
7 state register on the twenty-sixth day of February, one
8 thousand nine hundred ninety-seven, relating to the board
9 of pharmacy (registration of pharmacy technicians, 15
10 CSR 7), is authorized.

11 (b) The legislative rule filed in the state register on the
12 eighth day of August, one thousand nine hundred
13 ninety-six, under the authority of section six, article nine,
14 chapter sixty-a of this code, modified by the board of
15 pharmacy to meet the objections of the legislative
16 rule-making review committee and refiled in the state
17 register on the twenty-second day of November, one
18 thousand nine hundred ninety-six, relating to the board of
19 pharmacy (controlled substances monitoring, 15 CSR 8),
20 is authorized.

§64-9-12. Board of accountancy.

1 The legislative rule filed in the state register on the
2 thirtieth day of August, one thousand nine hundred
3 ninety-six, under the authority of section three, article
4 nine, chapter thirty of this code, modified by the board of
5 accountancy to meet the objections of the legislative
6 rule-making review committee and refiled in the state
7 register on the twenty-seventh day of February, one
8 thousand nine hundred ninety-seven, relating to the board

9 of accountancy (board rules and rules of professional
10 conduct, 1 CSR 1), is authorized.

§64-9-13. Board of barbers and cosmetologists.

1 (a) The legislative rule filed in the state register on the
2 twenty-ninth day of August, one thousand nine hundred
3 ninety-six, under the authority of section one, article
4 twenty-seven, chapter thirty of this code, modified by the
5 board of barbers and cosmetologists to meet the
6 objections of the legislative rule-making review committee
7 and refiled in the state register on the twenty-seventh day
8 of December, one thousand nine hundred ninety-six,
9 relating to the board of barbers and cosmetologists
10 (schedule of fees, 3 CSR 6), is authorized.

11 (b) The legislative rule filed in the state register on the
12 twenty-ninth day of August, one thousand nine hundred
13 ninety-six, under the authority of section one, article
14 twenty-seven, chapter thirty of this code, modified by the
15 board of barbers and cosmetologists to meet the
16 objections of the legislative rule-making review committee
17 and refiled in the state register on the twenty-seventh day
18 of December, one thousand nine hundred ninety-six,
19 relating to the board of barbers and cosmetologists
20 (procedures, criteria and curricula for examination and
21 licensure of barbers, cosmetologists, manicurists and
22 aestheticians, 3 CSR 1), is authorized.

§64-9-14. Board of examiners of psychologists.

1 (a) The legislative rule filed in the state register on the
2 thirtieth day of August, one thousand nine hundred
3 ninety-six, under the authority of section six, article
4 twenty-one, chapter thirty of this code, modified by the
5 board of examiners of psychologists to meet the
6 objections of the legislative rule-making review committee
7 and refiled in the state register on the twenty-eighth day of
8 February, one thousand nine hundred ninety-seven,
9 relating to the board of examiners of psychologists
10 (qualifications for licensure as a psychologist or school
11 psychologist, 17 CSR 3), is authorized.

12 (b) The legislative rule filed in the state register on the
13 thirtieth day of August, one thousand nine hundred
14 ninety-six, authorized under the authority of section six,
15 article twenty-one, chapter thirty of this code, relating to
16 the board of examiners of psychologists (fees, 17 CSR 1),
17 is disapproved, and not authorized for promulgation.

§64-9-15. Public service commission.

1 The legislative rule filed in the state register on the
2 twenty-sixth day of August, one thousand nine hundred
3 ninety-six, under the authority of section ten, article six,
4 chapter twenty-four of this code, modified by the public
5 service commission to meet the objections of the
6 legislative rule-making review committee and refiled in the
7 state register on the eighth day of January, one thousand
8 nine hundred ninety-seven, relating to the public service
9 commission (rules and regulations for the use of the
10 number "911", 150 CSR 15), is authorized.

§64-9-16. Real estate appraiser licensure and certification board.

1 (a) The legislative rule filed in the state register on the
2 thirty-first day of July, one thousand nine hundred
3 ninety-six, under the authority of section thirty, article
4 fourteen, chapter thirty-seven of this code, modified by
5 the real estate appraiser licensure and certification board
6 to meet the objections of the legislative rule-making
7 review committee and refiled in the state register on the
8 twenty-third day of December, one thousand nine
9 hundred ninety-six, relating to the real estate appraiser
10 licensure and certification board (requirements for
11 licensure and certification, 190 CSR 2), is authorized.

12 (b) The legislative rule filed in the state register on the
13 thirty-first day of July, one thousand nine hundred
14 ninety-six, under the authority of section six, article
15 fourteen, chapter thirty-seven of this code, modified by
16 the real estate appraiser licensure and certification board
17 to meet the objections of the legislative rule-making
18 review committee and refiled in the state register on the
19 twenty-third day of December, one thousand nine
20 hundred ninety-six, relating to the real estate appraiser

21 licensure and certification board (renewal of licensure or
22 certification, 190 CSR 3), is authorized.

§64-9-17. Board of respiratory care.

1 (a) The legislative rule filed in the state register on the
2 twenty-fifth day of July, one thousand nine hundred
3 ninety-six, under the authority of section six, article thirty-
4 four, chapter thirty of this code, modified by the board of
5 respiratory care to meet the objections of the legislative
6 rule-making review committee and refiled in the state
7 register on the twenty-ninth day of October, one thousand
8 nine hundred ninety-six, relating to the board of
9 respiratory care (procedures for licensure application
10 process, 30 CSR 1), is authorized.

11 (b) The legislative rule filed in the state register on the
12 thirtieth day of August, one thousand nine hundred
13 ninety-six, under the authority of section six, article thirty-
14 four, chapter thirty of this code, modified by the board of
15 respiratory care to meet the objections of the legislative
16 rule-making review committee and refiled in the state
17 register on the twenty-ninth day of October, one thousand
18 nine hundred ninety-six, relating to the board of
19 respiratory care (establishment of fees, 30 CSR 2), is
20 authorized.

21 (c) The legislative rule filed in the state register on the
22 thirtieth day of August, one thousand nine hundred
23 ninety-six, under the authority of section five, article
24 thirty-four, chapter thirty of this code, modified by the
25 board of respiratory care to meet the objections of the
26 legislative rule-making review committee and refiled in the
27 state register on the twenty-ninth day of October, one
28 thousand nine hundred ninety-six, relating to the board of
29 respiratory care (continuing education requirements, 30
30 CSR 3), is authorized with the following amendment:

31 "On page two, section 4.3, line two, after the word
32 'subsection' by striking out '2.5' and inserting in lieu
33 thereof '2.1'."

§64-9-18. Economic development authority.

1 The legislative rule filed in the state register on the
2 thirteenth day of February, one thousand nine hundred
3 ninety-six, under the authority of section five, article one,
4 chapter five-e of this code, modified by the economic
5 development authority to meet the objections of the
6 legislative rule-making review committee and refiled in the
7 state register on the thirteenth day of December, one
8 thousand nine hundred ninety-six, relating to the econom-
9 ic development authority (general administration of the
10 West Virginia capital company act: establishment of the
11 application procedures to implement the act, 117 CSR 1),
12 is authorized.

§64-9-19. Family protection services board.

1 The legislative rule filed in the state register on the
2 thirtieth day of August, one thousand nine hundred
3 ninety-six, under the authority of section thirteen, article
4 two-c, chapter forty-eight of this code, modified by the
5 family protection services board to meet the objections of
6 the legislative rule-making review committee and refiled in
7 the state register on the twenty-sixth day of February, one
8 thousand nine hundred ninety-seven, relating to the family
9 protection services board (operation of family protection
10 services board and licensure and funding of domestic
11 violence programs, 191 CSR 1), is authorized.

CHAPTER 122

(Com. Sub. for S. B. 192—By Senators Ross, Anderson, Macnaughtan, Boley and Buckalew)

[Passed April 10, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and two, article ten, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and 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 legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing the division of natural resources to promulgate a legislative rule relating to fertility control of free roaming wildlife; authorizing the division of natural resources to promulgate a legislative rule relating to prohibitions when hunting and trapping; authorizing the division of natural resources to promulgate a legislative rule relating to falconry; and authorizing the manufactured housing construction and safety standards board to promulgate a legislative rule relating to the board.

Be it enacted by the Legislature of West Virginia:

That sections one and two, 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. Division of natural resources.

§64-10-2. Manufactured housing construction and safety standards board.

§64-10-1. Division of natural resources.

1 (a) The legislative rule filed in the state register on the
2 sixteenth day of August, one thousand nine hundred
3 ninety-six, authorized under the authority of section five-
4 d, article two, chapter twenty of this code, modified by the
5 division of natural resources to meet the objections of the
6 legislative rule-making review committee and refiled in the
7 state register on the twenty-seventh day of September, one
8 thousand nine hundred ninety-six, relating to the division
9 of natural resources (fertility control of free roaming
10 wildlife, 58 CSR 66), is authorized.

11 (b) The legislative rule filed in the state register on the
12 sixteenth day of August, one thousand nine hundred
13 ninety-six, authorized under the authority of section seven,
14 article one, chapter twenty of this code, modified by the
15 division of natural resources to meet the objections of the
16 legislative rule-making review committee and refiled in the
17 state register on the twenty-seventh day of September, one
18 thousand nine hundred ninety-six, relating to the division

19 of natural resources (prohibitions when hunting and
20 trapping, 58 CSR 47), is authorized.

21 (c) The legislative rule filed in the state register on the
22 sixteenth day of August, one thousand nine hundred
23 ninety-six, authorized under the authority of section seven,
24 article one, chapter twenty of this code, modified by the
25 division of natural resources to meet the objections of the
26 legislative rule-making review committee and refiled in the
27 state register on the twenty-seventh day of September, one
28 thousand nine hundred ninety-six, relating to the division
29 of natural resources (falconry, 58 CSR 65), is authorized.

§64-10-2. Manufactured housing construction and safety standards board.

1 The legislative rule filed in the state register on the
2 fourteenth day of August, one thousand nine hundred
3 ninety-six, authorized under the authority of section four,
4 article nine, chapter twenty-one of this code, modified by
5 the manufactured housing construction and safety stan-
6 dards board to meet the objections of the legislative
7 rule-making review committee and refiled in the state
8 register on the eleventh day of February, one thousand
9 nine hundred ninety-seven, relating to the manufactured
10 housing construction and safety standards board (manu-
11 factured housing construction and safety standards board,
12 42 CSR 19), is authorized, with the following amendments:

13 "On page two, section three, line fourteen, after the
14 word 'authorized' by striking out the period and adding
15 the following:

16 'with the amendments set forth below:

17 On page 20, subsection 10B.5, line two, after the word
18 'preparation' by inserting the words 'that cannot be
19 performed after the home is leveled as described in the
20 initial home placement evaluation form in 10B.4';

21 On page 20, subsection 10B.5, line two, by striking out
22 the word 'and' and by inserting in lieu thereof the word
23 'or';

24 On page 21, subsection 10B.6(b), line three, by
25 striking out the word 'the' and inserting in lieu thereof
26 the word 'all';

27 On page 21, subsection 10B.6(b), line three, after the
28 word 'installation', by inserting the words 'as set forth in
29 subsection 3.21 of this rule'.

30 On page 24, subsection 13.1, line three, after the word
31 'standards', by striking out the word 'or' and inserting in
32 lieu thereof a comma;

33 On page 24, subsection 13.1, line three, after the word
34 'licensees', by inserting a comma, and the words 'includ-
35 ing, but not limited to, warranty claims, matters concerning
36 the installation of the home and all matters covered by this
37 rule';

38 On page 24, subsection 13.2, line four, after the word
39 'complaints' by adding the words 'Any Licensee may file
40 a complaint with the Board';

41 On page 24, subsection 13.4, line six, by striking the
42 word 'may', and inserting in lieu thereof the word 'must';

43 On page 24, subsection 13.4, after the word distribu-
44 tor, by striking the word 'or' and inserting in lieu thereof
45 a comma;

46 On page 24, subsection 13.4, line eight, after the word
47 'contractor', by adding the words 'or installer';

48 On page 24, subsection 13.6, line two, by striking out
49 the words 'federal or state manufactured housing stan-
50 dard' and inserting in lieu thereof the words 'matter
51 within the Board's jurisdiction as defined by this Rule';

52 On page 25, subsection 13.6, line one, by striking out
53 the words 'the Board's licensee it determines responsible',
54 and inserting in lieu thereof the words 'any and all
55 responsible licensees';

56 On page 25, subsection 13.6, line three, after the word
57 'violated' by adding the words 'If no standard has been
58 violated it shall be so noted in writing to all parties in-
59 volved';

60 On page 25, subsection 13.6, line four, by striking the
61 word 'the' and inserting in lieu thereof the word 'a';

62 And, on page 25, subsection 13.6, line five, after the
63 word 'thirty' by striking out the word 'days' and insert-
64 ing in lieu thereof the following: 'calendar days from
65 receipt of notice'."

CHAPTER 123

(H. B. 2744—By Delegates Douglas, Hunt, Compton,
Faircloth, Linch and Riggs)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to repeal sections six, seven, eight, nine, ten, eleven and twelve, article eleven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, three, four and five of said article, all relating generally to the promulgation of administrative rules by the various executive and administrative agencies; authorizing certain agencies to modify certain legislative rules for the limited purpose of updating and making technical corrections to those legislative rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. TECHNICAL CORRECTONS TO THE CODE OF STATE RULES.

- §64-11-1. West Virginia board of occupational therapy.
- §64-11-2. Division of environmental protection, office of mining and reclamation and office of abandoned mine lands and reclamation.
- §64-11-3. Division of environmental protection, office of air quality.
- §64-11-4. Division of environmental protection, office of water resources.
- §64-11-5. Division of environmental protection, office of waste management.

§64-11-1. West Virginia board of occupational therapy.

- 1 The legislative rule relating to the West Virginia board
- 2 of occupational therapy (administrative rules of the board
- 3 of occupational therapy, 13 CSR 1), effective the ninth

4 day of June, one thousand nine hundred ninety-three, is
5 reauthorized with the following amendments:

6 "On page 1, subsection 2.2, by striking out the words
7 "AOTCB" means the American Occupational Therapy
8 Certification Board', and inserting in lieu thereof the words
9 "NBCOT" means the National Board for Certification in
10 Occupational Therapy.';

11 On page 1, subsection 2.6, by inserting the word 'is'
12 immediately following the word 'license'; and

13 Beginning on page 2, subsection 2.18, and continuing
14 throughout the text of the rule, by striking out the initials
15 'AOTCB' and inserting in lieu thereof the initials
16 'NBCOT'."

**§64-11-2. Division of environmental protection, office of min-
ing and reclamation and office of abandoned mine
lands and reclamation.**

1 (a) The legislative rule relating to the division of envi-
2 ronmental protection, office of mining and reclamation
3 (regulations for mining and reclamation of minerals other
4 than coal, 38 CSR 2B), effective the first day of January,
5 one thousand nine hundred eighty-three, is reauthorized
6 with the following amendments:

7 "Beginning on page 1, and continuing throughout the
8 text of the rule, by renumbering the text breakdown as
9 necessary to conform with the rule of the secretary of state
10 relating to format (standard size and format for rules and
11 procedures for publication of the state register or parts of
12 the state register, 153 CSR 6);

13 Beginning on page 1, in the title, and continuing
14 throughout the text of the rule, by striking out the word
15 'regulations' and inserting in lieu thereof the word 'rule';

16 Beginning on page 1, in the first sentence of section 2,
17 and continuing throughout the text of the rule, by striking
18 out the words 'these regulations' and inserting in lieu
19 thereof the words 'this rule';

20 Beginning on page 2, subsection 2.16, and continuing
21 throughout the text of the rule, by striking out the words
22 'Department of Natural Resources' and inserting in lieu
23 thereof 'Division of Environmental Protection', and by
24 striking out the words 'Division of Reclamation' and
25 inserting in lieu thereof, 'Office of Mining and Reclama-
26 tion';

27 Beginning on page 6, subdivision 5.3.a, and continu-
28 ing throughout the text of the rule, by striking out the
29 words 'Article six-D (6d), Chapter twenty (20), Code of
30 West Virginia', and inserting in lieu thereof the words 'W.
31 Va. Code Chapter 22, Article 4';

32 Beginning on page 8, subsection 6A.2., and continu-
33 ing throughout the text of the rule, by striking out the
34 words 'Division of Water Resources' and inserting in lieu
35 thereof the words 'Office of Water Resources';

36 On page 1, in the title of the rule, by inserting the
37 words 'BUREAU OF ENVIRONMENT' on the third line,
38 and by striking out the words 'MINING AND RECLA-
39 MATION' and inserting in lieu thereof the words 'OF-
40 FICE OF MINING AND RECLAMATION' on the fifth
41 line;

42 On page 1, subsection 1.2, by striking out the words
43 'W.Va. Code §20-1-7 and §20-6D' and inserting in lieu
44 thereof the words 'W. Va. Code § 22-1-3 and § 22-4-1';

45 On page 1, in the first sentence of section 2, by strik-
46 ing out the words 'Article Six (6), Chapter twenty (20),
47 Code of West Virginia' and inserting in lieu thereof the
48 words 'W. Va. Code Chapter 22, Article 4';

49 On page 3, subsection 2.45, by striking out the words
50 'Water Resources' and inserting in lieu thereof the words
51 'Environmental Protection';

52 On page 5, subsection 4.1, by striking out the words
53 'Section eleven A (11a), Article six d (6d), Chapter twenty
54 (20) of the Code of West Virginia' and inserting in lieu
55 thereof 'W. Va. Code § 22-4-11';

56 On page 6, subdivision 5.5.a., by striking out the
57 words 'Reclamation Division' and inserting in lieu thereof
58 the words 'Office of Mining and Reclamation';

59 On page 9, subsection 6A.3, after the words 'State
60 Department of Health', by inserting the words 'and Hu-
61 man Resources';

62 On page 9, subsection 6B.2, by striking the words
63 'section six D (6d) or six E (6e)' and inserting in lieu
64 thereof 'section 6D or 6E';

65 On page 15, subparagraph 7B.a.2.B, by deleting 'sec-
66 tion '7B.1(a)(2)' and inserting in lieu thereof 'paragraph
67 7B.1.a.2';

68 On page 17, subsection 8.6, in the first sentence, by
69 striking out the words 'Article six (D) (6d), Chapter twen-
70 ty (20), Section nine (9), Code of West Virginia', and
71 inserting in lieu thereof, 'W. Va. Code § 22-4-9';

72 And,

73 On page 17, subdivision 9.2.c, by striking out the
74 words 'Section sixteen (16), Article six D (6d), Chapter
75 twenty (20), Code of West Virginia', and inserting in lieu
76 thereof 'W. Va. Code § 22-4-16'."

77 (b) The legislative rule relating to the division of
78 environmental protection, office of mining and reclama-
79 tion (standards for certification of blasters - surface coal
80 mines, 38 CSR 2C), effective the first day of May, one
81 thousand nine hundred ninety-five, is reauthorized with
82 the following amendments:

83 "Beginning on page 1, and continuing throughout the
84 text of the rule, by renumbering the text breakdown as
85 necessary to conform with the rule of the secretary of state
86 relating to format (standard size and format for rules and
87 procedures for publication of the state register or parts of
88 the state register, 153 CSR 6);

89 On page 1, in the title of the rule, by inserting the
90 words 'BUREAU OF ENVIRONMENT' on the third line,
91 and by inserting the words 'OFFICE OF MINING AND
92 RECLAMATION' on the fifth line;

93 And,

94 On page 3, section 4, in the second sentence, by strik-
95 ing out the first appearance of the words 'subparagraph a-
96 k, paragraph 1,' and inserting in lieu thereof the words
97 'paragraphs 5.1.a.1 through 5.1.a.11 of', and by striking
98 out the words 'subparagraph a-k, paragraph 1,' and in-
99 sserting in lieu thereof the words 'paragraphs 5.2.a.1
100 through 5.2.a.11 of'."

