

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2000
First Extraordinary Session, 2000

Volume I
Chapters 1 — 150

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

* * * * *

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FOREWORD

These volumes contain the Acts of the Second Regular Session and the First Extraordinary Session of the 74th Legislature, 2000.

Second Regular Session, 2000

The Second Regular Session of the 74th Legislature convened on January 12, 2000. The Constitutional sixty-day limit on the duration of the session was midnight, March 11, 2000. The Governor issued proclamations on March 8 and March 17, extending the session for the purpose of considering the Budget and supplementary appropriation bills, and the Legislature adjourned *sine die* on March 19, 2000.

Bills totaling 1,901 were introduced in the two houses during the session (1232 House and 669 Senate). The Legislature passed 295 bills, 163 House and 132 Senate.

The Governor vetoed five House bills (H. B. 4303, Relating to credits against premium tax for investment in West Virginia securities; H. B. 4396, Criminal penalties for misuse of the state purchasing card; H. B. 4477, Relating to the board of examiners for licensed dietitians and defining a scope of practice; H. B. 4579, Certificate of need exemption for behavioral health; H. B. 4689, Providing that thoroughbred horse tracks provide one restricted race per two racing days and removing the cap for moneys placed in the general purse fund) and six Senate bills (S. B. 310, Authorizing certain agencies within bureau of commerce to promulgate legislative rules; S. B. 342, Providing proof of payment of personal taxes prior to receiving business certificate; S. B. 356, Relating to minor boundary adjustments by municipalities; S. B. 470, Rewriting law on state aid for agricultural fairs and festivals; S. B. 582, Permitting certain officers and state employees to waive salaries; and S. B. 653, Relating to higher education generally). The Legislature amended and again passed H. B. 4303, H. B. 4579, H. B. 4689, S. B. 310 and S. B. 653, leaving a net total of 289 bills, 161 House and 128 Senate, which became law.

There were 145 Concurrent Resolutions introduced during the session, 89 House and 56 Senate, of which 28 House and 20 Senate were adopted. Thirty-three House Joint Resolutions and nine Senate Joint Resolutions were introduced, proposing amendments to the State Constitution. The House introduced 25 House Resolutions, and the Senate introduced 48 Senate Resolutions, of which 17 House and 47 Senate were adopted.

The Senate failed to pass 79 House bills passed by the House, and 55 Senate bills failed passage by the House. One bill died in conference: Senate Bill 481, Reorganizing executive branch of cabinet secretaries.

First Extraordinary Session, 2000

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

The Legislature passed 5 bills, all of which were Senate bills. The Senate adopted four Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* on March 19, 2000.

* * * * *

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

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

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

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229. (SB451) Continuing State Police 1875

230. (SB166) Continuing State Soil Conservation
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231. (HB4771) Continuing the Racing Commission 1880

232.	(HB4297)	Continuing the Stream Partners Program	1881
233.	(HB4772)	Continuing the Division of Environmental Protection	1882
234.	(SB164)	Continuing Environmental Advocate	1883
235.	(SB227)	Continuing Environmental Quality Board	1884
236.	(HB4770)	Continuing the Oil and Gas Inspectors' Examining Board	1885
237.	(SB165)	Continuing Membership in Ohio River Water Sanitation Commission	1890
238.	(HB4774)	Continuing the Authority of the Commis- sioner of the Bureau of Employment Programs	1891
239.	(HB4773)	Continuing the Office of Administrative Law Judges	1893
240.	(SB396)	Continuing Division of Corrections	1896
241.	(SB449)	Continuing State Rail Authority	1897
242.	(SB229)	Continuing Public Defender Services	1900
243.	(SB450)	Continuing Board of Medicine	1901
244.	(HB4158)	Continuing the Board of Examiners in Counseling	1902
245.	(SB228)	Continuing Board of Examiners for Speech-Language Pathology and Audiology	1903
246.	(HB4094)	Continuing the Board of Respiratory Care Practitioners	1904
247.	(HB4410)	Continuing the Board of Examiners for Licensed Dietitians	1904
248.	(HB4157)	Continuing the Family Protection Services Board	1905
249.	(SB397)	Continuing Child Support Enforcement Division	1906
250.	(HB4411)	Continuing the Family Law Masters System	1908

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266.	(*HB4533)	Relating to Real Property Tax Liens Sold By Sheriffs for Delinquent Ad Valorem Taxes	1961

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MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 2000

OFFICERS

Speaker — Robert S. Kiss, Beckley

Clerk — Gregory M. Gray, Charleston

Sergeant at Arms — Oce Smith, Fairmont

Doorkeeper — John A. Roberts, Hedgenville

District	Name	Address	Legislative Service
First	Jeff Davis (D)	New Cumberland	73rd-74th
	Tamara Pettit (D)	New Cumberland	Appt. 11/18/89, 69th; 70th-74th
Second	Timothy R. Ennis (D)	Wellsburg	72nd-74th
	Roy E. Givens (D)	Wellsburg	64th-69th; 72nd-74th
Third	Tal Hutchins (D)	Wheeling	72nd-74th
	L. Gil White (R)	Wheeling	70th-71st; 73rd-74th
Fourth	Kenneth D. Tucker (D)	Moundsville	73rd-74th
	Scott G. Varner (D)	Moundsville	71st-74th
Fifth	Dave Pethel (D)	Hundred	69th-71st; 74th
Sixth	James E. Willison (R)	Sistersville	69th-74th
Seventh	Otis A. Leggett (R)	St. Marys	68th-74th
Eighth	Everette W. Anderson, Jr. (R)	Williamstown	71st-74th
Ninth	Larry W. Border (R)	Davisville	70th-74th
	Tom Azinger (R)	Vienna	72nd-74th
Tenth	J. D. Beane (D)	Parkersburg	70th-74th
	Rick Modesitt (R)	Parkersburg	74th
	F. Oscar Hines (D)	Spencer	74th
Twelfth	Karen L. Facemyer (R)	Ripley	71st-74th
Thirteenth	Jerry K. Kelley (D)	Red House	72nd-74th
	Brady Paxton (D)	Poca	71st; Appt. 4/22/99, 74th
Fourteenth	Mike Hall (R)	Hurricane	72nd-74th
	Lisa D. Smith (R)	Scott Depot	74th
Fifteenth	Arley Johnson (D)	Huntington	72nd-74th
	Margarette R. Leach (D)	Huntington	71st-74th
	Charles E. Romine, Jr. (R)	Huntington	60th-62nd; 74th
Sixteenth	Susan Hubbard (D)	Huntington	72nd-74th
	Evan H. Jenkins (D)	Huntington	72nd-74th
	Jody G. Smirl (R)	Huntington	58th-61st; 67th; 72nd-74th
Seventeenth	Mark A. Ross (D)	Wayne	Appt. 1/18/2000, 74th
Eighteenth	Don C. Perdue (D)	Prichard	74th
Nineteenth	K. Steven Kominar (D)	Kermit	72nd-74th
	Harry Keith White (D)	Gilbert	Appt. 9/11/92, 70th; 71st; 73rd-74th
Twentieth	Greg Butcher (D)	Chapmanville	73rd-74th
	Sammy D. Dalton (D)	Harts	62nd-67th; 69th; (Senate 70th-71st); 73rd-74th
	Tracy Dempsey (D)	Harts	70th-74th
Twenty-first	Joe C. Ferrell (D)	Logan	66th; 68th-70th; 74th
	Earnest H. Kuhn (D)	Van	72nd-74th
Twenty-second	Lacy Wright, Jr. (D)	Welch	62nd-64th; (Senate 65th-66th); 73rd-74th
	Emily W. Yeager (D)	Welch	Appt. 3/10/93, 71st; 72nd-74th
Twenty-third	Joe Sparks (D)	Pineville	73rd-74th
	Rick Staton (D)	Mullens	69th-74th
Twenty-fourth	Eustace Frederick (D)	Bluefield	Appt. 10/17/93, 71st; 72nd-74th
Twenty-fifth	Richard D. Flanigan (D)	Princeton	66th-71st; 73rd-74th
	Mark E. Wills (D)	Princeton	74th
Twenty-sixth	Mary Pearl Compton (D)	Union	69th-74th
Twenty-seventh	Robert S. Kiss (D)	Beckley	69th-74th
	Virginia Mahan (D)	Green Sulphur Springs	73rd-74th
	Warren R. McGraw II (D)	Prosperity	71st-74th
	Sally Matz Susman (D)	Beckley	74th
	Ron Thompson (D)	Beckley	72nd-74th

MEMBERS OF THE HOUSE OF DELEGATES - Continued

District	Name	Address	Legislative Service
Twenty-eighth	Thomas W. Campbell (D)	Lewisburg	73rd-74th
	Carroll Willis (D)	Alderson	73rd-74th
Twenty-ninth	William R. Laird IV (D)	Fayetteville	73rd-74th
	Tom Louisos (D)	Oak Hill	67th-68th; 70th-74th
	John Pino (D)	Oak Hill	67th-68th; 72nd-74th
Thirtieth	Jon Amores (D)	Charleston	72nd-74th
	Shelley Moore Capito (R)	Charleston	73rd-74th
	Barbara Burruss Hatfield (D)	South Charleston	68th-70th; 74th
	³ Ann Calvert (R)	Charleston	71st-72nd; Appt. 8/17/99, 74th
	Larry L. Rowe (D)	Malden	73rd-74th
	Joe F. Smith (D)	Charleston	71st; 73rd-74th
	Sharon Spencer (D)	Charleston	66th; 68th-71st; 73rd-74th
Thirty-first	Mark A. Hunt (D)	Charleston	72nd-74th
Thirty-second	Tim Armstead (R)	Elkview	Appt. 9/5/98, 73rd; 74th
	Art Ashley (D)	Nitro	74th
	Steve Harrison (R)	Cross Lanes	71st-74th
	Charles Rusty Webb (R)	Cross Lanes	73rd-74th
Thirty-third	William F. Stemple (D)	Arnoldsburg	73rd-74th
Thirty-fourth	Brent Boggs (D)	Gassaway	73rd-74th
Thirty-fifth	John W. Shelton (D)	Summersville	73rd-74th
Thirty-sixth	C. Randy White (D)	Webster Springs	73rd-74th
Thirty-seventh	Joe Martin (D)	Elkins	Appt. 6/15/78, 63rd; 64th-74th
	Bill Proudfoot (D)	Elkins	70th-74th
Thirty-eighth	Doug Stalnaker (R)	Weston	72nd-74th
Thirty-ninth	Dale F. Riggs (R)	Buckhannon	69th-74th
Fortieth	⁴ Joseph P. Mattaliano (D)	Philippi	Appt. 9/16/99, 74th
Forty-first	Frank T. Angotti, Jr. (D)	Clarksburg	74th
	Samuel J. Cann (D)	Jane Lew	72nd-74th
	Larry A. Lynch (D)	Clarksburg	71st-74th
	Barbara A. Warner (D)	Bridgeport	69th-74th
Forty-second	Tom Coleman (D)	Bridgeport	73rd-74th
Forty-third	Michael Caputo (D)	Fairmont	73rd-74th
	A. James Manchin (D)	Farmington	50th; 74th
	Paul Edward Prunty (D)	Fairmont	61st; 63rd-65th; 67th-68th; 70th; 72nd-74th
Forty-fourth	Barbara Evans Fleischauer (D)	Morgantown	72nd-74th
	Sheirl L. Fletcher (R)	Morgantown	74th
	Nancy Houston (D)	Morgantown	74th
	Charlene J. Marshall (D)	Morgantown	74th
Forty-fifth	Larry A. Williams (D)	Tunnelton	Appt. 10/08/93, 71st; 72nd-74th
Forty-sixth	David Collins (D)	Davis	70th-74th
Forty-seventh	Harold K. Michael (D)	Moorefield	69th-74th
Forty-eighth	Allen V. Evans (R)	Dorcas	70th-74th
Forty-ninth	Robert A. Schadler (R)	Keyser	69th-71st; 74th
Fiftieth	Jerry L. Mezzatesta (D)	Romney	68th-74th
Fifty-first	Charles S. Trump IV (R)	Berkeley Springs	71st-74th
Fifty-second	Vicki V. Douglas (D)	Martinsburg	70th-74th
Fifty-third	Larry V. Faircloth (R)	Inwood	65th-74th
Fifty-fourth	John Overington (R)	Martinsburg	67th-74th
Fifty-fifth	John Doyle (D)	Shepherdstown	66th; 71st-74th
Fifty-sixth	Dale Manuel (D)	Charles Town	69th-74th
	(D) Democrats		75
	(R) Republicans		25
	TOTAL		100

¹ Appointed Apr. 22, 1999, to fill the vacancy created by the resignation of Gary O. Tillis.² Appointed Jan. 18, 2000, to fill the vacancy created by the resignation of Jerry M. Damron.³ Appointed Aug. 17, 1999, to fill the vacancy created by the resignation of Margaret Miller.⁴ Appointed Sept. 16, 1999, to fill the vacancy created by the death of Richard H. Everson.

MEMBERS OF THE SENATE

REGULAR SESSION, 2000

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	Legislative Service
First	Edwin J. Bowman (D)	Weirton	72nd-74th
	Andy McKenzie (R)	Wheeling	73rd-74th
Second	Larry J. Edgell (D)	New Martinsville	74th
	Jeffrey V. Kessler (D)	Glen Dale	Appt. 11/97, 73rd; 74th
Third	Donna J. Boley (R)	St. Marys	Appt. 5/14/85, 67th; 68th-74th
	J. Frank Deem (R)	Vienna	(House 52nd-56th); 57th-62nd; 64th-65th; (House 69th); 72nd-74th
Fourth	Oshel B. Craigo (D)	Winfield	(House 65th); 66th-74th
	Robert L. Dittmar (D)	Ravenswood	69th-74th
Fifth	Robert H. Plymale (D)	Ceredo	71st-74th
	Marie E. Redd (D)	Huntington	74th
Sixth	H. Truman Chafin (D)	Williamson	66th-74th
	John Pat Fanning (D)	Iaeger	58th-64th; 67th-68th; 73rd-74th
Seventh	Lloyd G. Jackson II (D)	Hamlin	68th-69th; 72nd-74th
	Earl Ray Tomblin (D)	Chapmanville	(House 62nd-64th); 65th-74th
Eighth	John R. Mitchell, Jr. (D)	Charleston	74th
	Vic Sprouse (R)	South Charleston	(House 72nd); 73rd-74th
Ninth	Billy Wayne Bailey, Jr. (D)	Pineville	Appt. 1/9/91, 70th; 71st-74th
	William R. Wooton (D)	Beckley	(House 63rd-67th; 69th); 70th-74th
Tenth	Leonard W. Anderson (D)	Hinton	70th-74th
	Homer K. Ball (D)	Athens	(House 72nd); 73rd-74th
Eleventh	Shirley Love (D)	Oak Hill	72nd-74th
	¹ James G. Dawson (D)	Clay	Appt. 9/23/99, 74th
Twelfth	Joseph M. Minard (D)	Clarksburg	(House Appt. 1/10/83, 66th; 67th-69th); 70th-71st; 74th
	William R. Sharpe, Jr. (D)	Weston	55th-64th; 67th-74th
Thirteenth	Michael A. Oliverio II (D)	Westover	(House 71st); 72nd-74th
	Roman W. Prezioso, Jr. (D)	Fairmont	(House 69th-72nd); 73rd-74th
Fourteenth	Jon Blair Hunter (D)	Morgantown	73rd-74th
	Sarah M. Minear (R)	Davis	72nd-74th
Fifteenth	Walt Helmick (D)	Marlinton	(House 1 yr., 69th); Appt. 9/13/89, 69th; 70th-74th
	Mike Ross (D)	Coalton	71st-74th
Sixteenth	Herbert S. Snyder (D)	Shenandoah Junction	73rd-74th
	John R. Unger II (D)	Martinsburg	74th
Seventeenth	Brooks F. McCabe, Jr. (D)	Charleston	74th
	Martha Yeager Walker (D)	Charleston	(House 70th); 71st-74th

(D) Democrats	29
(R) Republicans	5
TOTAL	34

¹ Appointed Sept. 23, 1999, to fill the vacancy created by the resignation of Randy Schoonover.

COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2000

STANDING

AGRICULTURE AND NATURAL RESOURCES

Kelley (*Chair of Agriculture*), Boggs (*Vice Chair of Agriculture*), Yeager (*Chair of Natural Resources*), Ennis (*Vice Chair of Natural Resources*), Angotti, Butcher, Davis, Dempsey, Ferrell, Flanigan, McGraw, Paxton, Perdue, Pethtel, Prunty, Ross, Stemple, Williams, Willis, Anderson, Border, Evans, Leggett, Overington and Riggs.

BANKING AND INSURANCE

Thompson (*Chair of Banking*), Cann (*Vice Chair of Banking*), Beane (*Chair of Insurance*), Mahan (*Vice Chair of Insurance*), Amores, Angotti, Davis, Flanigan, Hatfield, Hutchins, Jenkins, Laird, Paxton, Perdue, Spencer, J. Smith, H. White, Wright, Azinger, Capito, Facemyer, Faircloth, Harrison, Romine and L. White.

CONSTITUTIONAL REVISION

Fleischauer (*Chair*), Kominar (*Vice Chair*), Collins, Dalton, Frederick, Givens, Hines, Houston, Laird, Leach, Linch, McGraw, Pethtel, Pino, Rowe, Varner, H. White, Wills, Wright, Anderson, Armstead, Harrison, Overington, Riggs and Webb.

EDUCATION

Mezzatesta (*Chair*), Manuel (*Vice Chair*), Boggs, Davis, Dempsey, Ennis, Houston, Hubbard, Paxton, Pethtel, Ross, Shelton, Sparks, Stemple, Susman, Williams, Willis, Yeager, Anderson, Armstead, Calvert, Fletcher, Harrison and Romine.

FINANCE

Michael (*Chair*), Doyle (*Vice Chair*), Ashley, Beane, Campbell, Cann, Compton, Fleischauer, Frederick, Jenkins, Kelley, Kominar, Laird, Leach, Mezzatesta, Pettit, Proudfoot, Thompson, Warner, Anderson, Border, Evans, Facemyer, Hall and Leggett.

GOVERNMENT ORGANIZATION

Douglas (*Chair*), Collins (*Vice Chair*), Angotti, Butcher, Caputo, Flanigan, Hatfield, Kuhn, Louisos, Manchin, Marshall, Martin, Mattaliano, McGraw, Perdue, Prunty, Tucker, Varner, H. White, Azinger, Modesitt, Overington, L. Smith, Stalnaker and Willison.

HEALTH AND HUMAN RESOURCES

Compton (*Chair*), Hutchins (*Vice Chair*), Caputo, Fleischauer, Hatfield, Houston, Hubbard, Kelley, Leach, Louisos, Mahan, Marshall, Perdue, Rowe, J. Smith, Spencer, Stemple, Susman, C. White, Calvert, Capito, Fletcher, Harrison, Romine and L. Smith.

INDUSTRY AND LABOR

Pettit (*Chair*), Kuhn (*Vice Chair*), Butcher, Cann, Caputo, Coleman, Dalton, Doyle, Frederick, Houston, Louisos, Mahan, Manchin, Paxton, Prunty, Sparks, Tucker, Williams, Armstead, Evans, Modesitt, Overington, Schadler, L. Smith and Webb.

JUDICIARY

Staton (*Chair*), Amores (*Vice Chair*), Coleman, Dalton, Ferrell, Givens, Hines, Hunt, Hutchins, Johnson, Linch, Mahan, Rowe, J. Smith, Spencer, Stemple, C. White, Wills, Capito, Faircloth, Riggs, Schadler, Smirl, Webb and L. White.

POLITICAL SUBDIVISIONS

Proudfoot (*Chair*), Campbell (*Vice Chair*), Ashley, Davis, Flanigan, Givens, Hines, Johnson, Kuhn, Linch, Marshall, Mattaliano, Pettit, Ross, C. White, Willis, Wills, Yeager, Facemyer, Schadler, Smirl, Stalnaker, Trump, L. White and Willison.

ROADS AND TRANSPORTATION

Warner (*Chair*), Shelton (*Vice Chair*), Ashley, Boggs, Butcher, Coleman, Ennis, Hubbard, Kominar, Manchin, Manuel, Marshall, Mattaliano, Pethtel, Pettit, Susman, Thompson, C. White, Yeager, Anderson, Border, Calvert, Hall, Leggett, L. Smith and Stalnaker.

RULES

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

VETERANS AFFAIRS

Givens (*Chair*), Frederick (*Vice Chair*), Coleman, Collins, Doyle, Ferrell, Kelley, Kuhn, Linch, Manchin, Manuel, Mattaliano, Shelton, Sparks, Thompson, Tucker, H. White, Wright, Yeager, Azinger, Evans, Fletcher, Modesitt, Smirl and Willison.

JOINT

ENROLLED BILLS

J. Smith (*Chair*), Dempsey (*Vice Chair*), Wright and Overington.

GOVERNMENT AND FINANCE

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

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*), Campbell, J. Smith, Williams, Hall and Harrison.

RULES

Kiss (*Chair*), Martin and Trump.

STATUTORY LEGISLATIVE COMMISSIONS

FOREST MANAGEMENT REVIEW

Williams (*Chair*), Mahan (*Vice Chair*), Angotti, Martin, Proudfoot and Willison.

INTERSTATE COOPERATION

Shelton (*Chair*), Amores, Doyle, Jenkins, Yeager, Overington and Stalnaker.

**OVERSIGHT COMMISSION ON EDUCATION
ACCOUNTABILITY**

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

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

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

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

Manuel (*Chair*), Leach, Michael, Pino, Warner and Faircloth.

SPECIAL INVESTIGATIONS

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

COMMITTEES OF THE SENATE

Regular Session, 2000

STANDING

AGRICULTURE

Anderson (*Chair*), Love (*Vice Chair*), Ball, Dittmar, Helmick, Mitchell, Ross, Unger, Deem and Minear.

BANKING AND INSURANCE

Helmick (*Chair*), Kessler (*Vice Chair*), Chafin, Craigo, Dittmar, Fanning, Minard, Prezioso, Sharpe, Snyder, Wooton, Deem and Sprouse.

CONFIRMATIONS

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

EDUCATION

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

ENERGY, INDUSTRY AND MINING

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

FINANCE

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

GOVERNMENT ORGANIZATION

Bowman (*Chair*), Bailey (*Vice Chair*), Ball, Dawson, Jackson, Kessler, McCabe, Minard, Plymale, Redd, Snyder, Walker, Wooton, Boley and Minear.

HEALTH AND HUMAN RESOURCES

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

INTERSTATE COOPERATION

Minard (*Chair*), Redd (*Vice Chair*), Anderson, Bowman, Dawson, Unger and Minear.

JUDICIARY

Wooton (*Chair*), Snyder (*Vice Chair*), Ball, Dawson, Dittmar, Fanning, Hunter, Kessler, McCabe, Minard, Mitchell, Oliverio, Redd, Ross, Deem and McKenzie.

LABOR

Fanning (*Chair*), Hunter (*Vice Chair*), Ball, Dawson, Edgell, Love, Mitchell, Prezioso, Deem and McKenzie.

MILITARY

Prezioso (*Chair*), Edgell (*Vice Chair*), Bailey, Dittmar, Helmick, Hunter, Minard, Oliverio and Boley.

NATURAL RESOURCES

Dittmar (*Chair*), Mitchell (*Vice Chair*), Anderson, Ball, Bowman, Craigo, Dawson, Love, Minard, Prezioso, Ross, Snyder, Deem and Minear.

PENSIONS

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

RULES

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

SMALL BUSINESS

Oliverio (*Chair*), Unger (*Vice Chair*), Anderson, Bowman, Craigo, Fanning, Kessler, McCabe, Ross, Sharpe, Boley and Sprouse.

TRANSPORTATION

Ross (*Chair*), Ball (*Vice Chair*), Dittmar, Kessler, Love, Oliverio, Plymale, Redd and McKenzie.

JOINT

ENROLLED BILLS

Bailey (*Chair*), Edgell, Walker and McKenzie.

GOVERNMENT AND FINANCE

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

GOVERNMENT OPERATIONS

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

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

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

PENSIONS AND RETIREMENT

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

RULES

Tomblin (*Chair*), Chafin and Sprouse.

STATUTORY LEGISLATIVE COMMISSIONS

FOREST MANAGEMENT REVIEW COMMISSION

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

INTERSTATE COOPERATION

Minard (*Chair*), Redd (*Vice Chair*), Anderson, Bowman, Dawson, Unger and Minear.

**OVERSIGHT COMMISSION ON EDUCATION
ACCOUNTABILITY**

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

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

Walker (*Chair*), Craig, Hunter, Prezioso, Sharpe, Snyder and
Boley.

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

Love (*Chair*), Bailey, Craig, Helmick, Hunter and McKenzie.

SPECIAL INVESTIGATIONS

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

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND REGULAR SESSION, 2000

CHAPTER 1

(Com. Sub. for H. B. 2918 — By Delegates C. White,
Williams, Sparks, Proudfoot and Martin)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty, relating to limiting civil liability of nonprofits which solely arrange for persons to take train excursions and provide tourist information regarding the excursion area.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-20. Limiting civil liability of nonprofits for arranging passage on excursion trains.

1 Any not for profit corporation for which one of its purposes
 2 is to arrange for persons or groups of persons to take excursions
 3 through, on, at or near places of scenic, historic or educational
 4 interest using trains, trackage or other related equipment and
 5 facilities of a regulated common carrier or governmental entity,
 6 shall not be liable for personal injury, wrongful death or
 7 property damage arising from the acts or omissions of the
 8 regulated common carrier or governmental entity so long as the
 9 role of the not for profit is limited to arranging for persons or
 10 groups of persons to participate in the excursion and providing
 11 tour information regarding the scenic, historic or educational
 12 qualities of the excursion area.

CHAPTER 2

(Com. Sub. for H. B. 2377 — By Delegates Ashley and Perdue)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article sixteen, relating to establishing a civil remedy for drawing, making, uttering, issuing or delivery of worthless checks, drafts, or other written orders; providing for the recovery of damages; requiring a written demand; establishing affirmative defenses; and limiting criminal prosecutions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. CIVIL REMEDY FOR WORTHLESS CHECK.

§55-16-1. Civil remedy for making, drawing, issuing, uttering or delivery of worthless check, draft or order.

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

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

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

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

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

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

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

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

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

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

34 (3) Be delivered by personal service or by certified mail to
35 the defendant at his or her last known address.

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

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

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

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

CHAPTER 3

**(Com. Sub. for S. B. 209 — By Senators Unger, Anderson, Love,
Mitchell, Ball, Boley, Bowman, Edgell, Dittmar, Snyder, Kessler,
Hunter, McCabe, Redd, Sprouse, Dawson and McKenzie)**

[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seventy-two, seventy-three, seventy-four, seventy-five, seventy-six, seventy-seven and seventy-eight, article twenty-four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto thirteen new sections, designated sections seventy-three-a,

seventy-three-b, seventy-three-c, seventy-three-d, seventy-four-a, seventy-four-b, seventy-four-c, seventy-nine, eighty, eighty-one, eighty-two, eighty-three and eighty-four, all relating to establishing farmland protection programs; presenting findings; authorizing county farmland protection boards; establishing a state agricultural land protection authority; defining terms; establishing procedures; authorizing promulgation of rules; and providing for funding.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. PLANNING AND ZONING.

PART XX. VOLUNTARY FARMLAND PROTECTION PROGRAMS.

- §8-24-72. Legislative findings and purpose.
- §8-24-73. County farmland protection programs and farmland protection boards authorized; authority of county commission to approve purchase of farmland easements; expense reimbursement of actual expenses for the board members.
- §8-24-73a. Content and requirements of farmland protection programs.
- §8-24-73b. Farmland protection boards—appointment, composition, terms.
- §8-24-73c. Farmland protection boards—powers.
- §8-24-73d. Farmland protection board duties.
- §8-24-74. West Virginia agriculture land protection authority—established.
- §8-24-74a. West Virginia agriculture land protection authority—board of trustees.
- §8-24-74b. West Virginia agriculture land protection authority—powers.
- §8-24-74c. West Virginia agriculture land protection authority—duties.
- §8-24-75. Definitions.
- §8-24-76. Methods of farmland protection.

- §8-24-77. Offer of conservation or preservation easements.
- §8-24-78. Value of conservation or preservation easement.
- §8-24-79. Criteria for acquisition of conservation and preservation easements by county farmland protection boards and the authority.
- §8-24-80. Use of land for which conservation or preservation easement acquired.
- §8-24-81. Funding of farmland protection programs.
- §8-24-82. Disbursements by the authority to county farmland protection boards.
- §8-24-83. Classification of land subject to conservation or preservation easement.
- §8-24-84. Authorization for commissioner of agriculture to promulgate proposed rules.

§8-24-72. Legislative findings and purpose.

1 The Legislature hereby finds and declares that agriculture
2 is a unique “life support” industry and that a need exists to
3 assist those agricultural areas of the state which are experienc-
4 ing the irreversible loss of agricultural land. It is the intent of
5 the Legislature to provide persons and other entities an opportu-
6 nity to voluntarily protect agricultural land and woodland in
7 order to: (1) Assist in sustaining the farming community; (2)
8 provide sources of agricultural products within the state for the
9 citizens of the state; (3) control the urban expansion which is
10 consuming the agricultural land, topsoil and woodland of the
11 state; (4) curb the spread of urban blight and deterioration; (5)
12 protect agricultural land and woodland as open-space land; (6)
13 enhance tourism; and (7) protect worthwhile community values,
14 institutions and landscapes which are inseparably associated
15 with traditional farming.

16 Further, it is the intent of the Legislature to establish a West
17 Virginia agricultural land protection authority, hereinafter
18 “authority”, to assist persons, other entities and counties to
19 obtain funding from any source available to accomplish the
20 purposes of the voluntary farmland protection programs.

§8-24-73. County farmland protection programs and farmland protection boards authorized; authority of county commission to approve purchase of farmland easements; expense reimbursement of actual expenses for the board members.

1 The county commission of each county may adopt and
2 implement a farmland protection program within the county.

3 The county commission of each county which decides to adopt
4 and implement a farmland protection program shall appoint a
5 farmland protection board. The farmland protection board shall
6 administer on behalf of the county commission all matters
7 concerning farmland protection. The county commission has
8 final approval authority for any and all purchases of easements
9 for the farmland protection program by the board.

10 The farmland protection board shall adopt bylaws prescrib-
11 ing the board's officers, meeting dates, record-keeping proce-
12 dures, meeting attendance requirements and other internal
13 operational procedures. The member of the farmland protection
14 board who is a county commissioner shall serve as temporary
15 chairman of the board until the board's bylaws are adopted and
16 until the board's officers are selected as prescribed by those
17 bylaws. The farmland protection board shall prepare a docu-
18 ment proposing a farmland protection program which is
19 consistent with the Legislature's intent.

20 Each member of the board shall receive expense reimburse-
21 ment for actual expenses incurred while engaged in the dis-
22 charge of official duties, the actual expenses not to exceed the
23 amount paid to members of the Legislature.

§8-24-73a. Content and requirements of farmland protection programs.

1 An adopted farmland protection program shall include only
2 those qualifying properties which are voluntarily offered into
3 the program by the landowners of the properties.

4 An adopted farmland protection program shall meet the
5 following minimum requirements:

6 (a) The program shall be developed by the county farmland
7 protection board and approved by the county commission. The
8 county farmland protection board, in consultation with the local
9 soil conservation district, shall administer the farmland protec-
10 tion program;

11 (b) The board shall establish uniform standards and
12 guidelines for the eligibility of properties for the program. The

13 standards and guidelines shall take into consideration the
14 following: Current and past uses of the property, existing
15 property improvements, property tract size and shape, location
16 of the property tract in relation to other potential agricultural
17 property tracts, impending threat of conversion of the property
18 to nonagricultural uses, property ownership and existing deed
19 covenants and restrictions with respect to the property;

20 (c) The guidelines established by the board shall outline the
21 various methods of farmland protection which are available to
22 prospective participating property owners and the procedures to
23 be followed in applying for program consideration.

§8-24-73b. Farmland protection boards—appointment, composition, terms.

1 (a) *Composition.* — A farmland protection board shall be
2 composed of seven members, each serving without compensa-
3 tion. Membership on the farmland protection board shall consist
4 of the following: One county commissioner; the executive
5 director of the county development authority; one farmer who
6 is a county resident and a member of the county farm bureau;
7 one farmer who is a county resident and a member of a soil
8 conservation district; one farmer who is a county resident; and
9 two county residents who are not members of any of the
10 foregoing organizations. All members of the farmland protec-
11 tion board shall be voting members, except the county commis-
12 sioner who shall serve in an advisory capacity as a nonvoting
13 member.

14 (b) *Terms.* — Each member of a farmland protection board
15 shall be appointed for a term of office of four years except the
16 initial appointment of two voting board members shall be for a
17 term of two years:

18 (1) No member may serve for more than two consecutive
19 full terms; and

20 (2) An appointment to fill a vacancy shall be for the
21 remainder of the unexpired term.

§8-24-73c. Farmland protection boards—powers.

1 A farmland protection board has the following general
2 powers:

3 (a) *Power to sue.* — To sue and be sued in contractual
4 matters in its own name;

5 (b) *Power to contract.* — To enter into contracts generally
6 and to execute all instruments necessary or appropriate to carry
7 out its purposes;

8 (c) *Power to restrict use of land.* — To acquire or cohold,
9 by gift, purchase, devise, bequest or grant, easements in gross,
10 fee or other rights to restrict the use of agricultural land and
11 woodland as may be designated to maintain the character of the
12 land as agricultural land or woodland: *Provided*, That the
13 county commission has final approval authority for any and all
14 purchases of easements for the farmland protection program by
15 the board;

16 (d) *Power to implement rules.* — To implement rules
17 necessary to achieve the purposes of the voluntary farmland
18 protection programs;

19 (e) *Power to disseminate information.* — To promote the
20 dissemination of information throughout the county concerning
21 the activities of the farmland protection board; and

22 (f) *Power to seek funding.* — To pursue and apply for any
23 and all county, state, federal and private funding available,
24 consistent with the purpose of the voluntary farmland protection
25 programs.

§8-24-73d. Farmland protection board duties.

1 The duties of each farmland protection board are as
2 follows:

3 (a) To report to the county commission with respect to the
4 acquisition of easements by the farmland protection board
5 within the county and to obtain final approval authority for any

6 and all purchases of easements for the farmland protection
7 program by the board;

8 (b) To advise the authority concerning county priorities for
9 agricultural protection;

10 (c) To promote protection of agriculture within the county
11 by offering information and assistance to landowners with
12 respect to the acquisition of easements;

13 (d) To seek and apply for all available funds from federal,
14 state, county and private sources to accomplish the purposes of
15 the voluntary farmland protection programs; and

16 (e) To perform any other duties assigned by the county
17 commission.

**§8-24-74. West Virginia agricultural land protection author-
ity—established.**

1 A West Virginia agricultural land protection authority is
2 established within the department of agriculture. The authority
3 has the powers and duties provided in this article.

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

1 (a) *Composition; chairman; quorum; qualifications.* — The
2 authority shall be governed and administered by a board of
3 trustees composed of the state treasurer, the auditor and the
4 commissioner of agriculture, who shall serve as ex officio
5 members, and nine members to be appointed by the governor,
6 by and with the advice and consent of the Senate, at least five
7 of whom shall be representative of farmers from different areas
8 of the state. The state treasurer, auditor and the commissioner
9 of agriculture may appoint designees to serve on the board of
10 trustees. One of the appointed members who is not a representa-
11 tive of farmers shall be a representative of the division of
12 natural resources; one of the appointed members who is not a
13 representative of farmers shall be a representative of the soil
14 conservation district; and one of the appointed members who is
15 not a representative of farmers shall be a representative of an

16 I.R.C. 501(c)(3) qualified land trust. Three of the five represen-
17 tatives of farmers shall be appointed as follows:

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

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

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

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

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

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

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

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

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

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

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

§8-24-74b. West Virginia agricultural land protection authority—powers.

1 The authority has the following general powers:

2 (a) *Power to sue.* — To sue and be sued in contractual
3 matters in its own name;

4 (b) *Power to contract.* — To enter into contracts generally
5 and to execute all instruments necessary or appropriate to carry
6 out its purposes;

7 (c) *Power to restrict use of land.* — To acquire or cohold,
8 by gift, purchase, devise, bequest or grant, easements in gross,
9 fee or other rights to restrict the use of agricultural land and
10 woodland as may be designated to maintain the character of the
11 land as agricultural land or woodland;

12 (d) *Power to disseminate information.* — To promote the
13 dissemination of information throughout the state concerning
14 the activities of the farmland protection board; and

15 (e) *Power to seek funding.* — To pursue and apply for any
16 and all state, federal and private funding available consistent
17 with the purpose of the voluntary farmland protection pro-
18 grams.

§8-24-74c. West Virginia agricultural land protection authority—duties.

1 The authority shall:

2 (a) Disseminate information regarding agricultural land
3 protection and promote the protection of agricultural land;

4 (b) Assist county farmland protection boards in applying
5 for and obtaining all state and federal funding available
6 consistent with the purposes of the farmland protection pro-
7 grams;

8 (c) Upon request of a farmland protection board, provide
9 technical and legal services necessary to procure, acquire, draft,
10 file and record conservation and preservation easements;

11 (d) Prepare and file with the governor's office and with the
12 Legislature by the thirty-first day of August of each year a
13 report including, but not limited to, the following information:

14 (1) The cost per easement obtained;

15 (2) The identity of all applicants for conservation and
16 preservation easements; and

17 (3) The identity of all applicants from whom conservation
18 and preservation easements have been acquired;

19 (e) Seek and apply for all available funds from federal, state
20 and private sources to accomplish the purposes of the farmland
21 protection programs.

§8-24-75. Definitions.

1 For purposes of the voluntary farmland protection pro-
2 grams, the following terms have the meanings set forth in this
3 section.

4 (a) *Acquisition of easement.* — The holding or coholding of
5 land-use restrictions as defined in this article, whether obtained
6 through purchase, gift, devise, bequest, grant or contract to
7 cohold with another holder.

8 (b) *Conservation easement.* — This article incorporates the
9 definition of a conservation easement found in section three,
10 article twelve, chapter twenty of this code except that a conser-
11 vation easement created under this article must be held or
12 coheld by at least one "holder" as defined in that section in
13 perpetuity.

14 (c) *Farm, farmland or agricultural land.* — A tract, or
15 contiguous tracts of land, of any size, used or useable for
16 agriculture, horticulture or grazing and includes all real
17 property designated as wetlands that are part of a property used
18 or useable as farmland.

19 (d) *Preservation easement.* — This article incorporates the
20 definition of a preservation easement found in section three,

21 article twelve, chapter twenty of this code except that a preser-
22 vation easement created under this article must be held or
23 coheld by at least one “holder” as defined in that section and
24 must be perpetual in its duration.

25 (e) *Woodland.* — Woodland shall be considered land of a
26 farm only if it is part of or appurtenant to a tract of land which
27 is a farm, or held by common ownership of a person or entity
28 owning a farm, but in no event may woodland include land used
29 primarily in commercial forestry or the growing of timber for
30 commercial purposes or any other use inconsistent with farm
31 use.

32 (f) *Opt-out provision.* — A provision which may be inserted
33 into any conservation or preservation easement agreement
34 entered into pursuant to this article which would act as a
35 mechanism to place the easement selling price into an escrow
36 fund for the purpose of allowing the owner or owners up to five
37 years to rescind the decision to enter into the farmland protec-
38 tion program.

§8-24-76. Methods of farmland protection.

1 (a) The authority or a county farmland protection board
2 may negotiate with and compensate eligible property owners to
3 ensure the protection of farmland within the county or state.
4 Methods of protecting farmland may include, but are not
5 limited to, the following:

6 (1) *Acquisition of conservation easement or preservation*
7 *easement.* — With the consent of a property owner, the county
8 farmland protection board or the authority may acquire and
9 place on record a conservation or preservation easement.
10 Acquired easements apply only to those properties which
11 qualify for consideration under the terms established by an
12 adopted farmland protection program;

13 (2) *Acquisition of land and disposition.* — With the consent
14 of a property owner, the county farmland protection board or
15 the authority may acquire any property which qualifies for
16 agricultural protection under terms established by an adopted

17 farmland protection program. The county farmland protection
18 board or the authority may lease, as lessor, acquired property
19 for agricultural uses or may restrict the property to agricultural
20 uses and sell the property at fair market value for use as a farm.
21 Any property acquired by a county farmland protection board
22 or the authority and then sold shall be sold subject to a conser-
23 vation or preservation easement. If the property is leased, the
24 lessee shall pay to the county commission, in addition to rent,
25 an annual fee set by the county commission. The amount of this
26 annual fee shall be commensurate with the amount of property
27 taxes which would be assessed in accordance with the provi-
28 sions of this code upon the property if the property were held by
29 a private landowner.

30 (b) Revenues from the sale of properties restricted to
31 agricultural uses shall be used to recover the original purchase
32 costs of the properties and shall be returned to the applicable
33 funds which were used by the county farmland protection board
34 or the authority to purchase the property. Any profits resulting
35 from the sale of property restricted to agricultural uses shall be
36 deposited in a farmland protection fund.

§8-24-77. Offer of conservation or preservation easements.

1 (a) *Owner may offer to sell or donate a conservation or*
2 *preservation easement.* — An owner of farmland may offer by
3 written application to sell or donate a conservation or preserva-
4 tion easement on all or any portion of the farm to a county
5 farmland board or the authority.

6 (b) *Requirements for application to sell or donate.* — In
7 order to be considered by a county farmland protection board or
8 the authority, an application to sell or donate shall:

9 (1) Include an asking price, if any, at which the owner is
10 willing to sell a conservation or preservation easement and shall
11 specify the terms under which the offer is made; and

12 (2) Include a complete description of the land, including,
13 but not limited to, an itemization of all debts secured by the
14 land and the identity and amount of all liens.

§8-24-78. Value of conservation or preservation easement.

1 (a) *Maximum value.* — The maximum value of any conser-
2 vation or preservation easement acquired by the county
3 farmland protection board or the authority is the asking price or
4 the difference between the fair market value of the land and the
5 agricultural value of the land, whichever is lower.

6 (b) *Fair market value.* — The fair market value of the land
7 is the price as of the valuation date for the highest and best use
8 of the property which a vendor, willing but not obligated to sell,
9 would accept for the property, and which a purchaser, willing
10 but not obligated to buy, would pay for the property if the
11 property was not subject to any restriction imposed under this
12 article.

13 (c) *Agricultural value.* — The agricultural value of land is
14 the price as of the valuation date which a vendor, willing but
15 not obligated to sell, would accept for the property, and which
16 a purchaser, willing but not obligated to buy, would pay for the
17 property subject to the restrictions placed upon it by the
18 conservation or preservation easement.

19 (d) *Determination of values.* — The value of the easement
20 is determined at the time the county farmland protection board
21 or the authority is requested in writing to acquire the easement.
22 The fair market value is determined by the county farmland
23 protection board or the authority based on one or more apprais-
24 als obtained by the county farmland protection board or the
25 authority, and appraisals, if any, of the landowner.

26 (e) *Arbitration.* — If the landowner and the county farmland
27 protection board or the authority do not agree on the value of
28 the easement as determined by the state, the landowner, the
29 county farmland protection board or the authority may request
30 that the matter be referred to a mutually agreed upon mediator
31 for arbitration as to the value of the easement. The arbitration
32 shall be conducted in accordance with the rules promulgated by
33 the American arbitration association. The value determined at
34 arbitration is binding upon the owner and the county farmland
35 protection board or the authority in a purchase of the easement

36 made subsequent to the arbitration for a period of two years,
37 unless the landowner and the county farmland protection board
38 or the authority agree upon a lesser value or the landowner, the
39 county farmland protection board or the authority appeals the
40 results of the arbitration to the circuit court.

§8-24-79. Criteria for acquisition of conservation and preservation easements by county farmland protection boards and the authority.

1 The authority and county farmland protection boards, in
2 ranking applications for conservation and preservation ease-
3 ments, shall consider the following factors as priorities:

4 (a) The imminence of residential, commercial or industrial
5 development;

6 (b) The total acreage offered for conservation or preserva-
7 tion easement;

8 (c) The presence of prime farmland, unique farmland,
9 farmland of statewide importance, other locally significant
10 farmlands and the productive capacity of the acreage;

11 (d) Whether the property offered is contiguous or appurte-
12 nant to working farms;

13 (e) The ratio of the asking price, if any, of the easement to
14 the fair market value of the easement;

15 (f) The historical, architectural, archaeological, cultural,
16 recreational, natural, scenic, source water protection or unique
17 value of the easement: *Provided*, That determinations of the
18 authority or a county farmland protection board are not a
19 substitute for and do not have the effect of other procedures
20 under state or federal law for granting protected status to land,
21 including, but not limited to, procedures under the National
22 Historic Preservation Act of 1966, as amended, or rules of the
23 director of the historic preservation section of the division of
24 culture and history authorized in section eight, article one,
25 chapter twenty-nine of this code, or procedures under the

26 authority of the tourism commissioner or the parks and recre-
27 ation section of the division of natural resources;

28 (g) The existence and amount of secured debt upon the
29 property, as determined by a title search, and whether the total
30 exceeds the agricultural value of the land as determined by the
31 appraisal as required in subsection (d), section seventy-eight of
32 this article; and

33 (h) The length of the protective easement.

**§8-24-80. Use of land for which conservation or preservation
easement acquired.**

1 (a) *Provisions to be included in conservation or preserva-*
2 *tion easement and county farmland protection board rules, or*
3 *the authority rules.* — Farmland upon which a conservation or
4 preservation easement has been recorded may be used for the
5 following:

6 (1) Farm use;

7 (2) Businesses directly related to the retail sale of farm
8 products;

9 (3) Any activity performed for religious, charitable or
10 educational purposes or to foster tourism; and

11 (4) Any home-based business that does not require a
12 division of environmental protection permit to operate.

13 Notwithstanding any of the exceptions in this subsection,
14 any use of land under preservation or conservation easement
15 must be consistent with the purpose of the farmland protection
16 programs.

17 (b) *Use for commercial, industrial or residential purposes.*
18 — Excepting existing and future uses described in subsections
19 (c), (d) and (e) of this section, a landowner whose land is
20 subject to a conservation or preservation easement may not
21 develop the land for any commercial, industrial, residential or

22 other nonfarm purpose. Nonresidential, noncommercial,
23 nonindustrial farm support buildings or structures are permitted.

24 (c) *Exclusion for single residential dwelling.* — On request
25 to a county farmland protection board or the authority, an
26 owner may exclude two acres per each single residential
27 dwelling, which existed at the time of the sale of the easement,
28 from the easement prohibitions on residential development. A
29 land survey and recordation identifying each single residential
30 dwelling shall be provided at the expense of the owner. How-
31 ever, before any exclusion is granted, an owner shall agree with
32 the county farmland protection board or the authority not to
33 subdivide further for residential purposes any acreage allowed
34 to be excluded. This agreement shall be recorded among the
35 land records where the land is located and shall bind all future
36 owners.

37 (d) *Exclusion for certain existing and future uses.* — This
38 article neither abrogates nor creates any preexisting rights in the
39 land owned by any person not joining as a grantor of a conser-
40 vation or preservation easement. Neither the creation nor the
41 existence of a conservation or preservation easement shall
42 prevent existing or future use of the land based on a preexisting
43 right, or prevent any existing or future use consistent with state
44 law with respect to transmission and telecommunications
45 facilities' rights-of-way, easements and licenses.