101 (c) The legislative rule relating to the division of envi-
102 ronmental protection, office of mining and reclamation
103 (abandoned mine lands reclamation rule, 38 CSR 2D),
104 effective the twenty-sixth day of June, one thousand nine
105 hundred ninety-five, is reauthorized with the following
106 amendments:

107 "Beginning on page 1, in the title, and continuing
108 throughout the text of rule, by striking out the title refer-
109 ence '38' and inserting in lieu thereof the title reference
110 '59';

111 Beginning on page 1, in the title, and continuing
112 throughout the text of the rule, by striking out the series
113 reference '2D' and inserting in lieu thereof the series
114 reference '1';

115 Beginning on page 1, and continuing throughout the
116 text of the rule, by renumbering the text breakdown as
117 necessary to conform with the rule of the secretary of state
118 relating to format (standard size and format for rules and
119 procedures for publication of the state register or parts of
120 the state register, 153 CSR 6);

121 On page 1, in the title of the rule, by inserting the
122 words 'BUREAU OF ENVIRONMENT' on the third line,
123 and by inserting the words 'OFFICE OF ABANDONED
124 MINE LANDS AND RECLAMATION' on the fifth line;

125 On page 3, subparagraph 3.3.b.4.E, by striking out the
126 words 'paragraph (b), (2) of this section' and inserting in
127 lieu thereof the words 'paragraph 3.3.b.2 of this section';

128 On page 3, paragraph 4.3.b.1, by striking out the
129 words 'paragraph a of this section' and inserting in lieu
130 thereof the words 'subdivision 4.3.a of this section';

131 On page 6, subparagraph 4.5.a.7.E, by striking out the
132 words 'subsection (b) or (c)' and inserting in lieu thereof
133 the words 'subparagraph 4.5.a.7.B or 4.5.a.7.C';

134 On page 7, in the first sentence of subdivision 4.5.b.,
135 by striking out the words 'subsection (a) of this section'
136 and inserting in lieu thereof the words 'subdivision 4.5.a
137 of this subsection';

138 On page 7, in the second sentence of subdivision 4.
139 5.b, by striking out the words 'subsection (a) of this sec-
140 tion' and inserting in lieu thereof the words 'subdivision
141 4.5.a of this subsection';

142 On page 8, subdivision 5.3.e, by striking out the refer-
143 ence '2D-5' and inserting in lieu thereof the reference
144 '5';

145 On page 12, paragraph 6.5.e.2, by striking out the
146 words 'paragraph (e) of this section' and inserting in lieu
147 thereof the words 'subdivision 6.5.e of this subsection';

148 On page 12, paragraph 6.5.e.4, by striking out the
149 words 'paragraph (e) of this section' and adding in lieu
150 thereof the words 'subdivision 6.5.e of this subsection';

151 On page 12, subsection 7.1, by adding the prefix
152 'sub' before the word 'section';

153 On page 12, subdivision 7.2.b, by striking out the
154 words 'paragraph (a) of this section' and inserting in lieu
155 thereof the words 'subdivision 7.2.a of this subsection';

156 On page 13, subdivision 7.2.d, by striking out the
157 words '7.3(a)(1),(2), or (3) of this section' and inserting
158 in lieu thereof the words 'paragraphs 7.3.a.1, 2, or 3 of
159 this section';

160 And,

161 On page 14, subdivision 8.4.c, by striking out the
162 words 'section 8.4(b) of this rule' and inserting in lieu
163 thereof the words 'subdivision 8.4.b of this subsection'."

164 (d) The legislative rule relating to the division of
165 environmental protection, office of mining and reclama-
166 tion (groundwater protection regulations coal mining
167 operations, 38 CSR 2F), effective the first day of June, one
168 thousand nine hundred ninety-four, is reauthorized with
169 the following amendments:

170 "Beginning on page 1, and continuing throughout the
171 text of the rule, by renumbering the text breakdown as
172 necessary to conform with the rule of the secretary of state
173 relating to format (standard size and format for rules and
174 procedures for publication of the state register or parts of
175 the state register, 153 CSR 6);

176 On page 1, in the title of the rule, by inserting the
177 words 'BUREAU OF ENVIRONMENT' on the third line,
178 and by striking out the words 'MINING AND RECLA-
179 MATION' and inserting in lieu thereof the words 'OF-
180 FICE OF MINING AND RECLAMATION' on the fifth
181 line;

182 Beginning on page 1, in the title, and continuing
183 throughout the text of the rule, by striking out the word
184 'regulations' and inserting in lieu thereof the word 'rule';

185 Beginning on page 1, subsection 1.1., and continuing
186 throughout the text of the rule, by striking out the words
187 'Chapter 22A, Article 3' and inserting in lieu thereof the
188 words 'Chapter 22, Article 3', and by striking out the
189 words 'Chapter 20, Article 5A' and inserting in lieu there-
190 of the words 'Chapter 22, Article 11';

191 On page 1, subsection 1.1., by striking out the words
192 'Chapter 20-5M-1 et seq. of the West Virginia Code' and
193 inserting in lieu thereof the words 'W. Va. Code § 22-12-
194 1 et seq.';

195 On page 1, subsection 1.2., by striking out the code
196 reference '20-5M-5' and inserting in lieu thereof the
197 code reference '§ 22-12-5';

198 On page 1, subsection 2.1., by striking out the code
199 reference '20-5M-1' and inserting in lieu thereof the
200 code reference '§ 22-12-1';

201 On page 1, subsection 2.2, by striking out the words
202 'subsection (w), Section (3), Article 3, Chapter 22A (the
203 West Virginia Surface Coal Mining and Reclamation Act)
204 of the Code of West Virginia, 1931' and inserting in lieu
205 thereof the words 'W. Va. Code § 22-3-3(u)';

206 On page 2, subsection 2.12., by striking out the code
207 reference '20-5M-5(h)' and inserting in lieu thereof '22-
208 12-5(h)';

209 On page 2, subsection 3.2., by striking out the code
210 reference '20-5A-1' and inserting in lieu thereof the code
211 reference '22-11-1', and by striking out the code refer-
212 ence '22A-3-1' and inserting in lieu thereof the code
213 reference '22-3-1';

214 And,

215 On page 2, subsection 3.2, by striking out the words
216 'Water Resources Board' and inserting in lieu thereof the
217 words 'Environmental Quality Board'."

**§64-11-3. Division of environmental protection, office of air
quality.**

1 (a) The legislative rule relating to the office of air
2 quality (to prevent and control air pollution from coal
3 refuse disposal areas, 45 CSR 1), effective the first day of
4 January, one thousand nine hundred and sixty-five, is
5 reauthorized with the following amendments:

6 "Beginning on page 1, in the title of the rule, by in-
7 serting the words 'OFFICE OF' immediately before the
8 words 'AIR QUALITY';

9 On page 1, subsection 1.2, by striking out the code
10 reference '§16-20-5' and inserting in lieu thereof the
11 code reference '§ 22-5-1 et seq.';

12 On page 1, subsection 2.1, by striking out the words
13 '— The term' and inserting in lieu thereof the word 'or';

14 On page 1, subsection 2.1, and continuing throughout
15 the text of the rule, by striking out the code reference
16 'section two of chapter sixteen, article twenty of the Code
17 of West Virginia, 1931' and inserting in lieu thereof the
18 code reference 'W. Va. Code § 22-5-2';

19 On page 1, subsection 2.2, by striking through the
20 period immediately following the words 'Coal Refuse';

21 On page 1, subsection 2.3, by striking through the
22 period immediately following the words 'Coal Refuse
23 Pile';

24 On page 1, subsection 2.3, by striking through the
25 period immediately following the words 'Coal Refuse
26 Disposal Area';

27 Beginning on page 1, subsection 2.2, and continuing
28 throughout the text of the rule, by striking out the words
29 '— Any', and inserting in lieu thereof the words 'means
30 any';

31 On page 1, subsection 2.5, by striking out the words
32 '— The' and inserting in lieu thereof the words 'means
33 the';

34 Beginning on page 1, subsection 2.6, second para-
35 graph, and continuing throughout the text of the rule, by
36 striking out the word 'regulation' and inserting in lieu
37 thereof the word 'rule';

38 And,

39 Beginning on page 2, subsection 3.1, and continuing
40 throughout the text of the rule, by striking out the word
41 'Commission' and inserting in lieu thereof the word 'Di-
42 rector'."

43 (b) The legislative rule relating to the office of air
44 quality (to prevent and control particulate air pollution
45 from combustion of fuel in indirect heat exchangers, 45
46 CSR 2), effective the first day of May, one thousand nine
47 hundred and ninety-five, is reauthorized with the follow-
48 ing amendments:

49 "Beginning on page 1, and continuing throughout the
50 text of the rule, by renumbering the text breakdown as
51 necessary to conform with the rule of the secretary of state
52 relating to format (standard size and format for rules and
53 procedures for publication of the state register or parts of
54 the state register, 153 CSR 6);

55 On page 1, subsection 2.6, by striking out the code
56 reference 'sections six or eight, article one, chapter twen-
57 ty-two of the West Virginia Code', and inserting in lieu
58 thereof the code reference 'W. Va. Code § 22-1-6 or §
59 22-1-8';

60 On page 2, subdivision 2.12.a, by striking out the
61 apostrophes enclosing the words 'design heat input (dhi)',
62 and inserting in lieu thereof quotation marks;

63 On page 2, subdivision 2.12.b, by striking out the
64 apostrophes enclosing the words 'total design heat input
65 (tdhi)', and inserting in lieu thereof quotation marks,

66 On page 2, subdivision 2.12.c, by striking out the
67 apostrophes enclosing the words 'normal maximum oper-
68 ating load (nmol)', and inserting in lieu thereof quotation
69 marks;

70 On page 2, subsection 2.16, by striking out the word
71 'the' immediately preceding the words '45CSR2';

72 On page 4, subdivision 3.4.g, by striking out the word
73 'regulations', and inserting in lieu thereof the word
74 'rules';

75 On page 5, subsection 7.1, by striking out the words
76 'Code of West Virginia', and inserting in lieu thereof the
77 words 'West Virginia Code';

78 On page 7, subsection 12.1, by striking through the
79 word 'regulation' and inserting in lieu thereof the word
80 'rule'."

81 And,

82 On page 7, subsection 12.1, by striking out the words
83 'rule or regulation', and inserting in lieu thereof the
84 words 'or rule'."

85 (c) The legislative rule relating to the office of air
86 quality (to prevent and control air pollution from the
87 operation of hot mix asphalt plants, 45 CSR 3), effective
88 the twenty-seventh day of October, one thousand nine
89 hundred seventy-nine, is reauthorized with the following
90 amendments:

91 "Beginning on page 1, and continuing throughout the
92 text of the rule, by renumbering the text breakdown as
93 necessary to conform with the rule of the secretary of state
94 relating to format (standard size and format for rules and
95 procedures for publication of the state register or parts of
96 the state register, 153 CSR 6);

97 On page 1, in the title of the rule, by inserting the
98 words 'OFFICE OF' immediately preceding the words
99 'AIR QUALITY';

100 On page 1, subsection 1.2, by striking out the code
101 reference '§16-20-5', and inserting in lieu thereof the
102 code reference '§ 22-5-1 et seq.';

103 On page 1, subsection 2.1, by striking out the code
104 reference 'section two of chapter sixteen, article twenty of
105 the Code of West Virginia', an inserting in lieu thereof the
106 words 'W. Va. Code § 22-5-2';

107 On page 1, subsection 2.2, by striking out the words
108 "Commission" shall mean the West Virginia Air Pollu-
109 tion Control Commission.', and inserting in lieu thereof
110 the words '[RESERVED]';

111 Beginning on page 1, subsection 2.3 and continuing
112 throughout the text of the rule, by striking out the words
113 'shall mean', and inserting in lieu thereof the word
114 'means';

115 On page 1, subsection 2.3, by striking out the words
116 'Air Pollution Control Commission', and inserting in lieu
117 thereof the words 'Division of Environmental Protection';

118 On page 2, subsection 2.11, by striking out the words
119 'shall be', and inserting in lieu thereof the word 'means';

120 Beginning on page 2, subsection 2.11 and continuing
121 throughout the text of the rule, by striking out the word

122 'Commission', and inserting in lieu thereof the word 'Di-
123 rector';

124 On page 2, subsection 2.14, by striking out the word
125 'is';

126 Beginning on page 2, subsection 2.14 and continuing
127 throughout the text of the rule, by striking out the word
128 'regulation', and inserting in lieu thereof the word 'rule';

129 On page 2, subsection 2.15, by striking out the code
130 reference 'section two of chapter sixteen, article twenty of
131 the Code of West Virginia, 1931', and inserting in lieu
132 thereof the code reference 'W. Va. Code § 22-5-1 et seq';

133 On page 3, subsection 6.3, by striking out the code
134 reference 'chapter sixteen, article twenty, section 11(b) of
135 the Code of West Virginia', and inserting in lieu thereof
136 the code reference 'W. Va. Code § 22-5-11';

137 On page 3, subsection 6.3, by striking out the refer-
138 ence 'Regulation 13', and inserting in lieu thereof the
139 reference '45CSR13';

140 And,

141 On page 3, subsection 8.1, by striking out the code
142 reference 'section five of chapter sixteen, article twenty,
143 paragraph seventeen, of the code of West Virginia', and
144 inserting in lieu thereof the code reference 'W. Va. Code
145 §22-5-4'."

146 (d) The legislative rule relating to the office of air
147 quality (to prevent and control the discharge of air pollut-
148 ants into the open air which causes or contributes to an
149 objectionable odor or odors, 45 CSR 4), effective the first
150 day of October, one thousand nine hundred and sixty-
151 seven, is reauthorized with the following amendments:

152 "Beginning on page 2, and continuing throughout the
153 text of the rule, by renumbering the text breakdown as
154 necessary to conform with the rule of the secretary of state
155 relating to format (standard size and format for rules and
156 procedures for publication of the state register or parts of
157 the state register, 153 CSR 6);

158 On page 1, in the title of the rule, by inserting the
159 words 'OFFICE OF' immediately prior to the words AIR
160 QUALITY';

161 On page 1, subsection 1.2, by striking out the code
162 reference '§16-20-5', and inserting in lieu thereof the
163 code reference '§ 22-5-1 et seq';

164 On page 1, subsection 2.3, by striking out the words
165 "Commission" shall mean the West Virginia Air Pollu-
166 tion Control Commission.', and inserting in lieu thereof
167 the words '[RESERVED]';

168 On page 1, subsection 2.1, and continuing throughout
169 the text of the rule, by striking out the words 'shall mean'
170 and inserting in lieu thereof the word 'means';

171 On page 1, subsection 2.6, by striking out the words
172 'Air Pollution Control Commission' and inserting in lieu
173 thereof the word 'Director';

174 Beginning on page 1, subsection 2.7, and continuing
175 throughout the text of the rule, by striking out the word
176 'Commission', and inserting in lieu thereof the word 'Di-
177 rector';

178 Beginning on page 1, subsection 2.7, and continuing
179 throughout the text of the rule, by striking out the word
180 'regulation', and inserting in lieu thereof the word 'rule';

181 And,

182 On page 1, subsection 2.7, by striking out the code
183 reference 'chapter sixteen, article twenty, section two of
184 the Code of West Virginia, 1931,' and inserting in lieu
185 thereof the code reference 'W. Va. Code § 22-5-1 et
186 seq'."

187 (e) The legislative rule relating to the office of air
188 quality (to prevent and control air pollution from the
189 operation of coal preparation plants and coal handling
190 operations, 45 CSR 5), effective the first day of May, one
191 thousand nine hundred and ninety-five, is reauthorized
192 with the following amendments:

193 “Beginning on page 1, and continuing throughout the
194 text of the rule, by renumbering the text breakdown as
195 necessary to conform with the rule of the secretary of state
196 relating to format (standard size and format for rules and
197 procedures for publication of the state register or parts of
198 the state register, 153 CSR 6);

199 On page 1, subsection 1.2, by striking out the code
200 reference ‘§§22-1-3, 22-5-4’, and inserting in lieu thereof
201 the code reference ‘§ 22-5-1 et seq’;

202 On page 1, subsection 2.2, by striking out the words
203 “‘Commission’ means the West Virginia Air Pollution
204 Control Commission.’, and inserting in lieu thereof the
205 words ‘[RESERVED]’;

206 On page 2, subsection 2.20, by striking out the words
207 ‘Department of Commerce, Labor, and Environmental
208 Resources’, and by inserting in lieu thereof the words
209 ‘Division of Environmental Protection’;

210 On page 4, subsection 6.3.c.5, by striking out the
211 words ‘Section 6.3.c.A’, and inserting in lieu thereof the
212 words ‘paragraph 6.3.c.1’;

213 On page 8, subsection 11.3, by striking out the word
214 ‘Commission’, and inserting in lieu thereof the words ‘Air
215 Quality Board’;

216 And,

217 On page 8, subdivision 12.1.a, by striking out the
218 word ‘Commission’, and inserting in lieu thereof the word
219 ‘Director’.”

220 (f) The legislative rule relating to the office of air
221 quality (to prevent and control air pollution from combus-
222 tion of refuse, 45 CSR 6), effective the first day of May,
223 one thousand nine hundred and ninety-five, is
224 reauthorized with the following amendments:

225 “Beginning on page 1, and continuing throughout the
226 text of the rule, by renumbering the text breakdown as
227 necessary to conform with the rule of the secretary of state
228 relating to format (standard size and format for rules and

229 procedures for publication of the state register or parts of
230 the state register, 153 CSR 6);

231 On page 1, subsection 2.1, by striking out the code
232 reference 'section two, article twenty, chapter sixteen of
233 the Code of West Virginia', and inserting in lieu thereof
234 the code reference 'W. Va. Code § 22-5-2';

235 Beginning on page 1, subsection 2.6, and throughout
236 the text of the rule, by striking out the word 'regulation',
237 and inserting in lieu thereof the word 'rule';

238 And,

239 On page 2, subsection 2.18, by striking out the code
240 reference '§22-5-2', and inserting in lieu thereof the code
241 reference '§ 22-5-1 et seq'."

242 (g) The legislative rule relating to the office of air
243 quality (to prevent and control particulate air pollution
244 from manufacturing process operations, 45 CSR 7), effec-
245 tive the twenty-seventh day of April, one thousand nine
246 hundred and ninety-four, is reauthorized with the follow-
247 ing amendments:

248 "Beginning on page 1, and continuing throughout the
249 text of the rule, by renumbering the text breakdown as
250 necessary to conform with the rule of the secretary of state
251 relating to format (standard size and format for rules and
252 procedures for publication of the state register or parts of
253 the state register, 153 CSR 6);

254 On page 1, in the title of the rule, by striking out the
255 words 'AIR POLLUTION CONTROL COMMISSION',
256 and inserting in lieu thereof the words 'DIVISION OF
257 ENVIRONMENTAL PROTECTION' on one line and
258 'OFFICE OF AIR QUALITY' on the next line;

259 On page 1, subsection 1.2, by striking out the code
260 reference '§16-20-5', and inserting in lieu thereof the
261 code reference '§ 22-5-1 et seq';

262 On page 1, subsection 2.1, by striking out the code
263 reference '§16-20-2', and inserting in lieu thereof the
264 code reference '§22-5-2';

265 On page 1, subsection 2.2, by striking out the words
266 ““Commission” means the West Virginia Air Pollution
267 Control Commission.’, and inserting in lieu thereof the
268 words ‘[RESERVED]’;

269 On page 1, subsection 2.3, by striking out the words
270 ‘shall mean’, and inserting in lieu thereof the word
271 ‘means’;

272 Beginning on page 1, subsection 2.8, and continuing
273 throughout the text of the rule, by striking out the word
274 ‘Chief’, and inserting in lieu thereof the word ‘Director’;

275 On page 4, subsection 2.44, by striking out the words
276 ““Chief of Air Quality” or “Chief” means the Chief of
277 the Office of Air Quality or his or her designated repre-
278 sentative appointed by the Director of the Division of
279 Environmental Protection pursuant to the provisions of W.
280 Va. Code §22-1-1, et seq., as amended.’, and inserting in
281 lieu thereof the words ‘[RESERVED]’;

282 On page 4, subsection 2.45, by striking out the words
283 ‘Department of Commerce, Labor, and Environmental
284 Resources’, and inserting in lieu thereof the words ‘Divi-
285 sion of Environmental Protection’;

286 On page 5, paragraph 3.3.e.3, by striking out the ref-
287 erences ‘3.3.e.A. or 3.3.e.B’ and inserting in lieu thereof
288 the references ‘3.3.e.1 or 3.3.e.2’;

289 On page 6, paragraph 3.4.e.3, by striking out the ref-
290 erences ‘3.4.e.A. and 3.4.e.B’, and inserting in lieu there-
291 of the references ‘3.4.e.1 and 3.4.e.2’;

292 On page 11, section 7, by striking through the code
293 reference ‘§16-20-1, et seq.’, and inserting in lieu thereof
294 the code reference ‘§ 22-5-1, et seq.’;

295 And,

296 On page 11, section 7, by striking through the words
297 ‘this agency’, and inserting in lieu thereof the reference
298 ‘Title 45’.

299 (h) The legislative rule relating to the office of air
300 quality (ambient air quality standards for sulfur oxides

301 and particulate matter, 45 CSR 8), effective the twenty-
302 fifth day of April, one thousand nine hundred and ninety,
303 is reauthorized with the following amendments:

304 "Beginning on page 1, and continuing throughout the
305 text of the rule, by renumbering the text breakdown as
306 necessary to conform with the rule of the secretary of state
307 relating to format (standard size and format for rules and
308 procedures for publication of the state register or parts of
309 the state register, 153 CSR 6);

310 On page 1, subsection 2.3, by striking out the words
311 "Commission" means the West Virginia Air Pollution
312 Control Commission', and inserting in lieu thereof the
313 words '[RESERVED]';

314 Beginning on page 1, subsection 1.1, and continuing
315 throughout the text of the rule, by striking out the word
316 'Commission', and inserting in lieu thereof the word 'Di-
317 rector';

318 On page 1, subsection 1.2, by striking out the code
319 references '§§16-20-5 and 16-20-1 through 13', and
320 inserting in lieu thereof the code reference '§ 22-5-1 et
321 seq';

322 On page 1, subsection 2.2, by striking out the code
323 reference 'WV Code 16-20-2', and inserting in lieu there-
324 of the code reference 'W. Va. Code § 22-5-2';

325 Beginning on page 2, section 5, and continuing
326 throughout the text of the rule, by striking out the word
327 'regulation', and inserting in lieu thereof the word 'rule';

328 And,

329 On page 2, section 5, immediately following the word
330 'method', by striking out the word 'rule'."

331 (i) The legislative rule relating to the office of air
332 quality (regulations pertaining to ambient air quality stan-
333 dards for carbon monoxide, nonmethane hydrocarbons,
334 and ozone, 45 CSR 9), effective the twenty-second day of
335 October, one thousand nine hundred and eighty, is
336 reauthorized with the following amendments:

337 "Beginning on page 1, and continuing throughout the
338 text of the rule, by renumbering the text breakdown as
339 necessary to conform with the rule of the secretary of state
340 relating to format (standard size and format for rules and
341 procedures for publication of the state register or parts of
342 the state register, 153 CSR 6);

343 On page 1, in the title of the rule, by inserting the
344 words 'OFFICE OF' immediately preceding the words
345 'AIR QUALITY';

346 On page 1, in the title of the rule, by striking out the
347 word 'REGULATIONS', and by inserting in lieu thereof
348 the word 'RULES';

349 On page 1, subsection 1.2, by striking out the code
350 reference '§16-20-5', and inserting in lieu thereof the
351 code reference '§ 22-5-1 et seq.';

352 On page 1, subsection 3.3, by striking out the words
353 "Commission" shall mean the West Virginia Air Pollu-
354 tion Control Commission', and by inserting in lieu thereof
355 the words '[RESERVED]';

356 Beginning on page 1, subsection 2.1, and continuing
357 throughout the text of the rule, by striking out the word
358 'Commission', and inserting in lieu thereof the word 'Di-
359 rector';

360 Beginning on page 1, subsection 3.1, and continuing
361 throughout the text of the rule, by striking out the words
362 'shall mean', and inserting in lieu thereof the word
363 'means';

364 On page 1, subsection 3.2, by striking out the code
365 reference 'section two of chapter sixteen, article twenty of
366 the Code of West Virginia', and inserting in lieu thereof
367 the code reference 'W. Va. Code § 22-5-2';

368 On page 2, subsection 3.7, by striking out the word
369 'regulation', and inserting in lieu thereof the word 'rule';

370 And,

371 Beginning on page 2, subsection 5.1, and continuing
372 throughout the text of the rule, by striking out the words

373 'West Virginia Air Pollution Control Commission', and
374 inserting in lieu thereof the word 'Director'."

375 (j) The legislative rule relating to the office of air
376 quality (to prevent and control air pollution from the
377 emission of sulfur oxides, 45 CSR 10), effective the twen-
378 ty-seventh day of April, one thousand nine hundred and
379 ninety-four, is reauthorized with the following amend-
380 ments:

381 "Beginning on page 1, and continuing throughout the
382 text of the rule, by renumbering the text breakdown as
383 necessary to conform with the rule of the secretary of state
384 relating to format (standard size and format for rules and
385 procedures for publication of the state register or parts of
386 the state register, 153 CSR 6);

387 On page 1, in the title of the rule, by inserting the
388 words 'OFFICE OF' immediately preceding the words
389 'AIR QUALITY';

390 On page 1, subsection 2.3, by striking out the words
391 "Commission" means the West Virginia Air Pollution
392 Control Commission.", and inserting in lieu thereof the
393 words '[RESERVED]';

394 Beginning on page 1, subdivision 1.1.b, and continu-
395 ing throughout the text of the rule, by striking out the
396 word 'Commission', and inserting in lieu thereof 'Direc-
397 tor';

398 On page 1, subsection 1.2, by striking out the code
399 reference '§16-20-5', and inserting in lieu thereof the
400 code reference '§ 22-5-1 et seq';

401 On page 1, subsection 2.1, by striking out the code
402 reference '§16-20-2', and inserting in lieu thereof the
403 code reference '§ 22-5-2';

404 On page 2, subsection 2.17, by striking out the words
405 "Chief of Air Quality" or "Chief" means the Chief of
406 the Office of Air Quality or his or her designated repre-
407 sentative appointed by the Director of the Division of
408 Environmental Protection pursuant to the provisions of W.

409 Va. Code §22-1-1, et seq, as amended.’, and inserting in
410 lieu thereof the words ‘[RESERVED]’;

411 On page 2, subsection 2.18, by striking out the words
412 ‘that Division of the West Virginia Department of Com-
413 merce, Labor, and Environmental Resources’, and insert-
414 ing in lieu thereof the words ‘the Division of Environmen-
415 tal Protection’;

416 Beginning on page 4, subdivision 3.4.b, and continu-
417 ing throughout the text of the rule, by striking out the
418 word ‘Chief’, and inserting in lieu thereof the word ‘Di-
419 rector’;

420 On page 4, subdivision 3.8.a, by striking out the words
421 ‘paragraphs (b), (c), (d), (e), and (f) following’, and in-
422 serting in lieu thereof the words ‘subdivisions 3.8.b
423 through 3.8.f’;

424 And,

425 On page 6, subsection 5.1, by striking out the words
426 ‘§16-20-1, et seq., as amended, and Series 13 of this agen-
427 cy’, and inserting in lieu thereof the words ‘§ 22-5-1 et
428 seq., as amended, and 45CSR13’.”

429 (k) The legislative rule relating to the office of air
430 quality (prevention of air pollution emergency episodes,
431 45 CSR 11), effective of the twenty-fifth day of April, one
432 thousand, nine hundred and ninety, is reauthorized with
433 the following amendments:

434 “On page 1, in the title of the rule, by inserting the
435 words ‘OFFICE OF’ immediately preceding the words
436 ‘AIR QUALITY’;

437 On page 1, subsection 1.2, by striking out the code
438 references ‘§§16-20-5 and 16-20-1-13’, and inserting in
439 lieu thereof the code reference ‘§ 22-5-1 et seq’;

440 On page 1, subsection 2.2, by striking out the words
441 “‘Commission” means the West Virginia Air Pollution
442 Control Commission.’, and inserting in lieu thereof the
443 words ‘[RESERVED]’;

444 On page 1, subsection 2.3, by striking out the words
445 'West Virginia Air Pollution Control Commission', and
446 inserting in lieu thereof the words 'Division of Environ-
447 mental Protection';

448 Beginning on page 1, subsection 2.6, and continuing
449 throughout the text of the rule, by striking out the word
450 'regulation', and inserting in lieu thereof the word 'rule';

451 Beginning on page 1, subsection 3.1, and continuing
452 throughout the text of the rule, by striking out the words
453 'and/or Commission';

454 Beginning on page 2, subdivision 3.1.a, and continu-
455 ing throughout the text of the rule, by striking out the
456 words 'West Virginia Air Pollution Control Commission',
457 and inserting in lieu thereof the word 'Director';

458 Beginning on page 1, subsection 1.1, and continuing
459 throughout the text of the rule, by striking out the word
460 'Commission', and inserting in lieu thereof the word 'Di-
461 rector';

462 On page 3, subsection 3.2, striking out the reference
463 'WV Code §45-11-6', and inserting in lieu thereof the
464 words 'Section 6 of this rule';

465 On page 4, subsection 6.2, and continuing throughout
466 the text of the rule, by striking out the reference 'W. Va.
467 Code §45-11-5', and inserting in lieu thereof the words
468 'Section 5 of this rule';

469 On page 5, subsection 7.1, by striking out the code
470 reference 'W. Va. Code §16-20-10', and inserting in lieu
471 thereof the code reference 'W. Va. Code §22-5-8';

472 On page 5, section 8, in the heading, by striking out
473 the word 'Regulations', and inserting in lieu thereof the
474 word 'Rules';

475 And,

476 On page 5, subsection 8.1, by striking out the words
477 'rule' immediately preceding the words 'or rule'."

478 (l) The legislative rule relating to the office of air
479 quality (ambient air quality standard for nitrogen dioxide,
480 45 CSR 12), effective the fifteenth day of March, one
481 thousand nine hundred and seventy-two, is reauthorized
482 with the following amendments:

483 "Beginning on page 1, and continuing throughout the
484 text of the rule, by renumbering the text breakdown as
485 necessary to conform with the rule of the secretary of state
486 relating to format (standard size and format for rules and
487 procedures for publication of the state register or parts of
488 the state register, 153 CSR 6);

489 On page 1, in the title of the rule, by inserting the
490 words 'OFFICE OF' immediately preceding the words
491 'AIR QUALITY';

492 On page 1, subsection 1.2, by striking out the code
493 reference '§16-20-5', and inserting in lieu thereof the
494 code reference '§ 22-5-1 et seq';

495 On page 1, subsection 3.3, by striking out the words
496 "'Commission shall mean the West Virginia Air Pollution
497 Control Commission', and by inserting in lieu thereof the
498 words '[RESERVED]';

499 On page 2, subsection 5.1, by striking out the words
500 'West Virginia Air Pollution Control Commission', and
501 inserting in lieu thereof the word 'Director';

502 Beginning on page 1, subsection 2.1, and continuing
503 throughout the text of the rule, by striking out the word
504 "Commission", and inserting in lieu thereof the word
505 'Director';

506 Beginning on page 1, subsection 3.1, and continuing
507 throughout the text of the rule, by striking out the words
508 'shall mean', and inserting in lieu thereof the word
509 'means';

510 On page 1, subsection 3.2, by striking out the code
511 reference '§16-20-2', and inserting in lieu thereof the
512 code reference '§ 22-5-2';

513 And,

514 On page 1, subsection 3.5, by striking out the word
515 'regulation', and inserting in lieu thereof the word
516 'rule'."

517 (m) The legislative rule relating to the office of air
518 quality (permits for construction, modification, relocation
519 and operation of stationary sources of air pollutants, noti-
520 fication requirements, temporary permits, general permits,
521 and procedures for evaluation, 45 CSR 13), effective the
522 twenty-seventh day of April, one thousand nine hundred
523 and ninety-four, is reauthorized with the following amend-
524 ments:

525 "Beginning on page 1, and continuing throughout the
526 text of the rule, by renumbering the text breakdown as
527 necessary to conform with the rule of the secretary of state
528 relating to format (standard size and format for rules and
529 procedures for publication of the state register or parts of
530 the state register, 153 CSR 6);

531 On page 1, in the title of the rule, by inserting the
532 words 'OFFICE OF' immediately prior to the words 'AIR
533 QUALITY';

534 On page 1, subsection 1.2, by striking out the code
535 reference '§16-20-5', and inserting in lieu thereof the
536 code reference '§ 22-5-1 et seq';

537 On page 2, subsection 2.4, by striking out the words
538 "Chief of Air Quality" or "Chief" means the Chief of
539 the Office of Air Quality or his or her designated repre-
540 sentative appointed by the Director of the Division of
541 Environmental Protection pursuant to the provisions of W.
542 Va. Code §22-1-1, et seq.', and by inserting in lieu there-
543 of the words '[RESERVED]';

544 Beginning on page 1, subdivision 2.1.a, and continu-
545 ing throughout the text of the rule, by striking out the
546 word 'Chief', and inserting in lieu thereof the word 'Di-
547 rector';

548 On page 1, subsection 2.3, by striking out the code
549 reference 'article twenty, chapter sixteen of the W. Va.

550 Code', and inserting in lieu thereof the code reference 'W.
551 Va. Code § 22-5-2';

552 On page 2, subsection 2.7, by striking out the words
553 "Commission" means the West Virginia Air Pollution
554 Control Commission', and inserting in lieu thereof the
555 words '[RESERVED]';

556 On page 2, subsection 2.10, by striking out the words
557 'that division of the Department of Commerce, Labor and
558 Environmental Resources', and inserting in lieu thereof
559 the words 'the Division of Environmental Protection';

560 On page 3, paragraph 2.17.b.2, by striking out the
561 words 'subparagraph 2.13.b.A', and inserting in lieu
562 thereof the words 'paragraph 2.17.b.1';

563 On page 3, subdivision 2.17.c, by striking out the
564 words 'subparagraph 2.13.b.A', and inserting in lieu
565 thereof the words 'paragraph 2.17.b.1';

566 On page 10, subsection 11.2, by striking out the words
567 'Commission rules', and inserting in lieu thereof the
568 words 'rules of the Director';

569 Beginning on page 4, subdivision 2.21.d, and contin-
570 uing throughout the text of the rule, by striking out the
571 word 'Commission', and inserting in lieu thereof the word
572 'Director';

573 On page 5, subsection 2.28, by striking out the code
574 reference 'chapter sixteen, article twenty, section two of
575 the Code of West Virginia, 1931', and inserting in lieu
576 thereof the code reference 'W. Va. Code § 22-5-1 et
577 seq.';

578 And,

579 Beginning on page 6, subsection 4.4, and continuing
580 throughout the text of the rule, by striking out the code
581 reference '§16-20-1', and inserting in lieu thereof the
582 code reference '§ 22-5-1'."

583 (n) The legislative rule relating to the office of air
584 quality (permits for construction and major modification
585 of major stationary sources of air pollution for the preven-

586 tion of significant deterioration, 45 CSR 14), effective the
587 first day of May, one thousand nine hundred and ninety-
588 five, is reauthorized with the following amendment:

589 "Beginning on page 1, and continuing throughout the
590 text of the rule, by renumbering the text breakdown as
591 necessary to conform with the rule of the secretary of state
592 relating to format (standard size and format for rules and
593 procedures for publication of the state register or parts of
594 the state register, 153 CSR 6);

595 On page 3, subsection 2.11, by striking out the words
596 "Chief of the Office of Air Quality" or "Chief" means
597 the principal administrative officer of the Office of Air
598 Quality or other designated representative appointed by
599 the Director of the Division of Environmental Protection
600 pursuant to the provisions of W. Va. Code §22-1-1 et
601 seq.', and inserting in lieu thereof the words '[RE-
602 SERVED]'."

603 (o) The legislative rule relating to the office of air
604 quality (emission standards for hazardous air pollutants
605 pursuant to 40 CFR part 61, 45 CSR 15), effective the first
606 day of May, one thousand nine hundred and ninety-five,
607 is reauthorized with the following amendment:

608 "Beginning on page 1, and continuing throughout the
609 text of the rule, by renumbering the text breakdown as
610 necessary to conform with the rule of the secretary of state
611 relating to format (standard size and format for rules and
612 procedures for publication of the state register or parts of
613 the state register, 153 CSR 6)."

614 (p) The legislative rule relating to the office of air
615 quality (to prevent and control particulate air pollution
616 from materials handling, preparation, storage and sources
617 of fugitive particulate matter, 45 CSR 17), effective the
618 first day of May, 1979, is reauthorized with the following
619 amendments:

620 "On page 1, in the title of the rule, by inserting the
621 words 'OFFICE OF' immediately preceding the words
622 'AIR QUALITY';

623 On page 1, subsection 3.2, by striking out the words
624 ““Commission” shall mean the West Virginia Air Pollu-
625 tion Control Commission.’; and inserting in lieu thereof
626 the words ‘[RESERVED]’;

627 On page 1, subsection 3.3, by striking out the words
628 ‘Air Pollution Control Commission’, and inserting in lieu
629 thereof the words ‘Division of Environmental Protection’;

630 Beginning on page 1, subsection 1.1, and continuing
631 throughout the text of the rule, by striking out the word
632 ‘Commission’, and inserting in lieu thereof the word ‘Di-
633 rector’;

634 On page 3, section 12, by striking out the words ‘or
635 regulation’;

636 Beginning on page 1, subsection 1.1, and continuing
637 throughout the text of the rule, by striking out the word
638 ‘regulation’, and inserting in lieu thereof the word ‘rule’;

639 On page 1, subsection 1.2, by striking out the code
640 reference ‘W.V. Code §16-20-5’, and inserting in lieu
641 thereof the code reference ‘W. Va. Code § 22-5-1 et seq’;

642 On page 1, subsection 3.1, by striking out the code
643 reference ‘section two of chapter sixteen, article twenty of
644 the Code of West Virginia’, and inserting in lieu thereof
645 the code reference ‘W. Va. Code § 22-5-2’;

646 Beginning on page 1, subsection 3.4, and continuing
647 throughout the text of the rule, by striking out the words
648 ‘shall mean’, and inserting in lieu thereof the word
649 ‘means’;

650 On page 2, subsection 3.11, by striking out the words
651 ‘shall include, but not be’, and inserting in lieu thereof the
652 words ‘includes, but is not’;

653 On page 2, subsection 3.12, by striking out the code
654 reference ‘section two of chapter sixteen, article twenty of
655 the Code of West Virginia’, and inserting in lieu thereof
656 the code reference ‘W. Va. Code § 22-5-1 et seq’;

657 And,

658 On page 3, subsection 9.1, by striking out the code
659 reference 'chapter sixteen, article twenty, section five,
660 subsection seventeen of the Code of West Virginia', and
661 inserting in lieu thereof the code reference 'W. Va. Code
662 § 22-5-4'."

663 (q) The legislative rule relating to the office of air
664 quality (to prevent and control particulate air pollution
665 from direct meat-firing devices, 45 CSR 18), effective the
666 first day of May, one thousand nine hundred and seventy-
667 nine, is reauthorized with the following amendments:

668 "On page 1, in the title of the rule, by inserting the
669 words 'OFFICE OF' immediately preceding the words
670 'AIR QUALITY';

671 On page 1, subsection 1.2, by striking out the code
672 reference '§16-20-5', and inserting in lieu thereof the
673 code reference '§ 22-5-1 et seq';

674 On page 1, subsection 2.1, by striking out the code
675 reference 'Section Two of Chapter Sixteen, Article Twenty
676 of the Code of West Virginia', and inserting in lieu thereof
677 the code reference 'W. Va. Code § 22-5-2';

678 On page 1, subsection 2.3, by striking out the words
679 "'Commission" shall mean the West Virginia Air Pollu-
680 tion Control Commission.', and inserting in lieu thereof
681 the words '[RESERVED]';

682 Beginning on page 1, subsection 2.2, and continuing
683 throughout the text of the rule, by striking out the words
684 'shall mean', and inserting in lieu thereof the word
685 'means';

686 On page 1, subsection 2.4, by striking out the words
687 'Air Pollution Control Commission', and inserting in lieu
688 thereof the words 'Division of Environmental Protection';

689 On page 1, subsection 2.8, by striking out the words
690 'shall be', and inserting in lieu thereof the word 'means';

691 Beginning on page 1, subsection 2.8, and continuing
692 throughout the text of the rule, by striking out the word
693 'Commission', and inserting in lieu thereof the word 'Di-
694 rector';

695 Beginning on page 2, subsection 2.15, and continuing
696 throughout the text of the rule, by striking out the word
697 'regulation', and inserting in lieu thereof the word 'rule';

698 On page 2, subsection 2.15, by striking out the code
699 reference 'Chapter Sixteen, Article Twenty, Section Two
700 of the Code of West Virginia', and inserting in lieu thereof
701 the code reference 'W. Va. Code § 22-5-1 et seq';

702 On page 2, subsection 5.1, by striking out the code
703 reference 'Section Five of Chapter Sixteen, Article Twen-
704 ty, Paragraph Seventeen of the Code of West Virginia',
705 and inserting in lieu thereof the code reference 'W. Va.
706 Code § 22-5-4';

707 On page 2, section 6, by striking out the code refer-
708 ence 'Section Two of Chapter Sixteen, Article Twenty,
709 Paragraph 11b of the Code of West Virginia', and insert-
710 ing in lieu thereof the code reference 'W. Va. Code § 22-
711 5-11';

712 And,

713 On page 2, section 6, by striking out the word 'Regu-
714 lation 13 of this agency', and inserting in lieu thereof the
715 reference '45CSR13'."