46 (e) *Condemnation of private property for public use.* —
47 This article neither abrogates nor creates any rights inconsistent
48 with state or federal law respecting the power of condemnation
49 of private property for public use. Any person or entity exercis-
50 ing the power of eminent domain must pay compensation at not
51 less than the fair market value of the land to the court having
52 jurisdiction of the proceeding or as directed by the court. The
53 term "fair market value" as used in this subdivision shall be
54 determined without regard to the existence of the conservation
55 or preservation easement. Neither the creation nor the existence
56 of a conservation or preservation easement shall prevent
57 acquisition of real property, or any right or interest in the
58 property, for public use.

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

1 (a) *Creation of fund.* — A county commission may use any
2 funds not specifically limited to other uses to fund and support
3 a farmland protection program and, once having created a
4 county farmland protection board, shall authorize the board to
5 create and maintain a farmland protection fund and hire staff as
6 it considers appropriate.

7 (b) *Created and continued.* — The West Virginia farmland
8 protection fund is created for the purposes specified in this
9 article.

10 (c) *Sources.* — The West Virginia farmland protection fund
11 is comprised of:

12 (1) Any money made available to the fund by general or
13 special fund appropriations;

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

16 (3) Any money realized by investments, interest, dividends
17 or distributions; and

18 (4) Any money appropriated by the Legislature for the West
19 Virginia farmland protection fund.

20 (d) *Disbursements.* — The treasurer may not disburse any
21 money from the fund other than:

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

24 (2) For reasonable expenses incurred by the members of the
25 board of trustees of the authority in the performance of official
26 duties; and

27 (3) For consideration in the purchase of farmland conserva-
28 tion and preservation easements.

29 (e) *Money remaining at end of fiscal year.* — Any money
30 remaining in the fund at the end of a fiscal year shall not revert

31 to the general revenue fund of the state, but shall remain in the
32 West Virginia farmland protection fund to be used for the
33 purposes specified in this chapter.

34 (f) *Budget.* — The estimated budget of the authority for the
35 next fiscal year shall be included with the budget of the West
36 Virginia department of agriculture.

37 (g) *Audit.* — The fund shall be audited annually.

§8-24-82. Disbursements by the authority to county farmland protection boards.

1 (a) *Applications; amount.* — If a county has established a
2 county farmland protection program, the authority shall
3 distribute within sixty days after the end of its fiscal year at
4 least eighty percent of that fiscal year's remaining funds to
5 county farmland protection boards who have certified to the
6 authority that there is then pending an application for one or
7 more conservation or preservation easements. Each certification
8 shall include:

9 (1) The name of each applicant for an easement and the
10 date of each application for an easement during the fiscal year;

11 (2) A description of the property upon which an easement
12 is offered; and

13 (3) An appraisal of the value of the conservation or preser-
14 vation easement as provided for in section seventy-eight of this
15 article.

16 (b) *Disbursement formula.* — Disbursement of authority
17 funds to qualifying counties shall be based on the ratio of each
18 county farmland protection board's appraisal value of conserva-
19 tion and preservation easement applications, including those
20 applications to donate easements, received during the fiscal
21 year to the total of the appraisal value of all applications for
22 conservation and preservation easements for the fiscal year
23 received by the authority from county farmland protection
24 boards. Applications for easement donations may only be

25 counted if the county farmland protection board holds or
26 coholds the easement.

§8-24-83. Classification of land subject to conservation or preservation easement.

1 Notwithstanding any statute or rule to the contrary, any
2 property held or coheld by a holder under a conservation or
3 preservation easement as defined in this article, regardless of
4 ownership, shall be taxed as “agricultural lands” for ad valorem
5 property tax purposes without further requirement, restriction
6 or disqualification. For ad valorem property tax purposes, any
7 property held or coheld by a holder under a perpetual conserva-
8 tion or preservation easement as defined by this article, regard-
9 less of ownership, shall be taxed as “agricultural lands” without
10 further requirement, restriction or disqualification.

§8-24-84. Authorization for commissioner of agriculture to promulgate proposed rules.

1 The commissioner of agriculture may propose rules for
2 legislative approval in accordance with the provisions of article
3 three, chapter twenty-nine-a of this code to implement the
4 provisions of this article.

CHAPTER 4

(Com. Sub. for H. B. 4380 — By Delegates Michael, Williams,
Stemple, Kelley, Mezzatesta, Martin and Proudfoot)

[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article thirteen-k, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section seven, article eleven, chapter twenty of said code, all relating to promoting the alternative use of poultry waste;

- 1 including nutrient management plans and best management
- 2 practices, when used as certain established procedures for
- 3 managing applications of certain poultry litter as fertilizer
- 4 applications, within the definition of qualified agricultural
- 5 equipment for which an investment tax credit is allowed;
- 6 establishment of amount of credit upon certification of
- 7 commissioner of agriculture; and establishing the use of certain
- 8 composted or deep stacked poultry litter products produced and
- 9 packaged in this state as having priority over the use of other
- 10 compost by agencies and instrumentalities of the state in land
- 11 maintenance and landscaping activities unless determined to be
- 12 economically unfeasible by the agency or instrumentality.

Be it enacted by the Legislature of West Virginia:

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

Chapter

11. Taxation.

20. Natural Resources.

CHAPTER 11. TAXATION.

ARTICLE 13K. TAX CREDIT FOR AGRICULTURAL EQUIPMENT.

§11-13K-2. Definitions.

§11-13K-3. Amounts of credit.

§11-13K-2. Definitions.

1 As used in this section the following terms have the
2 meanings ascribed in this section:

3 (a) "Advanced technology pesticide and fertilizer
4 application equipment" means machinery certified by the West
5 Virginia division of environmental protection as providing
6 precise pesticide and fertilizer application. The agriculture
7 commission and the West Virginia division of environmental
8 protection shall provide technical assistance to the tax

9 commissioner to determine appropriate specifications for
10 machinery which would provide for more precise pesticide and
11 fertilizer application to reduce the potential for adverse
12 environmental impacts for purposes of application of the credit
13 provided by this article. The machinery shall include, but not be
14 limited to:

15 (1) Sprayers for pesticides and liquid fertilizers;

16 (2) Pneumatic fertilizer applicators;

17 (3) Monitors, computer regulators and heights adjustable
18 booms for sprayers and liquid fertilizer applicators;

19 (4) Manure applicators; and

20 (5) Tramline adapters.

21 (b) "Conservation tillage equipment" means a planter or
22 drill commonly known as a "no-till" planter or drill, designed
23 to minimize disturbance of the soil in planting crops, including
24 such planters or drills which may be attached to equipment
25 already owned by the taxpayer.

26 (c) "Dead poultry composting facility" is a structure
27 consisting of a roof, an impervious weight bearing foundation,
28 such as concrete and rot resistant building materials such as
29 pressure treated lumber or similar material, which is used to
30 biologically treat poultry carcasses by composting.

31 (d) "Mortality incinerator" means a structure certified by
32 the director of the division of environmental protection which
33 is used for the purpose of burning animal carcasses.

34 (e) "Nutrient management plan" or "best management
35 practice" means an established procedure for managing the
36 amount, form, placement and timing of applications of poultry
37 litter, certified by the commissioner of agriculture as being free
38 from organisms that are not found in poultry litter produced in
39 this state, as fertilizer application.

40 (f) "Nutrient management system" means an established
41 procedure for managing the amount, form, placement and
42 timing of applications of plant nutrients.

43 (g) "Qualified agricultural equipment" means advanced
44 technology pesticide and fertilizer application equipment,
45 conservation tillage equipment, dead poultry composting
46 facilities, nutrient management plans, best management
47 practices, nutrient management systems, streambank and
48 shoreline protection systems, stream channel stabilization
49 systems, stream crossing or access plans, waste management
50 systems, waste storage facilities, and waste treatment lagoons
51 located on or at agricultural operations in this state and certified
52 by the tax commissioner in accordance with section five of this
53 article.

54 (h) "Streambank and shoreline protection system" means
55 the consistent use of vegetation or structures to stabilize and
56 protect banks of streams, lakes, estuaries, or excavated channels
57 in order to stabilize or protect banks of streams, lakes, estuaries
58 or excavated channels for one or more of the following
59 purposes:

60 (1) To prevent the loss of land or damage to utilities, roads,
61 buildings, or other facilities adjacent to the banks;

62 (2) To maintain the capacity of the channel;

63 (3) To control channel meander that would adversely affect
64 downstream facilities;

65 (4) To reduce sediment loads causing downstream damages
66 and pollution; or

67 (5) To improve the stream for recreation or as a habitat for
68 fish and wildlife.

69 (i) "Stream channel stabilization system" means an
70 established structure for the stabilization of the channel of a
71 stream.

72 (j) “Stream crossing or access plan” means the maintenance
73 of a stabilized area to provide for crossing of a stream by
74 livestock and farm machinery, or to provide access to the
75 stream for livestock water.

76 (k) “Waste management system” means a planned system
77 in which all necessary components are installed for managing
78 liquid and solid waste, including runoff from concentrated
79 waste areas at an agricultural operation, in a manner that does
80 not degrade air, soil or water resources.

81 (l) “Waste storage facility” means a waste impoundment
82 made by constructing an embankment or excavating a pit or
83 dugout, or both, or by fabricating a facility for the storage of
84 waste from livestock or poultry.

85 (m) “Waste treatment lagoon” means an impoundment
86 made by excavation or earthfill for biological treatment of
87 animal or other agricultural waste.

§11-13K-3. Amount of credit.

1 (a) There is allowed to eligible taxpayers who have made
2 investments in qualified agricultural equipment in this state, a
3 credit against taxes imposed by articles twenty-one and twenty-
4 four of this chapter in the amount set forth in subsection (b) of
5 this section.

6 (b) The amount of credit is equal to twenty-five percent of
7 the purchase price of qualified agricultural equipment, but not
8 to exceed two thousand five hundred dollars for purchases
9 during a taxable year or the total amount of tax imposed by
10 articles twenty-one or twenty-four of this chapter, whichever is
11 less, in the year of purchase of qualified agricultural equipment.
12 If the amount of the credit exceeds the taxpayer’s tax liability
13 for the taxable year, the amount which exceeds the tax liability
14 may be carried over and applied as a credit against the tax
15 liability of the taxpayer pursuant to article twenty-one or
16 twenty-four of this chapter to each of the next five taxable years
17 unless sooner used.

18 (c) The amount of credit for the investment in the plan or
19 practice described in subsection (e), section two of this article
20 is equal to twenty-five percent of the purchase price of the
21 poultry litter certified in writing to the tax commissioner by the
22 commissioner of agriculture as having been applied in the
23 established procedure described in legislative rules promulgated
24 by the commissioner of agriculture in accordance with the
25 provisions of article three, chapter twenty-nine-a of this code.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 11. WEST VIRGINIA RECYCLING PROGRAM.

§20-11-7. Procurement of recycled products.

1 (a) It is the policy of the state of West Virginia that, to the
2 maximum extent possible, all agencies and instrumentalities of
3 the state purchase recycled products. The goal of the state is to
4 achieve a recycled product mix on future purchases of:

5 (b) In furtherance of the aforesaid goal, the secretary of the
6 department of administration in consultation with the director
7 of the division of natural resources shall develop a
8 comprehensive procurement program for recycled products.
9 The program shall include, but not be limited to:

10 (1) A review, and subsequent revision, of existing
11 procurement procedures and bid specifications to remove
12 language that discriminates against recycled products;

13 (2) A review, and subsequent revision, of existing
14 procurement procedures and bid specifications to ensure that,
15 to the maximum extent possible, all agencies and
16 instrumentalities of the state purchase recycled products:
17 *Provided*, That recycled paper products shall be given a price
18 preference of ten percent: *Provided, however*, That priority
19 shall be given to paper products with the highest postconsumer
20 content;

21 (3) A plan to eliminate, to the maximum extent possible,
22 the use of disposable and single-use products; and

23 (4) A requirement that all agencies and instrumentalities of
 24 the state use compost in all land maintenance and landscaping
 25 activities: *Provided*, That the use of composted or deep stacked
 26 poultry litter products, certified by the commissioner of
 27 agriculture as being free from organisms that are not found in
 28 poultry litter produced in this state, have priority unless
 29 determined to be economically unfeasible by the agency or
 30 instrumentality.

31 (c) The secretary shall prepare and submit an annual report
 32 on the thirty-first day of January of each year summarizing the
 33 program's accomplishments, prospects for the future, and any
 34 recommendations. The report shall be submitted to the
 35 governor, speaker of the House of Delegates and president of
 36 the Senate.

CHAPTER 5

(H. B. 4782 — By Delegates Douglas, Butcher, Perdue,
 Marshall, Flanigan, Stalnaker and Willison)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article one, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, authorizing the commissioner of agriculture to administer the state rural development council.

Be it enacted by the Legislature of West Virginia:

That section four, article one, 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 1. DEPARTMENT OF AGRICULTURE.

§19-1-4. Duties of commissioner.

1 The commissioner of agriculture shall perform the follow-
 2 ing duties:

3 (a) Devise means of advancing the agricultural interests of
4 the state, and, in the performance of such duty, he or she shall
5 have authority to call upon any state department, or officer of
6 the state or county, to cooperate in promoting the agricultural
7 interests of the state. It shall be the duty of any such depart-
8 ment, or officer, upon request of the commissioner to render the
9 assistance desired;

10 (b) Promote and encourage the organization of such
11 societies and associations as have for their object the improve-
12 ment and development of the state's agricultural, horticultural
13 and kindred interests, especially in production, processing for
14 market and distribution;

15 (c) Conduct cooperative work with the United States
16 department of agriculture in inspecting and determining the
17 grade and condition of farm produce at collecting centers,
18 receiving centers and shipping points;

19 (d) Induce the investment of capital in, and immigration
20 into, this state by the dissemination of information relative to
21 the soil, climate, health, natural resources, market opportunities
22 and advantages of the state;

23 (e) Investigate and report upon the kinds, conditions and
24 extent of the mineral products of the state and their value;

25 (f) Take charge of the museum of the department of
26 agriculture, collect, preserve and exhibit therein specimens of
27 agricultural, horticultural and kindred products, products of the
28 forests, minerals, flora and fauna of the state;

29 (g) Administer the state rural development council through
30 the marketing and development division established in section
31 three-a of this article, in accordance with the memorandum of
32 understanding between the United States department of
33 Agriculture and the state concerning the president's initiative
34 on rural development;

35 (h) Publish and distribute from time to time such reports
36 and bulletins concerning agriculture, horticulture and kindred
37 subjects as may be of value to the farmers of the state, and, as

38 conditions may demand, publish a handbook giving the
39 resources of the several counties of the state, the varieties of
40 soil and products, both mineral and vegetable, and the adapt-
41 ability of the different sections of the state to the different
42 branches of agriculture, horticulture and kindred interests;

43 (i) Submit a biennial report to the governor and Legislature
44 containing such information as to the operations of the depart-
45 ment as may be helpful to the agricultural interests of the state,
46 together with an itemized statement of all receipts and disburse-
47 ments during the biennial period covered thereby, and giving
48 the name of every person employed during such period, the
49 time employed, and the amount paid each employee;

50 (j) Perform such other duties and exercise such other
51 powers as are provided in this chapter and by general law; and

52 (k) Propose rules, including regulatory standards, for
53 legislative approval in accordance with the provisions of article
54 three, chapter twenty-nine of this code for the purpose of
55 carrying out the requirements of this chapter.

CHAPTER 6

(Com. Sub. for H. B. 4074 — By Delegates Kelley,
Yeager, Boggs, Ennis, Willis, Campbell and Williams)

[Passed February 16, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one through eighteen, article fifteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to updating the West Virginia fertilizer law; expanding regulation to products other than commercial fertilizer; providing definitions; permitting the commissioner of agriculture to set fees and certain administrative penalties by rule; registration; labels; tonnage reports; inspection, sampling and analysis; plant nutrient deficien-

cies; commercial value; misbranding; adulteration; publications; rules; short weight; cancellation of registrations; embargo orders; seizure, condemnation and sale of product; violations and criminal penalties; and exchanges between manufacturers.

Be it enacted by the Legislature of West Virginia:

That sections one through eighteen, article fifteen, 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 15. WEST VIRGINIA FERTILIZER LAW.

- §19-15-1. Definitions of words and terms.
- §19-15-2. Registration.
- §19-15-3. Labels.
- §19-15-4. Inspection fees.
- §19-15-5. Tonnage reports.
- §19-15-6. Inspection, sampling and analysis.
- §19-15-7. Deficiencies.
- §19-15-8. Commercial value.
- §19-15-9. Misbranding.
- §19-15-10. Adulteration.
- §19-15-11. Publications.
- §19-15-12. Rules.
- §19-15-13. Short weight.
- §19-15-14. Cancellation of registrations.
- §19-15-15. Embargo orders.
- §19-15-16. Seizure, condemnation and sale.
- §19-15-17. Violations.
- §19-15-18. Exchanges between manufacturers.

§19-15-1. Definitions of words and terms.

- 1 (a) “Brand” means a term, design or trademark used in
2 connection with one or several grades of regulated product.
- 3 (b) “Bulk fertilizer” means fertilizer delivered to the
4 purchaser either in solid or liquid state in a nonpackage form to
5 which a label cannot be attached.
- 6 (c) “Commissioner” means the commissioner of agriculture
7 of the state of West Virginia or his or her duly authorized agent.
- 8 (d) “Compost” means a biologically stable material derived
9 from the composting process.

10 (e) "Custom media" means a horticultural growing medium
11 prepared to exact specifications of the person who will be
12 planting in the medium.

13 (f) "Department" means the department of agriculture of
14 the state of West Virginia.

15 (g) "Distribute" means to import, consign, to offer for sale,
16 sell, barter, warehouse or otherwise supply a regulated product
17 in this state.

18 (h) "Distributor" means any person who distributes a
19 regulated product in this state.

20 (i) "Embargo" means a written stop sale order issued by the
21 commissioner of agriculture prohibiting the sale, use of or
22 transportation of any regulated product in any manner until the
23 embargo is released by the commissioner.

24 (j) "Fertilizer" means any substance containing one or more
25 recognized plant nutrients, including natural organic fertilizer,
26 which is designed for use or claimed to have value in promoting
27 plant growth, except unmanipulated animal and vegetable
28 manures, marl, lime, limestone, wood ashes and gypsum, and
29 other products exempted by rule of the commissioner.

30 (k) "Fertilizer material" means a fertilizer which either:

31 (1) Contains important quantities of no more than one of
32 the primary plant nutrients: (nitrogen (N), available phosphate
33 (P205) and soluble potash (K20), or

34 (2) Has eighty-five percent or more of its plant nutrient
35 content present in the form of a single chemical compound, or

36 (3) Is derived from a plant or animal residue or by-product
37 or a natural material deposit which has been processed in such
38 a way that its content of primary plant nutrients has not been
39 materially changed except by purification and concentration.

40 (l) "Grade" means the percentage of total nitrogen, avail-
41 able phosphate and soluble potash stated in whole numbers in

42 the same terms, order and percentages as in the guaranteed
 43 analysis: *Provided*, That specialty fertilizers may be guaranteed
 44 in fractional units of less than one percent of total nitrogen,
 45 available phosphate and soluble potash: *Provided, however*,
 46 That fertilizer materials, bone meal, manures and similar raw
 47 materials may be guaranteed in fractional units.

48 (m) "Guaranteed analysis" means the minimum percentage
 49 of plant nutrients claimed in the following order and form:

- 50 (1) Total nitrogen (N) percent
- 51 Available phosphate (P2O5) percent
- 52 Soluble potash (K2O) percent

53 (2) For unacidulated mineral phosphatic materials and basic
 54 slag, bone, tankage and other organic phosphatic materials, the
 55 total available phosphate or degree of fineness may also be
 56 guaranteed.

57 (3) Guarantees for other plant nutrients may be permitted
 58 or required by rule of the commissioner and shall be expressed
 59 in the form of the element. The sources of such other nutrients
 60 (oxides, salt, chelates, etc.) may be required to be stated on the
 61 application for registration and may be included as a parentheti-
 62 cal statement on the label. Other beneficial substances or
 63 compounds, determinable by laboratory methods, also may be
 64 guaranteed by permission of the commissioner. When any plant
 65 nutrients or other substances or compounds are guaranteed, they
 66 shall be subject to inspection and analysis in accord with the
 67 methods and rules prescribed by the commissioner.

68 (n) "Horticultural growing medium" means any substance
 69 or mixture of substances promoted as or intended to function as
 70 a commercial or consumer growing medium for the managed
 71 growth of horticultural crops in containers.

72 (o) "Investigational allowance" means an allowance for
 73 variations inherent in the collection, preparation and analysis of
 74 an official sample of regulated product.

75 (p) "Label" means the display of all written, printed or
76 graphic matter upon the immediate container or statement
77 accompanying a regulated product.

78 (q) "Labeling" means all written, printed or graphic matter,
79 upon or accompanying any regulated product, or advertise-
80 ments, brochures, posters or electronic announcements used in
81 promoting the sale of regulated products.

82 (r) "Manufacture" means to produce, compound, mix,
83 blend, or in any way alter the chemical or physical characteris-
84 tics of a regulated product).

85 (s) "Manufacturer" means any person who manufactures a
86 regulated product.

87 (t) "Mixed fertilizer" means a fertilizer containing any
88 combination or mixture of fertilizer materials.

89 (u) "Natural organic fertilizer" means materials derived
90 from either plant or animal products containing one or more
91 elements other than carbon, hydrogen, and oxygen which are
92 essential for plant growth. These materials may be subjected to
93 biological degradation processes under normal conditions of
94 aging, rainfall, sun-curing, air drying, composting, rotting,
95 enzymatic, or anaerobic/aerobic bacterial action, or any
96 combination of these. These materials may not be mixed with
97 synthetic materials or changed in any physical or chemical
98 manner from their initial state except by manipulations such as
99 drying, cooking, chopping, grinding, shredding, hydrolysis or
100 pelleting.

101 (v) "Official sample" means any sample of regulated
102 product collected by the commissioner or his or her agent and
103 designated as "official" by the commissioner.

104 (w) "Percent" or "percentage" means the percentage by
105 weight.

106 (x) "Person" means an individual, partnership, association,
107 firm or corporation.

108 (y) “Primary nutrients” means nitrogen (N), available
109 phosphate (P205) and soluble potash (K20).

110 (z) “Registrant” means the person who registers regulated
111 products under the provisions of this article.

112 (aa) “Regulated product” means any product governed by
113 this article, including any fertilizer, specialty fertilizer, soil
114 amendment and horticultural growing medium.

115 (bb) “Soil amendment” means any substance or mixture of
116 substances, imported, manufactured, prepared or sold for
117 manurial, soil enriching or soil corrective purposes, or intended
118 to be used for promoting or stimulating the growth of plants,
119 increasing the productivity of plants, improving the quality of
120 crops or producing any chemical or physical change in the soil.
121 The following are exempt from the definition of “soil amend-
122 ment”: Fertilizer, unmanipulated animal manures, horticultural
123 growing medium, agricultural liming materials, unmixed mulch
124 and unmixed peat.

125 (cc) “Specialty fertilizer” means a fertilizer distributed
126 primarily for nonfarm use, such as home gardens, lawns,
127 shrubbery, flowers, house plants, golf courses, municipal parks,
128 cemeteries, greenhouses and nurseries.

129 (dd) “Synthetic” means any substance generated from
130 another material or materials by means of a chemical reaction.

131 (ee) “Ton” means a net weight of two thousand pounds
132 avoirdupois.

133 (ff) “Unmanipulated manure” means substances composed
134 of the excreta of domestic animals, or domestic fowls, which
135 has not been processed or conditioned in any manner, including,
136 but not limited to, processing or conditioning by drying,
137 grinding, pelleting, shredding, addition of plant food, mixing
138 artificially with any material or materials, other than those
139 which have been used for bedding, sanitary or feeding purposes
140 for animals or fowls, or by any other means.

§19-15-2. Registration.

1 (a) Any person or persons whose name appears upon the
2 label of any regulated product as manufacturer or distributor
3 shall obtain a permit to distribute in the state prior to distribut-
4 ing the regulated product. The application for registration shall
5 be submitted to the commissioner on forms furnished or
6 approved by the commissioner, and shall be accompanied by a
7 fee established by legislative rule.

8 (b) Each brand or grade of regulated product shall be
9 registered before being distributed in this state. The application
10 for registration shall be submitted to the commissioner on forms
11 furnished or approved by the commissioner, and shall be
12 accompanied by a fee established by legislative rule. Upon
13 approval by the commissioner a copy of the registration shall be
14 furnished to the applicant. All registrations expire on the
15 thirtieth day of June of the following year.

16 The application for fertilizer, soil amendment or horticult-
17 tural growing medium shall include the following information:

18 (1) The net weight;

19 (2) The brand and, in the case of fertilizer when primary
20 nutrients are claimed, the grade;

21 (3) The guaranteed analysis, or other information related to
22 ingredients, guaranteed analysis of ingredients, percentages of
23 ingredients, source of ingredients, physical components,
24 physical properties or nutrient analysis as the commissioner
25 may require;

26 (4) The purpose of the product;

27 (5) Directions for application; and

28 (6) The name and address of the registrant.

29 (c) A distributor is not required to register any regulated
30 product which is already registered under this article by another
31 person, providing the label does not differ in any respect.

32 (d) A distributor is not required to register each grade of
33 regulated product formulated according to specifications which
34 are furnished by a consumer prior to mixing, but is required to
35 register his or her firm in a manner and at a fee established by
36 legislative rule, and to label the regulated product as provided
37 in subsection (c), section three of this article.

38 (e) Any person applying for registration of a fertilizer or
39 specialty fertilizer, soil amendment or horticultural growing
40 medium shall include with the application a label and any
41 advertising literature.

42 (f) The commissioner may require proof of any claims
43 made for any regulated product. If no claims are made, he or
44 she may require proof of the usefulness and value of the
45 regulated product. For evidence of proof the commissioner may
46 rely on experimental data, evaluations or advice supplied from
47 such sources as the director of the agricultural experiment
48 station. The experimental design shall be related to state
49 conditions for which the product is intended. The commissioner
50 may accept or reject other sources of proof as additional
51 evidence in evaluating regulated products.

52 (g) If the commissioner identifies any unregistered regu-
53 lated product in commerce or any regulated product from any
54 nonregistered manufacturer or distributor during the registration
55 year, the commissioner shall give the grantor a grace period of
56 fifteen working days from issuance of notification within which
57 to register the regulated product or distributor. Any person
58 required to register regulated products or as a distributor, who
59 fails to register within the grace period shall pay to the commis-
60 sioner a penalty fee as established by legislative rule in addition
61 to the registration fee. The commissioner may issue an embargo
62 order on any regulated product until the registration is issued.

63 (h) Exemptions for horticultural growing medium:

64 (1) Distribution of horticultural growing media planted with
65 live plant material is exempt from the labeling and registration
66 requirements of this article.

67 (2) Distribution of custom media is exempt from the
68 registration requirements of this article, if it is prepared for a
69 single end user.

70 (3) Distribution of horticultural growing media containing
71 plant nutrients of three percent or less are exempt from the
72 requirements of this article.

§19-15-3. Labels.

1 (a) Any regulated product distributed in this state in
2 containers shall have placed on or affixed to the container a
3 label setting forth in clearly legible and conspicuous form the
4 information required by subdivisions (1), (2), (3), (4), (5) and
5 (6), subsection (b), section two of this article. When compost is
6 used as an ingredient, the label shall identify the source of the
7 compost. A label may be in multiple languages, but one
8 language must be English.

9 (b) In case of bulk shipments, the same information
10 required on a label, in written or printed form, shall accompany
11 delivery and be supplied to the purchaser at time of delivery.

12 (c) A regulated product formulated according to specifica-
13 tions which are furnished by a consumer prior to mixing shall
14 be labeled to show the net weight, guaranteed analysis of each
15 ingredient, guaranteed analysis of the finished product and the
16 name and address of the distributor.

§19-15-4. Inspection fees.

1 (a) There shall be paid to the commissioner for all fertiliz-
2 ers distributed in this state an inspection fee established by
3 legislative rule: *Provided*, That sales to manufacturers or
4 exchanges between them are hereby exempted. Fees collected
5 shall be used for the payment of the costs of inspection,
6 sampling and analysis, and other expenses necessary for the
7 administration of this article.

8 On individual packages of fertilizer containing ten pounds
9 or less, there shall be paid in lieu of a per ton inspection fee, an
10 inspection fee established by legislative rule for each brand and

11 grade sold or distributed. Where a person sells fertilizer in
12 packages over ten pounds the inspection fee for each brand or
13 grade shall apply only to that portion sold in packages of ten
14 pounds or less, and that portion sold in packages over ten
15 pounds shall be subject to the same per ton inspection fee
16 provided by rule.

17 (b) Every person who distributes a fertilizer in this state
18 shall:

19 File with the commissioner on forms furnished or approved
20 by the commissioner a quarterly statement for the periods
21 ending on the thirtieth day of September, the thirty-first day of
22 December, the thirty-first day of March and the thirtieth day of
23 June, setting forth the number of net tons of each fertilizer
24 distributed in this state during such quarter. The report shall be
25 due on or before the thirtieth day of the month following the
26 close of each quarter and upon such statement shall pay the
27 inspection fee at the rate stated in subsection (a) of this section.

28 If the tonnage report is not filed and the payment of
29 inspection fee is not made within thirty days after the end of the
30 quarter, a collection fee established by legislative rule shall be
31 assessed against the registrant, and the amount of fees due shall
32 constitute a debt and become the basis of a judgment against the
33 registrant.

34 (c) When more than one person is involved in the distribu-
35 tion of a fertilizer, the last person who has the fertilizer regis-
36 tered or distributes to a nonregistrant (dealer or consumer) is
37 responsible for reporting the tonnage and paying the inspection
38 fee, unless the report and payment is made by a prior distributor
39 of a fertilizer.

§19-15-5. Tonnage reports.

1 The person transacting, distributing or selling fertilizer to
2 a nonregistrant shall furnish the commissioner a report showing
3 the county of the consignee, the amounts (tons) of each grade
4 of fertilizer, and the form in which the fertilizer was distributed
5 (bags, bulk, liquid, etc.). This information shall be reported by

6 one of the following methods: (a) Submitting a summary report
7 approved by the commissioner on or before the fifteenth day of
8 each month covering shipments made during the preceding
9 month; or (b) by electronic transfer using the UFTRS system or
10 other electronic system approved by the commissioner. No
11 information furnished to the commissioner under this section
12 may be disclosed in such a way as to divulge the operation of
13 any person. The commissioner shall assess a late fee established
14 by legislative rule against the registrant who is responsible for
15 reporting if the monthly report is not filed by the due date.

§19-15-6. Inspection, sampling and analysis.

1 (a) It is the duty of the commissioner, who may act through
2 his or her authorized agent, to sample, inspect, make analyses
3 of, and test regulated products distributed within this state at
4 any time and place and to such an extent as he or she may
5 consider necessary to determine whether such regulated
6 products are in compliance with the provisions of this article.
7 The commissioner individually or through his or her agent is
8 authorized to enter upon any public or private premises or
9 carriers during operating hours in order to have access to
10 regulated products subject to the provisions of this article and
11 the rules pertaining thereto, and to the records relating to their
12 distribution.

13 (b) The methods of sampling and analysis to determine
14 plant food deficiencies in fertilizer or deficiencies in other
15 regulated products shall be those established by the Association
16 of American Plant Food Control Officials and AOAC Interna-
17 tional or other methods approved by the commissioner by
18 legislative rule.

19 (c) The commissioner, in determining for administrative
20 purposes whether any fertilizer is deficient in plant food, or
21 whether any other regulated product in compliance with this
22 article shall be guided solely by the official sample as defined
23 in subsection (v), section one of this article, and obtained and
24 analyzed as provided for in subsection (b) of this section.

25 (d) The results of official analysis of regulated products and
26 portions of official samples, shall be distributed by the commis-
27 sioner as provided by legislative rule. The results of official
28 analysis of fertilizers and portions of official samples shall be
29 distributed by the commissioner as provided by legislative rule.
30 Official samples establishing a penalty for nutrient deficiency
31 shall be retained for a minimum of thirty days from issuance of
32 a deficiency report.

§19-15-7. Deficiencies.

1 (a) *Penalty for nitrogen, available phosphate and soluble*
2 *potash.* — If the analysis shall show that a fertilizer is deficient
3 in one or more of its guaranteed primary plant nutrients (N-P-
4 K) beyond the “investigational allowances” established by rule,
5 or if the overall index value of the fertilizer is below the level
6 established by rule, a penalty of three times the commercial
7 value of such deficiency shall be assessed.

8 (b) *Penalty for soil amendment.* — If the analysis shows
9 that any soil amendment falls short of the guaranteed analysis
10 in any one soil amending ingredient or in total soil amending
11 ingredients, a penalty shall be assessed in favor of the commis-
12 sioner. A penalty of three times the value of the total soil
13 amending ingredient deficiency shall be assessed when the total
14 deficiency is more than two percent under the calculated total
15 soil amending ingredient guarantee.

16 (c) *Penalty for other deficiencies.* — Deficiencies beyond
17 the investigational allowances established by rule in any other
18 constituent which the registrant is required to or may guarantee
19 shall be evaluated and penalties prescribed by the commis-
20 sioner.

21 (d) Nothing contained in this section shall prevent any
22 person from appealing to a court of competent jurisdiction
23 praying for judgment as to the justification of such penalties.

24 (e) All penalties assessed under this section shall be paid to
25 the consumer of the lot of regulated product represented by the
26 sample analyzed. Within three months after the date of notice

27 from the commissioner to the registrant, the penalty shall be
28 collected and promptly forwarded to the commissioner. If the
29 consumers cannot be found, the amount of penalty shall be paid
30 to the commissioner and deposited in the department of
31 agriculture's fees account.

32 (f) A deficiency in an official sample of mixed fertilizer
33 resulting from nonuniformity is not distinguishable from a
34 deficiency due to actual plant nutrient shortage and is properly
35 subject to official action.

36 (g) If, upon evidence satisfactory to the commissioner, a
37 person is found to have: (1) Altered the content of any regulated
38 product shipped to him by a registrant; or (2) mixed or commin-
39 gled regulated product from two or more suppliers so that the
40 result of either alteration changes the analysis of the regulated
41 product as originally guaranteed, then the person who has
42 altered, mixed or commingled shall become responsible for
43 obtaining a registration, as the case may be; shall be held liable
44 for all assessments; and shall be subject to other provisions of
45 this article, including, by way of example, but not by way of
46 limitation, seizure, condemnation and embargo.

§19-15-8. Commercial value.

1 For the purpose of determining the commercial values to be
2 applied under the provisions of section seven of this article, the
3 commissioner shall determine and publish annually the values
4 per unit of nitrogen, available phosphate and soluble potash in
5 fertilizers in this state. The commissioner shall determine from
6 the registrant's sales invoice the values charged for the soil
7 amending ingredients. If no invoice is available or if the invoice
8 fails to provide sufficient information the commissioner may
9 use other methods to determine values. The value so determined
10 and published shall be used in determining and assessing
11 penalty payments.

§19-15-9. Misbranding.

1 No person shall distribute misbranded regulated products.

2 A regulated product is considered to be misbranded:

3 (a) If its label is false or misleading in any particular;

4 (b) If it is distributed under the name of another regulated
5 product;

6 (c) If it is not labeled as required in section three of this
7 article and in accordance with rules prescribed under this
8 article; or

9 (d) If it purports to be, to contain or is represented as a
10 fertilizer, plant nutrient, soil amendment, or horticultural
11 growing medium, but is not according to the definition pre-
12 scribed by rule of the commissioner. In the adopting of legisla-
13 tive rules defining these terms the commissioner shall give
14 regard to commonly accepted definitions and official terms
15 such as those issued by the Association of American Plant Food
16 Control Officials (AAPFCO).

§19-15-10. Adulteration.

1 No person may distribute an adulterated regulated product.

2 A regulated product is considered to be adulterated:

3 (a) If it contains any deleterious or harmful ingredient in
4 sufficient amount to render it injurious to beneficial plant life,
5 animals, humans, aquatic life, soil or water when applied in
6 accordance with directions for use on the label, or if adequate
7 warning statements or directions for use, which may be
8 necessary to protect plant life, animals, humans, aquatic life,
9 soil or water are not shown upon the label;

10 (b) If its composition falls below or differs from that which
11 it is purported to possess by its labeling; or

12 (c) If it contains unwanted crop seed, weed seed or noxious
13 weed seed, as defined in article 16, chapter 19 of the West
14 Virginia Seed Law.

15 (d) If adulteration levels of one or more metals in regulated
16 products are in excess of those officially adopted by the
17 Association of American Plant Food Control Officials.

§19-15-11. Publications.

1 The commissioner shall publish at least annually and in
2 such forms as he or she may consider proper: (a) Information
3 concerning the distribution of regulated products; and (b)
4 results of analysis based on official samples of regulated
5 products distributed within the state as compared with the
6 analysis guaranteed under sections two and three of this article.

§19-15-12. Rules.

1 The commissioner may propose rules for legislative
2 approval in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code. The commissioner may
4 enforce such rules relating to investigational allowances,
5 definitions, records, fees and the distribution of regulated
6 products as may be necessary to carry into effect the full intent
7 and meaning of this article, including protection of the environ-
8 ment.

§19-15-13. Short weight.

1 If any regulated product in the possession of the distributor
2 or retailer is found by the commissioner to be short in weight,
3 the registrant of the regulated product shall, within thirty days
4 after official notice from the commissioner, pay to the con-
5 sumer a penalty established by legislative rule.

§19-15-14. Cancellation of registrations.

1 The commissioner is authorized and empowered to cancel
2 the registration of any brand of regulated product or to refuse to
3 register any brand of regulated product upon satisfactory
4 evidence that the registrant has used fraudulent or deceptive
5 practices in evading or attempting to evade the provisions of
6 this article or any rule promulgated thereunder: *Provided*, That
7 no registration may be revoked or refused until the registrant is

8 given the opportunity to appear for a hearing conducted by the
9 commissioner.

§19-15-15. Embargo orders.

1 The commissioner may issue and enforce a written or
2 printed embargo order requiring the owner or custodian of any
3 lot of regulated product to hold it at a designated place, when
4 the commissioner finds the regulated product is being offered
5 or exposed for sale in violation of any of the provisions of this
6 article, until the law has been complied with and the regulated
7 product is released in writing by the commissioner, or until the
8 violation has been otherwise legally disposed of by written
9 authority. The commissioner shall release the regulated product
10 embargoed when the requirements of the provisions of this
11 article have been complied with and all costs and expenses
12 incurred in connection with the embargo have been paid.

§19-15-16. Seizure, condemnation and sale.

1 Any lot of regulated product not in compliance with the
2 provisions of this article is subject to seizure on complaint of
3 the commissioner to a court of competent jurisdiction in the
4 county or judicial circuit where the product is located. In the
5 event the court finds that the regulated product is in violation of
6 this article and orders its condemnation, the product may be
7 disposed of in any manner consistent with its quality and the
8 laws of the state: *Provided*, That in no instance may the
9 disposition of the regulated product be ordered by the court
10 without first giving the claimant an opportunity to apply to the
11 court for its release or for permission to process or relabel the
12 regulated product to bring it into compliance with this article.

§19-15-17. Violations.

1 (a) If it appears from the examination of any regulated
2 product that any of the provisions of this article or the rules
3 issued thereunder have been violated, the commissioner shall
4 cause notice of the violation to be given to the registrant,
5 distributor or possessor from whom the sample was collected.
6 Any person so notified shall be given an opportunity to be heard
7 under legislative rules proposed and promulgated by the

8 commissioner. If it appears after the hearing, either in the
9 presence or absence of the person so notified, that any of the
10 provisions of this article or rules issued thereunder have been
11 violated, the commissioner may prosecute in any court of
12 competent jurisdiction any person violating the provisions of
13 this article.

14 (b) Any person convicted of violating any provisions of this
15 article or rules issued thereunder is guilty of a misdemeanor
16 and, upon conviction thereof, shall be fined not less than one
17 hundred dollars nor more than two hundred dollars for the first
18 offense and not less than two hundred dollars nor more than
19 five hundred dollars for each subsequent offense.

20 (c) Nothing in this article may be construed as requiring the
21 commissioner or his or her agent to report for prosecution or for
22 the institution of seizure proceedings as a result of minor
23 violations of the article when he or she believes that the public
24 interest will be best served by a suitable notice of warning in
25 writing.

26 (d) It is the duty of each prosecuting attorney to whom any
27 violation is reported to cause appropriate proceedings to be
28 instituted and prosecuted in a court of competent jurisdiction
29 without delay.

30 (e) The commissioner is hereby authorized to apply for and
31 the court to grant a temporary or permanent injunction, to be
32 issued without bond, restraining any person from violating or
33 continuing to violate any provision of this article or rule
34 promulgated thereunder notwithstanding the existence of other
35 remedies at law.

§19-15-18. Exchanges between manufacturers.

1 Nothing in this article may be construed to restrict or avoid
2 sales or exchanges of regulated products between importers,
3 manufacturers or manipulators who mix regulated materials for
4 sale, or to prevent the free and unrestricted shipment of
5 regulated products to manufacturers or manipulators who have
6 registered their brands as required by the provisions of this
7 article.

CHAPTER 7

(Com. Sub. for H. B. 4498 — By Delegates Kelley, Dempsey,
Ennis, Pethel, Williams, Willis and Anderson)

[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-seven, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a, relating to administration of the West Virginia State Farm Museum by the commissioner of agriculture upon the transfer of the assets of the corporation known as the West Virginia State Farm Museum to the state of West Virginia.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 27. WEST VIRGINIA STATE FARM MUSEUM.

§19-27-1a. West Virginia State Farm Museum; ex officio members of the board of directors; rules.

1 Upon dissolution of the corporation known as “the West
2 Virginia State Farm Museum” and the transfer of the corpora-
3 tion’s assets to the state of West Virginia, the commissioner of
4 agriculture shall administer the museum and the assets. The
5 West Virginia State Farm Museum shall be located at Point
6 Pleasant in the county of Mason.

7 The commissioner of agriculture may propose rules for
8 legislative approval in accordance with the provisions of
9 chapter twenty-nine-a of this code to carry out the provisions of
10 this section.

CHAPTER 8

(H. B. 4172 — By Delegates Williams, Mezzatesta, Martin,
Kelley, Stemple, Anderson and Michael)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter twenty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to defining the term “planting and harvesting season” for the purpose of administering rules applicable to drivers transporting agricultural commodities or farm supplies for agricultural purposes.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PURPOSES, DEFINITIONS AND EXEMPTIONS.

§24A-1-2. Definitions.

1 As used in this chapter:

2 (1) “Commission” means the public service commission of
3 West Virginia;

4 (2) “Common carrier by motor vehicle” means any person
5 who undertakes, whether directly or by lease or any other
6 arrangement, to transport passengers or property, or any class
7 or classes of property, for the general public over the highways
8 of this state by motor vehicles for hire, whether over regular or
9 irregular routes, including such motor vehicle operations of
10 carriers by rail, water or air and of express or forwarding

11 agencies, and leased or rented motor vehicles, with or without
12 drivers;

13 (3) "Contract carrier by motor vehicle" means any person
14 not included in subdivision (2) of this section, who under
15 special and individual contracts or agreements, and whether
16 directly or by lease or any other arrangement, transports
17 passengers or property over the highways in this state by motor
18 vehicles for hire;

19 (4) "Driveaway operation" means an operation in which
20 any vehicle or vehicles, operated singly or in lawful combina-
21 tions, new or used, not owned by the transporting motor carrier,
22 constitute the commodity being transported;

23 (5) "Exempt carrier" means any person operating a motor
24 vehicle exempt from the provisions of this chapter under
25 section three thereof;

26 (6) "I.C.C." means the interstate commerce commission;

27 (7) "Motor carrier" includes both a common carrier by
28 motor vehicle and a contract carrier by motor vehicle;

29 (8) "Motor vehicle" means, and includes, any automobile,
30 truck, tractor, truck-tractor, trailer, semitrailer, motorbus,
31 taxicab, any self-propelling motor-driven motor vehicle or any
32 combination thereof, used upon any public highway in this state
33 for the purpose of transporting persons or property;

34 (9) "NARUC" means the national association of regulatory
35 utility commissioners;

36 (10) "Operations within the borders of this state" means
37 interstate or foreign operations to, from, within or traversing
38 this state;

39 (11) "Person" means and includes any individual, firm,
40 copartnership, corporation, company, association or joint-stock
41 association, and includes any trustee, receiver, assignee or
42 personal representative thereof;

43 (12) "Planting and harvesting season" means the first day
44 of January through the thirty-first day of December of each
45 calendar year only as it relates to the administration of rules
46 promulgated pursuant to subsection (j), section five, article five
47 of this chapter;

48 (13) "Private commercial carrier" means and includes any
49 person who undertakes, whether directly or by lease or other
50 arrangement, to transport property, including hazardous
51 materials as defined in rules and regulations promulgated by the
52 commission, for himself over the public highways of this state,
53 in interstate or intrastate commerce, for any commercial
54 purpose, by motor vehicle with a gross vehicle weight rating of
55 ten thousand one pounds or more, by motor vehicle designed to
56 transport more than fifteen passengers, including the driver; or
57 by any motor vehicle used to transport hazardous materials in
58 a quantity requiring placarding under federal hazardous
59 material regulations as adopted by the commission;

60 (14) "Power unit" means any vehicle which contains within
61 itself the engine, motor or other source of power by which said
62 vehicle is propelled; and

63 (15) "Public highway" means any public street, alley, road
64 or highway, or thoroughfare of any kind in this state, used by
65 the public.

CHAPTER 9

**(H. B. 4587 — By Delegates Staton, Johnson, Spencer, Capito,
Amores, Rowe and Smirl)**

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article nineteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to anatomical gifts.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 19. ANATOMICAL GIFT ACT.

- §16-19-1. Definitions.
- §16-19-2. Making, amending, revoking, and refusing to make anatomical gifts by individual.
- §16-19-3. Making, revoking, and objecting to anatomical gifts, by others.
- §16-19-4. Authorization by coroner, medical examiner or local public health official.
- §16-19-5. Information regarding anatomical donation; requests for anatomical gifts; search and notification.
- §16-19-6. Persons who may become donees; purposes for which anatomical gifts may be made.
- §16-19-7. Delivery of document of gift.
- §16-19-8. Rights and duties at death.
- §16-19-9. Coordination of procurement and use; facilitation of communication.
- §16-19-10. Sale or purchase of parts prohibited.
- §16-19-11. Examination; autopsy.
- §16-19-12. Transitional provisions.
- §16-19-13. Immunity.
- §16-19-14. Short title.

§16-19-1. Definitions.

1 As used in this article:

2 (1) "Anatomical gift" means a donation of all or part of a
3 human body to take effect upon or after certification of death.

4 (2) "Certification of death" means a written pronouncement
5 of death by the attending physician. Certification is required
6 before the attending physician may allow removal of any bodily
7 organs of the decedent for transplant purposes.

8 (3) "Death" has the meaning provided in section one, article
9 ten, chapter sixteen of this code.

10 (4) "Decedent" means a deceased individual and includes
11 a stillborn infant or fetus.

12 (5) "Designated requester" means an individual employed
13 or trained by a procurement organization to discuss the option
14 of donation with families of deceased individuals.

15 (6) "Document of gift" means a card, a statement attached
16 to or imprinted on a motor vehicle operator's or chauffeur's
17 license, a will, or other writing used to make an anatomical gift.

18 (7) "Donor" means an individual who makes an anatomical
19 gift of all or part of his or her body.

20 (8) "Hospital" means a facility licensed, accredited, or
21 approved as a hospital under the law of any state or a facility
22 operated as a hospital by the United States government, a state
23 or a subdivision of a state.

24 (9) "Part" means an organ, tissue, eye, bone, artery, blood,
25 fluid or other portion of a human body.