716 (r) The legislative rule relating to the office of air
717 quality (requirements for pre-construction review, deter-
718 mination of emission offsets for proposed new or modi-
719 fied stationary sources of air pollutants and emission trad-
720 ing for intrasource pollutants, 45 CSR 19), effective the
721 seventh day of July, one thousand nine hundred ninety-
722 three, is reauthorized with the following amendments:

723 "Beginning on page 1, and continuing throughout the
724 text of the rule, by renumbering the text breakdown as
725 necessary to conform with the rule of the secretary of state
726 relating to format (standard size and format for rules and
727 procedures for publication of the state register or parts of
728 the state register, 153 CSR 6);

729 On page 1, in the title of the rule, by inserting the
730 words 'OFFICE OF' immediately preceding the words
731 'AIR QUALITY';

732 On page 2, subsection 2.9, by striking out the words
733 “Chief of Air Quality” or “Chief” means the Chief of
734 the Office of Air Quality or his or her designated repre-
735 sentative appointed by the Director of the Division of
736 Environmental Protection pursuant to the provisions of
737 §22-1-1, et seq., of the West Virginia Code.’, and inserting
738 in lieu thereof the words ‘[RESERVED]’;

739 On page 2, subsection 2.11, by striking out the words
740 “Commission” means the West Virginia Air Pollution
741 Control Commission.’, and inserting in lieu thereof the
742 words ‘[RESERVED]’;

743 On page 2, subsection 2.2, by striking out the words
744 ‘Commission or Chief’, and inserting in lieu thereof the
745 word ‘Director’;

746 Beginning on page 1, subsection 1.1, and continuing
747 throughout the text of the rule, by striking out the word
748 ‘Commission’, and inserting in lieu thereof the word ‘Di-
749 rector’;

750 Beginning on page 1, subsection 1.1, and continuing
751 throughout the text of the rule, by striking out the word
752 ‘regulation’, and inserting in lieu thereof the word ‘rule’;

753 On page 1, subsection 1.1, by striking out the code
754 reference ‘Chapter 16, Article 20, of the code of West
755 Virginia, of 1931, as amended, (the Code)’, and inserting
756 in lieu thereof the code reference ‘W. Va. Code § 22-5-1
757 et seq., as amended’;

758 On page 1, subsection 1.2, by striking out the code
759 reference ‘§16-20-5’, and inserting in lieu thereof the
760 code reference ‘§ 22-5-1 et seq.’;

761 On page 1, subsection 1.5, by striking out the words
762 ‘1.5 Type. This regulation is a legislative rule as defined
763 in West Virginia Code, Chapter 29A, Article 2’;

764 Beginning on page 1, subdivision 2.1.a, and continu-
765 ing throughout the text of the rule, by striking out the
766 word ‘Chief’, and inserting in lieu thereof the word ‘Di-
767 rector’;

768 On page 2, subsection 2.3, by striking out the words
769 'the West Virginia Administrative Regulations of the Air
770 Pollution Control Commission', and inserting in lieu
771 thereof the words 'rules of the Director';

772 On page 2, subsection 2.3, by striking out the words
773 'the Code of West Virginia, of 1931', and inserting in lieu
774 thereof the code reference 'W. Va. Code § 22-5-1 et
775 seq.';

776 On page 2, subsection 2.6, by striking out the code
777 reference 'Section Two of the West Virginia Code 16-20,
778 as amended', and inserting in lieu thereof the code refer-
779 ence 'W. Va. Code § 22-5-2';

780 On page 2, subsection 2.10, by striking out the code
781 reference 'Chapter 16, Article 20, of the Code of West
782 Virginia of 1931', and inserting in lieu thereof the code
783 reference 'W. Va. Code § 22-5-1 et seq.';

784 On page 2, subsection 2.10, by striking out the code
785 reference 'Chapter 20, Article 5E of the Code of West
786 Virginia of 1931', and inserting in lieu thereof the code
787 reference 'W. Va. Code § 22-18-1 et seq.';

788 On page 3, subsection 2.15, by striking out the words
789 'that Division of the Department of Commerce, Labor and
790 Environmental Resources', and inserting in lieu thereof
791 the words 'the Division of Environmental Protection';

792 On page 8, subsection 2.47, by striking out the code
793 reference 'Chapter 16, Article 20, Section 2, of the Code
794 of West Virginia, 1931', and inserting in lieu thereof the
795 code reference 'W. Va. Code § 22-5-1 et seq.';

796 On page 9, paragraph 4.1.a.2, by striking out the code
797 reference 'Chapter 16, Article 20, of the Code of West
798 Virginia, 1931', and inserting in lieu thereof the code
799 reference 'W. Va. Code § 22-5-1 et seq.';

800 On page 9, paragraph 4.1.a.4, by striking out the
801 words 'Subparagraph 4.1.a.C', and inserting in lieu there-
802 of the words 'paragraph 4.1.a.3';

803 On page 10, subdivision 6.1.a, by striking out the
804 words 'Subparagraphs 4.1.a.C and D', and inserting in
805 lieu thereof the words 'paragraphs 4.1.a.3 and 4.1.a.4';

806 On page 10, paragraph 6.1.b.1, by striking out the
807 words 'Subparagraphs 4.1.a.C and D', and inserting in
808 lieu thereof the words 'paragraphs 4.1.a.3 and 4.1.a.4';

809 On page 12, paragraph 8.2.d.1, by striking out the
810 words 'Subparagraph 4.1.a.D', and inserting in lieu there-
811 of the words 'paragraph 4.1.a.4';

812 On page 12, paragraph 8.2.d.2, by striking out the
813 words 'Subparagraphs 4.1.a.C and 8.2.a.A', and inserting
814 in lieu thereof the words 'paragraphs 4.1.a.3 and 8.2.a.1';

815 And,

816 Beginning on page 13, subsection 9.3, and continuing
817 throughout the text of the rule, by striking out the code
818 reference 'Chapter 16, Article 20, Section 5 (17) of the
819 Code', and inserting in lieu thereof the code reference 'W.
820 Va. Code § 22-5-4'."

821 (s) The legislative rule relating to the office of air
822 quality (good engineering practice as applicable to stack
823 heights, 45 CSR 20), effective the fourteenth day of July,
824 one thousand nine hundred and eighty-nine, is
825 reauthorized with the following amendments:

826 "Beginning on page 1, and continuing throughout the
827 text of the rule, by renumbering the text breakdown as
828 necessary to conform with the rule of the secretary of state
829 relating to format (standard size and format for rules and
830 procedures for publication of the state register or parts of
831 the state register, 153 CSR 6);

832 On page 1, in the title of the rule, by inserting the
833 words 'OFFICE OF' immediately preceding the words
834 'AIR QUALITY';

835 Beginning on page 1, subsection 1.1, and continuing
836 throughout the text of the rule, by striking out the word
837 'regulation', and inserting in lieu thereof the word 'rule';

838 On page 1, subsection 1.2, by striking out the code
839 reference '§16-20-5', and inserting in lieu thereof the
840 code reference '§ 22-5-1 et seq';

841 On page 3, subdivision 2.6.a, by striking out the words
842 'APCC Regulation XIV', and inserting in lieu thereof the
843 words '45CSR14';

844 On page 3, subdivision 2.6.a, by striking out the words
845 'Regulation XVI', and inserting in lieu thereof the words
846 '45CSR16';

847 On page 4, subsection 2.8, by striking out the words
848 'West Virginia Air Pollution Control Commission', and
849 inserting in lieu thereof the words 'Division of Environ-
850 mental Protection';

851 On page 4, subsection 2.12, by striking out the words
852 "'Commission" means the West Virginia Air Pollution
853 Control Commission.', and inserting in lieu thereof the
854 words '[RESERVED]';

855 Beginning on page 3, paragraph 2.6.b.1, and continu-
856 ing throughout the text of the rule, by striking out the
857 word 'Commission', and inserting in lieu thereof the word
858 'Director';

859 On page 3, subdivision 2.7.a, by striking out the words
860 'APCC Regulation XV', and inserting in lieu thereof the
861 words '45CSR15';

862 On page 4, subdivision 2.7.a, by striking out the words
863 'APCC Regulation XVI', and inserting in lieu thereof the
864 words '45CSR16';

865 On page 4, subsection 2.11, by striking out the code
866 reference '§16-20-2, 1931', and inserting in lieu thereof
867 the code reference '§ 22-5-2';

868 On page 4, subsection 2.14, by striking out the code
869 reference '§16-20-2, 1931', and inserting in lieu thereof
870 the code reference '§ 22-5-1, et seq';

871 On page 4, subdivision 3.2.b, by striking out the words
872 'APCC Regulation XIV', and inserting in lieu thereof the
873 words '45CSR14';

874 On page 4, subsection 4.1, by striking out the words
875 'Sub-section 2.4.c.', and inserting in lieu thereof the
876 words 'subdivision 2.4.c.';

877 On page 4, subsection 4.1, by striking out the words
878 'Section 2.4.b.A and B', and inserting in lieu thereof the
879 words 'paragraphs 2.4.b.1 and 2.4.b.2';

880 On page 5, section 5, in the heading of the section, by
881 striking out the word 'Regulations', and inserting in lieu
882 thereof the word 'Rules';

883 And,

884 On page 5, subsection 5.1, by striking out the word
885 'rule' immediately following the words 'provision, term,
886 condition, method,'."

887 (t) The legislative rule relating to the office of air
888 quality (air quality management fee program, 45 CSR 22),
889 effective the sixth day of May, one thousand nine hundred
890 and ninety-one, is reauthorized with the following amend-
891 ments:

892 "Beginning on page 2, and continuing throughout the
893 text of the rule, by renumbering the text breakdown as
894 necessary to conform with the rule of the secretary of state
895 relating to format (standard size and format for rules and
896 procedures for publication of the state register or parts of
897 the state register, 153 CSR 6);

898 On page 1, in the title of the rule, by inserting the
899 words 'OFFICE OF' immediately preceding the words
900 'AIR QUALITY';

901 Beginning on page 1, subsection 1.1, and continuing
902 throughout the text of the rule, by striking out the word
903 'regulation', and inserting in lieu thereof the word 'rule';

904 On page 1, subsection 1.1, by striking out the words
905 'Air Pollution Control Commission's', and inserting in
906 lieu thereof the word 'Director's';

907 On page 1, subsection 1.2, by striking out the code
908 reference '§16-20-5', and inserting in lieu thereof the
909 code reference '§ 22-5-1, et seq';

910 On page 1, subsection 2.1, by striking out the code
911 reference '§16-20', and inserting in lieu thereof the code
912 reference '§ 22-5-2';

913 On page 1, subsection 2.3, by striking out the words
914 "Commission" means the West Virginia Air Pollution
915 Control Commission.', and inserting in lieu thereof the
916 words '[RESERVED]';

917 On page 1, subsection 2.5, by striking out the words
918 'West Virginia Air Pollution Control Commission', and
919 inserting in lieu thereof the words 'Division of Environ-
920 mental Protection';

921 Beginning on page 2, subdivision 3.3.a, and continu-
922 ing throughout the text of the rule, by striking out the
923 words 'West Virginia Air Pollution Control Commission',
924 and inserting in lieu thereof the words 'Air Pollution Con-
925 trol';

926 On page 3, subdivision 4.2.a, by striking out the words
927 'or Commission';

928 On page 3, subdivision 4.2.b, by striking out the words
929 'or Commission';

930 Beginning on page 1, subsection 2.4, and throughout
931 the text of the rule, by striking out the word 'Commis-
932 sion', and inserting in lieu thereof the word 'Director';

933 On page 2, subsection 3.1, by striking out the words
934 'Permits for Construction, Modification or Relocation of
935 Stationary Sources of Air Pollution and Procedures for
936 Registration and Evaluation', and insert in lieu thereof the
937 words 'Permits for Construction, Modification, Relocation
938 and Operation of Stationary Sources of Air Pollutants,
939 Notification Requirements, Temporary Permits, General
940 Permits, and Procedures for Evaluation';

941 And,

942 On page 6, subsection 4.6, by striking out the code
943 reference '§16-20-8', and inserting in lieu thereof the
944 code reference '§ 22-5-6'."

945 (u) The legislative rule relating to the office of air
946 quality (to prevent and control the emissions of toxic air
947 pollutants, 45 CSR 27), effective the thirtieth day of June,
948 one thousand nine hundred and ninety, is reauthorized
949 with the following amendments:

950 "Beginning on page 1, and continuing throughout the
951 text of the rule, by renumbering the text breakdown as
952 necessary to conform with the rule of the secretary of state
953 relating to format (standard size and format for rules and
954 procedures for publication of the state register or parts of
955 the state register, 153 CSR 6);

956 On page 1, in the title of the rule, by inserting the
957 words 'OFFICE OF' immediately prior to the words 'AIR
958 QUALITY';

959 On page 1, subsection 1.1, by striking out the word
960 'Regulation 27', and inserting in lieu thereof the refer-
961 ence '45CSR27';

962 On page 1, subsection 1.2, by striking out the code
963 reference '§16-20-5', and inserting in lieu thereof the
964 code reference '§ 22-5-1 et seq.';

965 On page 1, subsection 1.5, by striking out the words
966 '1.5. Type. This regulation is a legislative rule as defined
967 in West Virginia Code, Chapter 29A, Article 2.';

968 On page 1, subsection 2.1, by striking out the code
969 reference 'Section 2, of Chapter 16, Article 20 of the
970 Code of West Virginia, as amended', and inserting in lieu
971 thereof the code reference 'W. Va. Code §22-5-2';

972 Beginning on page 1, subsection 2.3, and continuing
973 throughout the text of the rule, by striking out the word
974 'regulation', and inserting in lieu thereof the word 'rule';

975 On page 2, subsection 2.5, by striking out the words
976 "'Commission" means the West Virginia Air Pollution
977 Control Commission.'; and inserting in lieu thereof the
978 words '[RESERVED]';

979 On page 2, subsection 2.6, by striking out the words
980 'West Virginia Air Pollution Control Commission', and

981 inserting in lieu thereof the words 'Division of Environ-
982 mental Protection';

983 On page 2, subsection 2.6, by inserting the word 'or'
984 between the words 'Plant' and 'facility';

985 Beginning on page 4, subsection 8.1, and continuing
986 throughout the text of the rule, by striking out the word
987 'Commission', and inserting in lieu thereof the word 'Di-
988 rector';

989 On page 4, subsection 9.1, by striking out the code
990 reference 'WV Code §16-20-11b, as amended' and insert-
991 ing in lieu thereof the code reference 'W. Va. Code § 22-
992 5-11';

993 And,

994 On page 5, subsection 13.1, by striking out the words
995 'rule or' immediately following the words 'provision,
996 term, condition, method,'."

997 (v) The legislative rule relating to the office of air
998 quality (rule requiring the submission of emission state-
999 ments for volatile organic compound emissions and ox-
1000 ides of nitrogen emissions, 45 CSR 29), effective the sev-
1001 enth day of July, one thousand nine hundred and ninety-
1002 three, is reauthorized with the following amendments:

1003 "Beginning on page 2, and continuing throughout the
1004 text of the rule, by renumbering the text breakdown as
1005 necessary to conform with the rule of the secretary of state
1006 relating to format (standard size and format for rules and
1007 procedures for publication of the state register or parts of
1008 the state register, 153 CSR 6);

1009 On page 1, in the title of the rule, by inserting the
1010 words 'OFFICE OF' immediately prior to the words 'AIR
1011 QUALITY';

1012 On page 1, subsection 1.1, by striking out the words
1013 'Chief of Air Quality's', and inserting in lieu thereof the
1014 word 'Director's';

1015 On page 1, subsection 1.2, by striking out the code
1016 reference ‘§16-20-5’, and inserting in lieu thereof the
1017 code reference ‘§ 22-5-1 et seq’;

1018 On page 1, subsection 2.7, by striking out the words
1019 “‘Chief of Air Quality” or “Chief” means the chief of
1020 the Office of Air Quality or his or her designated repre-
1021 sentative appointed by the director of the Division of En-
1022 vironmental Protection pursuant to the provisions of W.
1023 Va. Code §22-1-1, et seq.’, and inserting in lieu thereof
1024 the words ‘[RESERVED]’;

1025 On page 1, subsection 2.8, by striking out the words
1026 “‘Commission” means the West Virginia Air Pollution
1027 Control Commission.’, and inserting in lieu thereof the
1028 words ‘[RESERVED]’;

1029 On page 2, subsection 2.12, by striking out the words
1030 ‘Department of Commerce, Labor and Environmental
1031 Resources’, and inserting in lieu thereof the words ‘Divi-
1032 sion of Environmental Protection’;

1033 On page 4, section 6, by striking out the words ‘com-
1034 mission, director, or chief’, and inserting in lieu thereof
1035 the word ‘Director’;

1036 Beginning on page 2, subsection 2.25, and continuing
1037 throughout the text of the rule, by striking out the word
1038 ‘commission’, and inserting in lieu thereof the word ‘Di-
1039 rector’;

1040 Beginning on page 3, subsection 2.28, and continuing
1041 throughout the text of the rule, by striking out the word
1042 ‘chief’, and inserting in lieu thereof the word ‘Director’;

1043 On page 3, subsection 3.2, by striking out the words
1044 ‘of Air Quality’;

1045 And,

1046 On page 4, subsection 5.4, by striking out the code
1047 reference ‘§16-20-12’, and inserting in lieu thereof the
1048 code reference ‘§ 22-5-10.’”