26 (10) "Person" means an individual, corporation, business
27 trust, estate, trust, partnership, joint venture, association,
28 government, governmental subdivision or agency, or any other
29 legal or commercial entity.

30 (11) "Physician" or "surgeon" means an individual licensed
31 or otherwise authorized to practice medicine and surgery or
32 osteopathy and surgery under the laws of any state.

33 (12) "Physician assistant" has the meaning provided in
34 section sixteen, article three, chapter thirty of this code.

35 (13) "Procurement organization" or "bank" means a person
36 licensed, accredited, or approved under the laws of any state or
37 federal agency for procurement, distribution or storage of
38 human bodies or parts.

39 (14) "State" means any state, district, commonwealth,
40 territory, insular possession and any other area subject to the
41 legislative authority of the United States of America.

42 (15) "Technician" means a qualified individual who is
43 certified or authorized by an accredited procurement organiza-
44 tion to remove or process a part.

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

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

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

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

6 (3) Refuse to make an anatomical gift.

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

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

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

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

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

35 (1) A signed statement;

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

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

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

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

47 (h) An anatomical gift that is not revoked by the donor
48 before death is irrevocable and does not require the consent or
49 concurrence of any person after the donor's death.

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

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

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

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

59 (j) In the absence of contrary indications by the donor, an
60 anatomical gift of a part is neither a refusal to give other parts
61 nor a limitation on an anatomical gift under section three of this
62 article or on a removal or release of other parts under section
63 four of this article.

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

§16-19-3. Making, revoking, and objecting to anatomical gifts, by others.

1 (a) Any member of the following classes of persons, in the
2 order of priority listed, may make an anatomical gift of all or a
3 part of the decedent's body for an authorized purpose, unless
4 the decedent, at the time of certification of death, has made an
5 unrevoked refusal to make an anatomical gift:

6 (1) The medical power of attorney representative, if
7 available;

8 (2) The spouse of the decedent, unless in the six months
9 prior to the decedent's death the spouse has lived separate and
10 apart from the decedent in separate places of abode without
11 cohabitation;

12 (3) An adult son or daughter of the decedent;

13 (4) Either parent of the decedent;

14 (5) An adult brother or sister of the decedent;

15 (6) A grandparent of the decedent;

16 (7) A guardian of the decedent at the time of certification
17 of death; and

18 (8) The health care surrogate.

19 (b) An anatomical gift may not be made by a person listed
20 in subsection (a) of this section if:

21 (1) A person in a prior class is available at the time of
22 certification of death to make an anatomical gift;

23 (2) The person proposing to make an anatomical gift knows
24 of a refusal or contrary indications by the decedent; or

25 (3) The person proposing to make an anatomical gift knows
26 of an objection to making an anatomical gift by a member of
27 the person's class or a prior class.

28 (c) An anatomical gift by a person authorized under
29 subsection (a) of this section must be made by:

30 (1) A document of gift signed by the person; or

31 (2) The person's telegraphic, recorded telephonic, or other
32 recorded message, or other form of communication from the
33 person that is contemporaneously reduced to writing and signed
34 by the recipient.

35 (d) An anatomical gift by a person authorized under
36 subsection (a) of this section may not be revoked by any
37 member of the same or a prior class if procedures have begun
38 for the removal of a part from the body of the decedent and the
39 physician, surgeon or technician removing the part does not
40 know or has not been notified of the revocation.

41 (e) An individual's failure to make an anatomical gift under
42 subsection (a) of this section does not indicate an individual's
43 objection to the making of an anatomical gift.

**§16-19-4. Authorization by coroner, medical examiner or local
public health official.**

1 (a) The coroner or chief medical examiner may release and
2 permit the removal of a part from a body within his or her
3 custody, for transplantation or therapy, if:

4 (1) He or she has received a request for the part from a
5 hospital, physician, surgeon or procurement organization;

6 (2) He or she has made a reasonable effort, taking into
7 account the useful life of the part, to locate and examine the
8 decedent's medical records and inform persons listed in
9 subsection (a), section three of this article of their option to
10 make, or object to making, an anatomical gift;

11 (3) He or she does not know of a refusal or contrary
12 indication by the decedent or objection by a person having
13 priority to make an anatomical gift as provided in subsection
14 (a), section three of this article;

15 (4) The removal will be performed by a physician, surgeon
16 or technician;

17 (5) The removal will not interfere with any autopsy or
18 investigation; but in the instance that the coroner or chief
19 medical examiner refuses the request of an anatomical donation
20 due to interference with an autopsy or investigation, the coroner
21 or chief medical examiner shall document in writing to the
22 hospital, physician, surgeon or procurement organization the
23 specific circumstances which result in the interference;

24 (6) The removal will be in accordance with accepted
25 medical standards; and

26 (7) Cosmetic restoration will be done, if appropriate.

27 (b) If the body is not within the custody of the coroner or
28 chief medical examiner, the local public health officer may
29 release and permit the removal of any part from a body in his or
30 her custody for transplantation or therapy if the requirements of
31 subsection (a) of this section are met.

32 (c) The coroner, chief medical examiner or local public
33 health officer releasing and permitting the removal of a part
34 shall maintain a permanent record of the name of the decedent,
35 the person making the request, the date and purpose of the
36 request, the part requested, and the person to whom it was
37 released.

**§16-19-5. Information regarding anatomical donation; requests
for anatomical gifts; search and notification.**

1 (a) All hospitals in this state shall provide general informa-
2 tion available to the public regarding anatomical donation in the
3 patient admission area of each facility.

4 (b) At the time of admission to a hospital, every patient
5 who is at least eighteen years of age shall receive, as part of the
6 hospital admission packet, information regarding anatomical
7 donation, including, but not limited to, (1) general facts about
8 anatomical donation, (2) an explanation of their rights to make
9 an anatomical gift, (3) a document of gift card for making an
10 anatomical gift and (4) a card for acknowledging an existing
11 document of gift. If the patient completes a document of gift
12 card making an anatomical gift at the time of admission or at
13 any time thereafter, or if the patient completes a card acknowl-
14 edging an existing document of gift, the appropriate notation is
15 to be prominently placed in the patient's medical record.

16 (c) On or near the occurrence of each death in a hospital,
17 the hospital shall contact the regional organ procurement
18 organization by telephone to determine the suitability for organ,
19 tissue and eye donation for any purpose specified under this
20 chapter. The person designated by the hospital to contact the
21 organ procurement organization shall have (1) the patient's
22 name and identifier number, (2) the patient's age, (3) the cause
23 of death and (4) any available current and past medical history
24 available prior to making the contact. The organ procurement
25 organization shall collaborate with the hospital's designated
26 tissue or eye bank when there are tissue or eye donations. The
27 organ procurement organization, in consultation with the
28 patient's attending physician or hospital designee, shall
29 determine suitability for donation.

30 (d) If it is determined that donation is not appropriate based
31 on medical criteria, hospital personnel shall note this fact in the
32 patient's record and no further action is necessary.

33 (e) If it is determined that the patient is a suitable candidate
34 for anatomical donation, and there is no document of gift or
35 other information evidencing a refusal to make an anatomical
36 gift, a designated requestor shall immediately contact the

37 appropriate persons who are authorized to make an anatomical
38 gift of a patient's body, as provided in section three of this
39 article, and inquire as to whether the patient was an anatomical
40 donor. If those persons contacted by the designated requestor
41 are unaware of the patient's intent regarding anatomical
42 donation, and if no document of gift satisfying the requirements
43 of subsection (b) or (c), section two of this article is found, the
44 designated requestor shall inform those individuals authorized
45 to make an anatomical gift that they have the option of making
46 an anatomical gift of all or part of the patient's body. The
47 designated requestor shall use discretion and be sensitive to
48 family circumstances, cultural background and religious beliefs
49 of the patient.

50 (f) The following persons shall make a reasonable search
51 for a document of gift or other information identifying the
52 bearer as a donor or as an individual who has refused to make
53 an anatomical gift:

54 (1) A law-enforcement officer, fireman, paramedic or other
55 emergency rescuer finding an individual who the searcher
56 believes is dead or near death;

57 (2) A hospital, upon the admission of an individual at or
58 near the time of death, if there is not immediately available any
59 other source of that information; and

60 (3) The coroner or chief medical examiner as provided in
61 subdivision (2), subsection (a), section four of this article when
62 a body is placed in that official's custody.

63 (g) If a law-enforcement officer, fireman, paramedic or
64 other emergency rescuer finds a document of gift or evidence
65 of refusal to make an anatomical gift by the search required by
66 subsection (f) of this section, he or she shall notify the hospital
67 where the individual or body is taken of the contents and send
68 the document or other evidence to the hospital.

69 (h) If at or near the time of death of a patient, a hospital
70 knows that (1) an anatomical gift has been made pursuant to
71 subsection (a), section three of this article, (2) a release and

72 removal of a part has been permitted pursuant to section four of
73 this article, or (3) that the patient or an individual in transit to
74 the hospital is a donor, the hospital shall notify the appropriate
75 donee or procurement organization. The hospital shall cooper-
76 ate in the implementation of the anatomical gift or release and
77 removal of a part.

78 (i) Any person who fails to discharge the duties imposed by
79 this section is not subject to criminal or civil liability but is
80 subject to appropriate administrative sanctions.

**§16-19-6. Persons who may become donees; purposes for which
anatomical gifts may be made.**

1 (a) The following persons may become donees of anatomi-
2 cal gifts for the purposes stated:

3 (1) The university of West Virginia system board of
4 trustees for the scientific purposes of educational institutions
5 for which it may receive or requisition bodies;

6 (2) A hospital, physician, surgeon or procurement organiza-
7 tion, for transplantation, therapy, medical or dental education,
8 research or advancement of medical or dental science;

9 (3) An accredited medical or dental school, college or
10 university for education, research, advancement of medical or
11 dental science; or

12 (4) A designated individual for transplantation or therapy
13 needed by that individual.

14 (b) An anatomical gift may be made to a designated donee
15 or without designating a donee. If a donee is not designated or
16 if the donee is not available or rejects the anatomical gift, the
17 anatomical gift may be accepted by any hospital.

18 (c) If the donee knows of the decedent's refusal or contrary
19 indications to make an anatomical gift or that an anatomical gift
20 by a member of a class having priority to act is opposed by a
21 member of the same class or a prior class under subsection (a),

22 section three of this article the donee may not accept the
23 anatomical gift.

§16-19-7. Delivery of document of gift.

1 (a) Delivery of a document of gift during the donor's
2 lifetime is not required for the validity of an anatomical gift.

3 (b) If an anatomical gift is made to a designated donee, the
4 document of gift, or a copy, may be delivered to the donee to
5 expedite the appropriate procedures after certification of death.
6 The document of gift, or a copy, may be deposited in any
7 hospital, procurement organization, or registry office that
8 accepts it for safekeeping or for facilitation of procedures after
9 certification of death. On request of any person, upon or after
10 the donor's certification of death, the person in possession shall
11 allow any person to examine or copy the document of gift.

§16-19-8. Rights and duties at death.

1 (a) Rights of a donee created by an anatomical gift are
2 superior to rights of others, except with respect to autopsies
3 under subsection (b), section eleven of this article. A donee may
4 accept or reject an anatomical gift. If a donee accepts an
5 anatomical gift of an entire body, the donee, subject to the
6 terms of the gift, may allow embalming and use of the body in
7 funeral services. If the gift is of a part of a body, the donee,
8 upon the certification of death of the donor and before embalm-
9 ing, shall cause the part to be removed without unnecessary
10 mutilation. After removal of the part, custody of the remainder
11 of the body vests in the person under obligation to dispose of
12 the body.

13 (b) The time of death must be determined by a physician,
14 surgeon or physician assistant who attends the donor at death
15 or, if none, the physician or surgeon who certifies the death.
16 Neither the physician, surgeon or physician assistant who
17 attends the donor at death nor the physician or surgeon who
18 certifies the death may participate in the procedures for
19 removing or transplanting a part, unless the document of gift

20 designates the physician or surgeon as provided in subsection
21 (d), section two of this article.

22 (c) If there has been an anatomical gift, a technician may
23 remove any donated parts after certification of death by a
24 physician or surgeon.

§16-19-9. Coordination of procurement and use; facilitation of communication.

1 (a) Each hospital in this state, after consultation with other
2 hospitals and procurement organizations, shall establish
3 agreements or affiliations for coordination of procurement and
4 use of human bodies and parts.

5 (b) The organ procurement organization involved in any
6 transplant pursuant to this article shall facilitate, on the recipi-
7 ent's behalf, a request by the recipient to contact the donor's
8 family, in the priority order provided in subsection (a), section
9 three of this article.

10 (c) The organ procurement organization may not provide
11 the name, address or any other confidential information
12 regarding the donor or the donor's family to the recipient,
13 except upon a specific request by the member of the donor's
14 family contacted as provided in subsection (b) of this section.

§16-19-10. Sale or purchase of parts prohibited.

1 (a) It is unlawful for any person to knowingly acquire,
2 receive, or otherwise transfer for valuable consideration any
3 human organ for use in human transplantation. For purposes of
4 this section, "human organ" means the human kidney, liver,
5 heart, lung, bone marrow or any other human organ or tissue
6 designated by the director of health other than blood.

7 (b) For purposes of this section, valuable consideration does
8 not include reasonable payments associated with the removal,
9 transportation, implantation, processing, preservation, quality
10 control, and storage of a human organ; or the expenses of
11 travel, housing, and lost wages incurred by the donor of a
12 human organ in connection with the donation of the organ; or

13 expenses incurred by nonprofit agencies or corporations to
14 recover expenses incurred while offering services related to the
15 location, maintenance and distribution of human organs.

16 (c) A person who violates this section is guilty of a felony
17 and, upon conviction thereof, shall be fined not more than fifty
18 thousand dollars, or confined in a state correctional facility not
19 more than five years, or both.

§16-19-11. Examination; autopsy.

1 (a) An anatomical gift authorizes any reasonable examina-
2 tion necessary to assure medical acceptability of the gift for the
3 purposes intended.

4 (b) The provisions of this article are subject to the laws of
5 this state governing autopsies.

§16-19-12. Transitional provisions.

1 This article applies to a document of gift, revocation, or
2 refusal to make an anatomical gift signed by the donor or a
3 person authorized to make or object to making an anatomical
4 gift before, on, or after the effective date of this article.

§16-19-13. Immunity.

1 (a) Any person who acts in good faith in accord with the
2 terms of this article or with the anatomical gift laws of another
3 state or a foreign country is not liable for damages in any civil
4 action or subject to prosecution in any criminal proceeding for
5 his or her act.

6 (b) Any individual who makes an anatomical gift pursuant
7 to section two or three of this article and the individual's estate
8 are not liable for any injury or damage that may result from the
9 making or the use of the anatomical gift.

§16-19-14. Short title.

1 This article may be cited as the "Anatomical Gift Act."

CHAPTER 10

(Com. Sub. for S. B. 50 — Originating in the Committee on Finance)

[Passed March 19, 2000; 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.

TITLE I—GENERAL PROVISIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

77 Appropriations classified in any of the above categories
78 shall be expended only for the purposes as defined above and
79 only for the spending units herein designated: *Provided*, That
80 the secretary of each department shall have the authority to
81 transfer within the department those general revenue funds
82 appropriated to the various agencies of the department: *Pro-*
83 *vided, however*, That no more than five percent of the general
84 revenue funds appropriated to any one agency or board may be
85 transferred to other agencies or boards within the department:
86 *Provided further*, That the secretary of each department and the
87 director, commissioner, executive secretary, superintendent,
88 chairman or any other agency head not governed by a depart-
89 mental secretary as established by chapter five-f of the code
90 shall have the authority to transfer funds appropriated to
91 “personal services” and “employee benefits” to other lines
92 within the same account and no funds from other lines shall be
93 transferred to the “personal services” line: *And provided*
94 *further*, That upon written request of the speaker of the house
95 of delegates, the auditor shall transfer within the general
96 revenue fund amounts from the total appropriations of the
97 house of delegates to other agencies, boards or departments:
98 *And provided further*, That if the Legislature by subsequent
99 enactment consolidates agencies, boards or functions, the
100 secretary may transfer the funds formerly appropriated to such
101 agency, board or function in order to implement such consolida-
102 tion. No funds may be transferred from a special revenue
103 account, dedicated account, capital expenditure account or any
104 other account or fund specifically exempted by the Legislature
105 from transfer, except that the use of the appropriations from the
106 state road fund for the office of the secretary of the department
107 of transportation is not a use other than the purpose for which
108 such funds were dedicated and is permitted.

109 Appropriations otherwise classified shall be expended only
110 where the distribution of expenditures for different purposes
111 cannot well be determined in advance or it is necessary or

112 desirable to permit the spending unit the freedom to spend an
113 appropriation for more than one of the above classifications.

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

6 Funds of the state of West Virginia not heretofore classified
7 as to purpose and existing within the funds of the treasury shall
8 be determined by the governor and transferred to a special
9 account for the purpose of expenditure as part of the general
10 fund of the state.

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

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- §10. Specific funds and collection accounts.
- §11. Appropriations for refunding erroneous payment.
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- §13. Appropriations for local governments.
- §14. Total appropriations.
- §15. General school fund.

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

LEGISLATIVE

1—Senate

Fund 0165 FY 2001 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		2,860,200
4 Employee Benefits (R)	010		543,375
5 BRIM Premium	913		16,212
6 Current Expenses and			
7 Contingent Fund (R)	021		700,000
8 Repairs and Alterations (R)	064		450,000
9 Computer Supplies (R)	101		40,000
10 Computer Systems (R)	102		250,000

11	Printing Blue Book (R)	103	150,000
12	Expenses of Members (R)	399	<u>445,000</u>
13	Total		\$ 6,270,987

14 The appropriations for the senate for the fiscal year 2000
15 are to remain in full force and effect and are hereby
16 reappropriated to June 30, 2001. Any balances so
17 reappropriated may be transferred and credited to the fiscal year
18 2001 accounts.

19 Upon the written request of the clerk of the senate, the
20 auditor shall transfer amounts between items of the total
21 appropriation in order to protect or increase the efficiency of
22 the service.

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

33 The clerk of the senate, with the written approval of the
34 president, or the president of the senate shall have authority to
35 employ such staff personnel during any session of the Legisla-
36 ture as shall be needed in addition to staff personnel authorized
37 by the senate resolution adopted during any such session. The
38 clerk of the senate, with the written approval of the president,
39 or the president of the senate shall have authority to employ
40 such staff personnel between sessions of the Legislature as shall
41 be needed, the compensation of all staff personnel during and
42 between sessions of the Legislature, notwithstanding any such
43 senate resolution, to be fixed by the president of the senate. The

44 clerk is hereby authorized to draw his or her requisitions upon
 45 the auditor for the payment of all such staff personnel for such
 46 services, payable out of the appropriation for Compensation and
 47 Per Diem of Officers and Employees or Current Expenses and
 48 Contingent Fund of the senate.

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

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

2—House of Delegates

Fund 0170 FY 2001 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		
5	Contingent Fund (R)	021	3,500,000
6	BRIM Premium	913	13,889
7	Expenses of Members (R)	399	<u>1,120,000</u>
8	Total		\$ 7,355,051

9 The appropriations for the house of delegates for the fiscal
 10 year 2000 are to remain in full force and effect and are hereby
 11 reappropriated to June 30, 2001. Any balances so
 12 reappropriated may be transferred and credited to the fiscal year
 13 2001 accounts.

14 Upon the written request of the clerk of the house of
 15 delegates, the auditor shall transfer amounts between items of

16 the total appropriation in order to protect or increase the
17 efficiency of the service.

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

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

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

3—Joint Expenses

(WV Code Chapter 4)

Fund 0175 FY 2001 Org 2300

1	Joint Committee on Government		
2	and Finance (R)	104	\$ 6,030,776
3	Legislative Printing (R)	105	940,000
4	Legislative Rule-Making		
5	Review Committee (R)	106	226,050
6	Legislative Computer System (R)	107	1,138,121
7	Joint Standing Committee		
8	on Education (R)	108	68,000
9	Tax Reduction and Federal		
10	Funding Increased		
11	Compliance (TRAFFIC) (R)	642	0
12	BRIM Premium	913	<u>12,927</u>
13	Total		\$ 8,415,874

14 The appropriations for the joint expenses for the fiscal year
15 2000 are to remain in full force and effect and are hereby
16 reappropriated to June 30, 2001. Any balances so
17 reappropriated may be transferred and credited to the fiscal year
18 2001 accounts.

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

26 The appropriation for the Tax Reduction and Federal
 27 Funding Increased Compliance (TRAFFIC) (fund 0175, activity
 28 642) is intended for possible general state tax reductions or the
 29 offsetting of any reductions in federal funding for state pro-
 30 grams. It is not intended as a general appropriation for expendi-
 31 ture by the Legislature.

JUDICIAL

4—Supreme Court—

General Judicial

Fund 0180 FY 2001 Org 2400

1	Personal Services (R)	001	\$36,000,000
2	Annual Increment (R)	004	500,000
3	BRIM Premium	913	208,998
4	Social Security Matching (R)	011	2,792,250
5	Public Employees' Insurance		
6	Matching (R)	012	4,054,755
7	Public Employees' Retirement		
8	Matching (R)	016	3,467,500
9	Other Expenses (R)	029	5,984,000
10	Judges' Retirement System (R)	110	6,000,000
11	Other Court Costs (R)	111	2,600,000
12	Judicial Training Program (R)	112	500,000
13	Mental Hygiene Fund (R)	113	990,000
14	Guardianship Attorney Fees (R)	588	175,000
15	Family Court Fund (R)	912	<u>4,003,469</u>
16	Total		\$67,275,972

17 The appropriations to the supreme court of appeals for the
18 fiscal years 1999 and 2000 are to remain in full force and effect
19 and are hereby reappropriated to June 30, 2001. Any balances
20 so reappropriated may be transferred and credited to the fiscal
21 year 2001 accounts.

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

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

EXECUTIVE

5—Governor's Office

(WV Code Chapter 5)

Fund 0101 FY 2001 Org 0100

1	Personal Services	001	\$ 1,765,123
2	Salary of Governor	002	90,000
3	Annual Increment	004	17,250
4	Employee Benefits	010	465,203
5	BRIM Premium	913	134,901
6	Unclassified (R)	099	951,932
7	National Governors' Association	123	66,200
8	Southern States Energy Board	124	28,732
9	WV Human Resource		
10	Investment Council	294	262,662

11	Southern Growth Policies Board	299	24,339
12	Southern Technology Council	308	10,000
13	Southern Governors' Association	314	5,740
14	National Governors' Association		
15	for State Budget Officers	315	<u>11,500</u>
16	Total		\$ 3,833,582

17 Any unexpended balances remaining in the appropriation
 18 for Publication of Papers and Transition Expenses (fund 0101,
 19 activity 465) and Unclassified (fund 0101, activity 099) at the
 20 close of the fiscal year 2000 are hereby reappropriated for
 21 expenditure during the fiscal year 2001.

6—*Governor's Office*—

Custodial Fund

(WV Code Chapter 5)

Fund 0102 FY 2001 Org 0100

1	Unclassified—Total	096	\$ 534,643
2	To be used for current general expenses, including compen-		
3	sation of employees, household maintenance, cost of official		
4	functions and additional household expenses occasioned by		
5	such official functions.		

7—*Governor's Office*—

Governor's Cabinet on Children and Families

(WV Code Chapter 5)

Fund 0104 FY 2001 Org 0100

1	Unclassified (R)	099	\$ 309,295
2	Family Resource Networks (R)	274	1,505,000

3	Starting Points Centers and Parent		
4	Education Services (R)	316	1,244,500
5	Educare	895	<u>1,000,000</u>
6	Total		\$ 4,058,795

7 Any unexpended balances remaining in the appropriations
8 for Unclassified (fund 0104, activity 099), Starting Points
9 Centers and Parent Education Services (fund 0104, activity 316)
10 and Family Resource Networks (fund 0104, activity 274) at the
11 close of the fiscal year 2000 are hereby reappropriated for
12 expenditure during the fiscal year 2001.

8—Governor’s Office—

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2001 Org 0100

1	Civil Contingent Fund—Total (R)	114	\$ 3,650,000
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2 Any unexpended balances remaining in the appropriations
3 for Civil Contingent Fund—Total (fund 0105, activity 114),
4 Civil Contingent Fund—Surplus (fund 0105, activity 263),
5 Unclassified—Surplus—Total (fund 0105, activity 098) and
6 Civil Contingent Fund—Total—Surplus (fund 0105, activity
7 238) at the close of the fiscal year 2000 are hereby
8 reappropriated for expenditure during the fiscal year 2001, with
9 the exception of fund 0105, fiscal year 2000, activity 114
10 (\$328,063) which will expire on June 30, 2000.

11 From this appropriation there may be expended, at the
12 discretion of the governor, an amount not to exceed one
13 thousand dollars as West Virginia’s contribution to the inter-
14 state oil compact commission.

15 The above appropriation is intended to provide contingency
16 funding for accidental, unanticipated, emergency or unplanned

17 events which may occur during the fiscal year and is not to be
 18 expended for the normal day-to-day operations of the gover-
 19 nor's office.

9—Auditor's Office—

General Administration

(WV Code Chapter 12)

Fund 0116 FY 2001 Org 1200

1	Personal Services	001	\$ 2,062,231
2	Salary of Auditor	002	70,000
3	Annual Increment	004	50,523
4	Employee Benefits	010	734,990
5	BRIM Premium	913	1,876
6	Unclassified (R)	099	542,075
7	Office Automation (R)	117	<u>790,000</u>
8	Total		\$ 4,251,695

9 Any unexpended balances remaining in the appropriations
 10 for Unclassified (fund 0116, activity 099), Office Automation
 11 (fund 0116, activity 117) and Payroll System Acquisition (fund
 12 0116, activity 594) at the close of the fiscal year 2000 are
 13 hereby reappropriated for expenditure during the fiscal year
 14 2001, with the exception of fund 0116, fiscal year 2000, activity
 15 099 (\$69,245) which will expire on June 30, 2000.

10—Auditor's Office—

Family Law Masters

Administration Fund

(WV Code Chapter 48A)

Fund 0117 FY 2001 Org 1200

- 1 Unclassified—Total 096 \$ 650,000
- 2 The above appropriation shall be expended for the adminis-
- 3 trative expenses of the family law masters program, excluding
- 4 personal services and employee benefits.

11—Treasurer's Office

(WV Code Chapter 12)

Fund 0126 FY 2001 Org 1300

1	Personal Services	001	\$ 1,880,036
2	Salary of Treasurer	002	70,000
3	Annual Increment	004	34,856
4	Employee Benefits	010	573,578
5	BRIM Premium	913	12,335
6	Unclassified (R)	099	1,680,369
7	Abandoned Property Program	118	287,068
8	Tuition Trust Fund (R)	692	155,313
9	School Building Sinking		
10	Fund Debt Service (R)	770	<u>4,683,000</u>
11	Total		\$ 9,376,555

- 12 Any unexpended balances remaining in the appropriations
- 13 for Unclassified (fund 0126, activity 099), School Building
- 14 Sinking Fund Debt Service (fund 0126, activity 770), Tuition
- 15 Trust Fund (fund 0126, activity 692) and Tuition Trust
- 16 Fund—Surplus (fund 0126, activity 837) at the close of the
- 17 fiscal year 2000 are hereby reappropriated for expenditure
- 18 during the fiscal year 2001, with the exception of fund 0126,
- 19 fiscal year 2000, activity 099 (\$69,009) which will expire on
- 20 June 30, 2000.

12—Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2001 Org 1400

1	Personal Services	001	\$ 3,507,311
2	Salary of Commissioner	002	70,000
3	Annual Increment	004	73,000
4	Employee Benefits	010	1,343,747
5	BRIM Premium	913	77,862
6	Unclassified (R)	099	986,561
7	Gypsy Moth Program (R).	119	907,177
8	Black Fly Control	137	381,005
9	Mingo County Surface Mine Project (R)	296	150,000
10	Tri-County Fair Association	343	100,000
11	Predator Control	470	90,000
12	Charleston Farmers Market (R)	476	128,767
13	Bee Research	691	70,000
14	Microbiology Program	785	150,000
15	Moorefield Agriculture Center (R)	786	413,477
16	Fire Ants Eradication Program	129	25,000
17	Huntington Farmers Market	128	25,000
18	State Farm Museum	055	110,000
19	WV State Fair—WV Building	130	<u>30,000</u>
20	Total		\$ 8,638,907

21 Any unexpended balances remaining in the appropriations
 22 for Unclassified (fund 0131, activity 099), Gypsy Moth
 23 Program (fund 0131, activity 119), Mingo County Surface Mine
 24 Project (fund 0131, activity 296), Charleston Farmers Market
 25 (fund 0131, activity 476), Moorefield Agriculture Center (fund
 26 0131, activity 786) and Capital Improvements—Total—Surplus
 27 (fund 0131, activity 672) at the close of the fiscal year 2000 are
 28 hereby reappropriated for expenditure during the fiscal year
 29 2001, with the exception of fund 0131, fiscal year 2000, activity
 30 099 (\$21,496); fund 0131, fiscal year 2000, activity 119
 31 (\$33,518); fund 0131, fiscal year 2000, activity 296 (\$25,000);
 32 fund 0131, fiscal year 2000, activity 476 (\$6,000) and fund
 33 0131, fiscal year 2000, activity 786 (\$18,485) which shall
 34 expire on June 30, 2000.

35 A portion of the Unclassified appropriation may be trans-
 36 ferred to a special revenue fund for the purpose of matching
 37 federal funds for marketing and development activities.

13—Department of Agriculture—

State Soil Conservation Committee

(WV Code Chapter 19)

Fund 0132 FY 2001 Org 1400

1	Personal Services	001	\$	441,280
2	Annual Increment	004		7,900
3	Employee Benefits	010		166,458
4	Unclassified (R)	099		354,455
5	Soil Conservation Projects (R)	120		3,500,000
6	Maintenance of Flood			
7	Control Projects (R)	522		1,775,000
8	Conservation Reserve			
9	Enhancement Program	141		<u>250,000</u>

10 Total \$ 6,495,093

11 Any unexpended balances remaining in the appropriations
 12 for Unclassified (fund 0132, activity 099), Maintenance of
 13 Flood Control Projects (fund 0132, activity 522), Soil Conser-
 14 vation Projects (fund 0132, activity 120) and Soil Conservation
 15 Projects—Surplus (fund 0132, activity 269) at the close of the
 16 fiscal year 2000 are hereby reappropriated for expenditure
 17 during the fiscal year 2001, with the exception of fund 0132,
 18 fiscal year 2000, activity 120 (\$155,588) which shall expire on
 19 June 30, 2000.

14—Department of Agriculture—

Meat Inspection

(WV Code Chapter 19)

Fund 0135 FY 2001 Org 1400

1	Personal Services	001	\$ 379,089
2	Annual Increment	004	8,403
3	Employee Benefits	010	145,849
4	Unclassified	099	<u>64,503</u>
5	Total		\$ 597,844

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

15—Department of Agriculture—

Agricultural Awards

(WV Code Chapter 19)

Fund 0136 FY 2001 Org 1400

1	Fairs and Festivals	122	\$ 425,000
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2	Commissioner's Awards and Programs .	737	<u>90,000</u>
3	Total		\$ 515,000

16—Attorney General

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

Fund 0150 FY 2001 Org 1500

1	Personal Services (R)	001	\$ 2,304,636
2	Salary of Attorney General	002	75,000
3	Annual Increment (R)	004	39,100
4	Employee Benefits (R)	010	710,563
5	BRIM Premium	913	75,267
6	Unclassified (R)	099	507,310
7	Better Government Bureau (R)	740	<u>256,650</u>
8	Total		\$ 3,968,526

9 Any unexpended balance remaining in the above appropria-
 10 tion at the close of the fiscal year 2000 is hereby reappropriated
 11 for expenditure during the fiscal year 2001, with the exception
 12 of fund 0150, fiscal year 2000, activity 001 (\$80,000); fund
 13 0150, fiscal year 2000, activity 010 (\$14,592) and fund 0150,
 14 fiscal year 2000, activity 099 (\$19,681) which shall expire on
 15 June 30, 2000.

16 When legal counsel or secretarial help is appointed by the
 17 attorney general for any state spending unit, this account shall
 18 be reimbursed from such spending unit's specifically appropri-
 19 ated account or from accounts appropriated by general language
 20 contained within this bill: *Provided*, That the spending unit
 21 shall reimburse at a rate and upon terms agreed to by the state
 22 spending unit and the attorney general: *Provided, however*, That
 23 if the spending unit and the attorney general are unable to agree
 24 on the amount and terms of the reimbursement, the spending

25 unit and the attorney general shall submit their proposed
 26 reimbursement rates and terms to the joint committee on
 27 government and finance for final determination.

17—Secretary of State

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2001 Org 1600

1	Personal Services	001	\$ 605,515
2	Salary of Secretary of State	002	65,000
3	Annual Increment	004	14,255
4	Employee Benefits	010	229,330
5	BRIM Premium	913	17,140
6	Unclassified (R)	099	361,023
7	Administrative Law		
8	Division Improvements (R)	880	<u>58,801</u>
9	Total		\$ 1,351,064

10 Any unexpended balances remaining in the appropriations
 11 for Unclassified (fund 0155, activity 099), Technology Im-
 12 provements (fund 0155, activity 599) and Administrative Law
 13 Division Improvements (fund 0155, activity 880) at the close of
 14 the fiscal year 2000 are hereby reappropriated for expenditure
 15 during the fiscal year 2001, with the exception of fund 0155,
 16 fiscal year 2000, activity 099 (\$35,580) and fund 0155, fiscal
 17 year 2000, activity 880 (\$1,764) which shall expire on June 30,
 18 2000.

18—State Election Commission

(WV Code Chapter 3)

Fund 0160 FY 2001 Org 1601

1	Unclassified—Total	096	\$ 12,000
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DEPARTMENT OF ADMINISTRATION

19—Department of Administration—

Office of the Secretary

(WV Code Chapter 5F)

Fund 0186 FY 2001 Org 0201

1	Unclassified—Total	096	\$	0
2	Unclassified	099		290,512
3	BRIM Premium	913		<u>7,524</u>
4	Total		\$	298,036

20—Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2001 Org 0205

1	Supplemental Benefits for Annuitants . .	892	\$	5,019,000
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2 The above appropriation may be transferred to the appropri-
 3 ate special revenue fund of the Consolidated Public Retirement
 4 Board for expenditure as determined by the Executive Secre-
 5 tary.

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

21—Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2001 Org 0209

1	Personal Services	001	\$ 506,370
2	Annual Increment	004	11,090
3	Employee Benefits	010	138,496
4	BRIM Premium	913	52,889
5	Unclassified	099	561,178
6	GAAP Project (R)	125	<u>1,276,734</u>
7	Total		\$ 2,546,757

8 Any unexpended balance remaining in the appropriation for
9 GAAP Project (fund 0203, activity 125) at the close of the
10 fiscal year 2000 is hereby reappropriated for expenditure during
11 the fiscal year 2001, with the exception of fund 0203, fiscal
12 year 2000, activity 125 (\$74,721) which shall expire on June
13 30, 2000.

22—Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2001 Org 0211

1	Personal Services	001	\$ 536,648
2	Annual Increment	004	20,300
3	Employee Benefits	010	220,397
4	Unclassified	099	913,832
5	Fire Service Fee	126	<u>13,440</u>
6	Total		\$ 1,704,617

7 Any unexpended balances remaining in the appropriations
8 for Capitol Building Preservation (fund 0230, activity 503),
9 Capitol Building Preservation—Surplus (fund 0230, activity
10 675), Capital Improvements—Capitol Complex—Surplus (fund

11 0230, activity 676), Capitol Complex—Capital Outlay (fund
 12 0230, activity 417), Capitol Complex Master
 13 Plan—Total—Surplus (fund 0230, activity 606) and Capitol
 14 Building Roof—Total—Surplus (fund 0230, activity 820) at the
 15 close of the fiscal year 2000 are hereby reappropriated for
 16 expenditure during the fiscal year 2001.

23—Division of Purchasing

(WV Code Chapter 5A)

Fund 0210 FY 2001 Org 0213

1	Personal Services	001	\$ 627,695
2	Annual Increment	004	16,435
3	Employee Benefits	010	195,846
4	BRIM Premium	913	2,394
5	Unclassified	099	129,711
6	Purchasing Card Program	711	<u>87,809</u>
7	Total		\$ 1,059,890

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

24—Commission on Uniform State Laws

(WV Code Chapter 29)

Fund 0214 FY 2001 Org 0217

1	Unclassified—Total	096	\$ 25,000
2	To pay expenses of members of the commission on uniform		
3	state laws.		

25—Board of Risk and Insurance Management

(WV Code Chapter 29)

Fund 0217 FY 2001 Org 0218

1	Personal Services	001	\$ 630,000
2	Annual Increment	004	6,000
3	Employee Benefits	010	172,088
4	Unclassified	099	80,000
5	Premium Enhancement	346	<u>200,000</u>
6	Total		\$ 1,088,088

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

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

26—Education and State Employees' Grievance Board

(WV Code Chapter 18)

Fund 0220 FY 2001 Org 0219

1	Personal Services	001	\$ 673,122
2	Annual Increment	004	7,683

* Language deleted by the Governor.

104		APPROPRIATIONS	[Ch. 10
3	Employee Benefits	010	202,917
4	BRIM Premium	913	1,376
5	Unclassified	099	<u>169,678</u>
6	Total		\$ 1,054,776

27—Ethics Commission

(WV Code Chapter 6B)

Fund 0223 FY 2001 Org 0220

1	Personal Services	001	\$ 213,985
2	Annual Increment	004	2,008
3	Employee Benefits	010	62,851
4	BRIM Premium	913	1,262
5	Unclassified	099	<u>95,758</u>
6	Total		\$ 375,864

28—Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2001 Org 0221

1	Personal Services	001	\$ 459,200
2	Annual Increment	004	5,650
3	Employee Benefits	010	197,318
4	BRIM Premium	913	30,930
5	Unclassified (R)	099	357,831
6	Appointed Counsel Fees and		
7	Public Defender Corporations	127	<u>24,432,877</u>
8	Total		\$25,483,806

9 Any unexpended balances remaining in the above appropri-
 10 ations for Unclassified (fund 0226, activity 099), Appointed
 11 Counsel Fees (fund 0226, activity 788) and Public Defender
 12 Corporations (fund 0226, activity 352) at the close of the fiscal
 13 year 2000 are hereby reappropriated for expenditure during the
 14 fiscal year 2001, with the exception of fund 0226, fiscal year
 15 2000, activity 352 (\$826,712) which shall expire on June 30,
 16 2000.

17 Notwithstanding the provisions of Title I, section three of
 18 this bill, the executive director, with the approval of the
 19 secretary of the department of administration, shall have the
 20 authority to transfer funds between appointed counsel fees and
 21 public defender corporations: *Provided*, That no more than ten
 22 percent of the funds appropriated to one line item may be
 23 transferred to the other line item.

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

(WV Code Chapter 5A)

Fund 0233 FY 2001 Org 0224

1 Unclassified—Total 096 \$ 4,656

30—Public Employees Insurance Agency

(WV Code Chapter 5)

Fund 0200 FY 2001 Org 0225

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

31—West Virginia Prosecuting Attorneys' Institute

Fund 0557 FY 2001 Org 0228

1	Unclassified	099	\$	0
2	Forensic Medical Examinations	683		203,802
3	Federal Funds/Grant Match	749		<u>130,143</u>
4	Total		\$	333,945

5 Any unexpended balance remaining in the appropriation for
6 federal funds/grant match (fund 0557, activity 749) at the close
7 of the fiscal year 2000 is hereby reappropriated for expenditure
8 during the fiscal year 2001.

32—Children's Health Insurance Agency

(WV Code Chapter 5)

Fund 0588 FY 2001 Org 0230

1	Unclassified—Total	096	\$	2,000,088
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DEPARTMENT OF EDUCATION*33—State Department of Education—**School Lunch Program*

(WV Code Chapters 18 and 18A)

Fund 0303 FY 2001 Org 0402

1	Personal Services	001	\$	182,000
2	Annual Increment	004		2,654
3	Employee Benefits	010		75,293
4	Unclassified	099		<u>1,764,623</u>
5	Total		\$	2,024,570

34—State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

Fund 0306 FY 2001 Org 0402

1	Personal Services	001	\$ 361,042
2	Annual Increment	004	6,150
3	Employee Benefits	010	121,246
4	BRIM Premium	913	22,355
5	Unclassified	099	<u>221,898</u>
6	Total		\$ 732,691

35—State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2001 Org 0402

1	Personal Services	001	\$ 2,556,000
2	Annual Increment	004	30,415
3	Employee Benefits	010	946,129
4	BRIM Premium	913	132,756
5	Unclassified	099	4,450,000
6	WV Education Information		
7	System (WVEIS)	138	3,836,117
8	34/1000 Waiver	139	300,000
9	Increased Enrollment	140	1,121,840
10	National Science Foundation Match ...	142	139,500
11	Safe Schools	143	2,000,000
12	Implementation of Norm		
13	Referenced Testing Program	297	2,100,070
14	Curriculum Technology		
15	Resource Center	300	253,823

108	APPROPRIATIONS		[Ch. 10
16	Tax Assessment Errors	353	353,457
17	HVAC Technicians	355	378,433
18	Pendleton County Allowance		
19	for Transfer	356	85,000
20	READS Program	365	300,000
21	MATH Program	368	300,000
22	End of Course Exams	369	435,600
23	Employment Programs Rate Relief	401	948,353
24	Three Tier Funding	411	1,000,000
25	Governor's Honors Academy	478	190,000
26	Micro Computer Network	506	150,000
27	Adult Advisory Council	621	279,110
28	Foreign Student Education (R)	636	175,756
29	Teacher Mentor	158	500,000
30	State Teacher of the Year	640	35,899
31	National Teacher Certification	161	208,000
32	Principals Mentorship	649	50,000
33	Educational Enhancements	695	2,427,000
34	Allowance for Work Based Learning ..	744	68,985
35	Pickens School Support	758	150,000
36	Marshall University Graduate		
37	College Writing Project	807	25,000
38	Webster County Board of		
39	Education/Hacker Valley	809	100,000
40	Virtual School on Internet	178	89,840

41	Partnership Development/Staff	171	<u>250,000</u>
42	Total		\$ 26,367,083

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

45 Any unexpended balances remaining in the appropriations
 46 for Technology and Telecommunications Initiative (fund 0313,
 47 activity 596), Foreign Student Education (fund 0313, activity
 48 636), Increased Enrollment (fund 0313, activity 140), at the
 49 close of the fiscal year 2000 are hereby reappropriated for
 50 expenditure during the fiscal year 2001.

51 From the above appropriation for Safe Schools, an amount
 52 of \$100,000 may be used for the removal of chemicals from
 53 schools throughout the state.

36—State Department of Education—

Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2001 Org 0402

1	Special Education—Counties	159	\$ 7,336,561
2	Special Education—Institutions	160	3,086,941
3	Education of Juveniles Held in		
4	Predispositional Juvenile		
5	Detention Centers	302	556,022
6	Educational Services/Upshur County,		
7	Potomac Highlands,		
8	and Lory Julian	382	0
9	Education of Institutionalized		
10	Juveniles and Adults	472	6,331,260
11	Potomac Center	810	512,805

12	Educational Programs		
13	at Beckley Center	192	<u>350,738</u>
14	Total		\$ 18,174,327

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

37—State Department of Education—

State Aid to Schools

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2001 Org 0402

1	Other Current Expenses	022	\$ 115,215,859
2	Professional Educators	151	717,168,249
3	Service Personnel	152	232,407,752
4	Fixed Charges	153	84,287,118
5	Transportation	154	33,120,667
6	Administration	155	7,719,025
7	Improve Instructional Programs	156	<u>33,000,000</u>
8	Basic Foundation Allowances		1,222,918,670
9	Less Local Share		<u>(268,275,135)</u>
10	Total Basic State Aid		954,643,535
11	Public Employees' Insurance Match .	012	145,435,010
12	Teachers' Retirement System	019	225,645,313
13	School Building Authority	453	<u>20,573,905</u>
14	Total		\$ 1,346,297,763

*38—State Board of Education—**Vocational Division*

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2001 Org 0402

1	Personal Services	001	\$	850,000
2	Annual Increment	004		12,051
3	Employee Benefits	010		336,162
4	Unclassified	099		1,052,447
5	Wood Products—Forestry			
6	Vocational Program	146		63,024
7	Albert Yanni Vocational Program	147		139,300
8	Vocational Aid	148		13,033,974
9	Adult Basic Education	149		2,887,437
10	Equipment Replacement	150		1,019,750
11	Program Modernization	305		700,000
12	Aquaculture Support	769		<u>205,948</u>
13	Total		\$	20,300,093

*39—State Board of Education—**Division of Educational Performance Audits*

(WV Code Chapters 18 and 18A)

Fund 0573 FY 2001 Org 0402

1	Personal Services	001	\$	460,200
2	Annual Increment	004		3,000
3	Employee Benefits	010		161,274

112		APPROPRIATIONS		[Ch. 10
4	Unclassified	099	<u>255,384</u>	
5	Total		\$ 879,858	

40—West Virginia Schools for the Deaf and the Blind
(WV Code Chapters 18 and 18A)

Fund 0320 FY 2001 Org 0403

1	Personal Services	001	\$ 6,121,895
2	Annual Increment	004	4,000
3	Employee Benefits	010	2,377,466
4	BRIM Premium	913	42,812
5	Unclassified	099	<u>1,533,656</u>
6	Total		\$ 10,079,829

7 Any unexpended balances remaining in the appropriation
8 for Capital Outlay, Repairs and Equipment—Surplus (fund
9 0320, activity 677) and FM Auditory Equipment (fund 0320,
10 activity 395) at the close of the fiscal year 2000 are hereby
11 reappropriated for expenditure during the fiscal year 2001.

DEPARTMENT OF EDUCATION AND THE ARTS

41—Department of Education and the Arts—

Office of the Secretary

(WV Code Chapter 5F)

Fund 0294 FY 2001 Org 0431

1	Unclassified (R)	099	\$ 3,115,455
2	BRIM Premium	913	1,515
3	Joint Commission on Vocational—		
4	Technical—Occupational Education	109	30,000

5	Center for Professional		
6	Development (R)	115	1,808,477
7	Center for Professional Development—		
8	Principals' Academy (R)	415	500,018
9	Technical Preparation Program (R)	440	932,397
10	Community Schools/Mini Grants (R) . .	530	200,971
11	Commission for National and		
12	Community Service	193	165,000
13	Hospitality Training	600	550,000
14	Operation Safe Schools/Hotline Grants .	194	300,000
15	Jobs for West Virginia Graduates	863	<u>0</u>
16	Total		\$ 7,603,833

17 Any unexpended balances remaining in the appropriations
 18 for Unclassified (fund 0294, activity 099), Center for Profes-
 19 sional Development (fund 0294, activity 115), Center for
 20 Professional Development—Principals' Academy (fund 0294,
 21 activity 415), Workforce Program Continuation (fund 0294,
 22 activity 405), Technical Preparation Program (fund 0294,
 23 activity 440) and Community Schools/Mini Grants (fund 0294,
 24 activity 530) at the close of the fiscal year 2000 are hereby
 25 reappropriated for expenditure during the fiscal year 2001, with
 26 the exception of fund 0294, fiscal year 2000, activity 099
 27 (\$117,811) and fund 0294, fiscal year 2000, activity 115
 28 (\$54,223) which shall expire on June 30, 2000.