1049 (w) The legislative rule relating to the office of air
1050 quality (requirements for operating permits, 45 CSR 30),

1051 effective the twenty-seventh day of April, one thousand,
1052 nine hundred and ninety-four, is reauthorized with the
1053 following amendments:

1054 "Beginning on page 1, and continuing throughout the
1055 text of the rule, by renumbering the text breakdown as
1056 necessary to conform with the rule of the secretary of state
1057 relating to format (standard size and format for rules and
1058 procedures for publication of the state register or parts of
1059 the state register, 153 CSR 6);

1060 On page 1, in the title of the rule, by inserting the
1061 words 'OFFICE OF' immediately preceding the words
1062 'AIR QUALITY';

1063 On page 1, subsection 1.2, by striking out the code
1064 reference '§16-20-5', and inserting in lieu thereof the
1065 code reference '§ 22-5-1 et seq';

1066 On page 1, subsection 2.5, by striking out the code
1067 reference 'article twenty, chapter sixteen, of the W. Va.
1068 Code , as amended', and inserting in lieu thereof the code
1069 reference 'W. Va. Code § 22-5-2';

1070 On page 2, subsection 2.8, by striking out the words
1071 "Chief of Air Quality" or "Chief" means the chief of
1072 the Office of Air Quality or his or her designated repre-
1073 sentative appointed by the director of the Division of En-
1074 vironmental Protection pursuant to the provisions of W.
1075 Va. Code §22-1-1, et seq.', and inserting in lieu thereof
1076 the words '[RESERVED]';

1077 On page 2, subsection 2.10, by striking out the words
1078 "Commission" means the West Virginia Air Pollution
1079 Control Commission.', and inserting in lieu thereof the
1080 words '[RESERVED]';

1081 On page 24, subdivision 6.4.a.6, by striking out the
1082 words 'Commission rules', and inserting in lieu thereof
1083 the words 'rules of the Director';

1084 Beginning on page 2, subdivision 2.6.j, and through-
1085 out the text of the rule, by striking out the word 'Commis-
1086 sion', and inserting in lieu thereof the word 'Director';

1087 Beginning on page 2, subsection 2.6.1, and continuing
1088 throughout the text of the rule, by striking through the
1089 word 'Chief', and inserting in lieu thereof the word 'Di-
1090 rector';

1091 On page 2, subsection 2.13, by striking out the words
1092 'Department of Commerce, Labor, and Environmental
1093 Resources', and inserting in lieu thereof the words 'Divi-
1094 sion of Environmental Protection';

1095 On page 7, subdivision 2.34.a, by striking out the
1096 reference '2.25.c.C', and inserting in lieu thereof the
1097 reference '2.26.c.3';

1098 On page 8, subsection 2.44, by striking out the word
1099 'trichloromethane', and inserting in lieu thereof the word
1100 'trichloroethane';

1101 On page 8, subdivision 2.44.d by striking out the code
1102 reference '16-20-1', and inserting in lieu thereof the code
1103 reference '22-5-1';

1104 On page 12, subdivision 4.1.c, by striking out the code
1105 reference '16-20-12', and inserting in lieu thereof the
1106 code reference '22-5-10';

1107 On page 12, paragraph 4.3.c.2, by striking out the
1108 words 'subparagraph 4.3.c.A. and inserting in lieu thereof
1109 the words 'paragraph 4.3.c.1', and by striking out the
1110 code reference '16-20-1', and inserting in lieu thereof the
1111 code reference '22-5-1';

1112 On page 13, paragraph 4.3.c.8, by striking out the
1113 words 'subparagraphs 4.3.c.A through G', and inserting
1114 in lieu thereof the reference 'paragraphs 4.3.c.1 through
1115 4.3.c.7';

1116 On page 13, subdivision 4.3.e, by striking out the code
1117 reference '16-20-1', and inserting in lieu thereof the code
1118 reference '22-5-1';

1119 On page 13, subdivision 4.3.e, by striking out the code
1120 reference '20-5E-1', and inserting the code reference
1121 '22-18-1';

- 1122 On page 13, subdivision 4.3.g, by striking out the
1123 word 'paragraph' in two places and inserting in lieu there-
1124 of the word 'subdivision', and by striking out the refer-
1125 ence '5.1.a.C', and inserting in lieu thereof the reference
1126 'paragraph 5.1.a.3';
- 1127 On page 15, subparagraph 5.1.c.1.B, by striking out
1128 the reference '5.1.c.C', and inserting in lieu thereof the
1129 reference '5.1.c.3';
- 1130 On page 15, subparagraph 5.1.c.1.B, by striking out
1131 the reference '5.1.c.A', and inserting in lieu thereof the
1132 reference '5.1.c.1';
- 1133 On page 16, subparagraph 5.1.c.3.E, by striking out
1134 the code reference '16-20-12', and inserting in lieu there-
1135 of the code reference '22-5-10';
- 1136 On page 21, paragraph 5.7.c.4, by striking out the
1137 words 'subpart 5.1.c.C.(c)(B)', and inserting in lieu there-
1138 of the words 'part 5.1.c.3.C.2';
- 1139 On page 21, paragraph 5.7.c.4, by striking out the
1140 words 'part 5.1.c.D.(b)', and inserting in lieu thereof the
1141 reference 'subparagraph 5.1.c.3.B';
- 1142 On page 25, subparagraph 6.5.a.1.B, by striking out
1143 the words 'part 6.5.a.A.(a)', and inserting in lieu thereof
1144 the words 'subparagraph 6.5.a.1.A';
- 1145 On page 26, subparagraph 6.5.a.4.D, by striking out
1146 the reference '6.5.a.D', and inserting in lieu thereof the
1147 reference '6.5.a.4';
- 1148 On page 26, paragraph 6.5.a.5, by striking out the
1149 reference '6.5.a.D(a)', and inserting in lieu thereof the
1150 reference '6.5.a.4.A';
- 1151 On page 26, paragraph 6.5.a.5, by striking out the
1152 reference '6.5.a.D.(c)', and inserting in lieu thereof the
1153 reference '6.5.a.4.C';
- 1154 On page 28, paragraph 6.8.a.3, by striking out the
1155 words 'subpart of 6.8.a.C.(a)', and inserting in lieu there-
1156 of the words 'part 6.8.a.3.A.3';

- 1157 On page 28, paragraph 6.8.a.3, by striking out the
1158 reference 'part 6.8.a.C.(b)', and inserting in lieu thereof
1159 the reference 'subparagraph 6.8.a.3.B';
- 1160 On page 29, part 6.8.a.4.A.5, by striking out the word
1161 'paragraph' and inserting in lieu thereof the word 'subdi-
1162 visions';
- 1163 On page 29, subparagraph 6.8.a.4.B, by striking out
1164 the reference 'part 6.8.a.D.(a)', and inserting in lieu
1165 thereof the reference 'subparagraph 6.8.a.4.A';
- 1166 On page 30, part 6.8.a.4.B.4, by striking out the words
1167 'part 6.8.a.D.(a)', and inserting in lieu thereof the refer-
1168 ence 'subparagraph 6.8.a.4.A';
- 1169 On page 30, part 6.8.a.4.B.4, by striking out the words
1170 'subparagraph 6.8.a.C', and inserting in lieu thereof the
1171 reference 'paragraph 6.8.a.3';
- 1172 On page 30, subdivision 6.8.b, by striking out the
1173 words 'subparagraph 6.8.c.A', and inserting in lieu there-
1174 of the words 'paragraph 6.8.c.1';
- 1175 On page 30, paragraph 6.8.c.2, by striking out the
1176 reference 'subparagraph 6.8.a.B', and inserting in lieu
1177 thereof the words 'paragraph 6.8.a.2';
- 1178 On page 31, subdivision 6.9.a, by striking out the
1179 words 'subparagraph 6.8.a.C', and inserting in lieu there-
1180 of the words 'paragraph 6.8.a.3';
- 1181 Beginning on page 34, subsection 8.6, and continuing
1182 throughout the text of the rule, by striking out the code
1183 reference 'article twenty, chapter sixteen of the Code of
1184 West Virginia', and inserting in lieu thereof the code ref-
1185 erence 'W. Va. Code § 22-5-1 et seq.';
- 1186 On page 35, subsection 10.2, by striking out the words
1187 'order of the chief or, any';
- 1188 On page 35, subsection 10.2, by striking out the code
1189 reference '16-20-8', and inserting in lieu thereof the code
1190 reference '22-5-6';
- 1191 And,

1192 On page 35, subsection 12.4, by striking out the words
1193 'this subparagraph 4.1.a.E.' and inserting in lieu thereof
1194 the words 'paragraph 4.1.a.5'."

1195 (x) The legislative rule relating to the office of air
1196 quality (serious and minor violations of applicable rules,
1197 45 CSR 32), effective the seventh day of July, one thou-
1198 sand nine hundred and ninety-three, is reauthorized with
1199 the following amendments:

1200 "Beginning on page 1, and continuing throughout the
1201 text of the rule, by renumbering the text breakdown as
1202 necessary to conform with the rule of the secretary of state
1203 relating to format (standard size and format for rules and
1204 procedures for publication of the state register or parts of
1205 the state register, 153 CSR 6);

1206 On page 1, in the title of the rule, by inserting the
1207 words 'OFFICE OF' immediately preceding the words
1208 'AIR QUALITY';

1209 On page 1, subsection 1.1, by striking out the words
1210 'West Virginia Air Pollution Control Commission', and
1211 inserting in lieu thereof the words 'Director';

1212 On page 1, subsection 1.2, by striking out the code
1213 reference '§16-20-5', and inserting in lieu thereof the
1214 code reference '§ 22-5-1 et seq';

1215 On page 1, subsection 2.1, by striking out the code
1216 reference '§16-20-1, et seq.', and inserting in lieu thereof
1217 the code reference '§ 22-5-1, et seq';

1218 On page 1, subsection 2.2, by striking out the words
1219 'chief or the commission', and inserting in lieu thereof
1220 the word 'Director';

1221 On page 1, subsection 2.3, by striking out the words
1222 "'Chief of Air Quality" or "Chief" means the chief of
1223 the office of Air Quality or his or her designated represen-
1224 tative appointed by the director of the Division of Envi-
1225 ronmental Protection pursuant to the provisions of W. Va.
1226 Code §22-1-1, et seq.', and inserting in lieu thereof the
1227 words '[RESERVED]';

1228 On page 1, subsection 2.4, by striking out the words
1229 “Commission” means the West Virginia Air Pollution
1230 Control Commission.’, and inserting in lieu thereof the
1231 words ‘[RESERVED]’;

1232 On page 1, subsection 2.6, by striking out the words
1233 ‘that Division of the Department of Commerce, Labor,
1234 and Environmental Resources as’, and inserting in lieu
1235 thereof the words ‘the Division of Environmental Protec-
1236 tion’;

1237 On page 1, subsection 2.7, by striking the words ‘or
1238 regulation’;

1239 Beginning on page 2, subdivision 3.1.a, and continu-
1240 ing throughout the text of the rule, by striking out the
1241 word ‘chief’, and inserting in lieu thereof the word ‘Di-
1242 rector’;

1243 And,

1244 Beginning on page 2, subdivision 3.1.b, and continu-
1245 ing throughout the text of the rule, by striking out the
1246 word ‘commission’, and inserting in lieu thereof the word
1247 ‘Director’.”

1248 (y) The legislative rule relating to the office of air
1249 quality (provisions for determination of compliance with
1250 air quality management rules, 45 CSR 38), effective the
1251 first day of May, one thousand nine hundred ninety-five,
1252 is reauthorized with the following amendment:

1253 “Beginning on page 1, and continuing throughout the
1254 text of the rule, by renumbering the text breakdown as
1255 necessary to conform with the rule of the secretary of state
1256 relating to format (standard size and format for rules and
1257 procedures for publication of the state register or parts of
1258 the state register, 153 CSR 6).”

§64-11-4. Division of environmental protection, office of water resources.

1 (a) The legislative rule relating to the division of
2 environmental protection, office of water resources (un-
3 derground injection control fee schedule, 47 CSR 9), ef-

4 fective the first day of June, one thousand nine hundred
5 ninety-four, is reauthorized with the following amend-
6 ments:

7 "Beginning on page 1, and continuing throughout the
8 text of the rule, by renumbering the text breakdown as
9 necessary to conform with the rule of the secretary of state
10 relating to format (standard size and format for rules and
11 procedures for publication of the state register or parts of
12 the state register, 153 CSR 6);

13 On page 1, in the title of the rule, by inserting the
14 words 'BUREAU OF ENVIRONMENT' on the third line,
15 by striking out the word 'DEPARTMENT OF COM-
16 MERCE, LABOR AND ENVIRONMENTAL RESOURC-
17 ES', and by striking out the words 'WATER RESOURCES
18 - WASTE MANAGEMENT' and inserting in lieu thereof
19 the words 'OFFICE OF WATER RESOURCES';

20 Beginning on page 1, and continuing throughout the
21 text of the rule, by striking out the code reference '§20-
22 5A-5', and inserting in lieu thereof '§ 22-11-8';

23 Beginning on page 1, and continuing throughout the
24 text of the rule, by striking out the code reference '§22B-
25 1-6', and inserting in lieu thereof '§ 22-6-6';

26 On page 1, subsection 1.2, by striking out the code
27 reference '§20-5A-6a', and inserting in lieu thereof the
28 code reference '§ 22-11-10';

29 On page 1, subsection 2.2, by striking out the words
30 'Department of Commerce, Labor and Environmental
31 Resource' and inserting in lieu thereof the words 'Bureau
32 of Environment';

33 Beginning on page 1, subsection 2.3, and continuing
34 throughout the text of the rule, by striking out the words
35 '46 C.S.R.9' and inserting in lieu thereof the words
36 '47CSR13';

37 On page 1, subsections 2.3, 2.4, 2.5, 2.6 and 2.7, by
38 striking out the word 'paragraphs' and inserting in lieu
39 thereof the word 'subdivisions';

40 On page 3, subdivision 3.4.a., by striking out the
41 words '46 C.S.R. 2' and inserting in lieu thereof the
42 words '46CSR10';

43 Beginning on page 3, subsection 4.2 and continuing
44 throughout the text of the rule, by striking out the code
45 reference '§22B-1-1', and inserting in lieu thereof the
46 code reference '§ 22-6-1';

47 On page 5, subdivisions 8.5.a. and 8.5.e., by striking
48 out the word 'Section' and inserting in lieu thereof the
49 word 'subsection';

50 On page 5, subdivision 8.5.a., by striking out the ref-
51 erence '4.5.3. and inserting in lieu thereof the words
52 'subdivision 4.5.c.';

53 On page 5, subdivision 8.5.b., by striking out the
54 words 'Subsection 8.5.1' and insert in lieu thereof the
55 words 'subdivision 8.5.a';

56 On page 5, subdivision 8.5.c., by striking out the
57 words 'Subsection 8.5.1' and insert in lieu thereof the
58 words 'subdivision 8.5.a.';

59 And,

60 On page 5, subdivision 8.5.e., by striking out the ref-
61 erence '7.5.3' and inserting in lieu thereof the words
62 'subdivision 7.5.c.';"

63 (b) The legislative rule relating to the division of
64 environmental protection, office of water resources (na-
65 tional pollutant discharge elimination system (NPDES)
66 program, 47 CSR 10), effective the twenty-fifth day of
67 August, one thousand nine hundred ninety-three, is
68 reauthorized with the following amendments:

69 "Beginning on page 1, and continuing throughout the
70 text of the rule, by renumbering the text breakdown as
71 necessary to conform with the rule of the secretary of state
72 relating to format (standard size and format for rules and
73 procedures for publication of the state register or parts of
74 the state register, 153 CSR 6);

75 On page 1, in the title of the rule, by inserting the
76 words 'BUREAU OF ENVIRONMENT' on the third line,
77 and by striking out the words 'WATER RESOURCES -
78 WASTE MANAGEMENT' and inserting in lieu thereof
79 the words 'OFFICE OF WATER RESOURCES' on the
80 fifth line;

81 On page 1, in the title of the rule, by striking out the
82 word 'ELIMIATION' and inserting in lieu thereof the
83 word 'ELIMINATION';

84 Beginning on page 1, subsection 1.2, and continuing
85 throughout the rule where applicable, by striking the code
86 reference '§20-5A' and inserting in lieu thereof '§22-
87 11';

88 Beginning on page 1, subsection 1.5, and continuing
89 throughout the text of the rule, by striking out the word
90 'regulations' and inserting in lieu thereof the word 'rule';

91 Beginning on page 1, first sentence in section 2, and
92 continuing throughout the text of rule, by striking out the
93 words 'Chapter 20, Article 5A, Section 2 of the Code of
94 West Virginia' and inserting in lieu thereof the words 'W.
95 Va. Code § 22-11-3';

96 On page 2, subdivision 2.12.b, by striking out the
97 word 'worker' and inserting in lieu thereof the word
98 'work';

99 Beginning on page 5, subdivision 2.51, and continu-
100 ing throughout the text of the rule, by striking out the
101 words 'West Virginia Code, Chapter 20, Article 5A, Sec-
102 tion 1', and inserting in lieu thereof the words 'W. Va.
103 Code § 22-11-1';

104 On page 6, paragraph 3.2.D, by striking out the word
105 'operatings' and inserting in lieu thereof the word 'opera-
106 tions';

107 Beginning on page 7, subdivision 3.5.b, and continu-
108 ing throughout the text of the rule, by striking out the
109 words 'these rules' and inserting in lieu thereof the words
110 'this rule';

111 On page 7, subdivision 3.5.b, by striking out the word
112 'filing' in the third sentence, and inserting in lieu thereof
113 the words 'permit application';

114 On page 7, subdivision 3.5.b, by striking out the words
115 'West Virginia legislative rules, State Water Resources
116 Board Series 3, Section 7,' and inserting in lieu thereof
117 '47CSR26';

118 On page 8, subdivision 4.1.a, by striking out the words
119 'Series 3, Section 7' and inserting in lieu thereof the
120 words '47CSR26';

121 Beginning on page 9, subsection 4.3, by striking out
122 the code reference 'Chapter 20-5A-5(b)(6) of the State
123 Act' and inserting in lieu thereof 'W. Va. Code § 22-11-
124 8(b)(6)';

125 On page 9, paragraph 4.4.b.2, by striking out the word
126 'operatings' in the first sentence and inserting in lieu
127 thereof the word 'operations';

128 On page 11, part 4.4.b.7.B.1., by striking out the
129 words 'chromotography/mass' and inserting in lieu there-
130 of the words 'chromatography/mass';

131 On page 11, part 4.4.b.7.C.2., by striking out the word
132 'quantitatives' and inserting in lieu thereof the word
133 'quantitative';

134 On page 13, subsection 4.7, by striking out the words
135 'Series III, Section 8' and inserting in lieu thereof the
136 words '47CSR26';

137 On page 16, subsection 5.5, by striking out the words
138 'State Health Department Regulations' and inserting in
139 lieu thereof the words 'State Division of Health Rules';

140 On page 17, subdivision 5.10.a., by striking out the
141 word 'conduced' and inserting in lieu thereof the word
142 'conducted';

143 Beginning on page 18, paragraph 5.12.e.1, and con-
144 tinuing throughout the text of the rule, by striking out the
145 words 'Division of Water Resources' and inserting in lieu
146 thereof the words 'Office of Water Resources';

147 On page 18, paragraph 5.12.e.4, by striking out the
148 words 'Series 3, Section 1 of the Board's rules' and in-
149 serting in lieu thereof the words '47CSR11-1';

150 On page 24, subdivision 7.2.b (previously 7.2.c), by
151 striking 'Section 2 and 3 of Series 3 of the Legislative
152 Rules' and inserting in lieu thereof 'the Division of Envi-
153 ronmental Protection's legislative rule, 47CSR10, sections
154 3 and 4';

155 On page 24, subsection 7.3, by striking out the words
156 'Series 1' and inserting in lieu thereof the words
157 '46CSR1';

158 On page 28, part 9.2.b.3.A.2, by striking out the word
159 'withdraw' and inserting in lieu thereof the word 'with-
160 drawn';

161 On page 29, paragraph 9.2.b.13, by striking out the
162 word 'being' on first line and inserting in lieu thereof the
163 word 'begin';

164 On page 30, paragraph 9.4.a.4, by striking out the
165 word 'required' and inserting in lieu thereof the word
166 'requires';

167 Beginning on page 30, subdivision 9.4.b., and contin-
168 uing throughout the text of the rule, by striking out the
169 words 'Section 8', and inserting in lieu thereof the words
170 'Section 12';

171 On page 32, subdivision 11.3.b, by striking out the
172 word 'They' and inserting in lieu thereof the word 'The';

173 On page 33, paragraph 12.1.a.2., by striking out the
174 word 'section' and inserting in lieu thereof the word 'ac-
175 tion';

176 On page 34, subparagraph 12.1.c.1.C, by striking out
177 the word 'Department' and inserting in lieu thereof the
178 word 'Division';

179 On page 35, subsection 12.2, in the first sentence, by
180 striking out the word 'not' and inserting in lieu thereof
181 the word 'no';

182 On page 36, subdivision 12.5.a, by striking out the
183 word 'permits' and inserting in lieu thereof the word
184 'permit';

185 On page 43, paragraph 14.1.a.1, by striking out the
186 word 'Farrenheit' and inserting in lieu thereof the word
187 'Fahrenheit';

188 On page 44, subsection 14.5, after the word 'Chief',
189 by striking out the word 'to' and inserting in lieu thereof
190 the word 'for';

191 On page 45, subdivision 16.1.a., by striking out the
192 words '7, 8, 10 and 12a' and inserting in lieu thereof the
193 words '11, 12, 15, and 19';

194 On Page 45, subdivision 16.1.b., after the word 'Sec-
195 tion', by striking out the number '17' and inserting in
196 lieu thereof the number '22';

197 On Page 45, subdivision 16.1.c., after the word 'Sec-
198 tion', by striking out the number '19' and inserting in lieu
199 thereof the number '24';

200 On page 45, subsection 17.1, by striking out the words
201 'Chapter 20, Article 5, Section 3(b)' and inserting in lieu
202 thereof the words 'Chapter 22B, Article 1';

203 And,

204 On page 45, section 18, by striking out the words
205 'Series 3' and inserting in lieu thereof the words
206 '47CSR11'."

207 (c) The legislative rule relating to the division of envi-
208 ronmental protection, office of water resources (special
209 rules, 47 CSR 11), effective the first day of July, one thou-
210 sand nine hundred eighty-seven, is reauthorized with the
211 following amendments:

212 "Beginning on page 1, and continuing throughout the
213 text of the rule, by renumbering the text breakdown as
214 necessary to conform with the rule of the secretary of state
215 relating to format (standard size and format for rules and
216 procedures for publication of the state register or parts of
217 the state register, 153 CSR 6);

218 On page 1, in the title of the rule, by inserting the
219 words 'BUREAU OF ENVIRONMENT' on the third line,
220 and by striking out the words 'WATER RESOURCES -
221 WASTE MANAGEMENT' on the fifth line and inserting
222 in lieu thereof the words 'OFFICE OF WATER RE-
223 SOURCES';

224 On page 1, subsection 1.1, by striking out the words
225 'Series 1 and 2 of the State Water Resources Board's Leg-
226 islative Rules' and inserting in lieu thereof the words
227 '46CSR1 and 47CSR10';

228 Beginning on page 1, subsection 1.2, and continuing
229 throughout the text of the rule, by striking out the code
230 reference '§20-5A' and inserting in lieu thereof the code
231 reference '§ 22-11 et seq';

232 Beginning on page 1, subsection 2.2, and continuing
233 throughout the text of the rule, by striking out the words
234 'State Water Resources' and inserting in lieu thereof the
235 words 'Environmental Quality';

236 Beginning on page 1, subdivision 2.2.a, and continu-
237 ing throughout the text of the rule, by striking out the
238 words 'Division of Water Resources' and inserting in lieu
239 thereof the words 'Office of Water Resources';

240 On page 2, subsection 2.4, by striking out the words
241 'section nine, article five A, chapter twenty of the West
242 Virginia Code shall be punishable under section nine,
243 article five-A, chapter twenty of the West Virginia Code'
244 and inserting in lieu thereof the words 'W. Va. Code § 22-
245 11-14 shall be punishable under W. Va. Code § 22-11-
246 24';

247 On page 3, subdivision 3.3.c, by striking out the words
248 'see Section 8, Series 2' and inserting in lieu thereof the
249 words 'See 46CSR1, section 8';

250 On page 3, section 4, by striking out the word 'care'
251 and inserting in lieu thereof the word 'car';

252 On page 5, subsection 6.6, by striking out the word
253 'of' and inserting in lieu thereof the word 'or';

254 And,

255 On page 6, by striking out section 8 in its entirety, and
256 inserting in lieu thereof the words '(THIS SECTION IS
257 SUPERSEDED BY 47CSR26)', and by renumbering the
258 following section 9 as section 8."