42—Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2001 Org 0432

1	Personal Services	001	\$ 1,804,581
2	Annual Increment	004	34,350

114	APPROPRIATIONS	[Ch. 10
3	Employee Benefits	010 637,689
4	BRIM Premium	913 27,937
5	Martin Luther King, Jr.	
6	Holiday Celebration	031 15,000
7	Unclassified	099 589,120
8	Grants for Competitive Arts Programs .	624 1,000,000
9	Culture and History Programming	732 <u>300,014</u>
10	Total	\$ 4,408,691

11 Any unexpended balance remaining in the appropriation for
12 Capital Outlay, Repairs and Equipment (fund 0293, activity
13 589) at the close of the fiscal year 2000 is hereby
14 reappropriated for expenditure during the fiscal year 2001.

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

21 All federal moneys received as reimbursement to the
22 division of culture and history for moneys expended from the
23 general revenue fund for the arts fund and historical preserva-
24 tion are hereby reappropriated for the purposes as originally
25 made, including personal services, current expenses and
26 equipment.

43—Library Commission

(WV Code Chapter 10)

Fund 0296 FY 2001 Org 0433

1	Personal Services	001 \$ 1,115,752
2	Annual Increment	004 33,300

3	Employee Benefits	010	394,019
4	BRIM Premium	913	17,126
5	Unclassified	099	279,997
6	Books and Films	179	150,000
7	Services to State Institutions	180	156,310
8	Services to Blind and Handicapped	181	42,729
9	Libraries—Special Projects	625	<u>1,000,000</u>
10	Total		\$ 3,189,233

11 Any unexpended balance remaining in the appropriation for
 12 Capital Outlay—HVAC System (fund 0296, activity 889) at the
 13 close of the fiscal year 2000 is hereby reappropriated for
 14 expenditure during the fiscal year 2001.

44—Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 0300 FY 2001 Org 0439

1	Personal Services	001	\$ 3,282,591
2	Annual Increment	004	70,400
3	Employee Benefits	010	1,087,194
4	BRIM Premium	913	32,547
5	Unclassified	099	1,107,457
6	Lease Purchase Digital		
7	Conversion Equipment	893	<u>0</u>
8	Total		\$ 5,580,189

9 Any unexpended balance remaining in the appropriation for
 10 Equipment—Surplus (fund 0300, activity 341) at the close of

11 the fiscal year 2000 is hereby reappropriated for expenditure
12 during the fiscal year 2001.

13 These funds may be transferred to special revenue accounts
14 for matching college, university, city, county, federal and/or
15 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)

Fund 0333 FY 2001 Org 0452

1	Public Employees'			
2	Insurance Matching	012	\$	925,648
3	Unclassified	099		1,466,543
4	BRIM Premium	913		2,644,011
5	Tuition Contract Program (R)	165		749,552
6	WVNET	169		2,594,574
7	Community and Technical College			
8	Pupil Support Adjustment	858		<u>2,000,000</u>
9	Total		\$	10,380,328

10 Any unexpended balances remaining in the appropriations
11 for Higher Education Grant Program (fund 0333, activity 164),
12 Tuition Contract Program (fund 0333, activity 165), Higher
13 Education Technology Initiative—Surplus (fund 0333, activity
14 508) and Asynchronous Transfer Mode (ATM) Program (fund
15 0333, activity 199) at the close of the fiscal year 2000 are
16 hereby reappropriated for expenditure during the fiscal year
17 2001, with the exception of fund 0333, fiscal year 2000, activity
18 165 (\$21,107) which shall expire on June 30, 2000.

19 The appropriation for Minority Doctoral Fellowship (fund
20 0333, activity 166) may be transferred to special revenue
21 accounts for matching college, university, city, county, federal,
22 and/or other generated revenues.

*46—Board of Trustees of the
University System of West Virginia
and Board of Directors of the State College System—
Higher Education Efficiency Fund*

Control Account

(WV Code Chapter 18B)

Fund 0578 FY 2001 Org 0452

1	Strategic Planning and Compliance—		
2	Institutions—Total	772	\$ 11,434,390

*47—Board of Trustees of the
University System of West Virginia*

Control Account

(WV Code Chapter 18B)

Fund 0327 FY 2001 Org 0461

1	Unclassified	099	\$185,289,087
2	Marshall University—Southern WV		
3	Community and Technical College		
4	2+2 Program (R)	170	362,009
5	Marshall University—		
6	Autism Training Center	548	594,691
7	Marshall and West Virginia University		
8	Faculty and Course Development		
9	International Study Project (R)	549	35,000
10	Marshall University—Forensic Lab (R)	572	465,576

11	WVU Law School—Skills Program . . .	745	225,000
12	WVU College of Engineering and		
13	13 Mineral Resources—		
14	14 Diesel Training—Transfer (R)	852	20,000
15	15 Coal and Energy Research Bureau	827	<u>150,000</u>
16	16 Total		\$ 187,141,363

17 Any unexpended balances remaining in the appropriations
 18 for Marshall University—Southern WV Community and
 19 Technical College 2+2 Program (fund 0327, activity 170),
 20 Marshall University—Forensic Lab (fund 0327, activity 572),
 21 WVU College of Engineering and Mineral Resources—Diesel
 22 Training—Transfer (fund 0327, activity 852), Marshall and
 23 West Virginia University Faculty and Course Development
 24 International Study Project (fund 0327, activity 549), Jackson’s
 25 Mill—Surplus (fund 0344, activity 842) and Jackson’s Mill
 26 (fund 0327, activity 461) at the close of the fiscal year 2000 are
 27 hereby reappropriated for expenditure during the fiscal year
 28 2001, with the exception of fund 0327, fiscal year 2000, activity
 29 170 (\$110,860); fund 0327, fiscal year 2000, activity 549
 30 (\$1,084) and fund 0327, fiscal year 2000, activity 572 (\$13,967)
 31 which shall expire on June 30, 2000.

*48—Board of Trustees of the University
 System of West Virginia—
 University of West Virginia
 Health Sciences Account
 (WV Code Chapter 18B)*

Fund 0323 FY 2001 Org 0478

1	WVU—School of Health Sciences—		
2	2 Charleston Division	175	\$ 4,041,728
3	3 Primary Health Education		
4	4 Program Support (R)	177	4,754,611

5	Graduate Medical Education	197	1,397,000
6	Medical Education	178	0
7	School of Osteopathic Medicine	172	6,710,904
8	Marshall Medical School	173	11,716,104
9	Marshall University -		
10	Center for Rural Health	198	200,000
11	WVU—School of Health Sciences	178	42,198,873
12	Vice Chancellor for Health Sciences . . .	473	287,183
13	WVU Charleston Division—		
14	Poison Control Hot Line (R)	510	501,565
15	Rural Health Initiative Site		
16	Support Program (R)	853	2,980,000
17	School of Osteopathic Medicine—		
18	Capital Improvement	204	<u>600,000</u>
19	Total		\$ 75,387,968

20 Any unexpended balances remaining in the appropriations
21 for Primary Health Education Program Support (fund 0323,
22 activity 177), Correctional Telemedicine Project (fund 0323,
23 activity 406), Capital Outlay and Equipment (fund 0323,
24 activity 542), WVU Charleston Division—Poison Control Hot
25 Line (fund 0323, activity 510) and Rural Health Initiative Site
26 Support Program (fund 0323, activity 853) at the close of the
27 fiscal year 2000 are hereby reappropriated for expenditure
28 during the fiscal year 2001, with the exception of fund 0323,
29 fiscal year 2000, activity 177 (\$67,008); fund 0323, fiscal year
30 2000, activity 853 (\$262,727) and fund 0323, fiscal year 2000,
31 activity 510 (\$14,630) which shall expire on June 30, 2000.

32 The amount in the Graduate Medical Education line-item
33 above may be transferred to the Department of Health and
34 Human Resources' Consolidated Medical Service Fund for the

35 purpose of matching federal or other funds to be used in support
 36 of graduate medical education, subject to the approval of the
 37 Vice-Chancellor for Health Sciences and the Secretary of the
 38 Department of Health and Human Resources. If approval is
 39 denied, the funds may be utilized by the respective institutions
 40 for expenditure.

49—Board of Directors of the State College System

Control Account

(WV Code Chapter 18B)

Fund 0330 FY 2001 Org 0481

1 Unclassified—Total 096 \$ 88,057,058

50—State Board of Rehabilitation—

Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 0310 FY 2001 Org 0932

1	Personal Services	001	\$	4,421,291
2	Annual Increment	004		124,961
3	Employee Benefits	010		1,693,488
4	BRIM Premium	913		35,263
5	Unclassified	099		150,000
6	Case Services	162		2,499,267
7	Workshop Development	163		1,799,000
8	Ron Yost Personal Assistance Fund . . .	407		300,000
9	Traumatic Brain and Spinal Cord Injury	813		250,000
10	Supported Employment			
11	Extended Services	206		<u>125,000</u>

12 Total \$ 11,398,270

13 Any unexpended balance remaining in the appropriation for
 14 Technology—Related Assistance Revolving Loan Fund for
 15 Individuals with Disabilities (fund 0310, activity 766) at the
 16 close of the fiscal year 2000 is hereby reappropriated for
 17 expenditure during the fiscal year 2001 and may be transferred
 18 to a special account for the purpose of disbursement or loan.

**DEPARTMENT OF HEALTH
 AND HUMAN RESOURCES**

51—Department of Health and Human Resources—

Office of the Secretary

(WV Code Chapter 5F)

Fund 0400 FY 2001 Org 0501

1 Unclassified—Total 096 \$ 133,049

52—Division of Health—

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2001 Org 0506

1	Personal Services	001	\$	7,196,742
2	Annual Increment	004		131,907
3	Employee Benefits	010		3,062,865
4	BRIM Premium	913		107,791
5	Unclassified	099		4,313,563
6	Appalachian State Low Level			
7	Radioactive Waste Commission ...	185		48,000
8	Safe Drinking Water Program	187		494,441

122	APPROPRIATIONS	[Ch. 10
9	Women, Infants and Children	210 45,000
10	Early Intervention	223 2,018,357
11	Cancer Registry	225 216,285
12	Primary Care Centers—	
13	Mortgage Finance	413 400,000
14	Pet Scan Support	209 200,000
15	Black Lung Clinics	467 200,000
16	Pediatric Dental Services	550 150,000
17	Vaccine for Children	551 431,480
18	Adult Influenza Vaccine	552 65,000
19	Tuberculosis Control	553 251,266
20	Regional EMS Entities	557 630,000
21	Maternal and Child Health Clinics,	
22	Clinicians and Medical	
23	Contracts and Fees (R)	575 4,673,043
24	Epidemiology Support	626 377,379
25	Rural EMS Equipment and Training . . .	627 560,664
26	Primary Care Support	628 7,246,987
27	State Aid to Local Health Departments .	702 8,800,684
28	Transitional Funding for	
29	Local Health Departments	723 0
30	Basic Public Health Services Support . .	212 4,312,462
31	Health Right Free Clinics	727 2,250,000
32	Osteoporosis Prevention Fund	729 303,117
33	State EMS Coordinator	738 768,992

Ch. 10]	APPROPRIATIONS	123
34	EMS Training for Children	739 50,000
35	Emergency Response	
36	Entities—Special Projects	822 1,250,000
37	Emergency Response Entities Support .	213 250,000
38	Financial Assistance for	
39	Primary Health Care Facilities	215 350,000
40	Educare	895 0
41	County Wellness Institute Programs . . .	216 <u>200,000</u>
42	Total	\$ 51,356,025

43 Any unexpended balances remaining in the appropriations
44 for Unclassified (fund 0407, activity 099, fiscal year 1997) and
45 Maternal and Child Health Clinics, Clinicians and Medical
46 Contracts and Fees (fund 0407, activity 575) at the close of the
47 fiscal year 2000 are hereby reappropriated for expenditure
48 during the fiscal year 2001.

49 From the Maternal and Child Health Clinics, Clinicians,
50 and Medical Contracts and Fees line item, \$400,000 shall be
51 transferred to the Breast and Cervical Cancer Diagnostic
52 Treatment Fund.

53—Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 0525 FY 2001 Org 0506

1	Personal Services	001 \$ 531,371
2	Annual Increment	004 10,300
3	Employee Benefits	010 226,322
4	BRIM Premium	913 582,653
5	Special Olympics	208 26,074

6	Behavioral Health Program—		
7	Unclassified (R)	219	22,650,590
8	Family Support Act	221	1,090,622
9	Institutional Facilities Operations	335	0
10	Colin Anderson Community		
11	Placement (R)	803	3,433,963
12	Renaissance Program	804	<u>200,000</u>
13	Total		\$ 28,751,895

14 Any unexpended balances remaining in the appropriations
 15 for Behavioral Health Program—Unclassified (fund 0525,
 16 activity 219) and Colin Anderson Community Placement (fund
 17 0525, activity 803) at the close of the fiscal year 2000 are
 18 hereby reappropriated for expenditure during the fiscal year
 19 2001.

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

31 From the Colin Anderson Community Placement (fund
 32 0525, activity 803) funds may be both expended for the
 33 community placement costs of the Colin Anderson clients and
 34 transferred to the Medical Services Program Fund to pay the
 35 Medicaid state share of the Medicaid cost of Colin Anderson
 36 clients in the community.

54—*Division of Health—*

West Virginia Drinking Water Treatment

(WV Code Chapter 16)

Fund 0561 FY 2001 Org 0506

- 1 West Virginia Drinking Water Treatment
- 2 Revolving Fund—Transfer 689 \$ 700,000
- 3 The above appropriation for Drinking Water Treatment
- 4 Revolving Fund—Transfer shall be transferred to the West
- 5 Virginia Drinking Water Treatment Revolving Fund or appro-
- 6 priate bank depository and the Drinking Water Treatment
- 7 Revolving—Administrative Expense Fund as provided by
- 8 Chapter 16, of the Code.

55—*Human Rights Commission*

(WV Code Chapter 5)

Fund 0416 FY 2001 Org 0510

- 1 Personal Services 001 \$ 594,191
- 2 Annual Increment 004 12,400
- 3 Employee Benefits 010 207,056
- 4 BRIM Premium 913 15,384
- 5 Unclassified 099 184,121
- 6 Anti-Hate Program and
- 7 Human Rights Summit 815 18,000
- 8 Total \$ 1,031,152

56—*Division of Human Services*

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2001 Org 0511

1	Personal Services	001	\$ 20,713,316
2	Annual Increment	004	456,261
3	Employee Benefits	010	8,156,213
4	BRIM Premium	913	1,014,751
5	Unclassified	099	20,199,081
6	Child Care Development	144	1,438,120
7	Medical Services Contracts and		
8	Office of Managed Care	183	2,323,860
9	Medical Services	189	*183,521,000 182,883,000*
10	Women's Commission	191	131,262
11	Social Services	195	44,040,138
12	Family Preservation Program	196	1,565,000
13	James "Tiger" Morton		
14	Catastrophic Illness Fund	455	1,000,000
15	Child Protective Services Case Workers	468	7,709,104
16	Medical Services Trust Fund Transfer .	512	5,000,000
17	OSCAR and RAPIDS	515	3,457,728
18	Child Welfare System	603	2,552,496
19	Commission for the		
20	Deaf and Hard of Hearing	704	157,838
21	Child Support Enforcement	705	1,782,140
22	Medicaid Auditing	706	579,787
23	Temporary Assistance for		
24	Needy Families/Maintenance		
25	of Effort	707	24,908,382
26	Child Care—Maintenance of		

*Line item reduced by the Governor.

27	Effort and Match	708	4,409,643
28	WV Childrens' Health Fund—		
29	Transfer (R)	714	0
30	Grants for Licensed Domestic		
31	Violence Programs		
32	and Statewide Prevention	750	1,000,000
33	Indigent Burials (R)	851	<u>680,000</u>
34	Total		\$ 336,796,120

35 Any unexpended balances remaining in the appropriations
 36 for Indigent Burials (fund 0403, activity 851) and West Virginia
 37 Childrens' Health Fund—Transfer (fund 0403, activity 714) at
 38 the close of fiscal year 2000 are hereby reappropriated for
 39 expenditure during fiscal year 2001.

40 The above appropriation for James “Tiger” Morton
 41 Catastrophic Illness Fund (activity 455) shall be transferred to
 42 the James “Tiger” Morton Catastrophic Illness Fund (fund
 43 5454) as provided by Chapter 16, Article 5Q, of the Code.

44 Notwithstanding the provisions of Title I, section three of
 45 this bill, the secretary of the department of health and human
 46 resources shall have the authority to transfer funds within the
 47 above account: *Provided*, That no more than ten percent of the
 48 funds appropriated to one line item may be transferred to other
 49 line items: *Provided, however*, That no funds from other line
 50 items shall be transferred to the personal services line item.

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

**DEPARTMENT OF MILITARY AFFAIRS
 AND PUBLIC SAFETY**

57—Department of Military Affairs and Public Safety—

Office of the Secretary

(WV Code Chapter 5F)

Fund 0430 FY 2001 Org 0601

1	Unclassified—Total	096	\$	0
2	Unclassified	099		333,405
3	BRIM Premium	913		<u>2,868</u>
4	Total		\$	336,273

5 Any unexpended balance remaining in the appropriation for
6 Bland Memorial Fund (fund 0430, activity 332) at the close of
7 the fiscal year 2000 is hereby reappropriated for expenditure
8 during the fiscal year 2001.

58—Adjutant General—

State Militia

(WV Code Chapter 15)

Fund 0433 FY 2001 Org 0603

1	Personal Services	001	\$	367,859
2	Annual Increment	004		7,750
3	Employee Benefits	010		130,569
4	BRIM Premium	913		4,842
5	Unclassified (R)	099		<u>10,807,618</u>
6	Total		\$	11,318,638

7 Any unexpended balance remaining in the appropriation for
8 Unclassified (fund 0433, activity 099) at the close of the fiscal
9 year 2000 is hereby reappropriated for expenditure during the
10 fiscal year 2001.

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

59—West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 2001 Org 0605

1	Personal Services	001	\$	115,895
2	Annual Increment	004		1,100
3	Employee Benefits	010		114,504
4	BRIM Premium	913		20,189
5	Unclassified	099		60,735
6	Salaries of Members of			
7	West Virginia Parole Board	227		<u>200,000</u>
8	Total		\$	512,423

60—Office of Emergency Services

(WV Code Chapter 15)

Fund 0443 FY 2001 Org 0606

1	Personal Services	001	\$	212,230
2	Annual Increment	004		5,300
3	Employee Benefits	010		78,209
4	BRIM Premium	913		55
5	Unclassified	099		31,751
6	Federal Emergency			
7	Management Agency Match (R) . . .	188		237,610
8	Community Emergency Response	220		500,000

130

APPROPRIATIONS

[Ch. 10

9	Early Warning Flood System	877	<u>324,000</u>
10	Total		\$ 1,389,155

11 Any unexpended balance remaining in the appropriations
 12 for Federal Emergency Management Agency Match (fund
 13 0443, activity 188) and Unclassified—Surplus (fund 0443,
 14 activity 097) at the close of the fiscal year 2000 are hereby
 15 reappropriated for expenditure during the fiscal year 2001.

61—Division of Corrections—

Central Office

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

Fund 0446 FY 2001 Org 0608

1	Personal Services	001	\$ 382,757
2	Annual Increment	004	8,260
3	Employee Benefits	010	128,502
4	Unclassified	099	<u>98,162</u>
5	Total		\$ 617,681

62—Division of Corrections—

Correctional Units

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

Fund 0450 FY 2001 Org 0608

1	Unclassified	099	\$ 4,541,502
2	BRIM Premium	913	502,496
3	Charleston Work Release	456	789,217
4	Beckley Correctional Center	490	885,813
5	Huntington Work Release	495	669,908

6	Anthony Center	504	4,345,666
7	Huttonsville Correctional Center	514	13,667,004
8	Northern Correctional Facility	534	5,595,278
9	Pruntytown Correctional Center	543	6,052,953
10	Corrections Academy	569	757,768
11	Parole Services	686	1,889,015
12	Special Services	687	2,024,533
13	St. Mary's Correctional Facility	881	8,184,885
14	Denmar Correctional Facility	882	3,613,926
15	Ohio County Correctional Facility	883	1,244,109
16	Mt. Olive Correctional Facility	888	19,052,242
17	Lakin Correctional Facility	896	0
18	Capital Outlay	511	<u>1,072,917</u>
19	Total		\$ 74,889,232

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

30 From the above appropriation to Unclassified, on July 1,
 31 2000, the sum of two hundred thousand dollars shall be
 32 transferred to the department of agriculture—land division as
 33 advance payment for the purchase of food products; actual

34 payments for such purchases shall not be required until such
35 credits have been completely expended.

63—West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 2001 Org 0612

1	Personal Services	001	\$ 26,114,109
2	Annual Increment	004	151,850
3	Employee Benefits	010	5,156,118
4	BRIM Premium	913	1,039,973
5	Unclassified	099	4,902,276
6	COPS Program Federal Match	327	873,889
7	Vehicle Purchase	451	1,000,000
8	Barracks Maintenance and		
9	Construction (R)	494	113,947
10	Communications and Other		
11	Equipment (R)	558	2,415,000
12	Trooper Retirement Fund	605	18,328,152
13	Trooper Class/Grant Match	733	0
14	Handgun Administration Expense	747	67,260
15	Debt Payment/Capital Outlay,		
16	Renovations, Repair to Barracks (R)	751	2,000,000
17	COPS—Telecommunicators Match . . .	816	267,595
18	Trooper Overtime	897	0
19	Automated Fingerprint		
20	Identification System	898	<u>821,772</u>
21	Total		\$ 63,251,941

22 Any unexpended balances remaining in the appropriations
 23 for Barracks Maintenance and Construction (fund 0453, activity
 24 494), Communications and Other Equipment (fund 0453,
 25 activity 558), Trooper Class/Grant Match (fund 0453, activity
 26 733) and Debt Payment/Capital Outlay, Renovations, Repairs
 27 to Barracks (fund 0453, activity 751) at the close of the fiscal
 28 year 2000 are hereby reappropriated for expenditure during the
 29 fiscal year 2001, with the exception of fund 0453, fiscal year
 30 2000, activity 558 (\$457,992); fund 0453, fiscal year 2000,
 31 activity 733 (\$688,375) *and fund 0453, fiscal year 2000,
 32 activity 747 (\$40,697)* which shall expire on June 30, 2000.

33 From the amount reappropriated for Trooper Class/Grant
 34 Match, (fund 0453, activity 733) \$100,000 is redesignated as
 35 Unclassified, fund 0453, activity 099, fiscal year 1999.

64—Division of Veterans' Affairs

(WV Code Chapter 9A)

Fund 0456 FY 2001 Org 0613

1	Personal Services	001	\$	750,991
2	Annual Increment	004		18,300
3	Employee Benefits	010		354,558
4	BRIM Premium	913		23,741
5	Unclassified	099		16,570
6	Veterans' Field Offices	228		129,692
7	Veterans' Toll Free Assistance Line . . .	328		5,000
8	Veterans' Reeducation Assistance (R) .	329		270,000
9	Veterans' Field Office			
10	Improvements (R)	331		56,443
11	Veterans' Grant Program	342		150,000

* Language deleted by the Governor.

134	APPROPRIATIONS	[Ch. 10
12	Memorial Day Patriotic Exercise	697 <u>20,000</u>
13	Total	\$ 1,795,295

14 Any unexpended balances remaining in the appropriations
15 for Veterans' Reeducation Assistance (fund 0456, activity 329),
16 Barboursville Veterans' Home Improvements (fund 0456,
17 activity 466), Veterans' Field Office Improvements (fund 0456,
18 activity 331), and Veterans' Monuments (fund 0456, activity
19 817) at the close of the fiscal year 2000 are hereby
20 reappropriated for expenditure during the fiscal year 2001.

65—Division of Veterans' Affairs—

Veterans' Home

(WV Code Chapter 9A)

Fund 0460 FY 2001 Org 0618

1	Personal Services	001 \$ 636,515
2	Annual Increment	004 13,800
3	Employee Benefits	010 287,706
4	Unclassified	099 <u>161,734</u>
5	Total	\$ 1,099,755

66—Fire Commission

(WV Code Chapter 29)

Fund 0436 FY 2001 Org 0619

1	Personal Services	001 \$ 581,619
2	Annual Increment	004 12,700
3	Employee Benefits	010 197,928
4	BRIM Premium	913 20,940
5	Unclassified	099 <u>205,601</u>

6	Total	\$ 1,018,788
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67—Division of Criminal Justice Services

(Executive Order)

Fund 0546 FY 2001 Org 0620

1	Personal Services	001	\$	167,506
2	Annual Increment	004		2,885
3	Employee Benefits	010		65,156
4	BRIM Premium	913		57
5	Unclassified	099		145,608
6	Statistical Analysis Program	597		<u>51,640</u>
7	Total		\$	432,852

68—Division of Juvenile Services

(WV Code Chapter 49)

Fund 0570 FY 2001 Org 0621

1	Personal Services	001	\$	10,867,700
2	Annual Increment	004		58,150
3	Employee Benefits	010		4,127,684
4	BRIM Premium	913		17,587
5	Unclassified	099		4,331,176
6	Central Office	701		0
7	Juvenile Transportation	730		<u>0</u>
8	Total		\$	19,402,297

69—Division of Protective Services

(WV Code Chapter 15)

Fund 0585 FY 2001 Org 0622

1	Unclassified	099	\$	401,393
2	Equipment (R)	070		<u>600,000</u>
3	Total		\$	1,001,393

4 Any unexpended balance remaining in the appropriation for
5 Equipment (fund 0585, activity 070) at the close of the fiscal
6 year 2000 is hereby reappropriated for expenditure during the
7 fiscal year 2001.

DEPARTMENT OF TAX AND REVENUE*70—Department of Tax and Revenue—**Office of the Secretary*

(WV Code Chapter 5F)

Fund 0465 FY 2001 Org 0701

1	Unclassified—Total	096	\$	0
2	Unclassified	099		430,764
3	BRIM Premium	913		<u>6,084</u>
4	Total		\$	436,848

71—Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2001 Org 0702

1	Personal Services	001	\$	10,755,598
2	Annual Increment	004		222,650
3	Employee Benefits	010		3,578,826
4	BRIM Premium	913		3,973
5	Unclassified	099		6,175,625

6	Supplemental Assistance for Counties		
7	with Reduced Managed Timberland		
8	Tax Collections	222	423,000
9	Remittance Processor	570	<u>297,800</u>
10	Total		\$ 21,457,472

11 Any unexpended balances remaining in the appropriations
 12 for Automation Project (fund 0470, activity 442), Automation
 13 Project—Total—Surplus (fund 0470, activity 673), Property
 14 Tax Valuation and Assessment System (fund 0470, activity
 15 477), Administrative Hearing Examiner Program (fund 0470,
 16 activity 713) and Property Tax and Coal Reserve Valuation
 17 Automation Project (fund 0470, activity 831) at the close of the
 18 fiscal year 2000 are hereby reappropriated for expenditure
 19 during the fiscal year 2001.

72—Division of Professional and Occupational Licenses—

State Athletic Commission

(WV Code Chapter 29)

Fund 0523 FY 2001 Org 0933

1	Unclassified—Total	096	\$	0
2	Unclassified	099		4,719
3	BRIM Premium	913		<u>1,262</u>
4	Total		\$	5,981

DEPARTMENT OF TRANSPORTATION

73—Department of Transportation—

Office of the Secretary

(WV Code Chapter 5F)

Fund 0500 FY 2001 Org 0801

APPROPRIATIONS

[Ch. 10]

1	Unclassified (R)	099	\$	0
2	Civil Air Patrol	234		0
3	Potomac Highlands Airport Authority ..	444		<u>0</u>
4	Total		\$	0

5 Any unexpended balance remaining in the appropriation for
6 Unclassified (fund 0500, activity 099) at the close of the fiscal
7 year 2000 is hereby reappropriated for expenditure during the
8 fiscal year 2001, with the exception of fund 0500, fiscal year
9 2000, activity 099 (\$6,047) which shall expire on June 30,
10 2000.

74—State Rail Authority

(WV Code Chapter 29)

Fund 0506 FY 2001 Org 0804

1	Unclassified—Total	096	\$	0
2	Unclassified	099		2,719,978
3	BRIM Premium	913		<u>8,172</u>
4	Total		\$	2,728,150

75—Division of Public Transit

(WV Code Chapter 17)

Fund 0510 FY 2001 Org 0805

1	Unclassified—Total (R)	096	\$	0
2	Unclassified (R)	099		932,680
3	Federal Funds/Grant Match (R)	749		1,100,000
4	BRIM Premium	913		<u>216</u>
5	Total		\$	2,032,896

6 Any unexpended balances remaining in the appropriations
 7 for Unclassified—Total (fund 0510, activity 096), Unclassified
 8 (fund 0510, activity 099), Federal Funds/Grant Match (fund
 9 0510, activity 749) and Federal Funds/Grant Match—Surplus
 10 (fund 0510, activity 857) at the close of the fiscal year 2000 are
 11 hereby reappropriated for expenditure during the fiscal year
 12 2001, with the exception of fund 0510, fiscal year 2000, activity
 13 099 (\$27,980) and fund 0510, fiscal year 2000, activity 749
 14 (\$33,000) which shall expire on June 30, 2000.

76—Public Port Authority

(WV Code Chapter 17)

Fund 0581 FY 2001 Org 0806

1	Unclassified—Total (R)	096	\$	595,532
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2 Any unexpended balances remaining in the appropriation
 3 for Unclassified—Total (fund 0581, activity 096) and Port
 4 Authority (fund 0581, activity 443) at the close of the fiscal
 5 year 2000 are hereby reappropriated for expenditure during the
 6 fiscal year 2001, with the exception of fund 0581, fiscal year
 7 2000, activity 096 (\$14,852) which shall expire on June 30,
 8 2000.

9 From the above appropriation for unclassified – total (fund
 10 0581, activity 096) an amount up to \$100,000 may be spent to
 11 employ an expert on riverfront development.

77—Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2001 Org 0807

1	Unclassified—Total (R)	096	\$	0
2	Unclassified	099		901,254
3	Civil Air Patrol	234		86,952

4	Potomac Highlands Airport Authority . . .	444	200,000
5	Total		\$ 1,188,206

6 Any unexpended balances remaining in the appropriation
 7 for Unclassified—Total (fund 0582, activity 096) and Aeronau-
 8 tics Commission (fund 0582, activity 818) at the close of the
 9 fiscal year 2000 are hereby reappropriated for expenditure
 10 during the fiscal year 2001, with the exception of fund 0582,
 11 fiscal year 2000, activity 096 (\$27,023) which shall expire on
 12 June 30, 2000.

BUREAU OF COMMERCE

78—Division of Forestry

(WV Code Chapter 19)

Fund 0250 FY 2001 Org 0305

1	Personal Services	001	\$ 1,408,748
2	Annual Increment	004	32,700
3	Employee Benefits	010	542,835
4	BRIM Premium	913	40,313
5	Unclassified	099	361,816
6	Aerial Tanker Airplanes	752	200,000
7	Total		\$ 2,586,412

8 Out of the above appropriation a sum may be used to match
 9 federal funds for cooperative studies or other funds for similar
 10 purposes.

79—Geological and Economic Survey

(WV Code Chapter 29)

Fund 0253 FY 2001 Org 0306

1	Personal Services	001	\$ 1,416,756
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Ch. 10]	APPROPRIATIONS	141
2	Annual Increment	004 28,139
3	Employee Benefits	010 468,816
4	BRIM Premium	913 12,257
5	Unclassified	099 406,836
6	Mineral Mapping System (R)	207 1,211,276
7	Geographic Information System (R)	214 312,500
8	Computer Upgrade	349 <u>6,125</u>
9	Total	\$ 3,862,705

10 Any unexpended balances remaining in the appropriations
11 for Mineral Mapping System (fund 0253, activity 207),
12 Geographic Information System (fund 0253, activity 214) and
13 Computer Upgrade—Surplus (fund 0253, activity 874) at the
14 close of the fiscal year 2000 are hereby reappropriated for
15 expenditure during the fiscal year 2001, with the exception of
16 fund 0253, fiscal year 2000, activity 207 (\$61,838) and fund
17 0253, fiscal year 2000, activity 214 (\$45,000) which shall
18 expire on June 30, 2000.

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

80—West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2001 Org 0307

1	Personal Services	001 \$ 2,285,319
2	Annual Increment	004 29,463
3	Employee Benefits	010 670,699
4	BRIM Premium	913 1,464

142	APPROPRIATIONS		[Ch. 10
5	Unclassified	099	2,661,364
6	West Virginia Steel Advisory	230	80,000
7	Partnership Grants (R)	131	5,200,000
8	National Youth Science Camp	132	200,000
9	Local Economic Development		
10	Partnerships (R)	133	1,650,000
11	ARC Assessment	136	167,308
12	Institute for Software Research	217	100,000
13	Guaranteed Work Force Grant (R)	242	3,411,624
14	Small Business Financial Assistance (R)	360	419,163
15	Robert C. Byrd Institute for Advanced/		
16	Flexible Manufacturing—		
17	Technology Outreach and		
18	Programs for Environmental and		
19	Advanced Technologies	367	700,000
20	Industrial Park Assistance (R)	480	1,400,000
21	WV Film Development Office	498	102,719
22	Leverage Technology and Small Business		
23	Development Program (R)	525	850,000
24	International Offices (R)	593	926,966
25	WV Manufacturing		
26	Extension Partnership	731	200,000
27	Small Business Work Force (R)	735	374,078
28	Polymer Alliance	754	100,000
29	National Institute of Chemical Studies .	805	100,000
30	Local Economic		
31	Development Assistance	819	7,000,000

32	Community College		
33	Workforce Development	878	750,000
34	Revolving Fund - Loan -		
35	Fire Truck Purchases	899	0
36	Economic Development Assistance . . .	900	800,000
37	Technology Initiatives	901	1,000,000
38	Mid-Atlantic Aerospace Complex	231	<u>225,000</u>
39	Total		\$ 31,405,167

40 Any unexpended balances remaining in the appropriations
41 for Partnership Grants (fund 0256, activity 131), Guaranteed
42 Work Force Grant (fund 0256, activity 242), Local Economic
43 Development Partnerships (fund 0256, activity 133), European
44 Trade and Tourism Office (fund 0256, activity 763), Local
45 Economic Development Assistance (fund 0256, activity 819),
46 Small Business Financial Assistance (fund 0256, activity 360),
47 Industrial Park Assistance (fund 0256, activity 480), Leverage
48 Technology and Small Business Development Program (fund
49 0256, activity 525), Small Business Work Force (fund 0256,
50 activity 735), International Offices (fund 0256, activity 593)
51 and Office of Coalfield Community Development (fund 0256,
52 activity 326) at the close of the fiscal year 2000 are hereby
53 reappropriated for expenditure during the fiscal year 2001, with
54 the exception of fund 0256, fiscal year 2000, activity 131
55 (\$159,000); fund 0256, fiscal year 2000, activity 133
56 (\$151,612); fund 0256, fiscal year 2000, activity 360 (\$9,568);
57 fund 0256, fiscal year 2000, activity 480 (\$42,000); fund 0256,
58 fiscal year 2000, activity 525 (\$180,000); fund 0256, fiscal year
59 2000, activity 735 (\$11,216) which shall expire on June 30,
60 2000.

61 The above appropriation to Local Economic Development
62 Partnerships shall be used by the West Virginia development
63 office for the award of funding assistance to county and

64 regional economic development corporations or authorities
 65 participating in the certified development community program
 66 developed under the provisions of section three, article two,
 67 chapter five-b of the code. The West Virginia development
 68 office shall award the funding assistance through a matching
 69 grant program, based upon a formula whereby funding assis-
 70 tance may not exceed thirty thousand dollars per county served
 71 by an economic development corporation or authority.

81—Division of Labor

(WV Code Chapters 21 and 47)

Fund 0260 FY 2001 Org 0308

1	Personal Services	001	\$ 1,694,706
2	Annual Increment	004	22,605
3	Employee Benefits	010	628,146
4	BRIM Premium	913	29,149
5	Unclassified	099	<u>1,072,709</u>
6	Total		\$ 3,447,315

7 Any unexpended balance remaining in the appropriation for
 8 Computer/Technology Upgrades (fund 0260, activity 322) at
 9 the close of the fiscal year 2000 is hereby reappropriated for
 10 expenditure during the fiscal year 2001.

82—Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2001 Org 0310

1	Personal Services	001	\$ 8,707,692
2	Annual Increment	004	250,844
3	Employee Benefits	010	3,590,106

Ch. 10]	APPROPRIATIONS	145
4	BRIM Premium	913 259,032
5	Unclassified	099 107,883
6	Nongame Wildlife	527 550,000
7	Litter Control Conservation Officers . . .	564 200,619
8	West Virginia Stream Partners Program	637 100,000
9	Upper Mud River Flood Control	654 203,867
10	Law Enforcement	806 <u>300,000</u>
11	Total	\$ 14,270,043

12 Any revenue derived from mineral extraction at any state
13 park shall be deposited in a special revenue account of the
14 division of natural resources, first for bond debt payment
15 purposes and with any remainder to be for park operation and
16 improvement purposes.

83—Division of Miners' Health, Safety and Training

(WV Code Chapter 22)

Fund 0277 FY 2001 Org 0314

1	Personal Services	001 \$ 3,668,000
2	Annual Increment	004 64,700
3	Employee Benefits	010 1,312,955
4	BRIM Premium	913 36,539
5	Unclassified	099 916,158
6	West Virginia Diesel	
7	Equipment Commission	712 <u>30,000</u>
8	Total	\$ 6,028,352

84—Board of Coal Mine Health and Safety

(WV Code Chapter 22)

Fund 0280 FY 2001 Org 0319

1	Personal Services	001	\$	97,162
2	Annual Increment	004		400
3	Employee Benefits	010		24,673
4	Unclassified	099		<u>38,792</u>
5	Total		\$	161,027

85—Coal Mine Safety and Technical Review Committee

(WV Code Chapter 22)

Fund 0285 FY 2001 Org 0320

1	Unclassified—Total	096	\$	73,410
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BUREAU OF ENVIRONMENT*86—Environmental Quality Board*

(WV Code Chapter 20)

Fund 0270 FY 2001 Org 0311

1	Personal Services	001	\$	68,977
2	Annual Increment	004		612
3	Employee Benefits	010		19,863
4	Unclassified	099		<u>30,106</u>
5	Total		\$	119,558

87—Interstate Commission on Potomac River Basin

(WV Code Chapter 29)

Fund 0263 FY 2001 Org 0313

1	West Virginia's Contribution to the			
2	Interstate Commission			
3	on Potomac River Basin—Total . . .	134	\$	45,300

88—Ohio River Valley Water Sanitation Commission

(WV Code Chapter 29)

Fund 0264 FY 2001 Org 0313

1 West Virginia's Contribution to the Ohio River Valley Water
 2 Sanitation Commission—Total 135 \$ 129,100

89—Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2001 Org 0313

1	Unclassified—Total	096	\$	0
2	Personal Services	001		4,332,200
3	Annual Increment	004		74,563
4	Employee Benefits	010		1,324,022
5	BRIM Premium	913		12,642
6	Unclassified	099		1,064,079
7	Dam Safety	607		128,109
8	Office of Water Resources			
9	Non-Enforcement	855		<u>1,200,000</u>
10	Total		\$	8,135,615

11 Any unexpended balance remaining in the appropriation for
 12 Office of Water Resources—Equipment—Surplus (fund 0273,
 13 activity 875) at the close of the fiscal year 2000 is hereby
 14 reappropriated for expenditure during the fiscal year 2001.

90—Air Quality Board

(WV Code Chapter 16)

Fund 0550 FY 2001 Org 0325

148		APPROPRIATIONS		[Ch. 10
1	Unclassified—Total	096	\$	0
2	Unclassified	099		80,009
3	BRIM Premium	913		<u>4,368</u>
4	Total		\$	84,377

BUREAU OF SENIOR SERVICES

91—Bureau of Senior Services

(WV Code Chapter 29)

Fund 0420 FY 2001 Org 0508

1	Personal Services	001	\$	119,932
2	Annual Increment	004		1,906
3	Employee Benefits	010		62,490
4	BRIM Premium	913		2,075
5	Unclassified	099		536,890
6	Area Agencies Administration	203		87,428
7	Silver Haired Legislature	202		14,400
8	Foster Grandparents			
9	Stipends and Travel	205		57,734
10	In-Home Services for Senior Citizens	224		<u>700,000</u>
11	Total		\$	1,582,855

BUREAU OF EMPLOYMENT PROGRAMS

92—Bureau of Employment Programs

(WV Code Chapter 23)

Fund 0572 FY 2001 Org 0323

1	Welfare-to-Work—Total (R)	416	\$	1,000,000
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2 Any unexpended balance remaining in the appropriation for
 3 Welfare-to-Work—Total (fund 0572, activity 416) at the close
 4 of the fiscal year 2000 is hereby reappropriated for expenditure
 5 during the fiscal year 2001, with the exception of fund 0572,
 6 fiscal year 2000, activity 416 (\$30,000) which shall expire on
 7 June 30, 2000.

8 Total TITLE II, Section 1—
 9 General Revenue \$ 2,710,787,686

1 **Sec. 2. Appropriations from state road fund.**—From the
 2 state road fund there are hereby appropriated conditionally upon
 3 the fulfillment of the provisions set forth in article two, chapter
 4 five-a of the code the following amounts, as itemized, for
 5 expenditure during the fiscal year two thousand one.

DEPARTMENT OF TRANSPORTATION

93—Division of Motor Vehicles

(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)

Fund 9007 FY 2001 Org 0802

	Activity	State Road Fund
1 Personal Services	001	\$ 11,346,447
2 Annual Increment	004	115,000
3 Employee Benefits	010	4,288,570
4 BRIM Premium	913	76,025
5 Unclassified	099	18,066,627
6 International Fuel Tax Agreement	536	<u>560,644</u>
7 Total		\$ 34,453,313

94—Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2001 Org 0803

1	Debt Service	040	\$ 50,000,000
2	ARC Assessment	136	344,000
3	Maintenance, Expressway,		
4	Trunkline and Feeder	270	0
5	Maintenance, State Local Services	271	0
6	Maintenance	237	229,000,000
7	Maintenance, Contract Paving and		
8	Secondary Road Maintenance	272	50,000,000
9	Bridge Repair and Replacement	273	36,000,000
10	Inventory Revolving	275	2,000,000
11	Equipment Revolving	276	15,000,000
12	General Operations	277	41,711,995
13	Interstate Construction	278	35,000,000
14	Other Federal Aid Programs	279	137,000,000
15	Appalachian Programs	280	60,000,000
16	Nonfederal Aid Construction	281	30,000,000
17	Highway Litter Control	282	1,380,000
18	BRIM Premium	913	<u>4,737,674</u>
19	Total		\$ 692,173,669

20 The above appropriations are to be expended in accordance
21 with the provisions of chapters seventeen and seventeen-c of
22 the code.

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

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

34 It is the intent of the Legislature to capture and match all
 35 federal funds available for expenditure on the Appalachian
 36 highway system at the earliest possible time. Therefore, should
 37 amounts in excess of those appropriated be required for the
 38 purposes of Appalachian programs, funds in excess of the
 39 amount appropriated may be made available upon recommen-
 40 dation of the commissioner and approval of the governor.
 41 Further, for the purpose of Appalachian programs, funds
 42 appropriated to line items may be transferred to other line items
 43 upon recommendation of the commissioner and approval of the
 44 governor.

95—Division of Highways—

Federal Aid Highway Matching Fund

(WV Code Chapters 17 and 17C)

Fund 9018 FY 2001 Org 0803

1	Interstate Construction	278	\$ 35,000,000
2	Other Federal Aid Programs	279	163,000,000
3	Appalachian Programs	280	<u>90,000,000</u>
4	Total		\$ 288,000,000

96—*Claims Against the State Road Fund*

1	Claims Against the State	319	\$ <u>0</u>
2	Total TITLE II, Section 2—		
3	State Road Fund		\$ <u>1,014,912,544</u>

1 **Sec. 3. Appropriations from other funds.**—From the
2 funds designated there are hereby appropriated conditionally
3 upon the fulfillment of the provisions set forth in article two,
4 chapter five-a of the code the following amounts, as itemized,
5 for expenditure during the fiscal year two thousand one.

LEGISLATIVE

97—*Crime Victims Compensation Fund*

(WV Code Chapter 14)

Fund 1731 FY 2001 Org 2300

		Activity	Other Funds
1	Personal Services	001	\$ 200,000
2	Annual Increment	004	4,500
3	Employee Benefits	010	59,580
4	BRIM Premium	913	1,262
5	Unclassified	099	40,000
6	Economic Loss Claim		
7	Payment Fund (R)	334	<u>2,500,000</u>
8	Total		\$ 2,805,342

9 Any unexpended balance remaining in the appropriation for
10 Economic Loss Claim Payment Fund (fund 1731, activity 334)
11 at the close of the fiscal year 2000 is hereby reappropriated for
12 expenditure during the fiscal year 2001.

EXECUTIVE

98—Chief Technology Officer Administration Fund

(WV Code Chapter 5)

Fund 1028 FY 2001 Org 0100

1	Unclassified	099	\$ 1,856,345
2	EPSCOR Undergraduate Scientific		
3	Instrumentation Program	829	<u>150,000</u>
4	Total		\$ 2,006,345

99—Auditor’s Office—

Land Operating Fund

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 2001 Org 1200

1	Personal Services	001	\$ 137,082
2	Annual Increment	004	4,400
3	Employee Benefits	010	41,450
4	Unclassified	099	<u>195,416</u>
5	Total		\$ 378,348

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

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

*100—Auditor's Office—**Securities Regulation Fund*

(WV Code Chapter 32)

Fund 1225 FY 2001 Org 1200

1	Personal Services	001	\$ 538,724
2	Annual Increment	004	4,722
3	Employee Benefits	010	148,604
4	Unclassified	099	<u>497,227</u>
5	Total		\$ 1,189,277

*101—Auditor's Office—**Technology Support and Acquisition*

(WV Code Chapter 12)

Fund 1233 FY 2001 Org 1200

1	Unclassified—Total	096	\$ 570,200
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*102—Auditor's Office—**Purchasing Card Administration Fund*

(WV Code Chapter 12)

Fund 1234 FY 2001 Org 1200

1	Unclassified—Total	096	\$ 129,606
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*103—Auditor's Office—**Office of the Chief Inspector*

(WV Code Chapter 6)

Fund 1235 FY 2001 Org 1200

1	Personal Services	001	\$ 1,422,490
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Ch. 10]	APPROPRIATIONS	155
2	Annual Increment	004 22,900
3	Employee Benefits	010 456,936
4	Unclassified	099 <u>430,261</u>
5	Total	\$ 2,332,587

104—Treasurer's Office—

Technology Support and Acquisition

(WV Code Chapter 12)

Fund 1329 FY 2001 Org 1300

1	Unclassified—Total	096 \$ 100,000
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105—Department of Agriculture

(WV Code Chapter 19)

Fund 1401 FY 2001 Org 1400

1	Personal Services	001 \$ 800,228
2	Annual Increment	004 7,268
3	Employee Benefits	010 210,784
4	Unclassified	099 <u>598,094</u>
5	Total	\$ 1,616,374

106—Department of Agriculture—

West Virginia Rural Rehabilitation Program

(WV Code Chapter 19)

Fund 1408 FY 2001 Org 1400

1	Student and Farm Loans—Total	235 \$ 540,153
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107—Department of Agriculture—

General John McCausland Memorial Farm

(WV Code Chapter 19)

Fund 1409 FY 2001 Org 1400

1	Personal Services	001	\$	23,708
2	Employee Benefits	010		16,425
3	Unclassified	099		<u>40,000</u>
4	Total		\$	80,133

5 The above appropriation shall be expended in accordance
6 with article twenty-six, chapter nineteen of the code.

*108—Department of Agriculture—**Farm Operating Fund*

(WV Code Chapter 19)

Fund 1412 FY 2001 Org 1400

1	Unclassified—Total	096	\$	1,026,133
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*109—Attorney General—**Antitrust Enforcement*

(WV Code Chapter 47)

Fund 1507 FY 2001 Org 1500

1	Personal Services	001	\$	217,204
2	Annual Increment	004		935
3	Employee Benefits	010		69,628
4	Unclassified	099		<u>174,316</u>
5	Total		\$	462,083

*110—Attorney General—**Preneed Funeral Regulation Fund*

(WV Code Chapter 47)

Fund 1513 FY 2001 Org 1500

1 Unclassified—Total 096 \$ 224,132

111—Attorney General—

Preneed Funeral Guarantee Fund

(WV Code Chapter 47)

Fund 1514 FY 2001 Org 1500

1 Unclassified—Total 096 \$ 775,000

112—Secretary of State—

Trademark Registration

(WV Code Chapters 3, 5, and 59)

Fund 1610 FY 2001 Org 1600

1 Unclassified—Total 096 \$ 7,000

DEPARTMENT OF ADMINISTRATION

113—Office of the Secretary—

Tobacco Settlement Fund

(WV Code Chapter 4)

Fund 2041 FY 2001 Org 0201

1 Tobacco Settlement Fund—Transfer . . . 902 \$52,000,000

2 From the above appropriation for Tobacco Settlement

3 Fund—Transfer, \$52,000,000 shall be transferred to the

4 Division of Health (fund 5124, org 0506) for expenditure.

114—Division of Finance—

Public Employees Insurance Reserve Fund

(WV Code Chapter 5A)

Fund 2207 FY 2001 Org 0209

- 1 Public Employees Insurance
- 2 Reserve Fund—Transfer 903 \$10,000,000
- 3 The above appropriation for Public Employees Insurance
- 4 Reserve Fund—Transfer shall be transferred to the Public
- 5 Employees Insurance Agency (fund 2185, org 0225) for
- 6 expenditure.

115—Division of Information Services and Communications

(WV Code Chapter 5A)

Fund 2220 FY 2001 Org 0210

1	Personal Services	001	\$ 5,967,372
2	Annual Increment	004	83,915
3	Employee Benefits	010	1,755,835
4	BRIM Premium	913	7,733
5	Unclassified	099	<u>1,794,731</u>
6	Total		\$ 9,609,586

7 The total amount of this appropriation shall be paid from a
8 special revenue fund out of collections made by the division of
9 information services and communications as provided by law.

10 There is hereby appropriated from this fund, in addition to
11 the above appropriation, the necessary amount for the expendi-
12 ture of funds other than personal services or employee benefits
13 to enable the division to provide information processing
14 services to user agencies. These services include, but are not
15 limited to, data processing equipment, office automation and
16 telecommunications.

17 Each spending unit operating from the general revenue
18 fund, from special revenue funds or receiving reimbursement
19 for postage from the federal government shall be charged

20 monthly for all postage meter service and shall reimburse the
21 revolving fund monthly for all such amounts.

116—Division of Personnel

(WV Code Chapter 29)

Fund 2440 FY 2001 Org 0222

1	Personal Services	001	\$ 2,424,507
2	Annual Increment	004	48,200
3	Employee Benefits	010	729,132
4	BRIM Premium	913	5,328
5	Unclassified	099	<u>641,013</u>
6	Total		\$ 3,848,180

7 Any unexpended balance remaining in the appropriation for
8 Human Resource Information System (fund 2440, activity 641)
9 at the close of the fiscal year 2000 is hereby reappropriated for
10 expenditure during the fiscal year 2001.

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

117—Public Employees Insurance Agency—

Public Employees Insurance Reserve Fund

(WV Code Chapter 5A)

Fund 2185 FY 2001 Org 0225

1	Unclassified—Total	096	\$10,000,000
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2 The above appropriation shall be expended only for the
3 support of the programs provided by the public employees
4 insurance agency.

118—WV Prosecuting Attorneys' Institute

(WV Code Chapter 7)

Fund 2521 FY 2001 Org 0228

1	Unclassified—Total	096	\$	0
2	Unclassified	099		629,613
3	BRIM Premium	913		<u>1,262</u>
4	Total		\$	630,875

DEPARTMENT OF EDUCATION

119—State Board of Education—

Strategic Staff Development

(WV Code Chapter 18)

Fund 3937 FY 2001 Org 0402

1	Unclassified—Total (R)	096	\$	500,000
2	Any unexpended balance remaining in the appropriation for			
3	Unclassified—Total (fund 3937, activity 096) at the close of the			
4	fiscal year 2000 is hereby reappropriated for expenditure during			
5	the fiscal year 2001.			

120—State Department of Education—

School Building Authority

(WV Code Chapter 18)

Fund 3959 FY 2001 Org 0402

1	Personal Services	001	\$	511,838
2	Annual Increment	004		5,450
3	Employee Benefits	010		179,386
4	BRIM Premium	913		1,450
5	Unclassified	099		<u>263,099</u>

6 Total \$ 961,223
 7 The above appropriation for the administrative expenses of
 8 the school building authority shall be paid from the interest
 9 earnings on debt service reserve accounts maintained on behalf
 10 of said authority.

*121—State Department of Education—
 FFA-FHA Camp and Conference Center
 (WV Code Chapter 18)*

Fund 3960 FY 2001 Org 0402

1	Personal Services	001	\$ 750,600
2	Annual Increment	004	12,400
3	Employee Benefits	010	342,913
4	Unclassified	099	<u>1,051,522</u>
5	Total		\$ 2,157,435

DEPARTMENT OF EDUCATION AND THE ARTS

*122—Office of the Secretary—
 Lottery Education Fund Interest Earnings
 Control Account*

(WV Code Chapter 18B)

Fund 4010 FY 2001 Org 0431

1	Unclassified—Total	096	\$ 1,300,000
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*123—State College and University Systems—
 State Systems Registration Fee—
 Revenue Bond Construction Fund
 (WV Code Chapters 18 and 18B)*

Fund 4033 FY 2001 Org 0453

1 Any unexpended balance remaining in the appropriation for
2 Capital Outlay (fund 4033, activity 511) at the close of the
3 fiscal year 2000 is hereby reappropriated for expenditure during
4 the fiscal year 2001.

5 The appropriation shall be paid from available unexpended
6 cash balances and interest earnings accruing to the fund. The
7 appropriation shall be expended at the discretion of the Board
8 of Trustees of the University System and the Board of Directors
9 of the State College System and the funds may be allocated to
10 any institution within the system.

11 The total amount of this appropriation shall be paid from
12 unexpended proceeds of revenue bonds previously issued
13 pursuant to section eight, article ten, chapter eighteen-b of the
14 code, which have since been refunded.

124—State College and University Systems—

State Systems Tuition Fee—

Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4041 FY 2001 Org 0453

1 Capital Outlay (R) 511 \$ 500,000

2 Any unexpended balance remaining in the above appropria-
3 tion at the close of fiscal year 2000 is hereby reappropriated for
4 expenditure during the fiscal year 2001 except for fund 4041,
5 activity 734 (fiscal year 1999), and activity 757 (fiscal year
6 1998) which shall expire on June 30, 2000.

7 The appropriation shall be paid from available unexpended
8 cash balances and interest earnings accruing to the fund. The
9 appropriation shall be expended at the discretion of the Board
10 of Trustees of the University System and the Board of Directors

11 of the State College System and the funds may be allocated to
12 any institution within the systems.

13 The total amount of this appropriation shall be paid from
14 unexpended proceeds of revenue bonds previously issued
15 pursuant to section eight, article twelve-b, chapter eighteen of
16 the code, which have since been refunded.

125—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)

Fund 4007 FY 2001 Org 0461

1	Debt Service (R)	040	\$ 3,956,652
2	Capital Repairs and Alterations (R)	251	3,090,400
3	Computer and Telecommunications		
4	Technology (R)	438	<u>692,959</u>
5	Total		\$ 7,740,011

6 Any unexpended balances remaining in the appropriations
7 are hereby reappropriated for expenditure during the fiscal year
8 2001.

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

13 The above appropriations, except for debt service, may be
14 transferred to special revenue funds for capital improvement
15 projects at university system institutions.

126—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)

Fund 4008 FY 2001 Org 0461

1	Debt Service (R)	040	\$10,904,193
2	Building and Campus Renewal (R)	258	9,263,300
3	Facilities Planning and		
4	Administration (R)	386	190,645
5	Computer and Telecommunications		
6	Technology (R)	438	<u>692,960</u>
7	Total		\$ 21,051,098

8 Any unexpended balances remaining in the appropriations
 9 (except fiscal year 1997, activity 040) are hereby reappropriated
 10 for expenditure during the fiscal year 2001.

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

15 The above appropriations, except for debt service, may be
 16 transferred to special revenue funds for capital improvement
 17 projects at university system institutions.

127—State University System—

West Virginia University Health Sciences Center

Spending Authority

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2001 Org 0463

- 1 Unclassified—Total (R) 096 \$ 15,031,000
- 2 Any unexpended balance remaining in the appropriation for
- 3 the West Virginia University Health Sciences Center is hereby
- 4 reappropriated for expenditure during the fiscal year 2001.

128—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)

Fund 4289 FY 2001 Org 0481

- 1 Debt Service (R) 040 \$ 1,670,670
- 2 Capital Repairs and Alterations (R) 251 1,547,000
- 3 Total \$ 3,217,670

4 Any unexpended balances remaining in the appropriations
5 are hereby reappropriated for expenditure during the fiscal year
6 2001.

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

12 The above appropriations, except for debt service, may be
13 transferred to special revenue funds for capital improvement
14 projects at college system institutions.

*129—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)

Fund 4290 FY 2001 Org 0481

1	Debt Service (R)	040	\$ 3,409,265
2	Capital Improvements (New) (R)	259	5,557,200
3	Facilities Planning and		
4	Administration (R)	386	190,645
5	Capital Contingencies and		
6	Emergencies (R)	537	250,000
7	Building and Campus Renewal and		
8	Facilities Planning and		
9	Administration (R)	538	<u>2,214,700</u>
10	Total		\$ 11,621,810

11 Any unexpended balances remaining in the appropriations
 12 are hereby reappropriated for expenditure during the fiscal year
 13 2001.

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

18 The above appropriations, except for debt service, may be
 19 transferred to special revenue funds for capital improvement
 20 projects at college system institutions.

*130—State University System—
 Revenue Bond Construction Fund
 (WV Code Chapters 18 and 18B)
 Fund 4011 FY 2001 Org 0461*

1 Marshall University Medical School—
 2 Capital Improvements 814 \$12,000,000
 3 The total amount of this appropriation shall be paid from
 4 unexpended proceeds of revenue bonds to be issued subject to
 5 the approval of the University System Board of Trustees for the
 6 purpose of exercising a purchase option, and paying costs
 7 associated therewith, on a portion of the Marshall University
 8 Medical Center. The above appropriation shall be available
 9 from passage and any unexpended balance remaining in the
 10 appropriation at the close of fiscal year 2000 is hereby
 11 reappropriated for expenditure during fiscal year 2001.

*131—State Board of Rehabilitation—
 Division of Rehabilitation Services—
 West Virginia Rehabilitation Center
 Special Account
 (WV Code Chapter 18)*

Fund 8664 FY 2001 Org 0932

1	Unclassified	099	\$ 2,700,000
2	BRIM Premium	913	102,182
3	Workshop Development	163	450,000
4	Workshop-Supported Employment	484	<u>50,000</u>
5	Total		\$ 3,302,182

**DEPARTMENT OF HEALTH AND
HUMAN RESOURCES**

132—Board of Barbers and Cosmetologists

(WV Code Chapters 16 and 30)

Fund 5425 FY 2001 Org 0505

1	Personal Services	001	\$ 217,076
2	Annual Increment	004	4,861
3	Employee Benefits	010	76,163
4	BRIM Premium	913	1,262
5	Unclassified	099	<u>123,476</u>
6	Total		\$ 422,838

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

133—Division of Health—

Tobacco Settlement Fund

(WV Code Chapter 4)

Fund 5124 FY 2001 Org 0506

1	Tobacco Education Program—Total . . .	906	\$ 0
2	Institutional Facilities Operations	335	46,149,408
3	Colin Anderson Community Placement	803	0
4	Tobacco Education Program	906	5,650,592
5	ABCA Tobacco Retailer		
6	Education Program—Transfer	239	<u>200,000</u>
7	Total		\$ 52,000,000

8 ~~*From the above appropriation for Tobacco Education~~
9 ~~Program an amount of \$2,000,000 shall be spent for “Counter~~
10 ~~Marketing.”*~~

11 From the above appropriation for ABCA Tobacco Retailer
12 Education Program —Transfer, \$200,000 shall be transferred
13 to the Alcohol Beverage Control Administration (fund 7352,
14 org 0708) for expenditure.

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

26 Additional funds have been appropriated in fund 5156,
27 fiscal year 2001, organization 0506, for the operation of the
28 institutional facilities. The secretary of the department of health
29 and human resources is authorized to utilize up to ten percent
30 of the funds from the Institutional Facilities Operations line
31 item to facilitate cost effective and cost saving services at the
32 community level.

33 From the above appropriation to Institutional Facilities
34 Operations, together with available funds from the division of
35 health—hospital services revenue account (fund 5156, activity
36 335), on July 1, 2000, the sum of one hundred fifty thousand
37 dollars shall be transferred to the department of agricul-
38 ture—land division as advance payment for the purchase of
39 food products; actual payments for such purchases shall not be
40 required until such credits have been completely expended.

* Language deleted by the Governor.

*134—Division of Health—**Vital Statistics*

(WV Code Chapter 16)

Fund 5144 FY 2001 Org 0506

1	Personal Services	001	\$ 241,572
2	Annual Increment	004	8,203
3	Employee Benefits	010	109,972
4	Unclassified.	099	<u>99,950</u>
5	Total		\$ 459,697

*135—Division of Health—**Hospital Services Revenue Account**(Special Fund)**(Capital Improvement, Renovation and Operations)*

(WV Code Chapter 16)

Fund 5156 FY 2001 Org 0506

1	Debt Service (R)	040	\$ 2,420,000
2	Institutional Facilities Operations (R) ..	335	34,246,188
3	Medical Services Trust Fund—		
4	Transfer (R)	512	<u>23,300,000</u>
5	Total		\$ 59,966,188

6 Any unexpended balances remaining in the appropriations
7 for hospital services revenue account at the close of the fiscal
8 year 2000 are hereby reappropriated for expenditure during the
9 fiscal year 2001, except for fund 5156, activity 040, and activity
10 512 (fiscal year 1999) which shall expire on June 30, 2000.

11 The total amount of this appropriation shall be paid from
 12 the hospital services revenue account special fund created by
 13 section fifteen-a, article one, chapter sixteen of the code, and
 14 shall be used for operating expenses and for improvements in
 15 connection with existing facilities and bond payments.

16 The secretary of the department of health and human
 17 resources is authorized to utilize up to ten percent of the funds
 18 from the appropriation for Institutional Facilities Operations
 19 line to facilitate cost effective and cost saving services at the
 20 community level.

21 Necessary funds from the above appropriation may be used
 22 for medical facilities operations, either in connection with this
 23 account or in connection with the line item designated Institu-
 24 tional Facilities Operations in the consolidated medical service
 25 fund (fund 0525, fiscal year 2001, organization 0506).

26 From the above appropriation to Institutional Facilities
 27 Operations, together with available funds from the consolidated
 28 medical services fund (fund 0525, activity 335), on July 1,
 29 2000, the sum of one hundred fifty thousand dollars shall be
 30 transferred to the department of agriculture—land division as
 31 advance payment for the purchase of food products; actual
 32 payments for such purchases shall not be required until such
 33 credits have been completely expended.

136—Division of Health—

Laboratory Services

(WV Code Chapter 16)

Fund 5163 FY 2001 Org 0506

1	Personal Services	001	\$	468,526
2	Annual Increment	004		9,450
3	Employee Benefits	010		176,851

1 Unclassified—Total 096 \$ 65,408

140—West Virginia Health Care Authority

(WV Code Chapter 16)

Fund 5375 FY 2001 Org 0507

1 Personal Services 001 \$ 1,542,720

2 Annual Increment 004 14,450

3 Employee Benefits 010 450,355

4 Unclassified 099 1,893,940

5 Total \$ 3,901,465

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

141—Division of Human Services—

Health Care Provider Tax

(WV Code Chapter 11)

Fund 5090 FY 2001 Org 0511

1 Unclassified—Total 096 \$ 139,012,983

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

142—Division of Human Services—

Child Support Enforcement

(WV Code Chapter 48A)

Fund 5094 FY 2001 Org 0511

1 Unclassified—Total (R) 096 \$27,556,260

2 Any unexpended balance remaining in the appropriation for
3 Unclassified—Total (fund 5094, activity 096) at the close of the
4 fiscal year 2000 is hereby reappropriated for expenditure during
5 fiscal year 2001, except for fund 5094, activity 096 (fiscal year
6 1999) which shall expire on June 30, 2000.

143—Division of Human Services—

Medical Services Trust Fund

(WV Code Chapter 9)

Fund 5185 FY 2001 Org 0511

1 Eligibility Expansion 582 \$ 5,461,714

2 State Institutions DPSH Payments 583 6,566,355

3 Hospice Services 584 340,115

4 Match Drop 585 10,472,000

5 Total \$22,840,184

6 The Match Drop line item above shall be used in conjunc-
7 tion with funds appropriated to the division of human services
8 in the Medical Services line item (fund 0403, activity 189). The
9 remainder of all moneys deposited in the fund shall be trans-
10 ferred to the division of human services accounts.

144—Division of Human Services—

Tobacco Settlement Fund

(WV Code Chapter 4)

Fund 5364 FY 2001 Org 0511

1 Medical Services—Total 907 \$ 0

145—Division of Human Services—

James “Tiger” Morton Catastrophic Illness Fund

(WV Code Chapter 16)

Fund 5454 FY 2001 Org 0511

1 Unclassified—Total 096 \$ 1,250,000

146—Family Protection Services Board—

Domestic Violence Legal Services Fund

(WV Code Chapter 48)

Fund 5455 FY 2001 Org 0511

1 Unclassified—Total 096 \$ 150,000

**DEPARTMENT OF MILITARY
AFFAIRS AND PUBLIC SAFETY**

147—State Armory Board—

General Armory Fund

(WV Code Chapter 15)

Fund 6057 FY 2001 Org 0603

1 Unclassified—Total 096 \$ 0

2 Unclassified 099 401,899

3 BRIM Premium 913 121,809

4 Total \$ 523,708

148—West Virginia Division of Corrections—

Parolee Supervision Fees

(WV Code Chapter 62)

Fund 6362 FY 2001 Org 0608

176	APPROPRIATIONS		[Ch. 10
1	Personal Services	001	\$ 91,924
2	Annual Increment	004	1,200
3	Employee Benefits	010	41,971
4	Unclassified	099	<u>110,516</u>
5	Total		\$ 245,611

149—West Virginia State Police—

Motor Vehicle Inspection Fund

(WV Code Chapter 17C)

Fund 6501 FY 2001 Org 0612

1	Personal Services	001	\$ 968,902
2	Annual Increment	004	3,400
3	Employee Benefits	010	280,559
4	Unclassified (R)	099	<u>599,459</u>
5	Total		\$ 1,852,320

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

9 Any unexpended balance remaining in the appropriation for
10 Unclassified (fund 6501, activity 099) at the close of the fiscal
11 year 2000 is hereby reappropriated for expenditure during the
12 fiscal year 2001.

150—West Virginia State Police—

Drunk Driving Prevention Fund

(WV Code Chapter 15)

Fund 6513 FY 2001 Org 0612

1	Unclassified—Total	096	\$ 1,000,000
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2 The total amount of this appropriation shall be paid from
 3 the special revenue fund out of receipts collected pursuant to
 4 sections nine-a and sixteen, article fifteen, chapter eleven of the
 5 code and paid into a revolving fund account in the state
 6 treasury.

151—West Virginia State Police—

Surplus Real Property Proceeds Fund

(WV Code Chapter 15)

Fund 6516 FY 2001 Org 0612

1	Unclassified—Total	096	\$	500,000
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152—West Virginia State Police—

Surplus Transfer Account

(WV Code Chapter 15)

Fund 6519 FY 2001 Org 0612

1	Unclassified—Total (R)	096	\$	350,000
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2 Any unexpended balance remaining in the appropriation for
 3 Unclassified—Total (fund 6519, activity 096) at the close of the
 4 fiscal year 2000 is hereby reappropriated for expenditure during
 5 the fiscal year 2001.

153—WV State Police—

Central Abuse Registry Fund

(WV Code Chapter 15)

Fund 6527 FY 2001 Org 0612

1	Unclassified—Total	096	\$	69,005
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154—Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)

Fund 6675 FY 2001 Org 0615

1	Personal Services	001	\$ 978,034
2	Annual Increment	004	7,950
3	Employee Benefits	010	297,529
4	BRIM Premium	913	198,412
5	Debt Service	040	9,000,000
6	Unclassified	099	<u>284,021</u>
7	Total		\$10,765,946

155—Division of Veterans Affairs—

Veterans Home

(WV Code Chapter 19A)

Fund 6754 FY 2001 Org 0618

1	Unclassified—Total	096	\$ 216,000
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156—Fire Commission—

Fire Marshal Fees

(WV Code Chapter 29)

Fund 6152 FY 2001 Org 0619

1	Personal Services	001	\$ 429,611
2	Annual Increment	004	7,200
3	Employee Benefits	010	144,375
4	BRIM Premium	913	5,787
5	Unclassified	099	<u>407,920</u>
6	Total		\$ 994,893

7 Any unexpended cash balance remaining in fund 6152 at
 8 the close of the fiscal year 2000 is hereby available for expendi-
 9 ture as part of the fiscal year 2001 appropriation.

157—Criminal Justice Services—

Court Security Fund

(Executive Order)

Fund 6804 FY 2001 Org 0620

1 Unclassified—Total 096 \$ 1,000,000

DEPARTMENT OF TAX AND REVENUE

158—Division of Banking—

Lending and Credit Rate Board

(WV Code Chapter 47A)

Fund 3040 FY 2001 Org 0303

1	Personal Services	001	\$	5,000
2	Employee Benefits	010		1,002
3	Unclassified	099		<u>5,000</u>
4	Total		\$	11,002

159—Division of Banking

(WV Code Chapter 31A)

Fund 3041 FY 2001 Org 0303

1	Personal Services	001	\$	1,449,832
2	Annual Increment	004		11,350
3	Employee Benefits	010		436,696
4	BRIM Premium	913		1,634
5	Unclassified	099		<u>749,598</u>

180 APPROPRIATIONS [Ch. 10

6 Total \$ 2,649,110

160—Tax Division—

Cemetery Company Account

(WV Code Chapter 35)

Fund 7071 FY 2001 Org 0702

1	Personal Services	001	\$ 16,872
2	Employee Benefits	010	5,315
3	Unclassified	099	<u>10,269</u>
4	Total		\$ 32,456

161—Tax Division—

Special Audit and Investigative Unit

(WV Code Chapter 11)

Fund 7073 FY 2001 Org 0702

1	Personal Services	001	\$ 752,281
2	Annual Increment	004	15,150
3	Employee Benefits	010	241,148
4	BRIM Premium	913	625
5	Unclassified	099	<u>325,554</u>
6	Total		\$ 1,334,758

162—Insurance Commissioner—

Examination Revolving Fund

(WV Code Chapter 33)

Fund 7150 FY 2001 Org 0704

1	Personal Services	001	\$ 413,450
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Ch. 10]	APPROPRIATIONS	181
2	Annual Increment	004 1,500
3	Employee Benefits	010 109,315
4	Unclassified	099 <u>241,000</u>
5	Total	\$ 765,265

163—Insurance Commissioner—

Consumer Advocate

(WV Code Chapter 33)

Fund 7151 FY 2001 Org 0704

1	Personal Services	001 \$ 179,276
2	Annual Increment	004 750
3	Employee Benefits	010 63,487
4	Unclassified	099 <u>115,908</u>
5	Total	\$ 359,421

164—Insurance Commissioner

(WV Code Chapter 33)

Fund 7152 FY 2001 Org 0704

1	Personal Services	001 \$ 1,719,856
2	Annual Increment	004 29,950
3	Employee Benefits	010 555,834
4	BRIM Premium	913 36,880
5	Unclassified	099 <u>1,071,842</u>
6	Total	\$ 3,414,362

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

165—Racing Commission—

Relief Fund

(WV Code Chapter 19)

Fund 7300 FY 2001 Org 0707

1 Medical Expenses—Total 245 \$ 57,000

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

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

166—Racing Commission—

Administration and Promotion

(WV Code Chapter 19)

Fund 7304 FY 2001 Org 0707

1 Personal Services 001 \$ 53,700

2 Annual Increment 004 1,000

3 Employee Benefits 010 23,676

4 Unclassified 099 47,358

5 Total \$ 125,734

167—Racing Commission—

General Administration

(WV Code Chapter 19)

Fund 7305 FY 2001 Org 0707

1 Personal Services 001 \$ 1,256,757

Ch. 10]	APPROPRIATIONS	183
2	Annual Increment 004	19,250
3	Employee Benefits 010	343,400
4	Unclassified 099	<u>221,448</u>
5	Total	\$ 1,840,855

168—Racing Commission—

Administration, Promotion and Education Fund

(WV Code Chapter 19)

Fund 7307 FY 2001 Org 0707

1	Unclassified—Total 096	\$ 35,000
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169—Alcohol Beverage Control Administration—

Wine License Special Fund

(WV Code Chapter 60)

Fund 7351 FY 2001 Org 0708

1	Personal Services 001	\$ 215,528
2	Annual Increment 004	3,600
3	Employee Benefits 010	77,345
4	Unclassified 099	<u>156,016</u>
5	Total	\$ 452,489

170—Alcohol Beverage Control Administration

(WV Code Chapter 60)

Fund 7352 FY 2001 Org 0708

1	Personal Services 001	\$ 3,351,398
2	Annual Increment 004	73,251
3	Employee Benefits 010	1,362,674

184	APPROPRIATIONS	[Ch. 10
4	BRIM Premium	913 65,324
5	Unclassified	099 <u>2,003,999</u>
6	Total	\$ 6,856,646

7 From the above appropriation an amount of \$500,000 shall
8 be used to establish the Tobacco/Alcohol Education Program.
9 To the extent permitted by law, eight classified exempt posi-
10 tions shall be provided from Personal Services line item for the
11 educator-inspector positions to be used in the education and
12 enforcement activities relating to underage tobacco and alcohol
13 use and sales.

14 The total amount of this appropriation shall be paid from a
15 special revenue fund out of liquor revenues.

16 The above appropriation includes the salary of the commis-
17 sioner and the salaries, expenses and equipment of administra-
18 tive offices, warehouses and inspectors.

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

DEPARTMENT OF TRANSPORTATION

171—Division of Motor Vehicles

Driver's License Reinstatement Fund

(WV Code Chapter 17B)

Fund 8213 FY 2001 Org 0802

1	Unclassified—Total	096 \$ 693,408
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172—Division of Motor Vehicles

Driver Rehabilitation

(WV Code Chapter 17C)

Fund 8214 FY 2001 Org 0802

1 Unclassified—Total 096 \$ 1,154,370

173—Division of Motor Vehicles

Insurance Certificate Fees

(WV Code Chapter 20)

Fund 8215 FY 2001 Org 0802

1 Personal Services 001 \$ 599,244

2 Annual Increment 004 15,700

3 Employee Benefits 010 236,200

4 Unclassified 099 53,879

5 Total \$ 905,023

174—Division of Motor Vehicles

Motorboat Licenses

(WV Code Chapter 20)

Fund 8216 FY 2001 Org 0802

1 Unclassified—Total 096 \$ 161,279

175—Division of Motor Vehicles

Returned Check Fees

(WV Code Chapter 17)

Fund 8217 FY 2001 Org 0802

1 Unclassified—Total 096 \$ 16,000

176—Division of Highways—

Environmental/Tire Refuse Clean-Up Fund

(WV Code Chapter 17A)

Fund 8319 FY 2001 Org 0803

1 Unclassified—Total 096 \$ 3,625,000

BUREAU OF COMMERCE

177—Division of Forestry

(WV Code Chapter 19)

Fund 3081 FY 2001 Org 0305

1	Personal Services	001	\$ 309,213
2	Annual Increment	004	3,400
3	Employee Benefits	010	85,016
4	BRIM Premium	913	29,079
5	Unclassified	099	<u>355,332</u>
6	Total		\$ 782,040

178—Division of Forestry

Timberland Enforcement Operations

(WV Code Chapter 19)

Fund 3082 FY 2001 Org 0305

1 Unclassified—Total 096 \$ 170,000

179—Division of Forestry

Severance Tax Operations

(WV Code Chapter 11)

Fund 3084 FY 2001 Org 0305

1 Unclassified—Total 096 \$ 3,450,620

180—Geological and Economic Survey

(WV Code Chapter 29)

Fund 3100 FY 2001 Org 0306

Ch. 10]	APPROPRIATIONS	187
1	Personal Services 001	\$ 41,845
2	Annual Increment 004	540
3	Employee Benefits 010	7,822
4	Unclassified 099	<u>176,936</u>
5	Total	\$ 227,143

6 The above appropriation shall be used in accordance with
7 section four, article two, chapter twenty-nine of the code.

181—West Virginia Development Office—

Energy Assistance

(WV Code Chapter 5B)

Fund 3144 FY 2001 Org 0307

1 Any unexpended balance remaining in the appropriation for
2 Energy Assistance—Total (fund 3144, activity 647) at the close
3 of the fiscal year 2000 is hereby reappropriated for expenditure
4 during the fiscal year 2001.

182—West Virginia Development Office—

Office of Coal Field Community Development

(WV Code Chapter 5B)

Fund 3162 FY 2001 Org 0307

1 Unclassified—Total 096 \$ 200,000

183—Division of Labor

Contractor Licensing Board Fund

(WV Code Chapter 21)

Fund 3187 FY 2001 Org 0308

1 Personal Services 001 \$ 853,365

188		APPROPRIATIONS	[Ch. 10
2	Annual Increment	004	12,028
3	Employee Benefits	010	303,589
4	Unclassified	099	<u>676,811</u>
5	Total		\$ 1,845,793

184—Division of Labor

Elevator Safety Act

(WV Code Chapter 21)

Fund 3188 FY 2001 Org 0308

1	Personal Services	001	\$ 174,028
2	Annual Increment	004	1,384
3	Employee Benefits	010	60,829
4	Unclassified	099	<u>72,003</u>
5	Total		\$ 308,244

185—Division of Labor—

Crane Operator Certification Fund

(WV Code Chapter 21)

Fund 3191 FY 2001 Org 0308

1	Unclassified—Total	096	\$ 60,000
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186—Division of Labor—

Amusement Rides/Amusement Attraction Safety Fund

(WV Code Chapter 21)

Fund 3192 FY 2001 Org 0308

1	Unclassified—Total	096	\$ 75,208
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187—Division of Natural Resources

(WV Code Chapter 20)

Fund 3200 FY 2001 Org 0310

1	Personal Services	001	\$ 7,312,349
2	Annual Increment	004	149,491
3	Employee Benefits	010	2,769,022
4	BRIM Premium	913	547,942
5	Unclassified	099	2,306,064
6	Capital Improvements and		
7	Land Purchase (R)	248	<u>1,679,396</u>
8	Total		\$14,764,264

9 The total amount of this appropriation shall be paid from a
 10 special revenue fund out of fees collected by the division of
 11 natural resources.

12 Any unexpended balance remaining in the appropriation for
 13 Capital Improvements and Land Purchase (fund 3200, activity
 14 248) at the close of the fiscal year 2000 is hereby
 15 reappropriated for expenditure during the fiscal year 2001.

188—Division of Natural Resources—

Game, Fish and Aquatic Life Fund

(WV Code Chapter 20)

Fund 3202 FY 2001 Org 0310

1	Unclassified—Total	096	\$ 20,000
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189—Division of Natural Resources—

Nongame Fund

(WV Code Chapter 20)

Fund 3203 FY 2001 Org 0310

190		APPROPRIATIONS		[Ch. 10
1	Personal Services	001	\$ 188,526	
2	Annual Increment	004	800	
3	Employee Benefits	010	47,262	
4	Unclassified	099	<u>38,987</u>	
5	Total		\$ 275,575	

190—Division of Natural Resources—

Planning and Development Division

(WV Code Chapter 20)

Fund 3205 FY 2001 Org 0310

1	Personal Services	001	\$ 242,281
2	Annual Increment	004	5,450
3	Employee Benefits	010	91,799
4	Unclassified	099	<u>130,631</u>
5	Total		\$ 470,161

191—Division of Natural Resources—

Whitewater Study and Improvement Fund

(WV Code Chapter 20)

Fund 3253 FY 2001 Org 0310

1	Unclassified—Total	096	\$ 174,596
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192—Division of Natural Resources—

Recycling Assistance Fund

(WV Code Chapter 20)

Fund 3254 FY 2001 Org 0310

1	Personal Services	001	\$ 166,342
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Ch. 10]	APPROPRIATIONS	191
2	Annual Increment 004	2,400
3	Employee Benefits 010	63,830
4	Unclassified (R) 099	<u>1,414,015</u>
5	Total	\$ 1,646,587

6 Any unexpended balance remaining in the appropriation for
7 Unclassified (fund 3254, activity 099) at the close of the fiscal
8 year 2000 is hereby reappropriated for expenditure during the
9 fiscal year 2001.

193—Division of Natural Resources—

Whitewater Advertising and Promotion Fund

(WV Code Chapter 20)

Fund 3256 FY 2001 Org 0310

1	Unclassified—Total 096	\$ 20,000
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BUREAU OF EMPLOYMENT PROGRAMS

194—Bureau of Employment Programs—

Workers' Compensation Fund

(WV Code Chapter 23)

Fund 3440 FY 2001 Org 0322

1	Personal Services 001	\$21,942,862
2	Annual Increment 004	379,553
3	Employee Benefits 010	7,764,493
4	BRIM Premiums 913	73,192
5	Unclassified (R) 099	18,170,181
6	Employer Excess Liability Fund 226	<u>115,591</u>
7	Total	\$ 48,445,872

8 Any unexpended balance remaining in the appropriation for
 9 Unclassified (fund 3440, activity 099) at the close of the fiscal
 10 year 2000 is hereby reappropriated for expenditure during the
 11 fiscal year 2001.

BUREAU OF ENVIRONMENT

195—Solid Waste Management Board

(WV Code Chapter 20)

Fund 3288 FY 2001 Org 0312

1	Personal Services	001	\$ 485,058
2	Annual Increment	004	3,700
3	Employee Benefits	010	161,223
4	BRIM Premium	913	5,897
5	Unclassified	099	<u>1,648,215</u>
6	Total		\$ 2,304,093

196—Division of Environmental Protection—

Special Reclamation Fund

(WV Code Chapter 22A)

Fund 3321 FY 2001 Org 0313

1	Personal Services	001	\$ 278,148
2	Annual Increment	004	7,875
3	Employee Benefits	010	82,826
4	Unclassified	099	<u>7,615,981</u>
5	Total		\$ 7,984,830

197—Division of Environmental Protection—

Oil and Gas Reclamation Trust

(WV Code Chapter 22B)

Fund 3322 FY 2001 Org 0313

1	Unclassified—Total	096	\$	465,000
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*198—Division of Environmental Protection—**Oil and Gas Operating Permits*

(WV Code Chapter 22B)

Fund 3323 FY 2001 Org 0313

1	Personal Services	001	\$	214,922
2	Annual Increment	004		3,025
3	Employee Benefits	010		69,387
4	Unclassified	099		<u>469,876</u>
5	Total		\$	757,210

*199—Division of Environmental Protection—**Mines and Minerals Operations Fund*

(WV Code Chapter 22)

Fund 3324 FY 2001 Org 0313

1	Personal Services	001	\$	2,333,290
2	Annual Increment	004		37,000
3	Employee Benefits	010		743,001
4	Unclassified	099		<u>743,912</u>
5	Total		\$	3,857,203

*200—Division of Environmental Protection—**Underground Storage Tanks—**Administrative Fund*

(WV Code Chapter 20)

Fund 3325 FY 2001 Org 0313

1	Personal Services	001	\$ 294,603
2	Annual Increment	004	4,225
3	Employee Benefits	010	102,149
4	Unclassified	099	<u>129,966</u>
5	Total		\$ 530,943

*201—Division of Environmental Protection—**Hazardous Waste Emergency and Response Fund*

(WV Code Chapter 20)

Fund 3331 FY 2001 Org 0313

1	Personal Services	001	\$ 465,005
2	Annual Increment	004	5,900
3	Employee Benefits	010	147,676
4	Unclassified	099	<u>988,967</u>
5	Total		\$ 1,607,548

*202—Division of Environmental Protection—**Solid Waste Reclamation and**Environmental Response Fund*

(WV Code Chapter 20)

Fund 3332 FY 2001 Org 0313

1	Personal Services	001	\$ 163,650
2	Annual Increment	004	2,050
3	Employee Benefits	010	52,921

4	Unclassified	099	<u>689,290</u>
5	Total		\$ 907,911

*203—Division of Environmental Protection—**Solid Waste Enforcement Fund*

(WV Code Chapter 20)

Fund 3333 FY 2001 Org 0313

1	Personal Services	001	\$ 1,489,271
2	Annual Increment	004	27,950
3	Employee Benefits	010	500,607
4	Unclassified	099	<u>638,479</u>
5	Total		\$ 2,656,307

*204—Division of Environmental Protection—**Fees and Operating Expenses*

(WV Code Chapter 16)

Fund 3336 FY 2001 Org 0313

1	Personal Services	001	\$ 3,136,689
2	Annual Increment	004	27,050
3	Employee Benefits	010	988,192
4	Unclassified	099	<u>2,071,728</u>
5	Total		\$ 6,223,659

*205—Division of Environmental Protection—**Environmental Laboratory**Certification Fund*

(WV Code Chapter 22)

Fund 3340 FY 2001 Org 0313

1	Personal Services	001	\$ 114,881
2	Annual Increment	004	1,650
3	Employee Benefits	010	39,992
4	Unclassified	099	<u>66,114</u>
5	Total		\$ 222,637

*206—Division of Environmental Protection—**Stream Restoration Fund*Fund 3349 FY 2001 Org 0313

1	Unclassified—Total	096	\$ 2,000,000
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*207—Division of Environmental Protection—**Mountaintop Removal Fund*

(WV Code Chapter 22)

Fund 3490 FY 2001 Org 0313

1	Unclassified—Total	096	\$ 0
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*208—Division of Environmental Protection—**Office of Explosives and Blasting*

(WV Code Chapter 22)

Fund 3490 FY 2001 Org 0313

1	Unclassified—Total	096	\$ 900,000
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209—Oil and Gas Conservation Commission

(WV Code Chapter 22)

Fund 3371 FY 2001 Org 0315

1	Personal Services	001	\$ 154,427
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Ch. 10]	APPROPRIATIONS	197
2	Annual Increment 004	1,600
3	Employee Benefits 010	28,255
4	Unclassified 099	<u>47,462</u>
5	Total	\$ 231,744

MISCELLANEOUS BOARDS AND COMMISSIONS

210—Hospital Finance Authority

(WV Code Chapter 16)

Fund 5475 FY 2001 Org 0509

1	Personal Services 001	\$ 30,080
2	Annual Increment 004	550
3	Employee Benefits 010	12,907
4	BRIM Premium 913	1,262
5	Unclassified. 099	<u>24,370</u>
6	Total	\$ 69,169

7 The total amount of this appropriation shall be paid from
8 the special revenue fund out of fees and collections as provided
9 by article twenty-nine-a, chapter sixteen of the code.

211—Municipal Bond Commission

(WV Code Chapter 13)

Fund 7253 FY 2001 Org 0706

1	Personal Services 001	\$ 155,774
2	Annual Increment 004	2,600
3	Employee Benefits 010	57,913
4	BRIM Premium 913	1,262
5	Unclassified 099	<u>76,728</u>

6 Total \$ 294,277

*212—WV State Board of Examiners
for Licensed Practical Nurses
(WV Code Chapter 30)*

Fund 8517 FY 2001 Org 0906

1	Unclassified—Total	096	\$	0
2	Unclassified	099		340,399
3	BRIM Premium	913		<u>1,262</u>
4	Total		\$	341,661

*213—WV Board of Examiners for
Registered Professional Nurses
(WV Code Chapter 30)*

Fund 8520 FY 2001 Org 0907

1	Unclassified—Total	096	\$	0
2	Unclassified	099		832,018
3	BRIM Premium	913		<u>1,710</u>
4	Total		\$	833,728

*214—Public Service Commission
(WV Code Chapter 24)*

Fund 8623 FY 2001 Org 0926

1	Personal Services	001	\$	7,218,422
2	Annual Increment	004		120,000
3	Employee Benefits	010		2,269,288
4	BRIM Premium	913		42,283

5	Unclassified	099	<u>2,975,705</u>
6	Total		\$ 12,625,698

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

10 The Public Service Commission is authorized to spend up
11 to \$250,000, from surplus funds in this account, to meet the
12 expected deficiencies in the Motor Carrier Division account due
13 to passage of enrolled house bill no. 2715, regular session,
14 1997.

215—Public Service Commission—

Gas Pipeline Division

(WV Code Chapter 24B)

Fund 8624 FY 2001 Org 0926

1	Personal Services	001	\$ 142,293
2	Annual Increment	004	5,556
3	Employee Benefits	010	44,655
4	Unclassified	099	<u>93,742</u>
5	Total		\$ 286,246

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

216—Public Service Commission—

Motor Carrier Division

(WV Code Chapter 24A)

Fund 8625 FY 2001 Org 0926

1	Personal Services	001	\$ 1,528,190
2	Annual Increment	004	34,723
3	Employee Benefits	010	503,347
4	Unclassified	099	<u>615,301</u>
5	Total		\$ 2,681,561

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

217—Public Service Commission—

Consumer Advocate

(WV Code Chapter 24)

Fund 8627 FY 2001 Org 0926

1	Personal Services	001	\$ 445,983
2	Annual Increment	004	4,700
3	Employee Benefits	010	124,946
4	BRIM Premium	913	1,262
5	Unclassified	099	<u>291,587</u>
6	Total		\$ 868,478

7 The total amount of this appropriation shall be paid from a
8 special revenue fund out of collections made by the public
9 service commission.

218—Real Estate Commission

(WV Code Chapter 47)

Fund 8635 FY 2001 Org 0927

2 Total TITLE II, Section 3—
 3 Other Funds \$ 656,130,626

1 **Sec. 4. Appropriations from lottery net profits.**—Net
 2 profits of the lottery, not to exceed one hundred thirty-one
 3 million nine hundred eighty-six thousand seven hundred eleven
 4 dollars, are to be deposited by the lottery director to the
 5 following accounts in the amounts indicated. The lottery
 6 director shall prorate each deposit of net profits among fund
 7 numbers 2252, 3067, 3267,3951,3963, 3508, 3534,3587, 3559,
 8 4057 and 5405 in the proportion the appropriation for each
 9 account bears to the total of the appropriations for the eleven
 10 accounts.

223—Education, Arts, Sciences and Tourism—

Debt Service Fund

(WV Code Chapter 5)

Fund 2252 FY 2001 Org 0211

		Lottery
	Activity	Funds
1 Debt Service—Total	310	\$ 10,000,000

2 Any unexpended balance remaining in the appropriation for
 3 Debt Service—Total (fund 2252, activity 310) at the close of
 4 the fiscal year 2000 is hereby reappropriated for expenditure
 5 during the fiscal year 2001.

224—West Virginia Development Office—

Division of Tourism

(WV Code Chapter 5B)

Fund 3067 FY 2001 Org 0304

1 Tourism—Telemarketing Center	463	\$ 100,000
2 Tourism—Advertising (R)	618	3,125,000

3	State Parks and Recreation		
4	Advertising (R)	619	760,000
5	Tourism—Unclassified (R)	662	3,034,818
6	Celebration 2000	909	<u>500,000</u>
7	Total		\$ 7,519,818

8 The above appropriation for Celebration 2000 may be used
9 for tourism and recreation activities.

10 Any unexpended balances remaining in the appropriations
11 for Tourism—Advertising (fund 3067, activity 618), State
12 Parks and Recreation Advertising (fund 3067, activity 619),
13 Tourism—Unclassified (fund 3067, activity 662), Tour-
14 ism—Unclassified—Lottery Surplus (fund 3067, activity 773)
15 and Tourism—Special Projects (fund 3067, activity 859) are
16 hereby reappropriated for expenditure during the fiscal year
17 2001.

225—Division of Natural Resources

(WV Code Chapter 20)

Fund 3267 FY 2001 Org 0310

1	Unclassified	099	\$ 1,498,592
2	Pricketts Fort State Park	324	120,000
3	Canaan Valley—Land Acquisition	710	200,000
4	State Parks Repairs, Renovations,		
5	Maintenance and		
6	Life Safety Repairs	911	1,000,000
7	Computerized Lodging		
8	Reservation System	910	<u>450,000</u>
9	Total		\$ 3,268,592

10 Any unexpended balances remaining in the appropriations
 11 for Parks Operations—Unclassified (fund 3267, activity 645),
 12 Capital Outlay—Parks (fund 3267, activity 288) and State
 13 Parks—Special Projects (fund 3267, activity 860) at the close
 14 of the fiscal year 2000 are hereby reappropriated for expendi-
 15 ture during the fiscal year 2001.

226—State Department of Education

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2001 Org 0402

1	Computer Basic Skills (R)	145	\$ 7,510,101
2	S.U.C.C.E.S.S	255	8,800,000
3	Technology Repair and		
4	Modernization (R)	298	1,000,000
5	Technology and Telecommunications		
6	Initiative (R)	596	2,006,785
7	Technology Demonstration Project (R) .	639	150,000
8	Educational Development (R)	823	<u>1,500,000</u>
9	Total		\$ 20,966,886

10 Any unexpended balances remaining in the appropriation
 11 for Computer Basic Skills (fund 3951, activity 145),
 12 *S.U.C.C.E.S.S. (fund 3951, activity 255),* Technology Repair
 13 and Modernization (fund 3951, activity 298), Computer Basic
 14 Skills—Total (fund 3951, activity 567), Technology and
 15 Telecommunications Initiative (fund 3951, activity 596),
 16 Technology Demonstration Project (fund 3951, activity 639)
 17 and Educational Development (fund 3951, activity 823) at the
 18 close of the fiscal year 2000 are hereby reappropriated for
 19 expenditure during the fiscal year 2001.

227—State Department of Education—

* Language deleted by the Governor.

School Building Authority—Debt Service Fund

(WV Code Chapter 18)

Fund 3963 FY 2001 Org 0402

1 Debt Service—Total 310 \$ 18,000,000

228—*Department of Education and the Arts—**Office of the Secretary**Control Account—**Lottery Education Fund*

(WV Code Chapter 5F)

Fund 3508 FY 2001 Org 0431

1	Unclassified	099	\$ 2,100,000
2	WVU University Affiliated Center		
3	for Developmental Disabilities	157	80,000
4	WV Humanities Council (R)	168	300,000
5	Arts Programs (R)	500	40,000
6	WV2001 Project (R)	836	1,500,000
7	Energy Express (R)	861	425,000
8	Challenger Learning Center (R)	862	60,000
9	Incentives for Recruitment of Teachers		
10	in Subject Areas of Need	241	500,000
11	Jobs for West Virginia Graduates (R)	863	<u>500,000</u>
12	Total		\$ 5,505,000

13 Any unexpended balances remaining in the appropriations
 14 at the close of fiscal year 2000 are hereby reappropriated for
 15 expenditure during the fiscal year 2001.