259 (d) The legislative rule relating to the division of
260 environmental protection, office of water resources (un-
261 derground injection control, 47 CSR 13), effective the
262 twenty-fifth day of August, one thousand nine hundred
263 ninety-three, is reauthorized with the following amend-
264 ments:

265 "Beginning on page 1, and continuing throughout the
266 text of the rule, by renumbering the text breakdown as
267 necessary to conform with the rule of the secretary of state
268 relating to format (standard size and format for rules and
269 procedures for publication of the state register or parts of
270 the state register, 153 CSR 6);

271 On page 1, in the title of the rule, by inserting the
272 words 'BUREAU OF ENVIRONMENT' on the third line,
273 and by striking out the words '- WASTE MANAGE-
274 MENT' on the fifth line;

275 Beginning on page 1, in the Editor's Note, and contin-
276 uing throughout the text of the rule, by striking out the
277 words 'Water Resources Board' and inserting in lieu
278 thereof the words 'Environmental Quality Board';

279 Beginning on page 1, subsection 1.1, and continuing
280 throughout the text of the rule, by striking out the words
281 'these regulations' and inserting in lieu thereof the words
282 'this rule';

283 Beginning on page 1, subdivision 1.1.a., and continu-
284 ing throughout the text of the rule, by striking out the
285 word 'regulations' and inserting in lieu thereof the word
286 'rule';

287 Beginning on page 1, paragraph 1.1.e.4., and continu-
288 ing throughout the text of the rule, by striking out the
289 words used to describe the cross-references to sections,
290 subsections, subdivisions, paragraphs, subparagraphs, parts,
291 subparts, items or subitems, and inserting in lieu thereof
292 the corresponding reference as necessary to conform with

293 the rule of the secretary of state relating to format (stan-
294 dard size and format for rules and procedures for publica-
295 tion of the state register or parts of the state register, 153
296 CSR 6);

297 On page 1, subsection 1.2, by striking the code refer-
298 ence '§20-5A-3(b)(2)' and inserting in lieu thereof
299 '§22-11-4(a)(16)';

300 On page 1, section 2, by striking out the code refer-
301 ence '§20-5A-2' and inserting in lieu thereof the code
302 reference '§ 22-11-3';

303 On page 3, subsection 2.24, by striking out the word
304 'orific' and inserting in lieu thereof the word 'orifice';

305 On page 3, subsection 2.28, by striking out the words
306 'Title 47, Legislative Rules, Division of Natural Resources,
307 Series 35' and inserting in lieu thereof the words
308 '33CSR20';

309 On page 3, subsection 2.30, by striking out the words
310 'Title 47, Legislative Rules, Division of Natural Resources,
311 Series 35, Hazardous Waste Management Regulations,
312 Section 47-35-2.68' and inserting in lieu thereof the
313 words 'the Hazardous Waste Management Rule, 33CSR20-
314 2.68';

315 On page 4, subsection 2.51, by striking out the code
316 reference '§20-5A-1' and inserting in lieu thereof the
317 code reference '§ 22-11-1';

318 On page 5, subdivision 2.58.c. , by striking out the
319 word 'aquifer' and inserting in lieu thereof the word
320 'aquifer';

321 On page 7, subdivision 5.3.b., in the second para-
322 graph, by striking out the word 'multiplied' and inserting
323 in lieu thereof the word 'multiplied';

324 On page 7, subdivision 5.3.b., in the second para-
325 graph, by striking out the word 'multiplied' and inserting
326 in lieu thereof the word 'multiplied';

327 On page 7, subdivision 5.3.b., after the last sentence in
328 the subdivision, by inserting the words '(See Table 13.5-A
329 at end of this rule)';

330 On page 8 subparagraph 5.3.b.2.D., by striking out
331 the word 'infinitesimal' and inserting in lieu thereof the
332 word 'infinitesimal';

333 On page 9, subdivision 7.3.a., by striking out the
334 words 'Title 47, Legislative Rules, Division of Natural
335 Resources, Series 35, Hazardous Waste Management Regu-
336 lations, Section 47-35-4.(Chapter 20-5E)' and inserting in
337 lieu thereof the words 'the Hazardous Waste Management
338 Rule, 33CSR20-4 (W. Va. Code Chapter 22, Article 18)';

339 On page 9, subdivision 7.3.b., by striking out the
340 words 'Title 47, Legislative Rules, Division of Natural
341 Resources, Series 35, Hazardous Waste Management Regu-
342 lations, Section 47-35-8.2.2.(Chapter 20-5E)' and insert-
343 ing in lieu thereof the words 'the Hazardous Waste Man-
344 agement Rule, 33CSR20-8.22 (W. Va. Code Chapter 22,
345 Article 18)';

346 On page 9, subdivision 7.3.c., by striking out the
347 words 'Title 47, Legislative Rules, Division of Natural
348 Resources, Series 35, Hazardous Waste Management Regu-
349 lations, Section 47-35-8.5. (Chapter 20-5E)' and inserting
350 in lieu thereof the words 'the Hazardous Waste Manage-
351 ment Rule, 33CSR20-8.5 (W. Va. Code Chapter 22, Article
352 18)';

353 On page 9, subdivision 7.3.d., by striking out the
354 words 'Title 47, Legislative Rules, Division of Natural
355 Resources, Series 35, Hazardous Waste Management Regu-
356 lations, Section 47-35-8.5.3. (Chapter 20-5E)' and insert-
357 ing in lieu thereof the words 'the Hazardous Waste Man-
358 agement Rule, 33CSR20-8.5.3 (W. Va. Code Chapter 22,
359 Article 18)';

360 On page 9, subdivision 7.3.e., by striking out the
361 words 'Title 47, Legislative Rules, Division of Natural
362 Resources, Series 35, Hazardous Waste Management Regu-
363 lations, Section 47-35-8.54.(Chapter 20-5E)' and insert-
364 ing in lieu thereof the words 'the Hazardous Waste Man-

365 agement Rule, 33CSR20-8.5.4 (W. Va. Code Chapter 22,
366 Article 18)';

367 On page 9, subdivision 7.3.f., by striking out the
368 words 'Title 47, Legislative Rules, Division of Natural
369 Resources, Series 35, Hazardous Waste Management Regu-
370 lations, Section 47-35-8.5.6. (Chapter 20-5E)' and insert-
371 ing in lieu thereof the words 'the Hazardous Waste Man-
372 agement Rule, 33CSR20-8.5.6 (W. Va. Code Chapter 22,
373 Article 18)';

374 On page 9, subdivision 7.3.g., by striking out the
375 words 'Title 47, Legislative Rules, Division of Natural
376 Resources, Series 35, Hazardous Waste Management Regu-
377 lations, Section 47-35-8.5.6. (Chapter 20-5E)' and insert-
378 ing in lieu thereof the words 'the Hazardous Waste Man-
379 agement Rule, 33CSR20-8.5.6 (W. Va. Code Chapter 22,
380 Article 18)';

381 On page 9, subdivision 7.3.h., by striking out the
382 words 'Title 47, Legislative Rules, Division of Natural
383 Resources, Series 35, Hazardous Waste Management Regu-
384 lations, Section 47-35-8.2.7. (Chapter 20-5E)' and insert-
385 ing in lieu thereof the words 'the Hazardous Waste Man-
386 agement Rule, 33CSR20-8.2.7 (W. Va. Code Chapter 22,
387 Article 18)';

388 On page 19, subparagraph 10.5.a.6.B., by striking out
389 the word 'Qualitive' and inserting in lieu thereof the word
390 'Qualitative';

391 On page 20, subsection 11.2 and subdivisions 11.2.a.
392 and 11.2.b., by striking out the second occurrence of
393 subsection 11.2 and subdivisions 11.2.a. and 11.2.b., so as
394 to the duplicated language;

395 On page 20, paragraph 11.4.a.1., and on page 22,
396 paragraph 13.2.d.3, by striking out the words 'Chapter
397 20-5E of the West Virginia Code' and inserting in lieu
398 thereof the words 'W. Va. Code Chapter 22, Article 18';

399 On page 22, subdivision 13.1.f., by striking out the
400 words 'Section 12a of the State Act' and inserting in lieu
401 thereof the words 'W. Va. Code § 22-11-19';

402 On page 22, subparagraph 13.10.d.5.A., by striking
403 out the words '§20-5E-1' and inserting in lieu thereof the
404 words '§ 22-18-1';

405 On page 32, paragraph 13.13.1.6., by striking out the
406 word 'reoccurrence' and inserting in lieu thereof the word
407 'reoccurrence';

408 On page 37, paragraph 13.22.e.1., by striking out the
409 word 'ocured' and inserting in lieu thereof the word
410 'occurred'."

411 And,

412 At the end of the rule, by inserting a table, as follows:

413 TABLE 13-5A
414 Zone of Endangering Influence

$$415 \quad r = \sqrt{\frac{2.25KHt}{S10^x}}$$

416 where:

$$x = \frac{4\pi KH(h_w - h_{bo})S_p G_b}{2.3Q}$$

417 (e) The legislative rule relating to the division of envi-
418 ronmental protection, office of water resources (water
419 pollution control permit fee schedules, 47 CSR 26), effec-
420 tive the first day of July, one thousand nine hundred nine-
421 ty-three, is reauthorized with the following amendments:

422 "Beginning on page 1, and continuing throughout the
423 text of the rule, by renumbering the text breakdown as
424 necessary to conform with the rule of the secretary of state
425 relating to format (standard size and format for rules and
426 procedures for publication of the state register or parts of
427 the state register, 153 CSR 6);

428 On page 1, in the title of the rule, by inserting the
429 words 'BUREAU OF ENVIRONMENT' on the third line,
430 and by striking out the words 'WATER RESOURCES -
431 WASTE MANAGEMENT' on the fifth line and inserting
432 in lieu thereof the words 'OFFICE OF WATER RESOUR-
433 CES';

434 On page 1, subsection 1.1, by striking out the word
435 'Section' and inserting in lieu thereof the word 'Of-
436 fice'";

437 Beginning on page 1, subsection 1.1, and continuing
438 throughout the text of the rule, by striking out the code
439 reference '20-5A-5' and inserting in lieu thereof the code
440 reference '22-11-8';

441 On page 1, subsection 1.2, by striking the code refer-
442 ence '§20-5A-6a' and inserting in lieu thereof '§22-11-
443 10';

444 Beginning on page 1, subsection 1.5, and continuing
445 throughout the text of the rule, by striking out the words
446 'these regulations' and inserting in lieu thereof the words
447 'this rule';

448 On page 1, subdivision 2.2.b, by striking out the words
449 '46 C.S.R. 2 §4.4.b.3' and inserting in lieu thereof the
450 words '47CSR10, paragraph 4.4.b.3.';

451 On page 1, subsection 2.3, by striking out the words
452 'Section of Water Resources of the Division of Natural
453 Resources of the West Virginia Department of Commerce,
454 Labor and Environmental Resources' and inserting in lieu
455 thereof the words 'Office of Water Resources of the Divi-
456 sion of Environmental Protection of the West Virginia
457 Bureau of Environment';

458 Beginning on page 2, subsection 2.5, and continuing
459 throughout the text of the rule, by striking out the code
460 reference '20-5A' and inserting in lieu thereof the code
461 reference '22-11';

462 On page 2, subsection 2.10, by striking out the words
463 '46 C.S.R.2 §9.2.b' and inserting in lieu thereof the
464 words '47CSR10, subdivision 9.2.b';

465 On page 2, subsection 2.11, by striking out the words
466 '46 C.S.R. 2 §9.2.a' and inserting in lieu thereof the
467 words '47CSR10, subdivision 9.2.a';

468 On page 3, subdivision 2.23.a and 2.23b, by striking
469 out the words '47 C.S.R. 35' in both instances and insert-
470 ing in lieu thereof the words '33CSR20';

471 On page 3, subsection 3.3, by striking out the words
472 'West Virginia Division of Natural Resources' and insert-
473 ing in lieu thereof 'West Virginia Division of Environ-
474 mental Protection, Office of Water Resources';

475 On page 3, subdivision 3.4.a, by striking out the words
476 '46 C.S.R. 2 §4.3' and inserting in lieu thereof the words
477 '47CSR10, subsection 4.3';

478 And,

479 Beginning on page 6, subsection 4.4, and continuing
480 throughout the text of the rule, by striking out the words
481 '47 C.S.R. 38' and inserting in lieu thereof the words
482 '33CSR1'."

483 (f) The legislative rule relating to the division of envi-
484 ronmental protection, office of water resources (dam safe-
485 ty rules, 47 CSR 34), effective the first day of May, one
486 thousand nine hundred ninety-five, is reauthorized with
487 the following amendments:

488 "Beginning on page 1, and continuing throughout the
489 text of the rule, by renumbering the text breakdown as
490 necessary to conform with the rule of the secretary of state
491 relating to format (standard size and format for rules and
492 procedures for publication of the state register or parts of
493 the state register, 153 CSR 6);

494 On page 13, subparagraph 6.4.e.2.D., by striking out
495 the words 'Building 9', and inserting in lieu thereof the
496 words 'Cultural Center';

497 On page 13, subparagraph 6.4.e.2.D., by inserting the
498 word 'East' immediately following the words 'Kanawha
499 Boulevard';

500 On page 14, part 7.1.b.1.A.1., by striking out the
501 words 'Class 3 dams must be designed with either an open
502 channel spillway only or a combination of principal and
503 emergency spillways. A Class 3 dam shall be capable of
504 passing that portion of the design storm that cannot be
505 safely stored in the impoundment. The design of a Class 3
506 dam must assure that ninety percent (90%) of the stored
507 volume of the design storm will be discharged within ten

508 (10) days after the storm event.' and inserting in lieu
509 thereof the words 'Class 1 dams designed with either an
510 open channel spillway only or with an emergency spillway
511 and a principal spillway together must be capable of dis-
512 charging that portion of the design storm that cannot be
513 safely stored in the impoundment. Class 1 dams designed
514 with a decant or principal spillway only must be capable
515 of storing the volume of water generated by a PMP rain-
516 fall event of six (6) hours in duration. The design of a
517 Class 1 dam must assure that ninety percent (90%) of the
518 stored volume of the design storm will be discharged with-
519 in ten (10) days after the storm event.';

520 On page 14, part 7.1.b.1.A.3., by striking out the
521 words 'Class 1 dams designed with either an open channel
522 spillway only or with an emergency spillway and a princi-
523 pal spillway together must be capable of discharging that
524 portion of the design storm that cannot be safely stored in
525 the impoundment. Class 1 dams designed with a decant or
526 principal spillway only must be capable of storing the
527 volume of water generated by a PMP rainfall event of six
528 (6) hours in duration. The design of a Class 1 dam must
529 assure that ninety percent (90%) of the stored volume of
530 the design storm will be discharged within ten (10) days
531 after the storm event.' and inserting in lieu thereof the
532 words 'Class 3 dams must be designed with either an open
533 channel spillway only or a combination of principal and
534 emergency spillways. A Class 3 dam shall be capable of
535 passing that portion of the design storm that cannot be
536 safely stored in the impoundment. The design of a Class 3
537 dam must assure that ninety percent (90%) of the stored
538 volume of the design storm will be discharged within ten
539 (10) days after the storm event.';

540 On page 15, part 7.1.b.1.C.1., by striking out the
541 words 'Class 3 and Class 4 Dams - Once in twenty-five
542 (25) years.' and inserting in lieu thereof the words 'Class
543 1 Dams - Once in one hundred (100) years.';

544 On page 15, part 7.1.b.1.C.3., by striking out the
545 words 'Class 1 Dams - Once in one hundred (100) years.'
546 and inserting in lieu thereof the words 'Class 3 and Class 4
547 Dams - Once in twenty-five (25) years.';

548 On page 33, subsection 13.2., by inserting the words
549 'or her' immediately following the word 'his';

550 On page 38, subsection 18.3., by striking out the
551 words 'W. Va. Code §22-14-17' and inserting in lieu
552 thereof the words 'W. Va. Code § 22-14-7';

553 And,

554 On page 41, subdivision 19.5.a., by inserting the
555 words 'Calculation -' immediately following the citation
556 '19.5.a.'."

557 (g) The legislative rule relating to the division of
558 environmental protection, office of water resources
559 (groundwater protection act fee schedule, 47 CSR 55),
560 effective the first day of June, one thousand nine hundred
561 ninety-four, is reauthorized with the following amend-
562 ments:

563 "Beginning on page 1, and continuing throughout the
564 text of the rule, by renumbering the text breakdown as
565 necessary to conform with the rule of the secretary of state
566 relating to format (standard size and format for rules and
567 procedures for publication of the state register or parts of
568 the state register, 153 CSR 6);

569 On page 1, in the title of the rule, by striking out the
570 words 'DEPARTMENT OF COMMERCE, LABOR AND
571 ENVIRONMENTAL RESOURCES' and inserting in lieu
572 thereof the words 'BUREAU OF ENVIRONMENT', and
573 by striking out the words 'WATER RESOURCES -
574 WASTE MANAGEMENT' and inserting in lieu thereof
575 the words 'OFFICE OF WATER RESOURCES';

576 Beginning on page 1, and continuing throughout the
577 text of the rule, by striking out the code reference '§20-
578 5M-1 et seq.', and inserting in lieu thereof the code refer-
579 ence '§ 22-12-1 et seq.';

580 Beginning on page 1, and continuing throughout the
581 text of the rule, by striking out the code reference '§20-
582 5M-9 subsection (a)' and inserting in lieu thereof the
583 code reference '§ 22-12-9(a)';

584 On page 1, subsection 1.5, by striking out the word
585 'Section' and inserting in lieu thereof the word 'subsec-
586 tion';

587 On page 1, subsection 2.3, by striking out the words
588 'Solid Waste Management Regulation 47 C.S.R. 38' and
589 inserting in lieu thereof the words 'Solid Waste Manage-
590 ment Rule 33CSR1';

591 On page 1, subsection 2.4, by striking out the words
592 'division of environmental protection of the department
593 of commerce, labor and environmental resources' and
594 inserting in lieu thereof the words 'Division of Environ-
595 mental Protection of the Bureau of Environment';

596 On page 1, subsection 2.5, by striking out the code
597 reference '§20-5G-1 et seq.', and inserting in lieu thereof
598 the words '§ 22-19-1 et seq.';

599 On page 1, subsection 2.8, by striking out the code
600 reference '§20-5M-9(c)(1)' and inserting in lieu thereof
601 the code reference '§ 22-12-9(c)(1)';

602 On page 1, subsection 2.9, by striking out the words
603 'section 3.1.3' and inserting in lieu thereof the words
604 'subdivision 3.1.c', and by striking out the word 'regula-
605 tions' and inserting in lieu thereof the word 'rule', and by
606 striking out the words '47 C.S.R.35' and inserting in lieu
607 thereof the words '33CSR20';

608 On page 2, subsection 2.11, by striking out the words
609 'Section 2.22' and inserting in lieu thereof the words
610 'subsection 2.24', and by striking out the code reference
611 '46 C.S.R. 2' and inserting in lieu thereof the words
612 '47CSR10';

613 On page 2, subsection 2.17, by striking the code refer-
614 ence '§20-5F-2(k)' and inserting in lieu thereof '§22-15-
615 2(27)';

616 On page 2, subdivision 3.3.a., by striking out the code
617 reference '§20-5M-10' and inserting in lieu thereof the
618 code reference '§ 22-12-10';

619 On page 3, paragraph 3.3.a.2., by striking out the
620 words 'subsection 3.4.1' and inserting in lieu thereof the
621 words 'subdivision 3.4.a.';

622 On page 3, subdivision 3.3.b., by striking out the
623 words '§20-5M-8(c) et seq.' and inserting in lieu thereof
624 the words '§22-12-8(c) et seq.';

625 On page 3, subsection 3.5., by striking out the words
626 'paragraph 3.5.3' and inserting in lieu thereof the words
627 'subdivision 3.5.c.';

628 On page 3, subdivision 3.5.f., by striking out the
629 words '§20-5F-5a' and inserting in lieu thereof the words
630 '§22-15-11';

631 On page 3, subdivision 3.5.h., by striking out the code
632 reference '§22A-3-1 et seq.' and inserting in lieu thereof
633 the code reference '§22-3-1 et seq.', by striking out the
634 code reference '§20-5A-5(b)(6)' and inserting in lieu
635 thereof the code reference '§22-11-8(b)(6)', and by strik-
636 ing out the code reference '§22A-4-1 et seq' and insert-
637 ing in lieu thereof the code reference '§22-4-1 et seq.';

638 On page 3, subdivision 3.5.i., by striking out the code
639 reference '§20-5A-5(b) (1 through 6)' and inserting in
640 lieu thereof the code reference '§22-11-8(b) (1 through
641 6)';

642 On page 3, subdivision 3.5.j., by striking out the code
643 reference '§20-5A-5(b) (1 through 6)' and inserting in
644 lieu thereof the code reference '§22-11-8(b) (1 through
645 6)', and by striking out the words 'paragraphs 3.5.11,
646 3.5.12 or 3.5.13' and inserting in lieu thereof the words
647 'subdivisions 3.5.k, 3.5.l, or 3.5.m';

648 And,

649 On page 4, subdivision 3.5.t., by striking out the words
650 'paragraphs 3.5.1 through 3.5.19' and inserting in lieu
651 thereof the words 'subdivisions 3.5.a. through
652 3.5.s.'."