16 Effective upon passage, from fund 4292, org 0481, the
 17 balance of the account shall be transferred to fund 4801, org
 18 0492.

229—Division of Culture and History—

Lottery Education Fund

(WV Code Chapter 10)

Fund 3534 FY 2001 Org 0432

1	Huntington Symphony	027	\$	75,000
2	Fairs and Festivals	122		1,900,000
3	Historic Preservation Grants	311		200,000
4	West Virginia Public Theater	312		0
5	Theater Arts of West Virginia	464		360,000
6	Capital Outlay, Repairs, and			
7	Equipment (R)	589		1,500,000
8	Contemporary American			
9	Theater Festival	811		100,000
10	Independence Hall	812		50,000
11	Mountain State Forest Festival	864		75,000
12	Archeological Curation/			
13	Capital Improvements	246		500,000
14	Project ACCESS (R)	865		<u>300,000</u>
15	Total		\$	5,060,000

16 Any unexpended balance remaining in the appropriation for
 17 Capital Outlay, Repairs, and Equipment (fund 3534, activity
 18 589) and Project ACCESS (fund 3534, activity 865) at the close
 19 of the fiscal year 2000 is hereby reappropriated for expenditure
 20 during the fiscal year 2001.

*230—Educational Broadcasting Authority—**Lottery Education Fund*

(WV Code Chapter 10)

Fund 3587 FY 2001 Org 0439

1	Unclassified—Total	096	\$	0
2	Mountain Stage	249		200,000
3	Digital Conversion	247		<u>1,400,000</u>
4	Total		\$	1,600,000

*231—Library Commission—**Lottery Education Fund*

(WV Code Chapter 10)

Fund 3559 FY 2001 Org 0433

1	Infomine Network	884	\$	1,000,924
2	Grants to Public Libraries	182		<u>7,198,884</u>
3	Total		\$	8,199,808

*232—Department of Education and the Arts—**Board of Trustees of the University System of West Virginia and**Board of Directors of the State College Systems—**Central Office**Control Account—**Lottery Education Fund*

(WV Code Chapters 18B and 18C)

Fund 4057 FY 2001 Org 0452

1	Public Employees Insurance Matching .	012	\$	0
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208	APPROPRIATIONS	[Ch. 10
2	Unclassified (R)	099 3,521,857
3	Higher Education Grant Program (R) ..	164 15,575,000
4	Minority Doctoral Fellowship (R)	166 100,000
5	Underwood-Smith Scholarship Program—	
6	Student Awards(R)	167 150,000
7	Health Sciences Scholarship Fund(R) ..	176 148,500
8	MA Public Health Program and	
9	Health Science Technology (R) ...	623 75,000
10	HEAPS Grant Program (R)	867 1,000,000
11	WV Engineering, Science, and Technology	
12	Scholarship Program (R)	868 500,000
13	Health Sciences Career	
14	Opportunities Program (R)	869 75,000
15	HSTA Program (R)	870 <u>750,000</u>
16	Total	\$ 21,895,357
17	Any unexpended balances remaining in the appropriations	
18	at the close of the fiscal year 2000 are hereby reappropriated for	
19	expenditure during the fiscal year 2001.	

233—Bureau of Senior Services

(WV Code Chapter 29)

Fund 5405 FY 2001 Org 0508

1	Local Programs Service Delivery Costs	200	\$ 2,475,250
2	Silver Haired Legislature	202	0
3	Foster Grandparents Stipends and Travel	205	0
4	In-Home Services for Senior Citizens ..	224	0
5	Senior Citizen Centers		

6	and Programs (R)	462	2,900,000
7	Direct Services	481	2,800,000
8	Transfer to Division of Human Services		
9	for Health Care and Title XIX		
10	Waiver for Senior Citizens	539	13,000,000
11	Senior Services Medicaid Transfer	871	6,500,000
12	Legislative Initiatives for the Elderly . .	904	2,200,000
13	Long Term Care Ombudsmen	905	<u>96,000</u>
14	Total		\$ 29,971,250

15 Any unexpended balances remaining in the appropriations
 16 for Senior Citizens Centers and Programs—Lottery Surplus
 17 (fund 5405, activity 782), Holly Grove Mansion Restoration
 18 (fund 5405, activity 685), Senior Citizens Centers, Maintenance
 19 and Repairs (fund 5405, activity 848) and Senior Citizen
 20 Centers and Programs (fund 5405, activity 462) at the close of
 21 the fiscal year 2000 are hereby reappropriated for expenditure
 22 during the fiscal year 2001.

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

28 Total TITLE II, Section 4—
 29 Lottery Funds \$ 131,986,711

1 **Sec. 5. Appropriations of federal funds.**—In accordance
 2 with article eleven, chapter four of the code, from federal funds
 3 there are hereby appropriated conditionally upon the fulfillment
 4 of the provisions set forth in article two, chapter five-a of the
 5 code the following amounts, as itemized, for expenditure during
 6 the fiscal year two thousand one.

LEGISLATIVE

234—Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 8738 FY 2001 Org 2300

	Activity		Federal Funds
1	Unclassified—Total	096 \$	920,019

JUDICIAL

235—Supreme Court—

General Judicial

Fund 8805 FY 2001 Org 2400

1	Unclassified—Total	096 \$	119,626
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EXECUTIVE

236—Governor’s Office—

Governor’s Cabinet on Children and Families

(WV Code Chapter 5)

Fund 8792 FY 2001 Org 0100

1	Unclassified—Total	096 \$	842,071
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237—Governor’s Office—

Office of Economic Opportunity

(WV Code Chapter 5)

Fund 8797 FY 2001 Org 0100

1	Unclassified—Total	096 \$	5,342,615
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238—Governor’s Office—

Commission for National and Community Service

(WV Code Chapter 5)

Fund 8800 FY 2001 Org 0100

1 Unclassified—Total 096 \$ 3,501,413

239—Auditor’s Office—

National White Collar Crime Center

(WV Code Chapter 12)

Fund 8807 FY 2001 Org 1200

1 Unclassified—Total 096 \$ 9,742,182

240—Department of Agriculture

(WV Code Chapter 19)

Fund 8736 FY 2001 Org 1400

1 Unclassified—Total 096 \$ 2,283,323

241—Department of Agriculture—

Meat Inspection

(WV Code Chapter 19)

Fund 8737 FY 2001 Org 1400

1 Unclassified—Total 096 \$ 796,062

242—Department of Agriculture—

State Soil Conservation Committee

(WV Code Chapter 19)

Fund 8783 FY 2001 Org 1400

1 Unclassified—Total 096 \$ 168,348

DEPARTMENT OF ADMINISTRATION

243—West Virginia Prosecuting Attorney’s Institute

(WV Code Chapter 7)

Fund 8834 FY 2001 Org 0028

1 Unclassified—Total 096 \$ 220,106

244—Children’s Health Insurance Agency

(WV Code Chapter 5)

Fund 8838 FY 2001 Org 0230

1 Title XXI—Children’s Health

2 Insurance Program 254 \$23,000,000

DEPARTMENT OF EDUCATION

245—State Department of Education

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2001 Org 0402

1 Unclassified—Total 096 \$38,000,000

246—State Department of Education—

School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2001 Org 0402

1 Unclassified—Total 096 \$75,001,900

247—State Board of Education—

Vocational Division

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2001 Org 0402

1 Unclassified—Total 096 \$24,003,659

248—State Department of Education—

Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 8715 FY 2001 Org 0402

1 Unclassified—Total 096 \$40,000,000

DEPARTMENT OF EDUCATION AND THE ARTS

249—Division of Culture and History

(WV Code Chapter 29)

Fund 8718 FY 2001 Org 0432

1 Unclassified—Total 096 \$ 949,564

250—Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 8721 FY 2001 Org 0439

1 Unclassified—Total 096 \$ 2,955,000

251—Library Commission

(WV Code Chapter 10)

Fund 8720 FY 2001 Org 0433

1 Unclassified—Total 096 \$ 1,730,507

252—State Board of Rehabilitation—

Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 8734 FY 2001 Org 0932

1 Unclassified—Total 096 \$46,058,358

**DEPARTMENT OF HEALTH
AND HUMAN RESOURCES**

253—Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 8723 FY 2001 Org 0506

1 Unclassified—Total 096 \$ 2,803,258

254—Division of Health—

Central Office

(WV Code Chapter 16)

Fund 8802 FY 2001 Org 0506

1 Unclassified—Total 096 \$ 55,745,473

255—Division of Health—

West Virginia Safe Drinking Water Treatment

(WV Code Chapter 16)

Fund 8824 FY 2001 Org 0506

1 Unclassified—Total 096 \$ 16,000,000

256—Human Rights Commission

(WV Code Chapter 5)

Fund 8725 FY 2001 Org 0510

1 Unclassified—Total 096 \$ 500,774

257—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2001 Org 0511

1 Unclassified—Total 096 \$ 1,237,556,147

**DEPARTMENT OF MILITARY
AFFAIRS AND PUBLIC SAFETY**

258—Adjutant General—State Militia

(WV Code Chapter 15)

Fund 8726 FY 2001 Org 0603

1 Unclassified—Total 096 \$29,240,013

259—Office of Emergency Services

(WV Code Chapter 15)

Fund 8727 FY 2001 Org 0606

1 Unclassified—Total 096 \$ 1,592,467

260—Division of Corrections

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

Fund 8836 FY 2001 Org 0608

1 Unclassified—Total 096 \$ 50,000

261—West Virginia State Police

(WV Code Chapter 15)

Fund 8741 FY 2001 Org 0612

1 Unclassified—Total 096 \$ 3,786,559

262—Division of Veterans Affairs—

Veterans Home

(WV Code Chapter 9A)

Fund 8728 FY 2001 Org 0618

1 Unclassified—Total 096 \$ 520,648

263—Division of Criminal Justice Services

(Executive Order)

Fund 8803 FY 2001 Org 0620

1 Unclassified—Total 096 \$14,562,053

DEPARTMENT OF TAX AND REVENUE

264—Tax Division

(WV Code Chapter 11)

Fund 7069 FY 2001 Org 0702

1 Unclassified—Total 096 \$ 75,000

DEPARTMENT OF TRANSPORTATION

265—State Rail Authority

(WV Code Chapter 29)

Fund 8733 FY 2001 Org 0804

1 Unclassified—Total 096 \$ 2,000,000

266—Division of Public Transit

(WV Code Chapter 17)

Fund 8745 FY 2001 Org 0805

1 Unclassified—Total 096 \$11,558,437

267—Division of Motor Vehicles

(WV Code Chapter 17B)

Fund 8787 FY 2001 Org 0802

1 Unclassified—Total 096 \$ 2,337,931

268—Public Port Authority

(WV Code Chapter 17)

Fund 8830 FY 2001 Org 0806

Fund 8707 FY 2001 Org 0310

1 Unclassified—Total 096 \$ 7,676,906

*275—Division of Miners' Health,
Safety and Training*

(WV Code Chapter 22)

Fund 8709 FY 2001 Org 0314

1 Unclassified—Total 096 \$ 578,303

BUREAU OF ENVIRONMENT

276—Division of Environmental Protection

(WV Code Chapter 22)

Fund 8708 FY 2001 Org 0313

1 Unclassified—Total 096 \$ 104,586,621

BUREAU OF SENIOR SERVICES

277—Bureau of Senior Services

(WV Code Chapter 29)

Fund 8724 FY 2001 Org 0508

1 Unclassified—Total 096 \$13,120,543

BUREAU OF EMPLOYMENT PROGRAMS

278—Bureau of Employment Programs—

(WV Code Chapter 21A)

Fund 8835 FY 2001 Org 0323

1 Unclassified—Total 096 \$ 512,657

1 Pursuant to the requirements of 42 U.S.C. 1103, Section
2 903 of the Social Security Act, as amended, and the provisions
3 of section nine, article nine, chapter twenty-one-a of the code

4 of West Virginia, one thousand nine hundred thirty-one, as
 5 amended, the above appropriation to Unclassified shall be used
 6 by the bureau of employment programs for the specific purpose
 7 of administration of the state's unemployment insurance
 8 program or job service activities, subject to each and every
 9 restriction, limitation or obligation imposed on the use of the
 10 funds by those federal and state statutes.

MISCELLANEOUS BOARDS AND COMMISSIONS

279—Public Service Commission—

Motor Carrier Division

(WV Code Chapter 24A)

Fund 8743 FY 2001 Org 0926

1	Unclassified—Total	096	\$	912,958
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280—Public Service Commission—

Gas Pipeline Division

(WV Code Chapter 24B)

Fund 8744 FY 2001 Org 0926

1	Unclassified—Total	096	\$	<u>262,509</u>
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Total TITLE II, Section 5—

Federal Funds		\$	<u>1,793,855,184</u>
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1 **Sec. 6. Appropriations from federal block grants.**—The
 2 following items are hereby appropriated from federal block
 3 grants to be available for expenditure during the fiscal year
 4 2001.

281—Governor's Office—

Office of Economic Opportunity

Fund 8799 FY 2001 Org 0100

1 Unclassified—Total 096 \$ 7,148,623

282—*West Virginia Development Office—*

Community Development

Fund 8746 FY 2001 Org 0307

1 Unclassified—Total 096 \$ 25,315,667

283—*Bureau of Employment Programs—*

Job Training Partnership Act

Fund 8749 FY 2001 Org 0323

1 Unclassified—Total 096 \$ 57,628,409

284—*State Department of Education—*

Education Grant

Fund 8748 FY 2001 Org 0402

1 Unclassified—Total 096 \$ 112,002,460

285—*Division of Health—*

Maternal and Child Health

Fund 8750 FY 2001 Org 0506

1 Unclassified—Total 096 \$ 7,815,862

286—*Division of Health—*

Preventive Health

Fund 8753 FY 2001 Org 0506

1 Unclassified—Total 096 \$ 2,224,554

287—*Division of Health—*

Substance Abuse Prevention and Treatment

Fund 8793 FY 2001 Org 0506

1 Unclassified—Total 096 \$11,543,457

288—*Division of Health—*

Community Mental Health Services

Fund 8794 FY 2001 Org 0506

1 Unclassified—Total 096 \$ 2,843,787

289—*Division of Health—*

Abstinence Education Program

Fund 8825 FY 2001 Org 0506

1 Unclassified—Total 096 \$ 975,452

290—*Division of Human Services—*

Energy Assistance

Fund 8755 FY 2001 Org 0511

1 Unclassified—Total 096 \$ 12,785,447

291—*Division of Human Services—*

Social Services

Fund 8757 FY 2001 Org 0511

1 Unclassified—Total 096 \$ 17,894,898

292—*Division of Human Services—*

Temporary Assistance Needy Families

Fund 8816 FY 2001 Org 0511

1 Unclassified—Total 096 \$ 225,035,836

293—*Division of Human Services—*

Child Care and Development

Fund 8817 FY 2001 Org 0511

1 Unclassified—Total 096 \$ 38,000,000

294—*Division of Criminal Justice Services—*

Juvenile Accountability Incentive

Fund 8829 FY 2001 Org 0620

1 Unclassified—Total 096 \$ 2,147,715

295—*Division of Criminal Justice Services—*

Local Law Enforcement Training and Education Assistance

Fund 8832 FY 2001 Org 0620

1 Unclassified—Total 096 \$ 50,000

296—*Division of Criminal Justice Services—*

Local Law Enforcement

Fund 8833 FY 2001 Org 0620

1 Unclassified—Total 096 \$ 450,049

Total TITLE II, Section 6—

Federal Block Grants \$ 523,862,216

1 **Sec. 7. Awards for claims against the state.**—There are
2 hereby appropriated for expenditure during fiscal year 2000-
3 2001, from the fund as designated, in the amounts as specified
4 and for the claimants named in enrolled house bill no. 4529,
5 regular session, 2000, and enrolled senate bill no. 492, regular
6 session, 2000, general revenue funds of \$5,893,752.91 for
7 payment of claims against the state.

8 The total general revenue funds above do not include
9 payment for claims in the amount of \$8,908.00 from the
10 supreme court-general judicial, fund 0180, specifically made
11 payable from the appropriation for the current fiscal year 2000.

12 There are hereby appropriated for the remainder of the
13 fiscal year 1999-2000 and to remain in effect until June 30,

14 2001, from the funds as designated, in the amounts as specified
15 and for the claimants named in enrolled senate bill no. 492,
16 regular session, 2000, special revenue funds of \$7,928.59 and
17 state road funds of \$285,561.87 for payment of claims against
18 the state.

1 **Sec. 8. Special revenue appropriations.**—There are
2 hereby appropriated for expenditure during the fiscal year two
3 thousand one appropriations made by general law from special
4 revenue which are not paid into the state fund as general
5 revenue under the provisions of section two, article two, chapter
6 twelve of the code: *Provided*, That none of the money so
7 appropriated by this section shall be available for expenditure
8 except in compliance with and in conformity to the provisions
9 of articles two and three, chapter twelve and article two, chapter
10 five-a of the code, with due consideration to the digest of
11 legislative intent of the budget bill prepared pursuant to article
12 one, chapter four, unless the spending unit has filed with the
13 director of the budget and the legislative auditor prior to the
14 beginning of each fiscal year:

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

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

1 **Sec. 9. State improvement fund appropri-**
2 **tions.**—Bequests or donations of nonpublic funds, received by
3 the governor on behalf of the state during the fiscal year two
4 thousand one, for the purpose of making studies and recommen-
5 dations relative to improvements of the administration and
6 management of spending units in the executive branch of state
7 government, shall be deposited in the state treasury in a
8 separate account therein designated state improvement fund.

9 There are hereby appropriated all moneys so deposited
10 during the fiscal year two thousand one to be expended as

11 authorized by the governor, for such studies and recommenda-
12 tions which may encompass any problems of organization,
13 procedures, systems, functions, powers or duties of a state
14 spending unit in the executive branch, or the betterment of the
15 economic, social, educational, health and general welfare of the
16 state or its citizens.

1 **Sec. 10. Specific funds and collection accounts.**—A fund
2 or collection account which by law is dedicated to a specific use
3 is hereby appropriated in sufficient amount to meet all lawful
4 demands upon the fund or collection account and shall be
5 expended according to the provisions of article three, chapter
6 twelve of the code.

1 **Sec. 11. Appropriations for refunding erroneous**
2 **payment.**—Money that has been erroneously paid into the state
3 treasury is hereby appropriated out of the fund into which it was
4 paid, for refund to the proper person.

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

1 **Sec. 12. Sinking fund deficiencies.**—There is hereby
2 appropriated to the governor a sufficient amount to meet any
3 deficiencies that may arise in the mortgage finance bond
4 insurance fund of the West Virginia housing development fund
5 which is under the supervision and control of the municipal
6 bond commission as provided by section twenty-b, article
7 eighteen, chapter thirty-one of the code, or in the funds of the
8 municipal bond commission because of the failure of any state
9 agency for either general obligation or revenue bonds or any
10 local taxing district for general obligation bonds to remit funds
11 necessary for the payment of interest and sinking fund require-
12 ments. The governor is authorized to transfer from time to time

13 such amounts to the municipal bond commission as may be
14 necessary for these purposes.

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

1 **Sec. 13. Appropriations for local governments.**—There
2 are hereby appropriated for payment to counties, districts and
3 municipal corporations such amounts as will be necessary to
4 pay taxes due counties, districts and municipal corporations and
5 which have been paid into the treasury:

6 (a) For redemption of lands;

7 (b) By public service corporations;

8 (c) For tax forfeitures.

1 **Sec. 14. Total appropriations.**—Where only a total sum
2 is appropriated to a spending unit, the total sum shall include
3 personal services, annual increment, employee benefits, current
4 expenses, repairs and alterations, equipment and capital outlay,
5 where not otherwise specifically provided and except as
6 otherwise provided in TITLE I—GENERAL PROVISIONS,
7 Sec. 3.

1 **Sec. 15. General school fund.**—The balance of the
2 proceeds of the general school fund remaining after the
3 payment of the appropriations made by this act is appropriated
4 for expenditure in accordance with section sixteen, article
5 nine-a, chapter eighteen of the code.

TITLE III—ADMINISTRATION.

TITLE III—ADMINISTRATION.

§1. Appropriations conditional.

§2. Constitutionality.

1 **Section 1. Appropriations conditional.**—The expenditure
2 of the appropriations made by this act, except those appropria-

3 tions made to the legislative and judicial branches of the state
 4 government, are conditioned upon the compliance by the
 5 spending unit with the requirements of article two, chapter
 6 five-a of the code.

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

11 **Sec. 2. Constitutionality.**—If any part of this act is
 12 declared unconstitutional by a court of competent jurisdiction,
 13 its decision shall not affect any portion of this act which
 14 remains, but the remaining portion shall be in full force and
 15 effect as if the portion declared unconstitutional had never been
 16 a part of the act.

CHAPTER 11

(S. B. 642— By Senators Craigo, Sharpe, Prezioso, Plymale, Love,
 Bowman, Helmick, Anderson, Unger, Edgell,
 Boley, Minear and Sprouse)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the governor's office - governor's cabinet on children and families, fund 0104, fiscal year 2000, organization 0100, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 12, 2000, which included a statement of the state fund, general revenue, setting forth therein the

cash balance and investments as of July 1, 1999, and further included the estimate of revenues for the fiscal year 2000, less net appropriation balances forwarded and regular appropriations for the fiscal year 2000; and

WHEREAS, It appears from the governor’s executive budget document there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand, to fund 0104, fiscal year 2000, organization 0100, be supplemented and amended by increasing the total appropriation by twenty-nine thousand dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	EXECUTIVE		
4	<i>7—Governor’s Office—</i>		
5	<i>Governor’s Cabinet on Children and Families</i>		
6	(WV Code Chapter 5)		
7	Fund <u>0104</u> FY <u>2000</u> Org <u>0100</u>		
8			General
9		Act-	Revenue
10		ivity	Funds
11	1	Unclassified (R) 099	\$ 29,000

12 The purpose of this bill is to supplement this account in the
13 budget act for the fiscal year ending the thirtieth day of June,
14 two thousand, by adding twenty-nine thousand dollars to
15 unclassified for expenditure during the fiscal year two thou-
16 sand.

CHAPTER 12

(S. B. 668 — Originating in the Committee on Finance)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand, in the amount of one million sixty-six thousand seven hundred ninety-nine dollars from the treasurer's office - jury fees fund, fund 1314, organization 1300, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand, to the supreme court - general judicial, fund 0180, fiscal year 2000, organization 2400.

WHEREAS, The Legislature finds that the account balance in the treasurer's office - jury fees fund, fund 1314, fiscal year 2000, organization 1300, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, By the provisions of this legislation there now remains an unappropriated surplus balance in the state treasury which is available for the appropriation during the fiscal year ending the thirtieth day of June, two thousand; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the treasurer's office - jury fees fund, fund 1314, organization 1300, be decreased by expiring the amount of one million sixty-six thousand seven hundred ninety-nine dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, two thousand, to fund 0180, fiscal year 2000, organization 2400, be supplemented and amended by increasing the total appropriation by one million sixty-six thousand seven hundred ninety-nine dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 4—Supreme Court—

4 General Judicial

5 (WV Code Chapter 5)

6 Fund 0180 FY 2000 Org 2400

7		Act-	General
8		ivity	Revenue
9			Fund

10 10 Other Court Costs—

11 Surplus(R) 253 \$ 1,066,799

12 The purpose of this bill is to expire the sum of one million
 13 sixty-six thousand seven hundred ninety-nine dollars from the
 14 treasurer’s office - jury fees fund, fund 1314, organization
 15 1300, and to supplement the supreme court - general judicial,
 16 fund 0180, fiscal year 2000, organization 2400, in the budget
 17 act for the fiscal year ending the thirtieth day of June, two
 18 thousand, by adding one million sixty-six thousand seven
 19 hundred ninety-nine dollars to the appropriation for other court
 20 costs - surplus.



CHAPTER 13

(S. B. 649 — By Senators Craigo, Sharpe, Jackson,
 Chafin, Prezioso Plymale, Love, Bowman, Helmick,
 Anderson, Unger, Edgell, Sprouse and Minear)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the department of education and the arts - office of the secre-

tary, fund 0294, fiscal year 2000, organization 0431, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 12, 2000, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1999, and further included the estimate of revenues for the fiscal year 2000, less net appropriation balances forwarded and regular appropriations for the fiscal year 2000; and

WHEREAS, It appears from the governor’s executive budget document there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand, to fund 0294, fiscal year 2000, organization 0431, be supplemented and amended by increasing the total appropriation by one hundred eighteen thousand six hundred twenty-four dollars in a new item of appropriation as follows:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	DEPARTMENT OF EDUCATION AND THE ARTS		
4	<i>41—Department of Education and the Arts—</i>		
5	<i>Office of the Secretary</i>		
6	(WV Code Chapter 5F)		
7	Fund <u>0294</u> FY <u>2000</u> Org <u>0431</u>		
8			General
9		Act-	Revenue
10		ivity	Funds
11	14a	Operation Safe Schools	890 \$ 118,624

12 The purpose of this bill is to supplement this account in the
 13 budget act for the fiscal year ending the thirtieth day of June,
 14 two thousand, by providing for a new item of appropriation to
 15 be established therein to appropriate one hundred eighteen
 16 thousand six hundred twenty-four dollars to the department of
 17 education and the arts – office of the secretary, fund 0294,
 18 fiscal year 2000, organization 0431, to be expended during the
 19 fiscal year two thousand.

CHAPTER 14

(S. B. 456 — Originating in the Committee on Finance)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation in the state fund, general revenue, to the department of administration—West Virginia prosecuting attorneys institute, fund 0557, fiscal year 2000, organization 0228, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand, to fund 0557, fiscal year 2000, organization 0228, be supplemented and amended to read as follows:

1 TITLE II—APPROPRIATIONS.
 2 Section 1. Appropriations from general revenue.
 3 DEPARTMENT OF ADMINISTRATION
 4 32—*West Virginia Prosecuting Attorneys Institute*
 5 Fund 0557 FY 2000 Org 0228

232		APPROPRIATIONS		[Ch. 15]
6				General
7			Act-	Revenue
8			ivity	Funds
9	1	Forensic Medical Examinations	683	\$ 203,659
10	2	Federal Funds/Grants Match	749	<u>130,000</u>
11	3	Total		\$ 333,659

12 The purpose of this bill is to supplement this account in the
13 budget act for the fiscal year ending the thirtieth day of June,
14 two thousand, by reducing the appropriation for forensic
15 medical examinations by fifty thousand dollars and by adding
16 fifty thousand dollars to the Federal/Funds Grant Match line-
17 item with no new money being appropriated.



CHAPTER 15

(S. B. 367 — Originating in the Committee on Finance)



[Passed February 10, 2000; in effect from passage. Approved by the Governor.]



AN ACT making a supplementary appropriation in the state fund, general revenue, from the department of administration – division of information services and communications, fund 0583, fiscal year 2000, organization 0210, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand, to fund 0583, fiscal year 2000, organization 0210, be supplemented and amended to read as follows:

1 TITLE II—APPROPRIATIONS.

2 **Section 1. Appropriations from general revenue.**

3 DEPARTMENT OF ADMINISTRATION

4 22—*Division of Information Services and Communications*

5 Fund 0583 FY 2000 Org 0210

6		7 Act-	8 General
9		10 ivity	11 Revenue
12		13 Fund	14
15	1 Asynchronous Transfer Mode		
16	(ATM) Program (R)	199	\$ 0

17 Any unexpended balance remaining in the appropriation for
18 Asynchronous Transfer Mode (ATM) Program (fund 0583,
19 activity 199) at the close of the fiscal year 1999 is hereby
20 reappropriated for expenditure during the fiscal year 2000 and
21 redesignated to the Board of Trustees of the University System
22 of West Virginia and Board of Directors of the State College
System - Central Office - Control Account, fund 0333, organi-
zation 0452, activity 169.

23 The purpose of this bill is to supplement this account in the
24 budget act for the fiscal year ending the thirtieth day of June,
25 two thousand, by amending language with no new money being
26 appropriated.

CHAPTER 16

(S. B. 646 — By Senators Craigo, Sharpe, Jackson, Chafin,
Prezioso, Plymale, Love, Bowman, Helmick,
Anderson, Unger, Edgell, Sprouse and Minear)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the
state fund, general revenue, for the fiscal year ending the thirtieth

day of June, two thousand, in the amount of one hundred fifty thousand dollars from the auditor's office - public service corporation taxes fund, fund 1201, fiscal year 2000, organization 1200.

WHEREAS, The Legislature finds that the account balance in the auditor's office - public service corporation taxes fund, fund 1201, fiscal year 2000, organization 1200, exceeds that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of funds available for expenditure in the
2 fiscal year ending the thirtieth day of June, two thousand, to the
3 auditor's office - public service corporation taxes fund, fund
4 1201, fiscal year 2000, organization 1200, be decreased by
5 expiring the amount of one hundred fifty thousand dollars to the
6 unappropriated surplus balance of the state fund, general
7 revenue, to be available for appropriation during the fiscal year
8 two thousand.

9 The purpose of this bill is to expire the sum of one hundred
10 fifty thousand dollars from the auditor's office - public service
11 corporation taxes fund, fund 1201, fiscal year 2000, organiza-
12 tion 1200, to the unappropriated surplus balance in the state
13 fund, general revenue, for the fiscal year ending the thirtieth
14 day of June, two thousand, to be available for appropriation
15 during the fiscal year two thousand.

CHAPTER 17

**(S. B. 647 — By Senators Craig, Sharpe, Jackson, Chafin,
Prezioso, Plymale, Love, Bowman, Helmick,
Anderson, Unger, Edgell, Sprouse and Minear)**

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the balance of the auditor's office, chief inspector's fund, fund 1235, fiscal year 2000, organization 1200,

for the fiscal year ending the thirtieth day of June, two thousand, in an amount of four hundred thousand dollars from the auditor's office, securities regulation fund, fund 1225, fiscal year 2000, organization 1200.

WHEREAS, The Legislature finds that the account balance in the auditor's office, securities regulation fund, fund 1225, fiscal year 2000, organization 1200, will exceed that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of funds available for expenditure in the
2 fiscal year ending the thirtieth day of June, two thousand, to the
3 auditor's office, securities regulation fund, fund 1225, fiscal
4 year 2000, organization 1200, be decreased by expiring the
5 amount of four hundred thousand dollars to the balance to the
6 auditor's office, chief inspector's fund, fund 1235, fiscal year
7 2000, organization 1200, to be available for appropriation
8 during the fiscal year two thousand.

CHAPTER 18

(S. B. 455 — Originating in the Committee on Finance)

[Passed February 29, 2000; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the balance of the department of administration – division of general services – capitol complex – maintenance, fund 2251, fiscal year 2000, organization 0211, for the fiscal year ending the thirtieth day of June, two thousand, in the amount of two hundred seventy-seven thousand fifty-eight dollars and twelve cents from the department of administration – office of the secretary – natural gas contract refund fund, fund 2040, fiscal year 2000, organization 0201.

WHEREAS, The Legislature finds that the account balance in the department of administration – office of the secretary – natural gas contract refund fund, fund 2040, fiscal year 2000, organization 0201, exceeds that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of the funds available for expenditure in
2 the fiscal year ending the thirtieth day of June, two thousand, to
3 the department of administration – office of the secretary –
4 natural gas contract refund fund, fund 2040, fiscal year 2000,
5 organization 0201, be decreased by expiring the amount of two
6 hundred seventy-seven thousand fifty-eight dollars and twelve
7 cents to the balance of the department of administration –
8 division of general services – capitol complex – maintenance,
9 fund 2251, fiscal year 2000, organization 0211 during the fiscal
10 year two thousand.

11 The purpose of this bill is to expire the sum of two hundred
12 seventy-seven thousand fifty-eight dollars and twelve cents
13 from the department of administration – office of the secretary
14 – natural gas contract refund fund, fund 2040, fiscal year 2000,
15 organization 0201, to the balance of the department of adminis-
16 tration – division of general services – capitol complex –
17 maintenance, fund 2251, fiscal year 2000, organization 0211,
18 for the fiscal year ending the thirtieth day of June, two thou-
19 sand, to be available for expenditure during the fiscal year two
20 thousand.

CHAPTER 19

**(S. B. 650 —By Senators Craigo, Sharpe, Jackson, Chafin, Prezioso,
Plymale, Love, Bowman, Helmick,
Anderson, Unger, Edgell, Sprouse and Minear)**

[Passed March 9, 2000; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand, in the department of health and human resources, West Virginia health care authority, fund 5375, fiscal year 2000, organization 0507, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources, West Virginia health care authority, fund 5375, fiscal year 2000, organization 0507, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand, fund 5375, fiscal year 2000, organization 0507, be supplemented and amended by increasing the total appropriation by five hundred thousand dollars in the line item as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 3. Appropriations from other funds.		
3	DEPARTMENT OF HEALTH		
4	AND HUMAN RESOURCES		
5	<i>138—West Virginia Health Care Authority</i>		
6	(WV Code Chapter 16)		
7	Fund <u>5375</u> FY <u>2000</u> Org <u>0507</u>		
8		Act-	Other
9		ivity	Funds
10	4	Unclassified	099 \$ 500,000

11 The purpose of this supplementary appropriation bill is to
12 supplement this fund in the budget act for the fiscal year ending
13 the thirtieth day of June, two thousand, by adding five hundred
14 thousand dollars to the existing appropriation for unclassified
15 for expenditure during the fiscal year two thousand.

CHAPTER 20

(S. B. 644 —By Senators Craigo, Sharpe, Prezioso,
Plymale, Love, Bowman, Helmick,
Anderson, Unger, Edgell, Boley, Minear and Sprouse)

[Passed March 9, 2000; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand one, in the amount of seven hundred fifty thousand dollars from the insurance commission - insurance commission fund, fund 7152, fiscal year 2001, organization 0704.

WHEREAS, The Legislature finds that the account balance in the insurance commission - insurance commission fund, fund 7152, fiscal year 2001, organization 0704, will exceed that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of funds available for expenditure in the
2 fiscal year ending the thirtieth day of June, two thousand one,
3 to the insurance commission - insurance commission fund, fund
4 7152, fiscal year 2001, organization 0704, be decreased by
5 expiring the amount of seven hundred fifty thousand dollars to
6 the unappropriated balance of the state fund, general revenue,
7 to be available for appropriation during the fiscal year two
8 thousand one.

9 The purpose of this bill is to expire the sum of seven
10 hundred fifty thousand dollars from the insurance commission -
11 insurance commission fund, fund 7152, fiscal year 2001,
12 organization 0704, to the unappropriated balance in the state
13 fund, general revenue, for the fiscal year ending the thirtieth
14 day of June, two thousand one, to be available for appropriation
15 during the fiscal year two thousand one.

CHAPTER 21

(S. B. 453 — Originating in the Committee on Finance)

[Passed February 18, 2000; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand, in the department of transportation, division of motor vehicles—driver rehabilitation, fund 8214, fiscal year 2000, organization 0802, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of transportation, division of motor vehicles—driver rehabilitation, fund 8214, fiscal year 2000, organization 0802, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand, fund 8214, fiscal year 2000, organization 0802, be supplemented and amended by increasing the total appropriation by two hundred fifty thousand dollars in the line items as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 3. Appropriations from other funds.**
- 3 **DEPARTMENT OF TRANSPORTATION**

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APPROPRIATIONS

[Ch. 22

4

168—Division of Motor Vehicles—

5

Driver Rehabilitation

6

(WV Code Chapter 17C)

7

Fund 8214 FY 2000 Org 0802

8

Act-

Other

9

ivity

Funds

10 1 Unclassified—Total 096 \$ 250,000

11 The purpose of this supplementary appropriation bill is to
12 supplement this fund in the budget act for the fiscal year ending
13 the thirtieth day of June, two thousand, by adding two hundred
14 fifty thousand dollars to the existing appropriation for
15 unclassified—total for expenditure during the fiscal year two
16 thousand.

●

CHAPTER 22

(S. B. 648 — By Senators Craig, Sharpe, Jackson, Chafin,
Prezioso, Plymale, Love, Bowman, Helmick, Anderson,
Unger, Edgell, Sprouse and Minear)

[Passed March 9, 2000; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand, in miscellaneous boards and commissions, West Virginia state board of examiners for licensed practical nurses, fund 8517, fiscal year 2000, organization 0906, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.

WHEREAS, The governor has established that there now remains an unappropriated balance in the miscellaneous boards and commissions, West Virginia state board of examiners for licensed practical nurses, fund 8517, fiscal year 2000, organization 0906, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand, fund 8517, fiscal year 2000, organization 0906, be supplemented and amended by increasing the total appropriation by fifteen thousand dollars in the line item as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 MISCELLANEOUS BOARDS AND COMMISSIONS

4 205-WV State Board of Examiners

5 for Licensed Practical Nurses

6 (WV Code Chapter 30)

7 Fund 8517 FY 2000 Org 0906

8		Act-	Other
9		ivity	Funds

10	1	Unclassified—Total	096	\$	15,000
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11 The purpose of this supplementary appropriation bill is to
12 supplement this fund in the budget act for the fiscal year ending
13 the thirtieth day of June, two thousand, by adding fifteen
14 thousand dollars to the existing appropriation for unclassi-
15 fied—total for expenditure during the fiscal year two thousand.

CHAPTER 23

(S. B. 452 — Originating in the Committee on Finance)

[Passed February 29, 2000; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and reducing items of the existing appropriation to the public service commission, fund 8623, fiscal year 2000, organization 0926, as originally appropriated by chapter seven, acts of the Legislature, regular session, one thousand nine hundred ninety-nine, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation to the public service commission, fund 8623, fiscal year 2000, organization 0926, be amended and reduced in the line item as follows:

1		TITLE II—APPROPRIATIONS.	
2		Sec. 3. Appropriations from other funds.	
3		MISCELLANEOUS BOARDS AND COMMISSIONS	
4		<i>207—Public Service Commission</i>	
5		(WV Code Chapter 24)	
6		Fund <u>8623</u> FY <u>2000</u> Org <u>0926</u>	
7			Act-
8			ivity Other
9	4	Unclassified	099 \$ 456,000

10 The purpose of this supplementary appropriation bill is to
11 supplement, amend and reduce existing items in the aforesaid
12 account for the designated spending unit. The item for unclassi-
13 fied is reduced by four hundred fifty-six thousand dollars.

CHAPTER 24

(S. B. 643 — By Senators Craig, Sharpe, Prezioso, Plymale,
Love, Bowman, Helmick, Anderson, Unger, Edgell,
Boley, Minear and Sprouse)

[Passed March 9, 2000; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand one, in the amount of seven hundred fifty thousand dollars from the public service commission, fund 8623, fiscal year 2001, organization 0926.

WHEREAS, The Legislature finds that the account balance in the public service commission, fund 8623, fiscal year 2001, organization 0926, will exceed that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of funds available for expenditure in the
2 fiscal year ending the thirtieth day of June, two thousand one,
3 to the public service commission, fund 8623, fiscal year 2001,
4 organization 0926, be decreased by expiring the amount of
5 seven hundred fifty thousand dollars to the unappropriated
6 balance of the state fund, general revenue, to be available for
7 appropriation during the fiscal year two thousand one.

8 The purpose of this bill is to expire the sum of seven
9 hundred fifty thousand dollars from the public service commis-
10 sion, fund 8623, fiscal year 2001, organization 0926, to the
11 unappropriated balance in the state fund, general revenue, for
12 the fiscal year ending the thirtieth day of June, two thousand
13 one, to be available for appropriation during the fiscal year two
14 thousand one.

CHAPTER 25

(H. B. 4765 — By Delegates Michael, Doyle,
Kominar, Frederick, Pettit and Leggett)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand, to the bureau of commerce - West Virginia development office, fund 8705, fiscal year 2000, organization 0307, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand, to fund 8705, fiscal year 2000, organization 0307, be supplemented and amended by increasing the total appropriation by one million, four hundred thousand dollars in the line item as follows:

- | | |
|---|--|
| 1 | TITLE II—APPROPRIATIONS. |
| 2 | Section 5. Appropriations of federal funds. |
| 3 | BUREAU OF COMMERCE |
| 4 | <i>265—West Virginia Development Office</i> |
| 5 | (WV Code Chapter 5B) |
| 6 | Fund <u>8705</u> FY <u>2000</u> Org <u>0307</u> |

7			Federal
8		Activity	Funds
9	1	Unclassified—Total	096 \$ 1,400,000
10		The purpose of this supplementary appropriation bill is to	
11		supplement this account in the budget act for fiscal year ending	
12		the thirtieth day of June, two thousand, by adding one million	
13		four hundred thousand dollars to the existing appropriation for	
14		Unclassified—Total for expenditure during fiscal year two	
15		thousand.	



CHAPTER 26

(H. B. 4767 — By Delegates Michael, Campbell,
Compton, Frederick, Kelley, Proudfoot and Facemyer)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand, to the department of agriculture, fund 8736, fiscal year 2000, organization 1400, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand, to fund 8736, fiscal year 2000, organization 1400, be supplemented and amended by increasing the total

appropriation by six hundred sixty-four thousand, five hundred three dollars in the line item as follows:

1 TITLE II-APPROPRIATIONS.

2 Section 5. Appropriations of federal funds.

3 EXECUTIVE

4 236-Department of Agriculture

5 (WV Code Chapter 19)

6 Fund 8736 FY 2000 Org 1400

7		Act-	Federal
8		ivity	Funds
9	1 Unclassified-Total	096	\$ 664,503

10 The purpose of this supplementary appropriation bill is to
11 supplement this account in the budget act for fiscal year ending
12 the thirtieth day of June, two thousand, by adding six hundred
13 sixty-four thousand, five hundred three dollars to the existing
14 appropriation for Unclassified-Total for expenditure during
15 fiscal year two thousand.

CHAPTER 27

(H. B. 4812 — By Delegates Michael, Leach, Campbell,
Proudfoot, Compton, Kelley and Anderson)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand, to the department of agriculture, fund 8736, fiscal year 2000, organization 1400, supplementing and amending the

appropriation for the fiscal year ending the thirtieth day of June, two thousand.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand, to fund 8736, fiscal year 2000, organization 1400, be supplemented and amended by increasing the total appropriation by three hundred sixty-two thousand dollars in the line item as follows:

1	TITLE II-APPROPRIATIONS.		
2	Section 5. Appropriations of federal funds.		
3	EXECUTIVE		
4	<i>236-Department of Agriculture</i>		
5	(WV Code Chapter 19)		
6	Fund <u>8736</u> FY <u>2000</u> Org <u>1400</u>		
7		Act-	Federal
8		ivity	Funds
9	1	Unclassified-Total 096	\$ 362,000

10 The purpose of this supplementary appropriation bill is to
11 supplement this account in the budget act for fiscal year ending
12 the thirtieth day of June, two thousand, by adding three hundred
13 sixty-two thousand dollars to the existing appropriation for
14 Unclassified-Total for expenditure during fiscal year two
15 thousand.

CHAPTER 28

(H. B. 4768 — By Delegates Michael, Leach, Compton,
Thompson, Fleischauer, Border and Hall)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand, to the division of human services - child care and development, fund 8817, fiscal year 2000, organization 0511, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand, to fund 8817, fiscal year 2000, organization 0511, be supplemented and amended by increasing the total appropriation by fourteen million, seven hundred seven thousand, nine hundred forty-seven dollars in the line item as follows:

- | | |
|---|---|
| 1 | TITLE II - APPROPRIATIONS. |
| 2 | Section 6. Appropriations from federal block grants. |
| 3 | <i>288-Division of Human Services-</i> |
| 4 | <i>Child Care and Development</i> |
| 5 | Fund <u>8817</u> FY <u>2000</u> Org <u>0511</u> |

6		Act-	Federal
7		ivity	Funds
8 1	Unclassified-Total	096 \$	14,707,947

9 The purpose of this supplementary appropriation bill is to
10 supplement this account in the budget act for fiscal year ending
11 the thirtieth day of June, two thousand, by adding fourteen
12 million seven hundred seven thousand nine hundred forty-seven
13 dollars to the existing appropriation for Unclassified-Total for
14 expenditure during fiscal year two thousand.

CHAPTER 29

(H. B. 4766 — By Delegates Cann, Compton,
Frederick, Laird, Leach, Warner and Facemyer)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand, to a new item of appropriation designated to the department of military affairs and public safety - division of corrections - correctional units, fund 8836, fiscal year 2000, organization 0608, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter seven, acts of the Legislature, regular session, one thousand nine hundred ninety-nine, known as the budget bill, be

supplemented and amended by adding to Title II, section five thereof the following:

1 TITLE II—APPROPRIATIONS.
 2 Section 5. Appropriations of federal funds.
 3 DEPARTMENT OF MILITARY AFFAIRS
 4 AND PUBLIC SAFETY
 5 253a—Division of Corrections—
 6 Correctional Units
 7 (WV Code Chapters 25, 28, 49 and 62)
 8 Fund 8836 FY 2000 Org 0608

		Act-	Federal
		ivity	Funds
11	1 Unclassified—Total	096	\$ 100,000

12 The purpose of this supplementary appropriation bill is to
13 supplement this account in the budget act for fiscal year ending
14 the thirtieth day of June, two thousand, by providing for a new
15 item of appropriation to be established therein to appropriate
16 federal funds in the amount of one hundred thousand dollars to
17 Unclassified—Total for expenditure during fiscal year two
18 thousand.

CHAPTER 30

(H. B. 4786 — By Delegates Warner, Cann,
Thompson, Anderson and Border)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state road fund to the department of transportation, division of motor vehicles, fund

9007, fiscal year 2000, organization 0802, as originally appropriated by chapter seven, acts of the Legislature, regular session, one thousand nine hundred ninety-nine, 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, fund 9007, fiscal year 2000, organization 0802, be amended and reduced in the line item as follows:

1 TITLE II – APPROPRIATIONS.

2 **Sec. 2. Appropriations from state road fund.**

3 **DEPARTMENT OF TRANSPORTATION**

4 *95 – Division of Motor Vehicles*

5 (WV Code Chapters 17, 1 1, 17B, 17C, 17D, 20, and 24A)

6 Fund 9007 FY 2000 Org 0802

7 **State**

8 **Road**

9 **Activity Fund**

10 4 Unclassified 099 \$ 357,000

11 And, that the items of the total appropriations from the state
12 road fund, fund 9007, fiscal year 2000, organization 0802, be
13 amended and increased in the line items as follows:

14 TITLE II – APPROPRIATIONS.

15 **Sec. 2. Appropriations from state road fund.**

16 **DEPARTMENT OF TRANSPORTATION**

17 *95 – Division of Motor Vehicles*

18 (WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)

19 Fund 9007 FY 2000 Org 0802

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20				State
21				Road
22			Activity	Fund
23	1	Personal Services	001 \$	300,000
24	3	Employee Benefits	010	57,000

25 The purpose of this supplementary appropriation bill is to
 26 supplement, amend, reduce, and increase existing items in the
 27 department of transportation, division of motor vehicles, fund
 28 9007, fiscal year 2000, organization 0802. The line item for
 29 unclassified is reduced by three hundred fifty-seven thousand
 30 dollars. The line item for personal services is increased by three
 31 hundred thousand dollars and the line item for employee
 32 benefits is increased by fifty-seven thousand dollars. The
 33 amounts as itemized for expenditure in fiscal year ending the
 34 thirtieth day of June, two thousand, shall be available for
 35 expenditure immediately upon the effective date of this bill.

CHAPTER 31

(H. B. 4093 — By Delegates Warner, Frederick,
 Fleischauer, Proudfoot, Pettit, Compton and Hall)

[Passed January 28, 2000; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing, and increasing items of the existing appropriations from the state road fund to the department of transportation, division of highways, fund 9017, fiscal year 2000, organization 0803, as originally appropriated by chapter seven, acts of the Legislature, regular session, one thousand nine hundred ninety-nine, known as the budget bill.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 12, 2000, which included the statement of the state road fund setting forth therein the cash balances and investments as of July 1, 1999, and further included the estimate of revenues for the fiscal year 1999-2000, less net appropriation balances forwarded and regular appropriations for fiscal year 1999-2000.

WHEREAS, It appears from the governor’s executive budget document that there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand; therefore

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state road fund, fund 9017, fiscal year 2000, 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	<i>96 – Division of Highways</i>		
5	(WV Code Chapters 17 and 17C)		
6	Fund <u>9017</u> FY <u>2000</u> Org <u>0803</u>		
7			State
8		Act-	Road
9		ivity	Fund
10	1 Debt Service	040	\$2,450,000

11 And, that the items of the total appropriations from the state
12 road fund, fund 9017, fiscal year 2000, organization 0803, be
13 amended and increased in the line items as follows:

14 TITLE II – APPROPRIATIONS.

15 **Sec. 2. Appropriations from state road fund.**

16 **DEPARTMENT OF TRANSPORTATION**

17 *96 – Division of Highways*

18 (WV Code Chapters 17 and 17C)

19 Fund 9017 FY 2000 Org 0803

20			State
21		Act-	Road
22		ivity	Fund
23	6 Maintenance, Contract Paving and		
24	7 Secondary Road Maintenance . . .	272	\$3,000,000
25	10 Equipment Revolving	276	1,000,000
26	12 Interstate Construction	278	25,000,000
27	13 Other Federal Aid Programs	279	76,000,000
28	14 Appalachian Programs	280	20,000,000
29	15 Nonfederal Aid Construction	281	22,000,000

30 The purpose of this supplementary appropriation bill is to
 31 supplement, amend, reduce, and increase existing items in the
 32 aforesaid account for the designated spending unit. The item for
 33 Debt Service is reduced by two million four hundred fifty
 34 thousand dollars. The item Maintenance, Contract Paving and
 35 Secondary Road Maintenance is increased by three million
 36 dollars, Equipment Revolving is increased by one million
 37 dollars, Interstate Construction is increased by twenty-five
 38 million dollars, Other Federal Aid Programs is increased by
 39 seventy-six million dollars, Appalachian Programs is increased
 40 by twenty million dollars, and Nonfederal Aid Construction is

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6 Fund 9017 FY 2000 Org 0803

7					State
8					Road
9				Activity	Fund

10 8 Bridge Repair and Replacement . . 273 \$ 4,400,000

11 13 Other Federal Aid Programs 279 2,700,000

12 15 Nonfederal Aid Construction 281 8,000,000

13 And, that the items of the total appropriations from the state
14 road fund, fund 9017, fiscal year 2000, organization 0803, be
15 amended and increased in the line items as follows:

16 TITLE II – APPROPRIATIONS.

17 **Sec. 2. Appropriations from state road fund.**

18 **DEPARTMENT OF TRANSPORTATION**

19 *96 – Division of Highways*

20 (WV Code Chapters 17 and 17C)

21 Fund 9017 FY 2000 Org 0803

22					State
23					Road
24				Activity	Fund

25 3 Maintenance, Expressway, Trunkline
26 4 and Feeder 270 \$ 1,000,000

27 5 Maintenance, State Local Services . 271 10,000,000

28 6 Maintenance, Contract Paving and
29 7 Secondary Road Maintenance . 272 1,400,000

30 14 Appalachian Programs 280 2,700,000

31 The purpose of this supplementary appropriation bill is to
32 supplement, amend, reduce and increase existing items in the
33 department of transportation, division of highways, fund 9017,
34 fiscal year 2000, organization 0803. The item bridge repair and
35 replacement is reduced by four million four hundred thousand
36 dollars, other federal aid programs is reduced by two million
37 seven hundred thousand dollars, and nonfederal aid construc-
38 tion is reduced by eight million dollars. The item maintenance,
39 expressway, trunkline and feeder is increased by one million
40 dollars; maintenance, state local services is increased by ten
41 million dollars; maintenance, contract paving and secondary
42 road maintenance is increased by one million four hundred
43 thousand dollars, and appalachian programs is increased by two
44 million seven hundred thousand dollars. The amounts as
45 itemized for expenditure in fiscal year ending the thirtieth day
46 of June, two thousand, shall be available for expenditure upon
47 the effective date of this bill.

CHAPTER 33

(H. B. 2741 — By Delegate Givens)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article one-b, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing, as an administrative allowance, the remuneration of the command administrative officers of the Army National Guard and the Air National Guard.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1B. NATIONAL GUARD.

§15-1B-17. Command pay; inspections; compensation for clerical services and care of property.

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

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

19 (c) At the discretion of the adjutant general, there may be
20 paid to the enlisted man or woman who is directly responsible
21 for the care and custody of the federal and state property of
22 each organization or unit, the sum of ten dollars per month,
23 payable quarterly, upon the certificate of his or her command-
24 ing officer, that he or she has faithfully and satisfactorily
25 performed the duties assigned him or her and accounted for all
26 property entrusted to his or her care.

27 (d) The adjutant general shall determine the amount of
28 entitlement to command pay and clerical pay, not to exceed the
29 amounts set forth in subsections (a) and (b) of this section,
30 using organizational charts showing chain of command and
31 authorized strengths and defining other equivalent type organi-
32 zations.

33 (e) Notwithstanding any other provision of this code, there
34 shall be paid to the command administrative officer of the
35 headquarters of the West Virginia Army National Guard and to
36 the executive staff support officer of the headquarters of the
37 West Virginia Air National Guard, or to the officer occupying
38 a similar position, regardless of title, one hundred dollars per
39 month, payable quarterly, to be known as an administrative
40 allowance.

CHAPTER 34

(S. B. 359 — By Senators Bailey, Unger, Dawson,
Minard, Hunter, Love, Kessler, Sprouse and Wooton)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article one-b, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing payment for tuition and fees to members of the national guard who attend accredited colleges, universities, business or trade schools or aviation schools in this state while serving in the national guard; and providing that national guard members enrolled in a course of postgraduate study, attending an accredited school located in West Virginia and receiving payments under the army continuing

education system may be entitled to payment for tuition and fees while serving in the national guard.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1B. NATIONAL GUARD.

§15-1B-21. Tuition and fees for guard members at institutions of higher education.

1 (a) Any member of the national guard who is enrolled in a
2 course of undergraduate study and is attending any accredited
3 college, university, business or trade school located in West
4 Virginia or is attending any aviation school located in West
5 Virginia for the purpose of taking college-credit courses, may
6 be entitled to payment of tuitions and fees at that college,
7 university, business or trade school or aviation school during
8 the period of his or her service in the national guard: *Provided,*
9 That the adjutant general may prescribe criteria of eligibility for
10 payment of tuition and fees at the college, university, business
11 or trade school or aviation school: *Provided, however,* That
12 such payment is contingent upon appropriations being made by
13 the Legislature for this express purpose.

14 (b) The amount of the payment for members attending a
15 state-supported school shall be determined by the adjutant
16 general and may not exceed the actual amount of tuition and
17 fees at the school. The amount of such payment for members
18 attending a private school shall be determined by the adjutant
19 general, but in no event may exceed the highest amounts
20 payable at any state-supported school.

21 (c) Any member of the national guard who is enrolled in a
22 course of postgraduate study and is attending any accredited
23 college or university located in West Virginia, and is receiving

24 payments under the army continuing education system, may be
25 entitled to payment of tuition and fees at that college or
26 university during his or her period of service in the national
27 guard: *Provided*, That the sum of payments received under this
28 subsection and the army continuing education system may not
29 exceed the actual amount of tuition and fees at the school and
30 in no event may exceed the highest amounts payable at any
31 state-supported school. Such payments are contingent upon
32 appropriations being made by the Legislature for this express
33 purpose.

34 (d) The adjutant general shall administer the tuition and fee
35 payments authorized under this section and shall propose
36 policies to implement the provisions of this section.

CHAPTER 35

(Com. Sub. for H. B. 4078 — By Mr. Speaker, Mr. Kiss, and Delegates Louisos,
Martin, Givens, Michael, Williams and Willison)

[Passed March 6, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-four, relating to providing high school diplomas to certain World War I, World War II, Korean Conflict and Vietnam Conflict veterans that did not graduate from high school; and rules.

Be it enacted by the Legislature of West Virginia:

That article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by

adding thereto a new section, designated section thirty-four, to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-34. High school diplomas for World War I, World War II, Korean Conflict, and Vietnam Conflict veterans.

1 (a) Notwithstanding any provision of this code to the
2 contrary, the state board shall provide for the awarding of high
3 school diplomas, either by the county board in the county in
4 which the veteran resides or the county in which the veteran
5 would have received his or her diplomas, whichever location
6 the veteran chooses, to any surviving World War I veteran and
7 any World War II, Korean Conflict or Vietnam Conflict veteran
8 who:

9 (1) Left high school prior to graduation and served in the
10 armed forces of the United States;

11 (2) Did not receive a high school diploma;

12 (3) Was discharged from the armed services under honor-
13 able conditions; and

14 (4) Completes the application process as provided by the
15 joint rules of the state board and the veterans' council.

16 (b) The state board and the veterans' council, created in
17 article one, chapter nine-a of this code, shall jointly promulgate
18 rules for the identification of eligible veterans and for the
19 awarding of high school diplomas. The rules shall provide for
20 an application process and the credentials required to receive
21 the high school diplomas.

22 (c) For purposes of this section:

23 (1) "World War I veteran" means any veteran who:

24 (A) Performed wartime service between April sixth, one
25 thousand nine hundred seventeen, and November eleventh, one
26 thousand nine hundred eighteen; or

27 (B) Has been awarded the World War I Victory Medal;

28 (2) "World War II veteran" means any veteran who
29 performed wartime service between September sixteenth, one
30 thousand nine hundred forty, and December thirty-first, one
31 thousand nine hundred forty-six;

32 (3) "Korean Conflict veteran" means any veteran who
33 performed military service between June twenty-seventh, one
34 thousand nine hundred fifty, and January thirty-first, one
35 thousand nine hundred fifty-five; and

36 (4) "Vietnam Conflict veteran" means any veteran who
37 performed military service between February twenty-eighth,
38 one thousand nine hundred sixty-one, and May seventh, one
39 thousand nine hundred seventy-five.



CHAPTER 36

(H. B. 4080 — By Delegates Thompson, H. White, Cann,
Harrison, Capito, L. White and Angotti)

[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifteen, relating to authorizing the state treasurer to conduct a program in the public schools on banking.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-15. Bank at school.

1 (a) The state treasurer may conduct a program in West
2 Virginia public schools to educate students about banking
3 activities and to encourage savings. Banking institutions under
4 the jurisdiction of the West Virginia commissioner of banking
5 may participate in the program by assisting the treasurer in
6 developing and producing materials for use in the schools,
7 opening savings accounts for students at the schools and
8 receiving and accepting deposits at the schools.

9 (b) The state treasurer may not implement the banking
10 program in any school in a county unless he or she obtains
11 permission from the county board of education and the princi-
12 pal of the school; and

13 (c) Nothing in this section shall be construed to require any
14 professional or service employee to perform additional duties
15 as a result of the establishment of the banking program.

CHAPTER 37

(Com. Sub. for H. B. 4293 — By Delegates Hunt, Linch,
Compton, Jenkins Faircloth and Riggs)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article five, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to market-based banking and trading; modifying state banking and trading requirements to comply with federal program changes.

Be it enacted by the Legislature of West Virginia:

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

§22-5-18. Market-based banking and trading programs, emissions credits; director to promulgate rules.

1 (a) The director shall propose legislative rules for promul-
2 gation in accordance with article three, chapter twenty-nine-a
3 of this code, to the full extent allowed by federal and state law,
4 one or more rules establishing a voluntary emissions trading
5 and banking program that provides incentives to make progress
6 toward the attainment or maintenance of the national ambient
7 air quality standards, the reduction or prevention of hazardous
8 air contaminants or the protection of human health and welfare
9 and the environment from air pollution.

10 (b) The director shall establish a system by legislative rule
11 for quantifying, verifying, determining eligibility, registering,
12 trading and using all emissions reduction credits, for banking
13 and trading if achieved after the first day of January, one
14 thousand nine hundred ninety-one, to the extent permitted by
15 federal law. Credits also shall be available for permanent
16 shutdowns. Ten percent of any emission reduction credits
17 registered with the director shall be retired from future use:
18 *Provided*, That fifty percent of any emission reduction credits
19 generated from permanent shutdowns prior to the effective date
20 of the legislative rule or rules promulgated pursuant to this
21 section shall be retired from future use. All other emissions
22 reduction credits registered shall remain in effect until used and

23 debited or retired. Credits not used within ten years shall be
24 retired from future use. The director may charge a reasonable
25 transaction fee at the time any credits are registered and shall
26 deposit the fees in the air pollution control fund.

27 The division may establish the emissions trading program
28 as a state, multistate or regional program as long as the program
29 contributes to the goal of improving the air quality in West
30 Virginia and in the air quality region where the source is
31 located.



CHAPTER 38

(S. B. 207 — By Senators Helmick, Kessler, Ross and Sprouse)



[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]



AN ACT to amend and reenact section six, article one, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section eight, article two of said chapter; to amend and reenact sections two, thirteen, fourteen, fourteen-a, fifteen, sixteen, seventeen, eighteen and forty-two, article four of said chapter; to further amend said article by adding thereto a new section, designated section fourteen-b; to amend and reenact sections one, two, three, four and five, article six of said chapter; and to amend and reenact section two, article eight-e of said chapter, all relating to the exercise of trust powers of banking institutions through nonbank affiliates or subsidiaries; giving banks trust powers so that those banks may conduct trust activities, both in-state and at out-of-state branches, through their nonbank affiliates, subsidiaries, or through entities that are jointly owned by a group of banks; providing that nonbanking trust entities may be assessed for

examination costs and expenses in the same manner as other financial institutions; and providing civil and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

Article

1. **General Provisions and Definitions.**
2. **Division of Banking.**
4. **Banking Institutions and Services Generally.**
6. **Nominee Registration of Fiduciary Securities.**
- 8E. **Interstate Branching by De Novo Entry and Acquisition of Branches.**

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§31A-1-6. Deposit insurance required for banking and other depository institutions.

- 1 All credit unions established pursuant to article ten, chapter
- 2 thirty-one of this code and all banking institutions governed by
- 3 the provisions of this chapter except banks that do not accept
- 4 deposits and offer only trust or other nondepository services
- 5 must qualify for and obtain federal deposit insurance.

ARTICLE 2. DIVISION OF BANKING.

§31A-2-8. Commissioner's assessments and examination fund; assessments, costs and expenses of examinations; collection.

1 (a) All moneys collected by the commissioner from
 2 financial institutions and bank holding companies for assess-
 3 ments, examination fees, investigation fees or other necessary
 4 expenses incurred by the commissioner in administering such
 5 duties shall be paid to the commissioner and paid by the
 6 commissioner to the treasurer of the state to the credit of a
 7 special revenue account to be known as the "commissioner's
 8 assessment and examination fund" which is hereby established.
 9 The assessments and fees paid into this account shall be
 10 appropriated by law and used to pay the costs and expenses of
 11 the division of banking and all incidental costs and expenses
 12 necessary for its operations. At the end of each fiscal year, if the
 13 fund contains a sum of money in excess of twenty percent of
 14 the appropriated budget of the division of banking, the amount
 15 of the excess shall be transferred to the general revenue fund of
 16 the state. The Legislature may appropriate money to start the
 17 special revenue account.

18 (b) The commissioner of banking shall charge and collect
 19 from each state banking institution or other financial institution
 20 or bank holding company and pay into a special revenue
 21 account in the state treasury for the division of banking assess-
 22 ments as follows:

23 (1) For each state banking institution, a semiannual assess-
 24 ment payable on the first day of January and the first day of July,
 25 each year, computed upon the total assets of the banking
 26 institution shown on the report of condition of the banking
 27 institution filed as of the preceding thirtieth day of June and the
 28 thirty-first day of December, respectively, as follows:

29 Total Assets

30	31	32	33	34	35	36
Over	But Not	This	Plus	Of Excess		
Million	Over	Amount		Over		
	Million			Million		
\$ 0	\$ 2	\$ 0	.001645020	0		
2	20	3,290	.000205628	2		

35	20	100	6,991	.000164502	20
36	100	200	20,151	.000106926	100
37	200	1,000	30,844	.000090476	200
38	1,000	2,000	103,225	.000074026	1,000
39	2,000	6,000	177,251	.000065801	2,000
40	6,000	20,000	440,454	.000055988	6,000
41	20,000	40,000	1,224,292	.000052670	20,000

42 (2) For each regulated consumer lender, an annual assess-
 43 ment payable on the first day of July, each year, computed upon
 44 the total outstanding gross loan balances and installment sales
 45 contract balances net of unearned interest of the regulated
 46 consumer lender shown on the report of condition of the
 47 regulated consumer lender as of the preceding thirty-first day of
 48 December, respectively, as follows:

49 Total Outstanding Balances

50	Over	But Not	This	Plus	Of Excess
51	Over	Over	Amount		Over
52	\$ 0	\$ 1,000,000	800	-	-
53	1,000,000	5,000,000	800	.000400	1,000,000
54	5,000,000	10,000,000	2,400	.000200	5,000,000
55	10,000,000	-	4,200	.000100	10,000,000

56 If a regulated consumer lender's records or documents are
 57 maintained in more than one location in this state, then eight
 58 hundred dollars may be added to the assessment for each
 59 additional location.

60 (3) For each credit union, an annual assessment as provided
 61 for in section eight, article one, chapter thirty-one-c of this code
 62 as follows:

63 Total Assets

64	Over	But Not	This	Plus	Of Excess
65	Over	Over	Amount		Over
66	\$ 0	\$ 100,000	100	-	-
67	100,000	500,000	300	-	-

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BANKS AND BANKING

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68	500,000	1,000,000	500	-	-
69	1,000,000	5,000,000	500	.000400	1,000,000
70	5,000,000	10,000,000	2,100	.000200	5,000,000
71	10,000,000	-	3,100	.000100	10,000,000

72 (4) For each bank holding company, an annual assessment
73 as provided for in section eight, article eight-a of this chapter.
74 The annual assessment may not exceed ten dollars per million
75 dollars in deposits rounded off to the nearest million dollars.

76 (c) The commissioner shall each December and each June
77 prepare and send to each state banking institution a statement
78 of the amount of the assessment due. The commissioner shall,
79 further, each June, prepare and send to each regulated consumer
80 lender and each state credit union a statement of the amount of
81 the assessment due. The commissioner shall, annually, during
82 the month of January, prepare and send to each bank holding
83 company a statement of the amount of the assessment due.

84 Assessments shall be prescribed annually, not later than the
85 fifteenth day of June, by written order of the commissioner, but
86 shall not exceed the maximums as set forth in subsection (b) of
87 this section. In setting the assessments the primary consider-
88 ation shall be the amount appropriated by the Legislature for the
89 division of banking for the corresponding annual period.
90 Reasonable notice of the assessments shall be made to all
91 interested parties. All orders of the commissioner for the
92 purpose of setting assessments are not subject to the provisions
93 of the West Virginia administrative procedures act, under
94 chapter twenty-nine-a of this code.

95 (d) For making an examination within the state of any other
96 financial institution for which assessments are not provided by
97 this code, the commissioner of banking shall charge and collect
98 from such other financial institution and pay into the special
99 revenue account for the division of banking the actual and
100 necessary costs and expenses incurred in connection therewith,
101 as fixed and determined by the commissioner. Banks that

102 provide only trust or other nondepository services, nonbanking
103 subsidiaries of bank holding companies that provide trust
104 services, nonbanking subsidiaries of banks that provide trust
105 services and any trust entity that is jointly owned by federally
106 insured depository institutions may be assessed for necessary
107 costs and expenses associated with an examination pursuant to
108 this subsection.

109 (e) If the records of an institution are located outside this
110 state, the institution at its option shall make them available to
111 the commissioner at a convenient location within the state, or
112 pay the reasonable and necessary expenses for the commis-
113 sioner or his or her representatives to examine them at the place
114 where they are maintained. The commissioner may designate
115 representatives, including comparable officials of the state in
116 which the records are located, to inspect them on his or her
117 behalf.

118 (f) The commissioner of banking may maintain an action
119 for the recovery of all assessments, costs and expenses in any
120 court of competent jurisdiction.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-2. Use of terms; unlawfully engaging in banking business; penalties; enforcement.

§31A-4-13. Powers of state banking institutions generally.

§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 or affiliated nonbanking entities or entities jointly owned by federally insured depository institutions.

§31A-4-14b. Delegation and fiduciary responsibility.

§31A-4-15. Required annual filings before exercising trust powers; penalties; notice of failure to comply.

§31A-4-16. Trust funds to be kept separate; bookkeeping and management.

§31A-4-17. Oath as fiduciary.

§31A-4-18. Capital as fiduciary security; additional security.

§31A-4-42. Unlawful for persons other than banking institutions to engage in the banking business; penalties.

§31A-4-2. Use of terms; unlawfully engaging in banking business; penalties; enforcement.

1 (a) No person doing business in this state, except a banking
2 institution or a person authorized by the commissioner under
3 the terms of this section, may use or advertise in connection
4 with such business, or as a designation or title thereof, the term
5 “bank”, “banker”, “banking”, “banking company”, “industrial
6 bank”, “savings bank”, or “trust company”, or engage in the
7 banking or trust business in this state. A nonbanking subsidiary
8 of a bank holding company or a nonbanking subsidiary of a
9 banking institution having a bank branch or bank main office in
10 this state that provides trust services pursuant to section
11 fourteen of this article may use the term “trust company” in its
12 title and advertising. A trust entity owned jointly by federally
13 insured depository institutions located within this state and
14 authorized by the commissioner to operate in this state may use
15 the term “trust company” in its title and advertising.

16 (b) It is unlawful for any such person other than banking
17 institutions as herein excepted, to advertise or hold himself,
18 itself, or themselves, as the case may be, out to the public in any
19 manner indicating, directly, indirectly or by implication, that
20 any of them is engaged in the banking or trust business or is
21 authorized and approved to engage therein in this state. A
22 nonbanking subsidiary of a bank holding company or
23 nonbanking subsidiary of a banking institution having a bank
24 branch or bank main office in this state that provides trust
25 services pursuant to section fourteen of this article may hold
26 itself out to the public as engaged in the trust business. A trust
27 entity owned jointly by federally insured depository institutions
28 located within this state and authorized by the commissioner to
29 operate in this state may hold itself out to the public as engaged
30 in the trust business.

31 (c) The commissioner may authorize a person to utilize the
32 term “bank” or “banc” in connection with nonprofit organiza-

33 tions or medical businesses where the term would have a
34 common meaning separate and apart from a financial institution
35 and would not result in confusion to the public (e.g., food bank;
36 medical databank); and in connection with bank holding
37 companies or their nonbanking affiliates where the term denotes
38 the entities' common affiliation and would not result in
39 confusion to the public.

40 (d) Any violation of the provisions of this section consti-
41 tutes a misdemeanor offense, punishable as provided in section
42 fifteen, article eight of this chapter.

43 (e) The commissioner of banking or any one or more
44 banking institutions, acting individually or jointly, may petition
45 the circuit court of the county in which any violation of the
46 provisions of this section occur or are threatened to occur for
47 injunction or other appropriate judicial remedies for enforce-
48 ment of the provisions hereof and the prevention of further or
49 continued violations thereof.

§31A-4-13. Powers of state banking institutions generally.

1 (a) Any state-chartered banking institution has and may
2 exercise all of the powers necessary for, or incidental to, the
3 business of banking and without limiting or restricting such
4 general powers, it shall have the right to buy or discount
5 promissory notes and bonds; negotiate drafts, bills of exchange
6 and other evidences of indebtedness; borrow money; receive
7 deposits on such terms and conditions as its officers may
8 prescribe; buy, sell or exchange bank notes, bullion or coin;
9 loan money on personal or other security; rent safe-deposit
10 boxes and receive on deposit for safekeeping jewelry, plate,
11 stocks, bonds and personal property of whatsoever description;
12 and provide customer services incidental to the business of
13 banking, including, but not limited to, the issuance and servic-
14 ing of and lending money by means of credit cards as letters of
15 credit or otherwise. Any state-chartered banking institution may

16 accept, for payment at a future date not to exceed one year,
17 drafts drawn upon it by its customers. Any state-chartered
18 banking institution may issue letters of credit, with a specified
19 expiration date or for a definite term, authorizing the holders
20 thereof to draw drafts upon it or its correspondents, at sight or
21 on time. Any such banking institution may organize, acquire,
22 own, operate, dispose of and otherwise manage wholly owned
23 subsidiary corporations or entities that are jointly owned with
24 other insured depository institutions for purposes incident to the
25 banking powers and services authorized by this chapter
26 provided any wholly owned or jointly owned entities are subject
27 to federal and state examination and supervision as if the
28 activities are conducted by the bank.

29 (b) Any state-chartered banking institution may acquire,
30 own, hold, use and dispose of real estate which may not be
31 carried on its books at a value greater than the actual cost:
32 *Provided*, That the property must be necessary for the conve-
33 nient transaction of its business, including any buildings, office
34 space or other facilities to rent as a source of income: *Provided*,
35 *however*, That the investment hereafter made may not exceed
36 sixty-five percent of the amount of its capital stock and surplus,
37 unless the consent in writing of the commissioner of banking is
38 first secured.

39 (c) Any state-chartered banking institution may acquire,
40 own, hold, use and dispose of real estate which shall be carried
41 on its books at the lower of fair value or cost as defined in rules
42 promulgated by the commissioner of banking, subject to the
43 following limitations:

44 (1) Such as may be mortgaged to it in good faith as security
45 for debts in its favor;

46 (2) Such as may be conveyed to it in satisfaction of debts
47 previously contracted in the course of its business dealings; and

48 (3) Such as it may purchase at sales under judgments,
49 decrees, trust deeds or mortgages in its favor, or may purchase
50 at private sale, to secure and effectuate the payment of debts
51 due to it.

52 (d) The value at which any real estate is held may not be
53 increased by the addition thereto of taxes, insurance, interest,
54 ordinary repairs or other charges which do not materially
55 enhance the value of the property.

56 (e) Any real estate acquired by any such banking institution
57 under subdivisions (2) and (3), subsection (c) of this section
58 shall be disposed of by the banking institution at the earliest
59 practicable date, but the officers thereof shall have a reasonable
60 discretion in the matter of the time to dispose of such property
61 in order to save the banking institution from unnecessary losses:
62 *Provided*, That in every case such property shall be disposed of
63 within ten years from the time it is acquired by the banking
64 institution, unless an extension of time is given in writing by
65 the commissioner of banking.

66 (f) The sale of insurance by state-chartered banking
67 institutions is subject to the following:

68 Any state-chartered banking institution having its main or
69 a branch office in any place the population of which does not
70 exceed five thousand inhabitants, as shown by the last preced-
71 ing decennial census, through its employees or agents, may,
72 from that place or office, directly or through a controlled
73 subsidiary, act as agent for any fire, life, casualty, liability or
74 other insurance company authorized by the authorities of the
75 state to do business in this state, by soliciting and selling
76 insurance and collecting premiums on policies issued by such
77 company; and may receive for services so rendered all permis-
78 sible fees or commissions as may be agreed upon between the
79 bank and the insurance company for which it may act as agent:
80 *Provided*, That no bank may in any case assume or guarantee

81 the payment on insurance policies issued through its agency by
82 its principal: *Provided, however,* That the bank may not
83 guarantee the truth of any statement made by an insured in
84 filing his, her or its application for insurance. For purposes of
85 this section, a “controlled subsidiary” is one in which the
86 state-chartered banking institution owns at least eighty percent
87 of all classes of stock. This provision is intended to give state-
88 chartered banking institutions parity with national banks
89 operating in this state with regard to the marketing and sale of
90 insurance, notwithstanding the prohibitions and limitations
91 contained in article eight-c or elsewhere in this chapter, and
92 shall be construed consistently with interpretations of 12 U.S.C.
93 §92, the regulations promulgated thereunder, and any successor
94 legislation or regulations.

95 (g) Any state-chartered banking institution may, through its
96 employees or agents, market and sell, as agent, annuities, either
97 at its main office or at any of its branches. The marketing and
98 sale of annuities may be made by the bank, through its employ-
99 ees or agents, directly, or through a controlled subsidiary, as
100 defined in subsection (f) of this section. This provision is
101 intended to give state-chartered banks parity with national
102 banks operating in this state with regard to the sale of annuities,
103 notwithstanding the prohibitions and limitations contained in
104 article eight-c or elsewhere in this chapter.

105 (h) Unless waived in writing by the commissioner, a
106 state-chartered bank may not invest or otherwise expend in
107 excess of ten percent of its capital and surplus calculated at the
108 end of the previous calendar year on the activities permitted by
109 subsections (f) and (g) of this section on an aggregate basis
110 together with any of its approved financially related products
111 and services. For purposes of this section, approved financially
112 related products and services means those products and services
113 offered by a state-chartered bank pursuant to an approved
114 application submitted under article eight-c of this chapter.

115 (i) The commissioner shall promulgate rules in accordance
116 with chapter twenty-nine-a of this code relating to the sale of
117 insurance or annuities, including, but not limited to, rules
118 requiring notice of the intention to engage in such activities and
119 relating to the policies and procedures state-chartered banking
120 institutions should adopt in connection with these activities.

121 (j) Any state-chartered banking institution and its employ-
122 ees or agents engaged in the sale of insurance or annuities
123 permitted hereby must also comply with all applicable require-
124 ments for the sale of such products imposed by the West
125 Virginia commissioner of insurance and by any state or federal
126 securities regulator.

127 (k) No state-chartered banking institution may hereafter
128 invest more than twenty percent of the amount of its capital and
129 surplus in furniture and fixtures, whether the same be installed
130 in a building owned by the banking institution, or in quarters
131 leased by it, unless the consent in writing of the commissioner
132 of banking is first secured.

§31A-4-14. Trust powers of banking institutions.

1 (a) Every state banking institution which files the reports
2 required in section fifteen of this article and which is not
3 otherwise prohibited by the commissioner or federal bank
4 regulators from doing so, has and may exercise the following
5 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, administrator,
10 committee, agent, curator or in any other fiduciary capacity, and
11 to take, assume, accept and execute trusts of every description
12 not inconsistent with the constitution and laws of the United
13 States of America or of this state; and to receive, hold, manage

14 and apply any sinking fund on the terms and for the purposes
15 specified in the instrument creating the fund;

16 (3) To act as registrar, transfer agent or dividend or coupon
17 paying agent for any corporation;

18 (4) To make, hold and dispose of investments and establish
19 common trust funds, and account therefor, pursuant to the
20 provisions of chapter forty-four of this code;

21 (5) To purchase and sell and take charge of and receive the
22 rents, issues and profits of any real estate for other persons or
23 corporations;

24 (6) To act as trustee or agent in any collateral trust and in
25 order to secure the payment of any obligations of any person,
26 firm, private corporation, public corporation, public body or
27 public agency to receive and hold in trust any items of personal
28 property (including, without limitation, notes, bonds, debentures,
29 obligations and certificates for shares of stock) with the
30 right in case of default to sell and dispose of such personal
31 property and to collect, settle and adjust any obligations for the
32 payment of money, and at any sale of personal property held by
33 it, to purchase the same for the benefit of all or any of the
34 holders of the obligations, to secure the payment of which the
35 items of personal property were pledged and delivered to the
36 trustee or agent. Any such sale may be made without any
37 proceedings in any court, and at such times and upon such
38 terms as may be specified in the instrument or instruments
39 creating the trust, or, in the absence of any specification of
40 terms, at the time and upon the terms as the trustee considers
41 reasonable; and

42 (7) To do and perform any act or thing requisite or neces-
43 sary in, or incidental to, the exercise of the general powers
44 herein set forth.

45 (b) All national banks having their main office in this state
46 which have been, or hereafter may be, authorized under the
47 laws of the United States to act as trustee and in other fiduciary
48 capacities in the state of West Virginia shall have all the rights,
49 powers, privileges and immunities conferred hereunder,
50 provided they comply with the requirements hereof.

51 (c) Banks having their main office in another state which
52 lawfully have a branch in this state pursuant to the provisions
53 of federal law or articles eight-d or eight-e of this chapter which
54 have been, or hereafter may be, authorized under the laws of the
55 United States or the laws of the state in which the bank is
56 chartered to act as trustee and in other fiduciary capacities in
57 the state in which their main office is located have all the rights,
58 powers, privileges and immunities conferred hereunder,
59 provided they comply with the requirements hereof.

60 (d) Any bank having its main office or a branch located in
61 this state pursuant to subsection (c) of this section may offer
62 trust services, but not deposit taking services, as described,
63 permitted and authorized in this section or other applicable
64 sections of this code through an affiliated nonbanking subsidi-
65 ary of a bank holding company, a nonbanking entity in which
66 the bank owns an interest along with other insured depository
67 institutions, or its own nonbanking subsidiary if the nonbanking
68 affiliate, subsidiary or jointly owned entity:

69 (1) Maintains a fidelity bond in the same form and amount
70 as would be required of a banking institution providing trust
71 services;

72 (2) Maintains unimpaired tangible capital and surplus of at
73 least two million dollars, or more if determined necessary by
74 the commissioner;

75 (3) Is subject to examination and supervision by the bank's
76 federal or state chartering authority, the federal deposit insur-

77 ance corporation or by the board of governors of the federal
78 reserve system or both the federal deposit insurance corporation
79 and the board of governors of the federal reserve system to the
80 same extent and in the same manner as if the trust services were
81 offered directly by the bank or banks;

82 (4) Has as its primary purpose the provision of trust
83 services; and

84 (5) Registers with the commissioner of banking, on a form
85 prescribed by him or her, at least sixty days prior to providing
86 or offering to provide those services in this state.

**§31A-4-14a. Transfer of fiduciary accounts or relationships
between affiliated subsidiary banks of a bank
holding company or affiliated nonbanking
entities or entities jointly owned by federally
insured depository institutions.**

1 (a) Notwithstanding any other provision of this code and
2 unless the will, deed or other instrument creating a trust or
3 fiduciary account or relationship specifically provides other-
4 wise, any affiliated banking institution, nonbanking subsidiary
5 of a bank, nonbanking subsidiary of a bank holding company,
6 or entity jointly owned by federally insured depository institu-
7 tions which is empowered with and authorized to exercise trust
8 powers within this state, or otherwise performs fiduciary
9 services for a fee, may, without any order or other action on the
10 part of any court or otherwise, transfer to any other affiliate
11 banking institution or nonbanking subsidiary of a bank or
12 affiliate or entity jointly owned by federally insured depository
13 institutions exercising or authorized to exercise trust powers
14 within this state pursuant to the provisions of section fourteen
15 of this article any or all rights, franchises and interests in its
16 fiduciary accounts or relationships, including, but not limited
17 to, any or all appointments, designations and nominations and
18 any other rights, franchises and interests, as trustee, executor,

19 administrator, guardian, committee, escrow agent, transfer and
20 paying agent of stocks and bonds and every other fiduciary
21 capacity; and the transferee or receiving affiliate or jointly
22 owned entity shall hold and enjoy all rights of property,
23 franchises and interests in the same manner and to the same
24 extent as such rights, franchises and interests were held or
25 enjoyed by the transferor affiliate. As to transfers to an affiliate
26 or jointly owned entity pursuant to this section, the receiving
27 affiliate or jointly owned entity shall take, receive, accept, hold,
28 administer and discharge any grants, gifts, bequests, devises,
29 conveyances, trusts, powers and appointments made by deed,
30 deed of trust, will, agreement, order of court or otherwise to, in
31 favor of, or in the name of, the transferor affiliate or jointly
32 owned entity, whether made, executed or entered before or after
33 such transfer and whether to vest or become effective before or
34 after such transfer, as fully and to the same effect as if the
35 receiving affiliate or jointly owned entity had been named in
36 such deed, deed of trust, will, agreement, order or other
37 instrument instead of such transferor affiliate or jointly owned
38 entity. All acts taken or performed in its own name or in the
39 name of or on behalf of the transferor affiliate or jointly owned
40 entity by any receiving affiliate or jointly owned entity as
41 trustee, agent, executor, administrator, guardian, depository,
42 registrar, transfer agent or other fiduciary with respect to
43 fiduciary accounts or relationships transferred pursuant to this
44 section are as good, valid and effective as if made by the
45 transferor entity.

46 (b) For purposes of this section, the term “affiliate” means:
47 (1) Any two or more subsidiaries (as the term “subsidiary” is
48 defined in section one, article eight-a of this chapter) which are
49 “banks” or “banking institutions” (as those terms are defined in
50 section two, article one of this chapter) or nonbanking institu-
51 tions providing trust services pursuant to subsection (d), section
52 fourteen of this article and which have a common bank holding
53 company; (2) any “bank” or “banking institution” (as those

54 terms are defined in section two, article one of this chapter) and
55 its nonbanking subsidiary providing trust services pursuant to
56 the provisions of subsection (d), section fourteen of this article;
57 or (3) any entity created to offer trust services that is jointly
58 owned by federally insured depository institutions authorized
59 to do banking business in this state. For purposes of this
60 section, the term “bank holding company” shall have the
61 meaning set forth in section one, article eight-a of this chapter.

62 (c) At least thirty days before any transfer authorized by
63 this section, the transferor shall send a statement of intent to
64 transfer together with the name and address of the transferee or
65 receiving entity by regular United States mail to the most recent
66 known address of all persons who appear in the records of the
67 transferor as having a vested present interest in the trust,
68 fiduciary account or relationship to be transferred.

69 (d) This section shall be applicable to both domestic and
70 foreign bank holding company affiliates.

§31A-4-14b. Delegation and fiduciary responsibility.

1 (a) Any bank, nonbanking subsidiary of a bank holding
2 company, nonbanking subsidiary of a banking institution or
3 trust entity jointly owned by federally insured depository
4 institutions located in this state and authorized by the commis-
5 sioner to operate in this state that acts as a trustee pursuant to
6 this chapter may delegate any investment, management or
7 administrative function if it exercises reasonable care, judgment
8 and caution in:

9 (1) Selecting the delegate, taking into account the dele-
10 gate’s financial standing and reputation;

11 (2) Establishing the scope and other terms of any delega-
12 tion; and

13 (3) Reviewing periodically the delegate's actions in order
14 to monitor overall performance and compliance with the scope
15 and other terms of any delegation.

16 (b) Notwithstanding any delegation permitted by subsection
17 (a) of this section, any bank, nonbanking subsidiary of a bank
18 holding company, nonbanking subsidiary of a banking institu-
19 tion or trust entity jointly owned by federally insured depository
20 institutions located in this state and authorized by the commis-
21 sioner to operate in this state that acts as a trustee pursuant to
22 this chapter shall retain at all times responsibility for the due
23 performance of any delegated fiduciary function.

**§31A-4-15. Required annual filings before exercising trust pow-
ers; penalties; notice of failure to comply.**

1 No banking institution, nonbanking subsidiary of a bank
2 holding company, nonbanking subsidiary of a bank, or entity
3 jointly owned by federally insured depository institutions
4 authorized to conduct banking business in this state shall
5 exercise any of the trust powers mentioned in this article until
6 it shall have filed with the commissioner of banking an annual
7 report of trust assets each calendar year. To meet the require-
8 ments of this section, the commissioner may accept a report
9 similar to the report filed by banking institutions with federal
10 regulators. If any such banking institution or its nonbanking
11 subsidiary or the nonbanking subsidiary of a bank holding
12 company or entity jointly owned by federally insured depository
13 institutions authorized to do banking business in this state
14 shall exercise, or attempt to exercise, any such powers or rights
15 without having complied with the requirements of this section
16 as to the filing of such report, it is guilty of a misdemeanor and,
17 upon conviction thereof, shall be fined not more than five
18 hundred dollars; and in every such case, whether or not there
19 has been a prosecution or conviction of the company so
20 offending, the commissioner of banking, being satisfied of the
21 facts, may publish a notice of the fact that it has failed to

22 comply with the requirements of this section and is therefore
23 not entitled to exercise the trust powers and rights mentioned in
24 the preceding section. In the event a notice is published as
25 aforesaid, it shall be published as a Class II legal advertisement
26 in compliance with the provisions of article three, chapter fifty-
27 nine of this code, and the publication area for such publication
28 shall be the county or counties in which such entity is offering
29 such trust services. The cost of publication shall be paid by the
30 person failing to comply with this section.

§31A-4-16. Trust funds to be kept separate; bookkeeping and management.

1 Every banking institution, nonbanking subsidiary of a bank
2 holding company, nonbanking subsidiary of a bank or entity
3 jointly owned by federally insured depository institutions
4 authorized to engage in the trust business pursuant to the
5 provisions of section fourteen of this article, shall keep all trust
6 funds and investments separate and distinct from the assets
7 owned by the corporation; and shall keep a separate set of
8 books and records showing in proper detail all transactions so
9 engaged in; and all investments made by such institution as
10 fiduciary shall be so designated that the trust to which such
11 investments shall appertain or belong shall be clearly and
12 distinctly shown on the books of the institution; and such funds
13 shall be held for the uses of the trust designated and for the
14 beneficiaries thereof, and shall not be liable for any other
15 obligations of the institution.

§31A-4-17. Oath as fiduciary.

1 Whenever any court, or the clerk thereof, shall appoint any
2 banking institution, nonbanking subsidiary of a bank holding
3 company, nonbanking subsidiary of a bank or entity jointly
4 owned by federally insured depository institutions exercising
5 trust powers under section fourteen of this article, as trustee,
6 receiver, assignee, guardian, executor, administrator, special

7 commissioner, curator, committee, or in any other fiduciary
8 capacity to perform any duty or execute any trust, the chairman
9 of the board, the president, vice president, secretary, treasurer,
10 trust officer or assistant trust officer of such appointee shall
11 take the oath and make the affirmation required by law of any
12 such fiduciary, before the court or the clerk thereof, or before
13 any other officer authorized to administer oaths.

§31A-4-18. Capital as fiduciary security; additional security.

1 Whenever any banking institution, nonbanking subsidiary
2 of a bank holding company, nonbanking subsidiary of a bank or
3 entity jointly owned by federally insured depository institutions
4 authorized to exercise trust powers pursuant to the provisions
5 of section fourteen of this article, and having complied with the
6 requirements of this article, shall be appointed trustee, assignee,
7 receiver, guardian, executor, administrator, special commis-
8 sioner, curator, committee, or in any other fiduciary capacity,
9 or shall be directed by the order or decree of any court to
10 execute any trust whatsoever, the capital and other assets of the
11 fiduciary corporation shall constitute the security required by
12 law for the faithful performance of its duties and shall be
13 absolutely liable in case of any default whatsoever but, where
14 the liability under any such appointment as trustee, assignee,
15 receiver, guardian, executor, administrator, special commis-
16 sioner, curator or committee, or, in the execution of any trust by
17 order or decree of any court, shall be equal to, or shall exceed
18 the capital and surplus of such fiduciary corporation, the court
19 making such appointment or entering such order or decree may
20 require, and the fiduciary shall give, additional security. No
21 bond shall be required of any banking institution, nonbanking
22 subsidiary of a bank holding company, nonbanking subsidiary
23 of a bank or entity jointly owned by federally insured depository
24 institutions unless such additional security is required.

**§31A-4-42. Unlawful for persons other than banking institutions
to engage in the banking business; penalties.**

1 No person, except banking institutions chartered under the
2 laws of this state, or authorized to conduct a banking business
3 in this state under the laws of the United States of America or
4 those chartered under the laws of another state or the United
5 States of America with branch offices in this state under the
6 provisions of articles eight-d and eight-e of this chapter, may
7 engage in the business of banking or the trust business in the
8 state of West Virginia, or shall receive or accept deposits of
9 money, or borrow money by receiving and giving credits for
10 deposits, or by issuing certificates of deposits or certificates of
11 indebtedness, or by making and negotiating any writing
12 purporting to be a bond, contract or other obligation, the
13 performance of which requires the holder or other party to make
14 deposits of money with the issuer or receive or accept deposits
15 by means of any other plan, pretext, scheme, shift or device:
16 *Provided*, That a nonbanking subsidiary of a bank holding
17 company, a nonbanking subsidiary of a banking institution or
18 an entity jointly owned by federally insured depository institu-
19 tions may provide trust services pursuant to subsection (d),
20 section fourteen of this article.

21 Nothing contained in this section may affect the rights,
22 privileges, objects or purposes delegated to other corporations
23 by the general corporation law or other laws of this state.

24 Any corporation or individual who violates any of the
25 provisions of this section is guilty of a misdemeanor and, upon
26 conviction thereof, shall be fined not more than five thousand
27 dollars and, in addition to penalty, every corporation so
28 offending shall forfeit its corporate franchise and every individ-
29 ual so offending is subject to a further penalty by confinement
30 in the county or regional jail for not more than one year.

ARTICLE 6. NOMINEE REGISTRATION OF FIDUCIARY SECURITIES.

§31A-6-1. Procedures for nominee registration of securities.

§31A-6-2. Duties of trust institutions making use of nominee registration.

§31A-6-3. Civil liabilities and criminal penalties.

§31A-6-4. Limitations on liability in transfers and changes of registration.

§31A-6-5. Registration of property to evade taxes prohibited.

§31A-6-1. Procedures for nominee registration of securities.

1 Any bank, nonbanking subsidiary of a bank holding
2 company, nonbanking subsidiary of a banking institution, or
3 entity jointly owned by federally insured depository institutions
4 authorized to exercise trust powers under section fourteen,
5 article four of this chapter, which holds in a fiduciary capacity
6 any stock, bond, debenture, note, warrant, certificate or other
7 security evidencing ownership or interest, either whole or
8 fractional, in fully paid and nonassessable intangible personal
9 property, may cause the security or evidence of ownership, to
10 be registered and held in the name of a nominee or nominees of
11 the trust institution, or in its own name, without disclosing the
12 fiduciary relationship, but, where the trust institution is acting
13 jointly with some other individual or individuals, it must first
14 secure the written consent of the individual fiduciary or
15 fiduciaries thereto, which consent the individual fiduciary or
16 fiduciaries are hereby authorized to give.

17 The placing of property in the name of a nominee, nomi-
18 nees or in the name of the trust institution, without disclosure
19 of the fiduciary capacity, shall be deemed to be nominee
20 registration under this article and every such registration shall
21 ipso facto constitute a declaration of trust upon the part of the
22 registered owner so far as the fiduciary and the beneficiaries of
23 the fiduciary status are concerned.

24 For purposes of this article, the term "trust institution"
25 means a bank, nonbanking subsidiary of a bank holding
26 company, nonbanking subsidiary of a banking institution or
27 entity jointly owned by federally insured depository institutions
28 authorized to exercise trust powers under section fourteen,
29 article four of this chapter.

§31A-6-2. Duties of trust institutions making use of nominee registration.

1 Every trust institution making use of nominee registration
2 as provided in this article shall:

3 (a) At all times maintain such records as may be necessary
4 to show the actual beneficial ownership of the property so held;

5 (b) At all times retain possession and control of securities
6 or other evidences of ownership which must be kept separate
7 and apart from the assets of such trust institution and assets held
8 in other fiduciary capacities;

9 (c) Secure from the nominee or nominees the endorsements,
10 assignments or other writings as may be necessary to effect
11 retransfer of the securities or other evidences of ownership
12 without notice and such endorsements, assignments or other
13 writings shall be valid and effective as of the date of delivery
14 thereof whether the nominee die before transfer is perfected, or
15 not;

16 (d) Enter into such contracts or agreements with its nomi-
17 nee or nominees as may be necessary to afford full protection
18 to the ownership of its fiduciary account and the beneficiaries
19 thereof;

20 (e) Clearly show in all of its reports and accounts the form
21 of registration under which such securities or evidences of
22 ownership are held.