653 (h) The legislative rule relating to the division of
654 environmental protection, office of water resources (as-
655 sessment of civil administrative penalties, 47 CSR 56),
656 effective the first day of June, one thousand nine hundred
657 ninety-four, is reauthorized with the following amend-
658 ments:

659 "Beginning on page 1, and continuing throughout the
660 text of the rule, by renumbering the text breakdown as
661 necessary to conform with the rule of the secretary of state
662 relating to format (standard size and format for rules and
663 procedures for publication of the state register or parts of
664 the state register, 153 CSR 6);

665 On page 1, in the title of the rule, by striking out the
666 words 'DEPARTMENT OF COMMERCE, LABOR AND
667 ENVIRONMENTAL RESOURCES' and inserting in lieu
668 thereof the words 'BUREAU OF ENVIRONMENT', and
669 by striking out the words 'WATER RESOURCES -
670 WASTE MANAGEMENT' and inserting in lieu thereof
671 the words 'OFFICE OF WATER RESOURCES';

672 Beginning on page 1, subsection 1.2, and continuing
673 throughout the text of the rule, by striking out the code
674 reference '§20-5M-10 et seq.', and inserting in lieu there-
675 of the code reference '§ 22-12-10 et seq.';

676 On page 1, subsection 2.1, by striking out the code
677 reference '§20-5M-1 et seq.' and inserting in lieu thereof
678 the code reference '§ 22-12-1 et seq.';

679 On page 3, subsection 5.5, by striking out the words
680 'State Water Resources Board', and inserting in lieu there-
681 of the words 'Environmental Quality Board';

682 And,

683 On page 3, subsection 6.3, by striking out the word
684 'Section' and inserting in lieu thereof the word 'subsec-
685 tion'."

686 (i) The legislative rule relating to the division of envi-
687 ronmental protection, office of water resources (ground-
688 water quality standard variances, 47 CSR 57), effective the
689 first day of June, one thousand nine hundred ninety-four,
690 is reauthorized with the following amendments:

691 "Beginning on page 1, and continuing throughout the
692 text of the rule, by renumbering the text breakdown as
693 necessary to conform with the rule of the secretary of state
694 relating to format (standard size and format for rules and

695 procedures for publication of the state register or parts of
696 the state register, 153 CSR 6);

697 On page 1, in the title of the rule, by striking out the
698 words 'DIVISION OF NATURAL RESOURCES' and
699 inserting in lieu thereof the words 'BUREAU OF ENVI-
700 RONMENT', by striking out the words 'DEPARTMENT
701 OF COMMERCE, LABOR AND ENVIRONMENTAL
702 RESOURCES' and inserting in lieu thereof the words
703 'DIVISION OF ENVIRONMENTAL PROTECTION',
704 and by striking out the words 'WATER RESOURCES -
705 WASTE MANAGEMENT' and inserting in lieu thereof
706 the words 'OFFICE OF WATER RESOURCES';

707 Beginning on page 1, subsection 1.2, and continuing
708 throughout the text of the rule, by striking out the code
709 reference '§20-5M-1 et seq.', and inserting in lieu thereof
710 the code reference '§ 22-12-1 et seq.';

711 On page 1, subsection 1.2, by striking out the code
712 reference '§20-5M-1 through 6', and inserting in lieu
713 thereof the code reference '§ 22-12-1 through 6';

714 On page 1, section 2.0, by striking out the code refer-
715 ence '§20-5M-3' and inserting in lieu thereof the code
716 reference '§ 22-12-3';

717 Beginning on page 1, subsection 2.7, and continuing
718 throughout the text of the rule, by striking out the words
719 'Department of Commerce, Labor and Environmental
720 Resources' and inserting in lieu thereof the words 'Bureau
721 of Environment';

722 On page 2, subsection 2.10, by striking out the words
723 'State Water Resources Board' and inserting in lieu there-
724 of the words 'Environmental Quality Board';

725 On page 2, subsection 3.1, by striking out the words
726 'Article 3, Chapter 22A of the W. Va. Code or Article 5A,
727 Chapter 20 of the W. Va. Code', and inserting in lieu
728 thereof the words 'W. Va. Code §§ 22-3-1 et seq. or 22-
729 11-1 et seq.';

730 On page 2, subsection 3.2, by striking out the words
731 'Chapter 22B of the W. Va. Code', and inserting in lieu
732 thereof 'W. Va. Code § 22-6-1 et seq.';

733 On page 2, subsection 3.3, by striking out the words
734 'Article 4, Chapter 22A of the W. Va. Code', and inserting
735 in lieu thereof the words 'W. Va. Code § 22-4-1 et seq.';

736 On page 2, subsection 4.2, by striking out the code
737 reference '§20-5M-4(b)' and inserting in lieu thereof the
738 code reference '§ 22-12-4(b)';

739 On page 3, subdivisions 5.2.a. through 5.2.g., on page
740 4, subdivisions 6.2.a. through 6.2.k. and subdivisions
741 6.3.a. through 6.3.b., and on page 5, subdivisions 6.3.c.
742 through 6.3.d. and subdivisions 6.7.a. through 6.7.d., by
743 striking the first letter of the beginning word in these sub-
744 divisions, and inserting the appropriate capital letter for
745 the word;

746 On page 5, subsection 6.6, and continuing throughout
747 the text of the rule, by striking out the words 'Water Re-
748 sources Board' and inserting in lieu thereof the words
749 'Environmental Quality Board';

750 And,

751 On page 5, subdivision 6.7.a., by striking out the code
752 reference '§20-5M-5(g)' and inserting in lieu thereof '§
753 22-12-5(g)'."

754 (j) The legislative rule relating to the division of envi-
755 ronmental protection, office of water resources (ground-
756 water protection rules, 47 CSR 58), effective the first day
757 of June, one thousand nine hundred ninety-four, is
758 reauthorized with the following amendments:

759 "Beginning on page 1, and continuing throughout the
760 text of the rule, by renumbering the text breakdown as
761 necessary to conform with the rule of the secretary of state
762 relating to format (standard size and format for rules and
763 procedures for publication of the state register or parts of
764 the state register, 153 CSR 6);

765 On page 1, in the title of the rule, by striking out the
766 words 'DEPARTMENT OF COMMERCE, LABOR AND

767 ENVIRONMENTAL RESOURCES' and inserting in lieu
768 thereof the words 'BUREAU OF ENVIRONMENT', and
769 by striking out the words 'WATER RESOURCES -
770 WASTE MANAGEMENT' and inserting in lieu thereof
771 the words 'OFFICE OF WATER RESOURCES';

772 Beginning on page 1, in the title, and continuing
773 throughout the text of the rule, by striking out the word
774 'regulations' and inserting in lieu thereof the word 'rule';

775 On page 1, subsection 1.1, by striking out the words
776 'chapter 20-5M-1 et seq. of the West Virginia Code' and
777 inserting in lieu thereof the words 'W. Va. Code § 22-12-
778 1 et seq.';

779 On page 1, subsection 1.2, by striking out the words
780 'West Virginia Code 20-5M-5(d)' and inserting in lieu
781 thereof the words 'W. Va. Code § 22-12-5(d)';

782 On page 1, subsection 2.3, by striking out the words
783 'Department of Commerce, Labor and Environmental
784 Resources' and inserting in lieu thereof the words 'Bureau
785 of Environment', and by inserting the words 'or her'
786 immediately following the word 'him';

787 On page 2, in the note immediately following subdivi-
788 sion 4.3.b., by striking out the words '46 C.S.R. 3', and
789 inserting in lieu thereof the words '47CSR11';

790 On page 3, paragraph 4.6.c.1., by striking out the
791 words '20-5D-1' and inserting in lieu thereof the words
792 '22-14-1', and by striking out the words 'Articles (Chap-
793 ter 20-5M and 20-5D)' and inserting in lieu thereof the
794 words 'Chapter 22, Article 12 and Chapter 22, Article 14';

795 On page 6, subsection 5.1, in two occurrences, by
796 striking out the words 'Chapter 20, Article 5M', and in-
797 serting in lieu thereof the words 'Chapter 22, Article 12';

798 On page 6, subsection 7.2, by striking out the words
799 'sections(s) 20-5M-5 (f) through (l) of the W. Va. Code',
800 and inserting in lieu thereof the words 'W. Va. Code § 22-
801 12-5 (f) through (l)';

802 And,

803 On page 7, subsections 12.1 and 12.2, by striking out
804 the words 'Water Resources Board', and inserting in lieu
805 thereof the words 'Environmental Quality Board', and by
806 striking out the words '\$20-5M-11' and inserting in lieu
807 thereof the words '\$ 22-12-11'."

808 (k) The legislative rule relating to the division of
809 environmental protection, office of water resources (moni-
810 toring well rules, 47 CSR 59), effective the first day of
811 June, one thousand nine hundred ninety-four, is
812 reauthorized with the following amendments:

813 "Beginning on page 1, and continuing throughout the
814 text of the rule, by renumbering the text breakdown as
815 necessary to conform with the rule of the secretary of state
816 relating to format (standard size and format for rules and
817 procedures for publication of the state register or parts of
818 the state register, 153 CSR 6);

819 On page 1, in the title of the rule, by striking out the
820 words 'DEPARTMENT OF COMMERCE, LABOR AND
821 ENVIRONMENTAL RESOURCES' and inserting in lieu
822 thereof the words 'BUREAU OF ENVIRONMENT', and
823 by striking out the words 'WATER RESOURCES -
824 WASTE MANAGEMENT' and inserting in lieu thereof
825 the words 'OFFICE OF WATER RESOURCES';

826 On page 1, in the title, by striking out the word 'regu-
827 lations' and inserting in lieu thereof the word 'rule';

828 On page 3, subsection 1.2, by striking out the code
829 reference '\$20-5M-5(d)', and inserting in lieu thereof the
830 code reference '\$ 22-12-5(d)';

831 And,

832 On page 3, subsection 7.5 and section 8, by striking
833 out the code reference '\$20-5M-11' and inserting in lieu
834 thereof the code reference '\$ 22-12-11'."

§64-11-5. Division of environmental protection, office of waste management.

1 (a) The legislative rule relating to the division of envi-
2 ronmental protection, office of waste management (assess-

3 ment of civil administrative penalties, 47 CSR 4), effective
4 the twenty-second day of April, one thousand nine hun-
5 dred ninety-one, is reauthorized with the following
6 amendments:

7 “Beginning on page 1, and continuing throughout the
8 text of the rule, by renumbering the text breakdown as
9 necessary to conform with the rule of the secretary of state
10 relating to format (standard size and format for rules and
11 procedures for publication of the state register or parts of
12 the state register, 153 CSR 6);

13 Beginning on page 1, in the title, and continuing
14 throughout the text of the rule, by striking out the title
15 number ‘47’ and inserting in lieu thereof the title number
16 ‘33’;

17 Beginning on page 1, in the title, and continuing
18 throughout the text of the rule, by striking out the series
19 number ‘4’ and inserting in lieu thereof the series number
20 ‘22’;

21 On page 1, in the title, by striking out the words ‘WA-
22 TER RESOURCES-WASTE MANAGEMENT’ and insert-
23 ing in lieu thereof the words ‘OFFICE OF WASTE MAN-
24 AGEMENT’;

25 Beginning on page 1, subsection 1.1., and continuing
26 throughout the text of the rule, by striking out the code
27 reference ‘§20-5E-16’, and inserting in lieu thereof the
28 code reference ‘§ 22-18-17’, and by striking out the code
29 reference ‘§20-5F-6’, and inserting in lieu thereof the
30 code reference ‘§ 22-15-15’;

31 On page 1, subsection 2.1., by striking out the code
32 reference ‘§20-5E-1’, and inserting in lieu thereof the
33 code reference ‘§ 22-18-1’, and by striking out the code
34 reference ‘§20-5F-1’ and inserting in lieu thereof the
35 code reference ‘§ 22-15-1’;

36 On page 1, subsection 2.4., by striking out the words
37 ‘Natural Resources’ and inserting in lieu thereof the
38 words ‘environmental protection’;

39 On page 1, subsection 2.4., by inserting the words 'or
40 her' immediately following the word 'his';

41 Beginning on page 1, and continuing throughout the
42 text of the rule, by renumbering the text breakdown as
43 necessary to conform with the rule of the secretary of state
44 relating to format (standard size and format for rules and
45 procedures for publication of the state register or parts of
46 the state register, 153 CSR 6);

47 On page 3, subsection 5.5., by striking out the words
48 'State Water Resources Board', and inserting in lieu there-
49 of the words 'environmental quality board';

50 Beginning on page 3, subsection 6.2., and continuing
51 throughout the text of the rule, by striking out the words
52 'these regulations', and inserting in lieu thereof 'this
53 rule';

54 And,

55 On page 4, subsections 6.5, 7.3. and 7.5, by striking
56 out the word 'Section', and inserting in lieu thereof the
57 word 'subsection'."

58 (b) The legislative rule relating to the division of
59 environmental protection, office of waste management
60 (groundwater protection standard, 47 CSR 12), effective
61 the twenty-fifth day of April, one thousand nine hundred
62 eighty-four, is reauthorized with the following amend-
63 ments:

64 "Beginning on page 1, in the title, and continuing
65 throughout the text of the rule, by striking out the title
66 number '47', and inserting in lieu thereof the title number
67 '33';

68 Beginning on page 1, in the title, and continuing
69 throughout the text of the rule, by striking out the series
70 number '12', and inserting in lieu thereof the series num-
71 ber '23';

72 On page 1, in the title, by striking out the words 'WA-
73 TER RESOURCES-WASTE MANAGEMENT', and in-
74 serting in lieu thereof the words 'OFFICE OF WASTE
75 MANAGEMENT';

76 On page 1, subsection 1.1., by striking out the words
77 'these regulations', and inserting in lieu thereof the words
78 'this rule';

79 On page 1, subsection 1.1., by striking out the words
80 'Section 2, Series 35, Department of Natural Resources
81 Administrative Regulations', and inserting in lieu thereof
82 the words '33CSR20, Section 2';

83 And,

84 On page 1, subsection 1.2., by striking out the code
85 references '20-5E and 5A' and inserting in lieu thereof
86 the code references 'Chapter 22, Articles 18 and 11'."

87 (c) The legislative rule relating to the division of envi-
88 ronmental protection, office of waste management (com-
89 mercial hazardous waste management facility siting fees,
90 47 CSR 35A), effective the first day of June, one thousand
91 nine hundred ninety-four, is reauthorized with the follow-
92 ing amendments:

93 "Beginning on page 1, in the title, and continuing
94 throughout the text of the rule, by striking out the title
95 number '47', and inserting in lieu thereof the title number
96 '33';

97 Beginning on page 1, in the title, and continuing
98 throughout the text of the rule, by striking out the series
99 number '35A', and inserting in lieu thereof the series
100 number '21';

101 On page 1, in the title, by striking out the words 'WA-
102 TER RESOURCES-WASTE MANAGEMENT', and in-
103 serting in lieu thereof the words 'OFFICE OF WASTE
104 MANAGEMENT';

105 On page 1, subsection 1.1., by striking out the code
106 reference '§20-10-1', and inserting in lieu thereof the
107 code reference '§ 22C-5-1';

108 On page 1, subsection 1.2., by striking out the code
109 reference '§20-10-5(b)', and inserting in lieu thereof the
110 code reference '§22C-5-6(b)';

111 On page 1, subsection 2.1., by striking out the code
112 reference '§20-10-3', and inserting in lieu thereof the
113 code reference '§ 22C-5-4';

114 Beginning on page 1, subsection 2.2., and continuing
115 throughout the text of the rule, by striking out the rule
116 reference '47 C.S.R. 35', and inserting in lieu thereof the
117 rule reference '33CSR20';

118 Beginning on page 1, subsection 2.2., and continuing
119 throughout the text of the rule, by striking out the word
120 'regulations', and inserting in lieu thereof the word
121 'rule';

122 On page 1, subsection 3.1., by striking out the code
123 reference '§20-10-5', and inserting in lieu thereof the
124 code reference '§22C-5-6'."

125 And,

126 On page 1, subsection 3.3., by striking out the word
127 'regulations' and inserting in lieu thereof the word
128 'rule'."

129 (d) The legislative rule relating to the division of
130 environmental protection, office of waste management
131 (underground storage tanks, 47 CSR 36), effective the first
132 day of July, one thousand nine hundred ninety-six, is
133 reauthorized with the following amendments:

134 "Beginning on page 1, in the title, and continuing
135 throughout the text of the rule, by striking out the title
136 number '47', and inserting in lieu thereof the title number
137 '33';

138 Beginning on page 1, in the title, and continuing
139 throughout the text of the rule, by striking out the series
140 number '36', and inserting in lieu thereof the series num-
141 ber '30';

142 On page 1, in the title, by striking out the words 'WA-
143 TER RESOURCES-WASTE MANAGEMENT', and in-

144 setting in lieu thereof the words 'OFFICE OF WASTE
145 MANAGEMENT';

146 On page 5, subsection 4.6., by striking out the rule
147 reference '(46 C.S.R. 30)', and inserting in lieu thereof
148 the rule reference '(33CSR30)';

149 And,

150 On page 5, subsection 5.1., by striking out the rule
151 reference '(47 C.S.R. 37)', and inserting in lieu thereof
152 the rule reference '(33CSR31)', by striking out the rule
153 reference '(47 C.S.R. 36 Section 4)', and inserting in lieu
154 thereof the rule reference '(33CSR30 §4)', and by strik-
155 ing out the rule reference '(47 C.S.R. 37A Section 5)',
156 and inserting in lieu thereof the rule reference '(33CSR32
157 §5)'."

158 (e) The legislative rule relating to the division of envi-
159 ronmental protection, office of waste management (under-
160 ground storage tank fee assessments, 47 CSR 37), effective
161 the fourteenth day of June, one thousand nine hundred
162 ninety-three, is reauthorized with the following amend-
163 ments:

164 "Beginning on page 1, in the title, and continuing
165 throughout the text of the rule, by striking out the title
166 number '47', and inserting in lieu thereof the title number
167 '33';

168 Beginning on page 1, in the title, and continuing
169 throughout the text of the rule, by striking out the series
170 number '37', and inserting in lieu thereof the series num-
171 ber '31';

172 On page 1, in the title, by striking out the words 'WA-
173 TER RESOURCES-WASTE MANAGEMENT', and in-
174 serting in lieu thereof the words 'OFFICE OF WASTE
175 MANAGEMENT';

176 On page 1, subsection 1.1, by striking out the code
177 reference 'W. Va. Code §§20-5H-20 and 20-5H-21' and

178 inserting in lieu thereof the code reference 'W. Va. Code
179 §§ 22-17-20 and 22-17-21';

180 On page 1, subsection 1.2., by striking out the code
181 reference 'W. Va. Code §20-5H-6', and inserting in lieu
182 thereof the code reference 'W. Va. Code § 22-17-6';

183 Beginning on page 1, subsection 1.5., and continuing
184 throughout the text of the rule, by striking out the words
185 'these regulations', and inserting in lieu thereof the words
186 'this rule';

187 Beginning on page 1, and continuing throughout the
188 text of the rule, by renumbering the text breakdown as
189 necessary to conform with the rule of the secretary of state
190 relating to format (standard size and format for rules and
191 procedures for publication of the state register or parts of
192 the state register, 153 CSR 6);

193 On page 1, subsection 2.1., by striking out the code
194 reference '§20-5H', and inserting in lieu thereof the code
195 reference '§ 22-17-1';

196 On page 1, subsection 2.1., before the word means, by
197 inserting the word 'Act' in the definition;

198 On page 1, subsection 2.2., before the word means, by
199 inserting the word 'Change-In-Service' in the definition;

200 On page 1, subsection 2.3., before the word means, by
201 inserting the word 'Division' in the definition;

202 On page 1, subsection 2.4., before the word means, by
203 inserting the word 'Owner' in the definition;

204 On page 2, subsection 2.5., before the word means, by
205 inserting the word 'Person' in the definition;

206 On page 2, subsection 2.6., before the word means, by
207 inserting the word 'Permanent Closure' in the definition;

208 On page 2, subsection 2.7., before the word means, by
209 inserting the word 'Regulated Substance' in the defini-
210 tion;

211 On page 2, subsection 2.8., before the word means, by
212 inserting the word 'Underground Storage Tank or UST'
213 in the definition;

214 On page 2, subdivision 2.8.a., by striking out the word
215 'Farms', and inserting in lieu thereof the word 'Farm';

216 On page 2, subdivision 2.8.j., by striking out the words
217 'Section 2.8.1. through 2.8.9.' and inserting in lieu there-
218 of the words 'subdivisions 2.8.a. through 2.8.i.';

219 Beginning on page 3, subdivision 3.3.b., and continu-
220 ing to subdivisions 3.3.c. and 5.1.a., and paragraphs 4.
221 4.c.1, 5.1.b.1. and 5.1.c.1, by striking out the word 'Sec-
222 tions' and inserting in lieu thereof the word 'subsections';

223 On page 3, subdivision 4.4.c., by striking out the
224 words '47 C.S.R. 36 § 4', and inserting in lieu thereof the
225 words '33CSR30 §4', and by striking out the words 'W.
226 Va. Code §20-5H-8', and inserting in lieu thereof the
227 words 'W. Va. Code § 22-17-8';

228 On page 4, subsection 4.5., by striking out the code
229 references '§§20-5H-15 and 20-5H-16', and inserting in
230 lieu thereof the code references '§§ 22-17-15 and 22-17-
231 16';

232 On page 4, subsection 5.1., by striking out the code
233 references '§§20-5H-20 and 20-5H-21', and inserting in
234 lieu thereof the code references '§§ 22-17-20 and 22-17-
235 21';

236 And,

237 On page 4, paragraph 5.1.c.2., by striking out the
238 code reference '§20-5H-20(a)', and inserting in lieu
239 thereof the code reference '§ 22-17-20(a).'

240 (f) The legislative rule relating to the division of envi-
241 ronmental protection, office of waste management (solid
242 waste management rule, 47 CSR 38), effective the second
243 day of June, one thousand nine hundred ninety-six, is
244 reauthorized with the following amendments:

245 "Beginning on page 1, in the title, and continuing
246 throughout the text of the rule, by striking out the title
247 number '47', and inserting in lieu thereof the title number
248 '33';

249 On page 1, in the title, by striking out the words 'WA-
250 TER RESOURCES - WASTE MANAGEMENT', and
251 inserting in lieu thereof the words 'OFFICE OF WASTE
252 MANAGEMENT';

253 Beginning on page 1, in the title, and continuing
254 throughout the text of the rule, by striking out the series
255 number '38', and inserting in lieu thereof the series num-
256 ber '1';

257 Beginning on page 1, and continuing throughout the
258 text of the rule, by renumbering the text breakdown as
259 necessary to conform with the rule of the secretary of state
260 relating to format (standard size and format for rules and
261 procedures for publication of the state register or parts of
262 the state register, 153 CSR 6);

263 Beginning on page 1, paragraph 1.1.a.4., and continu-
264 ing throughout the text of the rule, by striking out the
265 words used to describe the cross-references to sections,
266 subsections, subdivisions, paragraphs, subparagraphs, parts,
267 subparts, items or subitems, and inserting in lieu thereof
268 the corresponding reference as necessary to conform with
269 the rule of the secretary of state relating to format (stan-
270 dard size and format for rules and procedures for publica-
271 tion of the state register or parts of the state register, 153
272 CSR 6);

273 Beginning on page 1, subsection 1.5, and continuing
274 throughout the text of the rule, by striking out the rule
275 reference '47CSR38', and inserting in lieu thereof the
276 rule reference '33CSR1';

277 Beginning on page 1, subsection 1.5, and continuing
278 throughout the rule, by striking out the words 'these regu-
279 lations', and inserting in lieu thereof the words 'this rule';

280 Beginning on page 9, subsection 2.88, and continuing
281 throughout section 2 of the rule, by correctly renumbering
282 all misnumbered subsections and subdivisions;

283 On page 50, subparagraph 3.13.k.1.F, by striking out
284 the word 'data', and inserting in lieu thereof the word
285 'date';

286 Beginning on page 72, subsection 4.1, and continuing
287 throughout the text of the rule, by striking out the word
288 'sec.', and inserting in lieu thereof the word 'seq.';

289 Beginning on page 111, paragraph 4.11.b.2., and
290 continuing throughout the text of the rule, by striking out
291 the word 'chief', and inserting in lieu thereof the word
292 'director';

293 And,

294 Beginning on page 117, subsection 4.11.e, and contin-
295 uing throughout the text of the rule, by striking out the
296 abbreviation 'WV', and inserting in lieu thereof the abbrevi-
297 ation 'W. Va.'

298 (g) The legislative rule relating to the division of
299 environmental protection, office of waste management
300 (commercial solid waste landfill closure assistance pro-
301 gram, 47 CSR 38C), effective the first day of June, one
302 thousand nine hundred ninety-four, is reauthorized with
303 the following amendments:

304 "Beginning on page 1, in the title, and continuing
305 throughout the text of the rule, by striking out the title
306 number '47', and inserting in lieu thereof the title number
307 '33';

308 On page 1, in the title, by striking out the words 'WA-
309 TER RESOURCES - WASTE MANAGEMENT', and
310 inserting in lieu thereof the words 'OFFICE OF WASTE
311 MANAGEMENT';

312 Beginning on page 1, in the title, and continuing
313 throughout the text of the rule, by striking out the series
314 number '38C', and inserting in lieu thereof the series
315 number '40';

315 On page 1, subsection 1.1, by striking out the code
316 reference '§20-5N-1 et seq.', and inserting in lieu thereof
317 the code reference '§ 22-16-1 et seq.';

318 On page 1, subsection 1.1, by striking out the words
319 'Article 5N' and inserting in lieu thereof the words 'Arti-
320 cle 16.';

321 On page 1, subsection 1.2, by striking out the code
322 reference '§20-5N-8', and inserting in lieu thereof the
323 code reference '§ 22-16-13.';

324 Beginning on page 1, subsection 1.6, and continuing
325 throughout the text of the rule, by striking out the words
326 'these regulations', and inserting in lieu thereof the words
327 'this rule', and by striking out the word 'regulation' and
328 inserting in lieu thereof the word 'rule';

329 On page 1, subsection 2.2, by striking out the code
330 references '§20-5N-3 and 10', and inserting in lieu there-
331 of the code references '§§ 22-16-3 and 15';

332 On page 2, subsection 2.3, by striking out the words
333 'of the Department of Commerce, Labor and Environ-
334 mental Protection'; On page 2, subsection 2.7, by insert-
335 ing the subsection heading 'Incorporation of § 22-15-2
336 Definitions.';

337 On page 2, subsection 2.7, by striking out the code
338 reference '§20-5F-2' and inserting in lieu thereof the
339 code reference '§ 22-15-2';

340 On page 2, subsection 3.1, by inserting the subsection
341 heading 'Application Form.';

342 On page 2, subsection 3.2, by inserting the subsection
343 heading 'Application Information.';

344 Beginning on page 2, subsection 3.2, and continuing
345 throughout the text of the rule, by renumbering the text
346 breakdown as necessary to conform with the rule of the
347 secretary of state relating to format (standard size and
348 format for rules and procedures for publication of the
349 state register or parts of the state register, 153 CSR 6);

350 Beginning on page 3, paragraph 3.2.h.2., and continu-
351 ing throughout the text of the rule, by striking out the
352 words used to describe the cross-references to sections,
353 subsections, subdivisions, paragraphs, subparagraphs, parts,
354 subparts, items or subitems, and inserting in lieu thereof
355 the corresponding reference as necessary to conform with
356 the rule of the secretary of state relating to format (stan-
357 dard size and format for rules and procedures for publica-
358 tion of the state register or parts of the state register, 153
359 CSR 6);

360 On page 3, subparagraphs 3.2.e. and 3.2.f., by striking
361 out the abbreviation 'No.' and by inserting the word
362 'Number';

363 On page 4, paragraph 3.2.h.5., by striking out the
364 code reference '§20-5F-4(k)', and inserting in lieu there-
365 of the code reference '§ 22-15-5(j)';

366 On page 4, subsection 3.3, by inserting the subsection
367 heading 'Application Review and Decision.';

368 On page 4, subsection 3.4, by inserting the subsection
369 heading 'Application Resubmittal.';

370 On page 4, subsection 3.5, by inserting the subsection
371 heading 'Application Deadlines.';

372 On page 4, subsection 3.5, by striking out the code
373 reference '§20-5F-6', and inserting in lieu thereof the
374 code reference '§ 22-16-11';

375 On page 5, subsection 4.1, by inserting the subsection
376 heading 'Valid Landfill Facility Permit Required.';

377 Beginning on page 5, subsection 4.1, and continuing
378 throughout the text of the rule, by striking out the code
379 reference '§20-5F-1' and inserting in lieu thereof the
380 code reference '§ 22-15-1';

381 On page 5, subdivision 4.1.b, by striking out the code
382 reference '§20-5A-1', and inserting in lieu thereof the
383 code reference '§ 22-11-1';

385 On page 5, subdivision 4.2.b., by striking out the code
386 reference '§20-5F-1', and inserting in lieu thereof the
387 code reference '§ 22-15-1';

388 Beginning on page 5, subsection 4.2.b., and continu-
389 ing throughout the text of the rule, by striking out the rule
390 reference '47 CSR 38', and inserting in lieu thereof the
391 rule reference '33CSR1';

392 On page 6, subdivision 4.4.a., by striking out the
393 words 'Water Resources Board', and inserting in lieu
394 thereof the words 'Environmental Quality Board';

395 On page 6, subdivision 4.5, by striking out the code
396 reference '§20-5N-4(a)', and inserting in lieu thereof the
397 code reference '§22-16-4';

398 Beginning on page 6, in paragraph 4.6.a.3., and con-
399 tinuing throughout the text of the rule, by striking out the
400 word 'Chief', and inserting in lieu thereof the word 'di-
401 rector';

402 On page 7, subsection 4.7, by inserting the subsection
403 heading 'Authority of the Director to Modify Permit.';

404 On page 7, subsection 4.8, by inserting the subsection
405 heading 'Granting of Access to Facility To Director.';

406 On page 7, subsection 5.1, by inserting the subsection
407 heading 'Authority of the Director to Establish Mainte-
408 nance Contracts.';

409 On page 8, subsection 6.1, by inserting the subsection
410 heading 'Performance of Post-Closure Activities.';

411 On page 8, subsection 7.1, by inserting the subsection
412 heading 'Expenditure of Funds from the Closure Assis-
413 tance Fund.';

414 On page 8, subsection 7.2, by inserting the subsection
415 heading 'Assistance Contingent upon the Availability of
416 Revenues.';

417 And,

418 On page 8, subsection 8.1, by inserting the subsection
419 heading 'Priority for Final Assistance.'."

418 (h) The legislative rule relating to the division of
419 environmental protection, office of waste management
420 (sewage sludge management rules, 47 CSR 38D), effective
421 the first day of May, one thousand nine hundred ninety-
422 six, is reauthorized with the following amendments:

423 "Beginning on page 1, in the title, and continuing
424 throughout the text of the rule, by striking out the title
425 number '47', and inserting in lieu thereof the title number
426 '33';

427 On page 1, in the title, on the line following the words
428 'DIVISION OF ENVIRONMENTAL PROTECTION', by
429 inserting the words 'OFFICE OF WASTE MANAGE-
430 MENT';

431 Beginning on page 1, in the title, and continuing
432 throughout the text of the rule, by striking out the series
433 number '38D', and inserting in lieu thereof the series
434 number '2';

435 Beginning on page 1, in the title, and continuing
436 throughout the text of the rule, by striking out the word
437 'regulations', and inserting in lieu thereof the word
438 'rule';

439 Beginning on page 5, subdivision 3.2.a., and continu-
440 ing throughout the text of the rule, by renumbering the
441 text breakdown as necessary to conform with the rule of
442 the secretary of state relating to format (standard size and
443 format for rules and procedures for publication of the
444 state register or parts of the state register, 153 CSR 6);

445 Beginning on page 6, subdivision 3.2.b., and continu-
446 ing throughout the text of the rule, by striking out the
447 words used to describe the cross-references to sections,
448 subsections, subdivisions, paragraphs, subparagraphs, parts,
449 subparts, items or subitems, and inserting in lieu thereof
450 the corresponding reference as necessary to conform with
451 the rule of the secretary of state relating to format (stan-
452 dard size and format for rules and procedures for publica-

453 tion of the state register or parts of the state register, 153
454 CSR 6);

455 On page 8, subdivision 4.1.e., and continuing
456 throughout the text of the rule, by striking out the rule
457 reference '47 CSR 38', and inserting in lieu thereof the
458 rule reference '33CSR1'."

459 (i) The legislative rule relating to the division of envi-
460 ronmental protection, office of waste management (yard
461 waste composting rule, 47 CSR 38E), effective the first day
462 of June, one thousand nine hundred ninety-four, is
463 reauthorized with the following amendments:

464 "Beginning on page 1, in the title, and continuing
465 throughout the text of the rule, by striking out the title
466 number '47', and inserting in lieu thereof the title number
467 '33';

468 On page 1, in the title, by striking out the words 'WA-
469 TER RESOURCES - WASTE MANAGEMENT', and by
470 inserting in lieu thereof the words 'OFFICE OF WASTE
471 MANAGEMENT';

472 Beginning on page 1, in the title, and continuing
473 throughout the text of the rule, by striking out the series
474 number '38E', and inserting in lieu thereof the series
475 number 'E';

476 On page 1, §33-3-2, by striking out the code reference
477 '§20-5F-2', and inserting in lieu thereof the code refer-
478 ence '22-15-2', and by striking out the rule reference
479 '§47CSR38D' and inserting in lieu thereof the rule refer-
480 ence '33CSR2';

481 Beginning on page 2, subsection 2.3, and continuing
482 throughout the text of the rule, by striking out the word
483 'Chief', and inserting in lieu thereof the word 'director';

484 Beginning on page 3, subdivision 3.1.a., and continu-
485 ing throughout the text of the rule, by renumbering the
486 text breakdown as necessary to conform with the rule of
487 the secretary of state relating to format (standard size and

488 format for rules and procedures for publication of the
489 state register or parts of the state register, 153 CSR 6);

490 Beginning on page 6, paragraph 3.1.a.2., and continu-
491 ing throughout the text of the rule, by striking out the
492 words used to describe the cross-references to sections,
493 subsections, subdivisions, paragraphs, subparagraphs, parts,
494 subparts, items or subitems, and inserting in lieu thereof
495 the corresponding reference as necessary to conform with
496 the rule of the secretary of state relating to format (stan-
497 dard size and format for rules and procedures for publica-
498 tion of the state register or parts of the state register, 153
499 CSR 6);

500 Beginning on page 3, paragraph 3.1.a.2., and continu-
501 ing throughout the text of the rule, by striking out the rule
502 reference '47 CSR 38', and inserting in lieu thereof the
503 rule reference '33CSR1.';

504 Beginning on page 3, paragraph 3.1.a.2., and continu-
505 ing throughout the text of the rule, by striking out the
506 word 'regulations', and inserting in lieu thereof the word
507 'rule';

508 On page 6, paragraph 3.4.c.3., after the semicolon, by
509 inserting word 'and';

510 And,

511 Beginning on page 7, subparagraph 3.4.c.4.C, and
512 continuing throughout the text of the rule, by striking out
513 the word 'Division', and inserting in lieu thereof the
514 words 'Division of Environmental Protection'."

515 (j) The legislative rule relating to the division of envi-
516 ronmental protection, office of waste management (office
517 of waste management, 47 CSR 38F), effective the first day
518 of June, one thousand nine hundred ninety-four, is
519 reauthorized with the following amendments:

520 "Beginning on page 1, in the title, and continuing
521 throughout the text of the rule, by striking out the title

522 number '47', and inserting in lieu thereof the title number
523 '33';

524 Beginning on page 1, in the title, and continuing
525 throughout the text of the rule, by striking out the series
526 number '38F', and inserting in lieu thereof the series
527 number '4';

528 On page 1, in the title, by striking out the words 'WA-
529 TER RESOURCES - WASTE MANAGEMENT', and
530 inserting in lieu thereof the words 'OFFICE OF WASTE
531 MANAGEMENT';

532 And,

533 Beginning on page 2, subdivision 3.3.a., and continu-
534 ing throughout the text of the rule, by renumbering the
535 text breakdown as necessary to conform with the rule of
536 the secretary of state relating to format (standard size and
537 format for rules and procedures for publication of the
538 state register or parts of the state register, 153 CSR 6)."

539 (k) The legislative rule relating to the division of
540 environmental protection, office of waste management
541 (waste tire management rule, 47 CSR 38G), effective the
542 second day of June, one thousand nine hundred ninety-
543 six, is reauthorized with the following amendments:

544 "Beginning on page 1, in the title, and continuing
545 throughout the text of the rule, by striking out the title
546 number '47', and inserting in lieu thereof the title number
547 '33';

548 On page 1, in the title, by striking out the words 'WA-
549 TER RESOURCES - WASTE MANAGEMENT', and
550 inserting in lieu thereof the words 'OFFICE OF WASTE
551 MANAGEMENT';

552 Beginning on page 1, in the title, and continuing
553 throughout the text of the rule, by striking out the series
554 number '38G', and inserting in lieu thereof the series
555 number '5';

556 Beginning on page 1, subdivision 1.1.a., and continu-
557 ing throughout the text of the rule, by renumbering the
558 text breakdown as necessary to conform with the rule of
559 the secretary of state relating to format (standard size and
560 format for rules and procedures for publication of the
561 state register or parts of the state register, 153 CSR 6);

562 Beginning on page 1, subdivision 1.1.c., and continu-
563 ing throughout the text of the rule, by striking out the
564 words used to describe the cross-references to sections,
565 subsections, subdivisions, paragraphs, subparagraphs, parts,
566 subparts, items or subitems, and inserting in lieu thereof
567 the corresponding reference as necessary to conform with
568 the rule of the secretary of state relating to format (stan-
569 dard size and format for rules and procedures for publica-
570 tion of the state register or parts of the state register, 153
571 CSR 6);

572 On page 1, §33-5-2 (former §47-38G-2), and contin-
573 uing throughout the text of the rule, by striking out the
574 rule reference '47 CSR 38', and inserting in lieu thereof
575 the rule reference '33CSR1';

576 Beginning on page 1, subsection 2.3, and continuing
577 throughout the text of the rule, by striking out the word
578 'regulations', and inserting in lieu thereof the word
579 'rule';

580 Beginning on page 2, subsection 2.17, and continuing
581 throughout the text of the rule, by striking out the abbrevi-
582 ation 'WV', and inserting in lieu thereof the abbrevia-
583 tion 'W. Va.';

584 Beginning on page 3, subdivision 3.1.b., and continu-
585 ing throughout the text of the rule, by striking out the rule
586 reference '47 CSR 38G', and inserting in lieu thereof the
587 words 'this rule';

588 And,

589 Beginning on page 3, subdivision 3.2.a., and continu-
590 ing throughout the text of the rule, by striking out the
591 word 'chief', and inserting in lieu thereof the word 'direc-
592 tor'."