§31A-6-3. Civil liabilities and criminal penalties.

1 Any trust institution which places property in nominee
2 registration under this article is absolutely liable in civil actions
3 or suits for any or all loss or damage to its fiduciary account or
4 the beneficiaries thereof occasioned by the acts of any of its
5 nominees, or any of its agents, employees, or other persons

6 acting for it with respect to such property, including reasonable
7 attorney fees.

8 Any trust institution or its officers, employees, nominees or
9 agents placing property in nominee registration in violation of
10 any of the provisions of this article is guilty of a misdemeanor
11 and, in addition to civil liability for restitution, shall be pun-
12 ished by a fine of not less than fifty dollars nor more than one
13 thousand dollars.

**§31A-6-4. Limitations on liability in transfers and changes of
registration.**

1 No liability for any loss caused by the acts of the nominee
2 of a trust institution may attach to any transfer agent, registrar,
3 corporation, officer or agent of a corporation, or other person,
4 who, in compliance with the directions of any trust institution
5 acting under the provisions of this article, transfers or changes
6 the registration of any property. The certification of the trust
7 institution that it has complied with the provisions of this article
8 is prima facie evidence of its compliance so far as any transfer
9 agent, registrar, corporation, officer or agent of a corporation,
10 or other person, is concerned.

§31A-6-5. Registration of property to evade taxes prohibited.

1 No trust institution acting under the provisions of this
2 article may cause or permit the use of its name or the name of
3 its nominee or nominees for the purpose of registering property
4 to evade, avoid or relieve itself or any other person, firm or
5 corporation, or the property, from taxation.

**ARTICLE 8E. INTERSTATE BRANCHING BY DE NOVO ENTRY AND
ACQUISITION OF BRANCHES.**

§31A-8E-2. Definitions.

1 As used in this article, unless a different meaning is
2 required by the context, the following words and phrases shall
3 have the following meanings:

4 (a) "Acquisition of a branch" means the acquisition of a
5 branch located in a host state, without either engaging in an
6 "interstate merger transaction" as defined in article eight-d of
7 this chapter or acquiring all or substantially all of the assets of
8 another bank by merger or purchase.

9 (b) "Bank" has the meaning set forth in 12 U.S.C. §1813(h):
10 *Provided*, That the term "bank" does not include any "foreign
11 bank" as defined in 12 U.S.C. §3101(7), except that the term
12 includes any foreign bank organized under the laws of a
13 territory of the United States, Puerto Rico, Guam, American
14 Samoa or the Virgin Islands, the deposits of which are insured
15 by the federal deposit insurance corporation.

16 (c) "Bank holding company" has the meaning set forth in
17 12 U.S.C. §1841(a)(1).

18 (d) "Bank supervisory agency" means:

19 (1) Any agency of another state with primary responsibility
20 for chartering and supervising banks; and

21 (2) The office of the comptroller of the currency, the federal
22 deposit insurance corporation, the board of governors of the
23 federal reserve system and any successor to these agencies.

24 (e) "Board of banking and financial institutions" means the
25 board created pursuant to the provisions of article three of this
26 chapter and referred to herein as "board".

27 (f) "Branch" has the meaning set forth in subsection (f),
28 section two, article one of this chapter. It includes an office of
29 a bank that exercises only trust powers as described by subsec-
30 tion (a), section fourteen, article four of this chapter and a
31 nonbanking subsidiary of a bank holding company or a bank
32 that provides trust services pursuant to the provisions of
33 subsection (d), section fourteen, article four of this chapter.

34 (g) "Commissioner" means the West Virginia commis-
35 sioner of banking then in office and, where appropriate, all of
36 his or her successors and predecessors in office.

37 (h) "Control" shall be construed consistently with the
38 provisions of 12 U.S.C. §1841(a)(2).

39 (i) "De novo branch" means a branch of a bank located in
40 a host state which: (i) Is originally established by the bank as a
41 branch; and (ii) does not become a branch of the bank as a
42 result of: (A) The acquisition of another bank or a branch of
43 another bank; or (B) the merger, consolidation or conversion
44 involving any such bank or branch.

45 (j) "Home state" means:

46 (1) With respect to a state bank, the state by which the bank
47 is chartered;

48 (2) With respect to a national bank, the state in which the
49 main office of the bank is located; or

50 (3) With respect to a foreign bank, the state determined to be
51 the home state of such foreign bank under 12 U.S.C. §3103(c).

52 (k) "Home state regulator" means, with respect to an
53 out-of-state state bank, the bank supervisory agency of the state
54 in which the bank is chartered.

55 (l) "Host state" means a state, other than the home state of
56 a bank, in which the bank maintains, or seeks to establish and
57 maintain, a branch.

58 (m) "Out-of-state bank" means a bank whose home state is
59 a state other than West Virginia.

60 (n) "Out-of-state state bank" means a bank chartered under
61 the laws of any state other than West Virginia.

62 (o) “State” means any state of the United States, the District
63 of Columbia, any territory of the United States, Puerto Rico,
64 Guam, the Virgin Islands and American Samoa.

65 (p) “West Virginia state bank” means a bank chartered
66 under the laws of West Virginia.

CHAPTER 39

(Com. Sub. for H. B. 4581 — By Delegates Anderson,
Border, Beane, Azinger and Modesitt)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article eight, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the Blennerhassett Island historical park; authorizing the natural resources commission to permit and regulate the hunting of white-tailed deer at the park; and promulgation of rules.

Be it enacted by the Legislature of West Virginia:

That section two, article eight, 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 8. BLANNERHASSETT ISLAND HISTORICAL STATE PARK COMMISSION.

§29-8-2. Blennerhassett Island historical state park commission established; members; terms; meeting; quorum; compensation; expenses.

1 There is continued within the bureau of commerce the
2 Blennerhassett Island historical state park commission. All
3 assets, real and personal property, debts, liabilities, duties,
4 powers and authority previously transferred to the bureau of
5 commerce from the Blennerhassett Island historical state park
6 commission are continued in the bureau of commerce. The
7 Blennerhassett Island historical state park commission is
8 maintained as an advisory commission as hereinafter provided.
9 The commission is composed of ten members who must be
10 citizens and residents of this state, appointed by the governor
11 for terms of four years, by and with the advice and consent of
12 the Senate: *Provided*, That the terms of all members previously
13 appointed to the Blennerhassett Island historical state park
14 commission prior to any amendment and reenactment of this
15 section shall continue for the periods originally specified, and
16 no member serving as of the effective date of the amendment
17 and reenactment need be reappointed.

18 Each member must be qualified to carry out the functions
19 of the commission under this article by reason of his or her
20 special interest, training, education or experience.

21 No person may be eligible to appointment as a member who
22 is an officer or member of any political party executive com-
23 mittee; or the holder of any other public office or public
24 employment under the United States government or the
25 government of this state or a political subdivision of this state.
26 Not more than six members may belong to the same political
27 party.

28 The commission shall elect a chairman from among its
29 members on the second Monday in September of each year.

30 All members are eligible for reappointment once by the
31 governor. A member shall, unless sooner removed, continue to
32 serve until his or her term expires and his or her successor has
33 been appointed and has qualified. A vacancy caused by the

34 death, resignation or removal of a member prior to the expira-
35 tion of his or her term shall be filled only for the remainder of
36 term.

37 For the purpose of carrying out its powers, duties and
38 responsibilities under this article, six members of the commis-
39 sion constitute a quorum for the transaction of business. Each
40 member is entitled to one vote. The commission shall meet at
41 a time and place designated by the chairman at least four times
42 each fiscal year. Additional meetings may be held when called
43 by the chairman or when requested by five members of the
44 commission or by the governor. All meetings shall comply with
45 the provisions of article nine-a, chapter six of this code. Each
46 member shall be reimbursed for all reasonable and necessary
47 expenses actually incurred in the performance of his or her
48 duties under this article.

49 The commission shall advise the bureau of commerce in all
50 matters relating to the development, establishment and mainte-
51 nance of the Blennerhassett Island historical state park.

52 All employee positions in the former Blennerhassett Island
53 historical state park commission transferred to the division of
54 commerce by a previous amendment and reenactment of this
55 section are continued in the classified service of the civil
56 service system pursuant to article six of this chapter. Any
57 person included in the classified service by the provisions of
58 this section who is employed in any of these positions as of the
59 effective date of any amendment and reenactment of this
60 section shall not be required to take and pass qualifying or
61 competitive examinations upon or as a condition to being added
62 to the classified service: *Provided*, That no person included in
63 the classified service by the provisions of this section who is
64 employed in any of these positions as of the effective date of
65 any amendment and reenactment of this section, be thereafter
66 severed, removed or terminated from such employment prior to
67 his or her entry into the classified service except for cause as if

68 the person had been in the classified service when severed,
69 removed or terminated.

70 Notwithstanding any provision of this code to the contrary,
71 the bureau of commerce is vested with exclusive regulatory
72 authority over watercraft transport of visitors to the
73 Blennerhassett Island portion of the Blennerhassett Island
74 historical state park, and the watercraft transport of these
75 visitors is not subject to the provisions of article eighteen,
76 chapter seventeen of this code.

77 Notwithstanding the provisions of section fifty-eight, article
78 two, chapter twenty of this code, the natural resources commis-
79 sion shall promulgate rules pursuant to the provisions of section
80 seventeen, article one, chapter twenty and section three, article
81 one, chapter twenty-nine-a of this code to permit and regulate
82 the hunting of white-tailed deer at Blennerhassett Island
83 historical state park.

CHAPTER 40

(Com. Sub. for H. B. 4058 —By Delegates Modesitt, Azinger and Trump)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, twelve and twenty-four, article five-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to providing the state athletic commission authority over full contact boxing and other boxing events that also use elements of other fighting disciplines; authority to promulgate rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5A. STATE ATHLETIC COMMISSION.

§29-5A-3. Commission to have sole control of boxing, etc., matches; licenses; municipality not to tax boxing, etc., club.

§29-5A-12. Length of rounds; weight of gloves.

§29-5A-24. Rules and regulations governing contestants and matches.

§29-5A-3. Commission to have sole control of boxing, etc., matches; licenses; municipality not to tax boxing, etc., club.

1 (a) The commission has sole direction, management and
2 control of the jurisdiction over all amateur, professional and
3 semiprofessional boxing, sparring matches and exhibitions, or
4 any form thereof, to be conducted, held or given within the state
5 by any club, individual, corporation or association. As used in
6 this article, the term "boxing" includes any fighting event that
7 includes or permits the striking of an opponent with a closed
8 fist, even if wrestling moves, elements of martial arts, or
9 striking an opponent with the feet are also permitted. No
10 boxing, sparring or exhibition may be conducted, held or given
11 within the state except pursuant to the commission's authority
12 and held in accordance with this article. The commission may,
13 in its discretion, issue and, at its pleasure, revoke the license to
14 conduct, hold or give boxing or sparring matches or exhibitions
15 to any club, corporation, association or individual. Every
16 license is subject to rules the commission may prescribe. Every
17 application for a license shall be on a blank form provided by
18 the commission. No promoter's license may be granted to any
19 club, corporation, association or individual, unless the signer of
20 the application is a bona fide resident of the state of West
21 Virginia. Upon application of the promoter's license, the
22 promoter shall pay a state license fee of one hundred twenty-
23 five dollars for one year. The fee shall be in the form of a

24 certified check or money order and shall be issued to the
25 treasurer of the state of West Virginia to be deposited in the
26 general fund. If the license is not granted, the treasurer shall
27 refund the full amount. Nonprofit chartered and charitable
28 organizations are exempt from this license fee for all amateur
29 events. No municipal corporation may impose any license tax
30 on boxing, sparring or exhibition clubs, notwithstanding the
31 provisions of any section of the code respecting municipal taxes
32 and licenses. The granting of a license to a club by the commis-
33 sion, or the holding of a license by a club, individual, corpora-
34 tion or association, does not prevent the commission from
35 canceling or revoking the license to conduct an event, as
36 provided in this section.

37 (b) In exercising its jurisdiction over professional,
38 semiprofessional and amateur boxing, sparring matches and
39 exhibitions, the commission shall follow the current United
40 States boxing authority rules and requirements to enable the
41 proper sanctioning of all participants, referees, judges and
42 matches or exhibitions conducted under the rules described in
43 subdivision (1), subsection (c), section twenty-four of this
44 article and shall cooperate fully with the boxing authority in
45 order that the sanctioning be extended to state boxers. For full
46 contact boxing events and other boxing events that follow
47 nontraditional rules, the commission may impose any limita-
48 tions or restrictions reasonably necessary to guarantee the
49 safety of the participants and the fair and honest conducting of
50 the matches or exhibitions and may refuse to license any event
51 that poses an unreasonable degree of risk to the participants.

§29-5A-12. Length of rounds; weight of gloves.

1 No boxing or sparring match or exhibition shall be more
2 than fifteen rounds of three minutes each in length with
3 intermission of one minute each between rounds; and the
4 contestants shall wear, during such contests, gloves weighing at
5 least ten ounces, unless the commission finds that for limited
6 categories or classes of fights a lesser weight is sufficient for

7 the protection of the participants and authorizes the lesser
8 weight by legislative rule.

§29-5A-24. Rules and regulations governing contestants and matches.

1 (a) The commission shall promulgate its rules in compli-
2 ance with the provisions of article three of chapter twenty-nine-
3 a of this code.

4 (b) The commission shall promulgate such rules as it
5 determines to be necessary to regulate professional and
6 semiprofessional boxers, and professional and semiprofessional
7 boxing matches and exhibitions. For full contact boxing and
8 other boxing events that follow nontraditional rules, rules
9 guaranteeing the safety of the participants and the fair and
10 honest conducting of the matches or exhibitions are authorized.

11 (c) The commission shall promulgate separate rules for
12 amateur boxers and amateur boxing, sparring matches and
13 exhibitions as follows:

14 (1) Rules which comply with the requirements of the rules
15 of the current United States amateur boxing authority to the
16 extent that any boxer complying with them will be eligible to
17 participate in any state, national or international boxing match
18 sanctioned by the current United States amateur boxing
19 authority or the international amateur boxing association.

20 (2) Rules which may differ from the rules of the current
21 United States amateur boxing authority but which adequately
22 guarantee the safety of the participants and the fair and honest
23 conducting of the matches or exhibitions. As a part of these
24 rules, the commission shall include a requirement that all
25 boxers participating in matches or exhibitions conducted under
26 these rules be informed prior to such participation that such
27 participation will disqualify them from participating in state,
28 national or international matches and exhibitions sanctioned by
29 the current United States amateur boxing authority or the
30 international amateur boxing association.

CHAPTER 41

(S. B. 137 — By Senators Craig, Walker and Plymale)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections six and eight, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the capital company act; requiring venture capital funds to be held in escrow until an applicant business provides proof of the creation of jobs to otherwise qualify for the provision of funding; providing for four million dollars in authorized credits for the fiscal year beginning on the first day of July, two thousand; and requiring two million dollars of that amount be allocated to small business investment companies.

Be it enacted by the Legislature of West Virginia:

That sections six and eight, 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-1-6. Qualification of West Virginia capital companies.

§5E-1-8. Tax credits.

§5E-1-6. Qualification of West Virginia capital companies.

- 1 (a) The authority shall qualify West Virginia capital
- 2 companies commencing after the effective date of this article.
- 3 A company seeking to be qualified as a West Virginia capital
- 4 company shall make written application to the authority on
- 5 forms provided by the authority. The application shall contain
- 6 the information required by section ten of this article. Further,

7 the application shall specify the level of capitalization of the
8 company.

9 (b) The application shall set forth the applicant's purpose.

10 (c) The authority may certify West Virginia capital compa-
11 nies in existence after the first day of July, one thousand nine
12 hundred eighty-six.

13 (d) An applicant shall establish an escrow account located
14 in West Virginia, into which funds invested in the applicant
15 shall be deposited and held for the period of time between their
16 receipt by the applicant and the designation of the applicant as
17 a qualified company. The funds shall not be invested by the
18 applicant until it is designated by the authority as a qualified
19 company: *Provided, That*, in addition to the minimum standards
20 set forth in section seven of this article, no applicant may be
21 designated a qualified company without providing sufficient
22 proof to the authority that the proposed project will sufficiently
23 promote the purpose of providing employment in accordance
24 with the provisions of section three, article fifteen, chapter
25 thirty-one of this code. In the event the authority does not
26 designate the applicant a qualified company, such funds shall
27 be returned to the investors, if requested by the investors.

28 (e) A West Virginia capital company may not qualify or be
29 issued a certification under this article unless the company
30 holds a valid business registration certificate issued pursuant to
31 article twelve, chapter eleven of this code. A company exempt
32 from registration under article twelve may qualify and be
33 certified under this article upon proof of its exemption.

§5E-1-8. Tax credits.

1 (a) The total amount of tax credits authorized for a single
2 qualified company may not exceed two million dollars.
3 Capitalization of the company may be increased pursuant to
4 rule of the authority.

5 (b) (1) The total credits authorized by the authority for all
6 companies may not exceed a total of ten million dollars each
7 fiscal year: *Provided*, That for the fiscal year beginning on the
8 first day of July, one thousand nine hundred ninety-nine, the
9 total credits authorized for all companies may not exceed a total
10 of six million dollars: *Provided, however*, That for the fiscal
11 year beginning on the first day of July, two thousand, the total
12 credits authorized for all companies may not exceed a total of
13 four million dollars: *Provided further*, That the capital base of
14 any such qualified company shall be invested in accordance
15 with the provisions of this article. The authority shall allocate
16 these credits to qualified companies in the order that the
17 companies are qualified.

18 (2) Not more than one million seven hundred fifty thousand
19 dollars of the credits allowed under subdivision (1) of this
20 subsection may be allocated by the authority during each fiscal
21 year to one or more small business investment companies
22 described in this subdivision: *Provided*, That for the fiscal year
23 beginning on the first day of July, two thousand, two million
24 dollars of the credits allowed under subdivision (1) of this
25 subsection shall be allocated by the authority during that fiscal
26 year to one or more small business investment companies
27 described in this subdivision. The remainder of the tax credits
28 allowed during the fiscal year shall be allocated to qualified
29 companies other than those small business investment compa-
30 nies. The portion of the tax credits allowed for small business
31 investment companies described in this subdivision shall be
32 allowed only if allocated by the authority during the first ninety
33 days of the fiscal year, and may only be allocated to companies
34 that: (A) Were organized on or after the first day of January,
35 one thousand nine hundred ninety-nine; (B) have registered for
36 licensure by the small business administration as a small
37 business investment company under the small business invest-
38 ment act; and (C) have certified in writing to the authority on
39 the application for credits under this act that the company will
40 diligently seek to obtain and thereafter diligently seek to invest
41 leverage available to such small business investment companies

42 under the small business investment act. These credits shall be
43 allocated by the authority in the order that the companies are
44 qualified. Any credits which have not been allocated to quali-
45 fied companies meeting the requirements of this subdivision
46 relating to small business investment companies during the first
47 ninety days of the fiscal year shall be made available and
48 allocated to other qualified companies in the manner prescribed
49 in this section for qualified companies generally.

50 (c) Any investor, including an individual, partnership or
51 corporation who makes a capital investment in a qualified West
52 Virginia capital company, is entitled to a tax credit equal to
53 fifty percent of the investment, except as otherwise provided in
54 this section or in this article. The credit allowed by this article
55 shall be taken after all other credits allowed by chapter eleven
56 of this code. It shall be taken against the same taxes and in the
57 same order as set forth in subsections (c) through (i), inclusive,
58 section five, article thirteen-c, chapter eleven of this code. The
59 credit for investments by a partnership or by a corporation
60 electing to be treated as a Subchapter S corporation may be
61 divided pursuant to election of partners or shareholders.

62 (d) The tax credit allowed under this section is to be
63 credited against the taxpayer's tax liability for the taxable year
64 in which the investment in a qualified West Virginia capital
65 company is made. If the amount of the tax credit exceeds the
66 taxpayer's tax liability for the taxable year, the amount of the
67 credit which exceeds the tax liability for the taxable year may
68 be carried to succeeding taxable years until used in full, or until
69 forfeited: *Provided*, That: (i) Tax credits may not be carried
70 forward beyond fifteen years; and (ii) tax credits may not be
71 carried back to prior taxable years. Any tax credit remaining
72 after the fifteenth taxable year is forfeited.

73 (e) The tax credit provided for in this section is available
74 only to those taxpayers whose investment in a qualified West
75 Virginia capital company occurs after the first day of July, one
76 thousand nine hundred eighty-six.

77 (f) The tax credit allowed under this section may not be
78 used against any liability the taxpayer may have for interest,
79 penalties or additions to tax.

80 (g) Notwithstanding any provision in this code to the
81 contrary, the tax commissioner shall publish in the state register
82 the name and address of every taxpayer, and the amount, by
83 category, of any credit asserted under this article. The catego-
84 ries by dollar amount of credit received are as follows:

85 (1) More than \$1.00, but not more than \$50,000;

86 (2) More than \$50,000, but not more than \$100,000;

87 (3) More than \$100,000, but not more than \$250,000;

88 (4) More than \$250,000, but not more than \$500,000;

89 (5) More than \$500,000, but not more than \$1,000,000;

90 (6) More than \$1,000,000.

CHAPTER 42

(S. B. 216 — By Senator Ball)

[Passed March 9, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen-a, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to clarifying to whom notice is to be given upon installation, repair or maintenance of a carbon monoxide detector.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-16a. Smoke detectors in one- and two-family dwellings; carbon monoxide detectors in residential units; penalty.

1 (a) On or before the first day of July, one thousand nine
2 hundred ninety-one, an operational smoke detector shall be
3 installed in the immediate vicinity of each sleeping area within
4 all one- and two-family dwellings, including any “manufactured
5 home” as that term is defined in subsection (j), section two,
6 article nine, chapter twenty-one of this code. Such smoke
7 detector shall be capable of sensing visible or invisible particles
8 of combustion and shall meet the specifications and be installed
9 as provided for in the National Fire Protection Association
10 Standard 74, “Standard for the Installation, Maintenance and
11 Use of Household Fire Warning Equipment”, 1989 edition, and
12 in the manufacturer’s specifications. When activated, the smoke
13 detector shall provide an alarm suitable to warn the occupants
14 of the danger of fire.

15 (b) The owner of each dwelling described in subsection (a)
16 of this section shall provide, install and replace the operational
17 smoke detectors required by this section. So as to assure that the
18 smoke detector continues to be operational, in each dwelling
19 described in subsection (a) of this section which is not occupied
20 by the owner thereof, the tenant in any such dwelling shall
21 perform routine maintenance on the smoke detectors within
22 such dwelling.

23 (c) Where a dwelling is not occupied by the owner and is
24 occupied by an individual who is deaf or hearing impaired, the
25 owner shall, upon written request by or on behalf of such
26 individual, provide and install a smoke detector with a light
27 signal sufficient to warn the deaf or hearing-impaired individual
28 of the danger of fire.

29 (d) An automatic fire sprinkler system installed in accor-
30 dance with the National Fire Protection Association Standard
31 13D, "Standard for the Installation of Sprinkler Systems in
32 Residential Occupancies", 1989 edition, may be provided in
33 lieu of smoke detectors.

34 (e) After investigating a fire in any dwelling described in
35 subsection (a) of this section, the local investigating authority
36 shall issue to the owner a smoke detector installation order in
37 the absence of the required smoke detectors.

38 (f) After the first day of July, one thousand nine hundred
39 ninety-eight, an operational carbon monoxide detector with a
40 suitable alarm shall be installed in accordance with the manu-
41 facturer's direction:

42 (1) In any newly constructed residential unit which has a
43 fuel-burning heating or cooking source, including, but not
44 limited to, an oil or gas furnace or stove; and

45 (2) In any residential unit which is connected to a newly
46 constructed building, including, but not limited to, a garage,
47 storage shed or bar, which has a fuel-burning heating or
48 cooking source, including, but not limited to, an oil or gas
49 furnace or stove.

50 (g) Any person installing a carbon monoxide detector in a
51 residential unit shall inform the owner, lessor or the occupant
52 or occupants of the residential unit of the dangers of carbon
53 monoxide poisoning and instructions on the operation of the
54 carbon monoxide detector installed.

55 (h) When repair or maintenance work is undertaken on a
56 fuel-burning heating or cooking source or a venting system in
57 an existing residential unit, the person making the repair or
58 performing the maintenance shall inform the owner, lessor or
59 the occupant or occupants of the unit being served by the fuel-
60 burning heating or cooking source or venting system of the
61 dangers of carbon monoxide poisoning and recommend the
62 installation of a carbon monoxide detector.

63 (i) Any person who violates any provision of this section is
64 guilty of a misdemeanor and, upon conviction thereof, shall be
65 fined not less than fifty dollars nor more than one hundred
66 dollars.

67 (j) A violation of this section shall not be deemed by virtue
68 of such violation to constitute evidence of negligence or
69 contributory negligence or comparative negligence in any civil
70 action or proceeding for damages.

71 (k) A violation of this section shall not constitute a defense
72 in any civil action or proceeding involving any insurance
73 policy.

74 (l) Nothing in this section shall be construed to limit the
75 rights of any political subdivision in this state to enact laws
76 imposing upon owners of any dwelling or other building
77 described in subsection (a) or (f) of this section a greater duty
78 with regard to the installation, repair and replacement of the
79 smoke detectors or carbon monoxide detectors than is required
80 by this section.

CHAPTER 43

(Com. Sub. for S. B. 90 — By Senators Ross, Ball, Sharpe,
Anderson, Mitchell, Unger, Hunter and Love)

[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirteen-a, relating to graves on private lands; authorizing certain persons access to cemeteries or graves on private lands for stated purposes;

requiring the persons to act responsibly and making the persons liable to owners for damage; limiting the use of motor vehicles to access cemeteries and graves; creating a cause of action for injunctive relief; and application of the article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. GRAVES LOCATED UPON PRIVATELY OWNED LANDS.

§37-13A-1. Access of certain persons to cemeteries and graves located on private land.

§37-13A-2. Purposes for which access is allowed.

§37-13A-3. Conduct of persons accessing cemeteries or grave sites; persons liable for damage.

§37-13A-4. Limiting the use of motor vehicles on private lands.

§37-13A-5. Cause of action for injunctive relief.

§37-13A-6. Application of article.

§37-13A-1. Access of certain persons to cemeteries and graves located on private land.

1 For the purposes set forth in section two of this article, the
 2 state recognizes that the owners of private land on which a
 3 cemetery or graves are located have a duty to allow ingress and
 4 egress to the cemetery or graves by family members, close
 5 friends and descendants of deceased persons buried there, by
 6 any cemetery plot owner, or by any person engaging in geneal-
 7 ogy research who has given reasonable notice to the owner of
 8 record or to the occupant of the property or to both the owner
 9 and occupant. The access route may be designated by the
 10 landowner if no traditional access route is obviously visible by
 11 a view of the property.

§37-13A-2. Purposes for which access is allowed.

1 The right of ingress and egress granted to persons specified
 2 in section one of this article shall be limited to the purposes of:

- 3 (1) Visiting graves; (2) maintaining the grave site or cemetery;
- 4 (3) burying a deceased person in a cemetery plot by those
- 5 granted rights of burial to that plot; and (4) conducting geneal-
- 6 ogy research.

§37-13A-3. Conduct of persons accessing cemeteries or grave sites; persons liable for damage.

- 1 All persons exercising access to a grave site or cemetery
- 2 under the provisions of this article are responsible for conduct-
- 3 ing themselves in a manner that does not damage the private
- 4 lands, the cemetery or grave sites and are liable to the owner of
- 5 the private lands for any damage caused as a result of their
- 6 access.

§37-13A-4. Limiting the use of motor vehicles on private lands.

- 1 The access to a cemetery or grave site on private lands
- 2 conferred by this article does not include the right to operate
- 3 motor vehicles on the private lands, unless there is a road or
- 4 adequate right-of-way that permits access by motor vehicle and
- 5 the owner has given written permission to use the road or right-
- 6 of-way or way of necessity.

§37-13A-5. Cause of action for injunctive relief.

- 1 Any person denied reasonable access under the provisions
- 2 of this section, including the denial of permission to use
- 3 vehicular access, may institute a proceeding in the circuit court
- 4 of the county in which the cemetery or grave site is located to
- 5 enjoin the owner of the private lands on which the cemetery or
- 6 grave site is located, or his or her agent, from denying the
- 7 person reasonable ingress and egress to the cemetery or grave
- 8 site for the purposes set forth in section two of this article. In
- 9 granting such relief, the court may set the frequency of access,
- 10 hours and duration of the access.

§37-13A-6. Application of article.

- 1 The provisions of this article shall not apply to any deed or
- 2 other written instrument executed prior to the effective date of
- 3 this article which creates or reserves a cemetery or grave site on
- 4 private property and which specifically sets forth terms of
- 5 access.

CHAPTER 44

(Com. Sub. for S. B. 129 — By Senators Kessler, Dawson,
Minard, Oliverio, Redd, Ross, Snyder, Deem,
Mitchell, McKenzie and Edgell)

[Passed February 18, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article ten, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said code by adding thereto a new chapter, designated chapter forty-eight-c, relating to adopting the uniform child custody jurisdiction and enforcement act.

Be it enacted by the Legislature of West Virginia:

That article ten, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said code be amended by adding thereto a new chapter, designated chapter forty-eight-c, to read as follows:

CHAPTER 48C. UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT.

Article

- 1. General Provisions.**
- 2. Jurisdiction.**
- 3. Enforcement.**
- 4. Miscellaneous Provisions.**

ARTICLE 1. GENERAL PROVISIONS.

- §48C-1-101. Short title.
- §48C-1-102. Definitions.
- §48C-1-103. Proceedings governed by other law.
- §48C-1-104. Application to Indian tribes.
- §48C-1-105. International application of chapter.
- §48C-1-106. Effect of child custody determination.
- §48C-1-107. Priority.

§48C-1-108. Notice to persons outside state.

§48C-1-109. Appearance and limited immunity.

§48C-1-110. Communication between courts.

§48C-1-111. Taking testimony in another state.

§48C-1-112. Cooperation between courts; preservation of records.

§48C-1-101. Short title.

- 1 This chapter may be cited as the “Uniform Child Custody
- 2 Jurisdiction and Enforcement Act”.

§48C-1-102. Definitions.

- 1 (a) “Abandoned” means left without provision for reason-
- 2 able and necessary care or supervision.

- 3 (b) “Child” means an individual who has not attained
- 4 eighteen years of age.

- 5 (c) “Child custody determination” means a judgment,
- 6 decree or other order of a court providing for the legal custody,
- 7 physical custody or visitation with respect to a child. The term
- 8 includes a permanent, temporary, initial and modification order.
- 9 The term does not include an order relating to child support or
- 10 other monetary obligation of an individual.

- 11 (d) “Child custody proceeding” means a proceeding in
- 12 which legal custody, physical custody or visitation with respect
- 13 to a child is an issue. The term includes a proceeding for
- 14 divorce, separation, neglect, abuse, dependency, guardianship,
- 15 paternity, termination of parental rights and protection from
- 16 domestic violence, in which the issue may appear. The term
- 17 does not include a proceeding involving juvenile delinquency,
- 18 contractual emancipation or enforcement under article three of
- 19 this chapter.

- 20 (e) “Commencement” means the filing of the first pleading
- 21 in a proceeding.

22 (f) "Court" means an entity authorized under the law of a
23 state to establish, enforce or modify a child custody determina-
24 tion. Reference to a court of West Virginia means a court of
25 record.

26 (g) "Home state" means the state in which a child lived
27 with a parent or a person acting as a parent for at least six
28 consecutive months immediately before the commencement of
29 a child custody proceeding. In the case of a child less than six
30 months of age, the term means the state in which the child lived
31 from birth with any of the persons mentioned. A period of
32 temporary absence of any of the mentioned persons is part of
33 the period.

34 (h) "Initial determination" means the first child custody
35 determination concerning a particular child.

36 (i) "Issuing court" means the court that makes a child
37 custody determination for which enforcement is sought under
38 this chapter.

39 (j) "Issuing state" means the state in which a child custody
40 determination is made.

41 (k) "Modification" means a child custody determination
42 that changes, replaces, supersedes or is otherwise made after a
43 previous determination concerning the same child, whether or
44 not it is made by the court that made the previous determina-
45 tion.

46 (l) "Person" means an individual; corporation; business
47 trust; estate; trust; partnership; limited liability company;
48 association; joint venture; government, governmental subdivi-
49 sion, agency or instrumentality; public corporation; or any other
50 legal or commercial entity.

51 (m) "Person acting as a parent" means a person, other than
52 a parent, who:

53 (1) Has physical custody of the child or has had physical
54 custody for a period of six consecutive months, including any
55 temporary absence, within one year immediately before the
56 commencement of a child custody proceeding; and

57 (2) Has been awarded legal custody by a court or claims a
58 right to legal custody under the law of this state.

59 (n) "Physical custody" means the physical care and
60 supervision of a child.

61 (o) "State" means a state of the United States, the District
62 of Columbia, Puerto Rico, the United States Virgin Islands, or
63 any territory or insular possession subject to the jurisdiction of
64 the United States.

65 (p) "Tribe" means an Indian tribe or band, or Alaskan
66 Native village, which is recognized by federal law or formally
67 acknowledged by a state.

68 (q) "Warrant" means an order issued by a court authorizing
69 law-enforcement officers to take physical custody of a child.

§48C-1-103. Proceedings governed by other law.

1 This chapter does not govern an adoption proceeding or a
2 proceeding pertaining to the authorization of emergency
3 medical care for a child.

§48C-1-104. Application to Indian tribes.

1 (a) A child custody proceeding that pertains to an Indian
2 child as defined in the Indian Child Welfare Act, 25 U.S.C. §
3 1901 et seq., is not subject to this chapter to the extent that it is
4 governed by the Indian Child Welfare Act.

5 (b) A court of this state shall treat a tribe as if it were a state
6 of the United States for purposes of applying articles one and
7 two of this chapter.

8 (c) A child custody determination made by a tribe under
9 factual circumstances in substantial conformity with the
10 jurisdictional standards of this chapter must be recognized and
11 enforced under article three of this chapter.

§48C-1-105. International application of chapter.

1 (a) A court of this state shall treat a foreign country as if it
2 were a state of the United States for purpose of applying articles
3 one and two of this chapter.

4 (b) Except as otherwise provided in subsection (c) of this
5 section, a child custody determination made in a foreign
6 country under factual circumstances in substantial conformity
7 with the jurisdictional standards of this chapter must be
8 recognized and enforced under article three of this chapter.

9 (c) A court of this state need not apply this chapter if the
10 child custody law of a foreign country violates fundamental
11 principles of human rights.

§48C-1-106. Effect of child custody determination.

1 A child custody determination made by a court of this state
2 that had jurisdiction under this chapter binds all persons who
3 have been served in accordance with the laws of this state or
4 notified in accordance with section one hundred eight of this
5 article or who have submitted to the jurisdiction of the court,
6 and who have been given an opportunity to be heard. As to
7 those persons the determination is conclusive as to all decided
8 issues of law and fact except to the extent the determination is
9 modified.

§48C-1-107. Priority.

1 If a question of existence or exercise of jurisdiction under
2 this chapter is raised in a child custody proceeding, the ques-

3 tion, upon request of a party, must be given priority on the
4 calendar and handled expeditiously.

§48C-1-108. Notice to persons outside state.

1 (a) Notice required for the exercise of jurisdiction when a
2 person is outside this state may be given in a manner prescribed
3 by the law of this state for service of process or by the law of
4 the state in which the service is made. Notice must be given in
5 a manner reasonably calculated to give actual notice but may be
6 by publication if other means are not effective.

7 (b) Proof of service may be made in the manner prescribed
8 by the law of this state or by the law of the state in which the
9 service is made.

10 (c) Notice is not required for the exercise of jurisdiction
11 with respect to a person who submits to the jurisdiction of the
12 court.

§48C-1-109. Appearance and limited immunity.

1 (a) A party to a child custody proceeding, including a
2 modification proceeding, or a petitioner or respondent in a
3 proceeding to enforce or register a child custody determination
4 is not subject to personal jurisdiction in this state for another
5 proceeding or purpose solely by reason of having participated,
6 or having been physically present for the purpose of participat-
7 ing, in the proceeding.

8 (b) A person who is subject to personal jurisdiction in this
9 state on a basis other than physical presence is not immune
10 from service of process in this state. A party present in this state
11 who is subject to the jurisdiction of another state is not immune
12 from service of process allowable under the laws of that state.

13 (c) The immunity granted by subsection (a) of this section
14 does not extend to civil litigation based on acts unrelated to the

15 participation in a proceeding under this chapter committed by
16 an individual while present in this state.

§48C-1-110. Communication between courts.

1 (a) A court of this state may communicate with a court in
2 another state concerning a proceeding arising under this
3 chapter.

4 (b) The court may allow the parties to participate in the
5 communication. If the parties are not able to participate in the
6 communication, they must be given the opportunity to present
7 facts and legal arguments before a decision on jurisdiction is
8 made.

9 (c) Communication between courts on schedules, calendars,
10 court records and similar matters may occur without informing
11 the parties. A record need not be made of the communication.

12 (d) Except as otherwise provided in subsection (c) of this
13 section, a record must be made of a communication under this
14 section. The parties must be informed promptly of the commu-
15 nication and granted access to the record.

16 (e) For the purposes of this section, "record" means
17 information that is inscribed on a tangible medium or that is
18 stored in an electronic or other medium and is retrievable in
19 perceivable form.

§48C-1-111. Taking testimony in another state.

1 (a) In addition to other procedures available to a party, a
2 party to a child custody proceeding may offer testimony of
3 witnesses who are located in another state, including testimony
4 of the parties and the child, by deposition or other means
5 allowable in this state for testimony taken in another state. The
6 court on its own motion may order that the testimony of a
7 person be taken in another state and may prescribe the manner
8 in which and the terms upon which the testimony is taken.

9 (b) A court of this state may permit an individual residing
10 in another state to be deposed or to testify by telephone,
11 audiovisual means, or other electronic means before a desig-
12 nated court or at another location in that state. A court of this
13 state shall cooperate with courts of other states in designating
14 an appropriate location for the deposition or testimony.

15 (c) Documentary evidence transmitted from another state
16 to a court of this state by technological means that do not
17 produce an original writing may not be excluded from evidence
18 on an objection based on the means of transmission.

§48C-1-112. Cooperation between courts; preservation of records.

1 (a) A court of this state may request the appropriate court
2 of another state to:

3 (1) Hold an evidentiary hearing;

4 (2) Order a person to produce or give evidence pursuant to
5 procedures of that state;

6 (3) Order that an evaluation be made with respect to the
7 custody of a child involved in a pending proceeding;

8 (4) Forward to the court of this state a certified copy of the
9 transcript of the record of the hearing, the evidence otherwise
10 presented and any evaluation prepared in compliance with the
11 request; and

12 (5) Order a party to a child custody proceeding or any
13 person having physical custody of the child to appear in the
14 proceeding with or without the child.

15 (b) Upon request of a court of another state, a court of this
16 state may hold a hearing or enter an order described in subsec-
17 tion (a) of this section.

18 (c) Travel and other necessary and reasonable expenses
19 incurred under subsections (a) and (b) of this section may be
20 assessed against the parties according to the law of this state.

21 (d) A court of this state shall preserve the pleadings, orders,
22 decrees, records of hearings, evaluations and other pertinent
23 records with respect to a child custody proceeding until the
24 child attains eighteen years of age. Upon appropriate request by
25 a court or law-enforcement official of another state, the court
26 shall forward a certified copy of those records.

ARTICLE 2. JURISDICTION.

§48C-2-201. Initial child custody jurisdiction.

§48C-2-202. Exclusive, continuing jurisdiction.

§48C-2-203. Jurisdiction to modify determination.

§48C-2-204. Temporary emergency jurisdiction.

§48C-2-205. Notice; opportunity to be heard; joinder.

§48C-2-206. Simultaneous proceedings.

§48C-2-207. Inconvenient forum.

§48C-2-208. Jurisdiction declined by reason of conduct.

§48C-2-209. Information to be submitted to court.

§48C-2-210. Appearance of parties and child.

§48C-2-201. Initial child custody jurisdiction.

1 (a) Except as otherwise provided in section two hundred
2 four of this article, a court of this state has jurisdiction to make
3 an initial child custody determination only if:

4 (1) This state is the home state of the child on the date of
5 the commencement of the proceeding, or was the home state of
6 the child within six months before the commencement of the
7 proceeding, and the child is absent from this state but a parent
8 or person acting as a parent continues to live in this state;

9 (2) A court of another state does not have jurisdiction under
10 subdivision (1) of this subsection, or a court of the home state
11 of the child has declined to exercise jurisdiction on the ground

12 that this state is the more appropriate forum under section two
13 hundred seven or two hundred eight, and:

14 (A) The child and the child's parents, or the child and at
15 least one parent or a person acting as a parent, have a signifi-
16 cant connection with this state other than mere physical
17 presence; and

18 (B) Substantial evidence is available in this state concern-
19 ing the child's care, protection, training and personal relation-
20 ships;

21 (3) All courts having jurisdiction under subdivision (1) or
22 (2) of this subdivision have declined to exercise jurisdiction on
23 the ground that a court of this state is the more appropriate
24 forum to determine the custody of the child under section two
25 hundred seven or two hundred eight; or

26 (4) No court of any other state would have jurisdiction
27 under the criteria specified in subdivision (1), (2) or (3) of this
28 subsection.

29 (b) Subsection (a) of this section is the exclusive jurisdic-
30 tional basis for making a child custody determination by a court
31 of this state.

32 (c) Physical presence of, or personal jurisdiction over, a
33 party or a child is not necessary or sufficient to make a child
34 custody determination.

§48C-2-202. Exclusive, continuing jurisdiction.

1 (a) Except as otherwise provided in section two hundred
2 four of this article, a court of this state which has made a child
3 custody determination consistent with section two hundred one
4 or two hundred three of this article has exclusive, continuing
5 jurisdiction over the determination until:

6 (1) A court of this state determines that neither the child,
7 the child and one parent, nor the child and a person acting as a
8 parent have a significant connection with this state and that
9 substantial evidence is no longer available in this state concern-
10 ing the child's care, protection, training and personal relation-
11 ships; or

12 (2) A court of this state or a court of another state deter-
13 mines that the child, the child's parents and any person acting
14 as a parent do not presently reside in this state.

15 (b) A court of this state which has made a child custody
16 determination and does not have exclusive, continuing jurisdic-
17 tion under this section may modify that determination only if it
18 has jurisdiction to make an initial determination under section
19 two hundred one of this article.

§48C-2-203. Jurisdiction to modify determination.

1 Except as otherwise provided in section two hundred four
2 of this article, a court of this state may not modify a child
3 custody determination made by a court of another state unless
4 a court of this state has jurisdiction to make an initial determi-
5 nation under subdivision (1) or (2), subsection (a), section two
6 hundred one of this article and:

7 (1) The court of the other state determines it no longer has
8 exclusive, continuing jurisdiction under section two hundred
9 two of this article or that a court of this state would be a more
10 convenient forum under section two hundred seven; or

11 (2) A court of this state or a court of the other state deter-
12 mines that the child, the child's parents and any person acting
13 as a parent do not presently reside in the other state.

§48C-2-204. Temporary emergency jurisdiction.

1 (a) A court of this state has temporary emergency jurisdic-
2 tion if the child is present in this state and the child has been
3 abandoned or it is necessary in an emergency to protect the
4 child because the child, or a sibling or parent of the child, is
5 subjected to or threatened with mistreatment or abuse.

6 (b) If there is no previous child custody determination that
7 is entitled to be enforced under this chapter and a child custody
8 proceeding has not been commenced in a court of a state having
9 jurisdiction under sections two hundred one through two
10 hundred three, inclusive, of this article, a child custody determi-
11 nation made under this section remains in effect until an order
12 is obtained from a court of a state having jurisdiction under
13 sections two hundred one through two hundred three, inclusive,
14 of this article. If a child custody proceeding has not been or is
15 not commenced in a court of a state having jurisdiction under
16 sections two hundred one through two hundred three, inclusive,
17 of this article, a child custody determination made under this
18 section becomes a final determination, if it so provides and this
19 state becomes the home state of the child.

20 (c) If there is a previous child custody determination that is
21 entitled to be enforced under this chapter, or a child custody
22 proceeding has been commenced in a court of a state having
23 jurisdiction under sections two hundred one through two
24 hundred three, inclusive, of this article, any order issued by a
25 court of this state under this section must specify in the order a
26 period that the court considers adequate to allow the person
27 seeking an order to obtain an order from the state having
28 jurisdiction under sections two hundred one through two
29 hundred three, inclusive, of this article. The order issued in this
30 state remains in effect until an order is obtained from the other
31 state within the period specified or the period expires.

32 (d) A court of this state which has been asked to make a
33 child custody determination under this section, upon being
34 informed that a child custody proceeding has been commenced

35 in, or a child custody determination has been made by, a court
36 of a state having jurisdiction under sections two hundred one
37 through two hundred three, inclusive, of this article, shall
38 immediately communicate with the other court. A court of this
39 state which is exercising jurisdiction pursuant to sections two
40 hundred one through two hundred three, inclusive, of this
41 article, upon being informed that a child custody proceeding has
42 been commenced in, or a child custody determination has been
43 made by, a court of another state under a statute similar to this
44 section shall immediately communicate with the court of that
45 state to resolve the emergency, protect the safety of the parties
46 and the child, and determine a period for the duration of the
47 temporary order.

§48C-2-205. Notice; opportunity to be heard; joinder.

1 (a) Before a child custody determination is made under this
2 chapter, notice and an opportunity to be heard in accordance
3 with the standards of section one hundred eight, article one of
4 this chapter must be given to all persons entitled to notice under
5 the law of this state as in child custody proceedings between
6 residents of this state, any parent whose parental rights have not
7 been previously terminated and any person having physical
8 custody of the child.

9 (b) This chapter does not govern the enforceability of a
10 child custody determination made without notice or an opportu-
11 nity to be heard.

12 (c) The obligation to join a party and the right to intervene
13 as a party in a child custody proceeding under this chapter are
14 governed by the law of this state as in child custody proceed-
15 ings between residents of this state.

§48C-2-206. Simultaneous proceedings.

1 (a) Except as otherwise provided in section two hundred
2 four of this article, a court of this state may not exercise its

3 jurisdiction under this article if, at the time of the commence-
4 ment of the proceeding, a proceeding concerning the custody of
5 the child has been commenced in a court of another state having
6 jurisdiction substantially in conformity with this chapter, unless
7 the proceeding has been terminated or is stayed by the court of
8 the other state because a court of this state is a more convenient
9 forum under section two hundred seven of this article.

10 (b) Except as otherwise provided in section two hundred
11 four of this article, a court of this state, before hearing a child
12 custody proceeding, shall examine the court documents and
13 other information supplied by the parties pursuant to section
14 two hundred nine of this article. If the court determines that a
15 child custody proceeding has been commenced in a court in
16 another state having jurisdiction substantially in accordance
17 with this chapter, the court of this state shall stay its proceeding
18 and communicate with the court of the other state. If the court
19 of the state having jurisdiction substantially in accordance with
20 this chapter does not determine that the court of this state is a
21 more appropriate forum, the court of this state shall dismiss the
22 proceeding.

23 (c) In a proceeding to modify a child custody determina-
24 tion, a court of this state shall determine whether a proceeding
25 to enforce the determination has been commenced in another
26 state. If a proceeding to enforce a child custody determination
27 has been commenced in another state, the court may:

28 (1) Stay the proceeding for modification pending the entry
29 of an order of a court of the other state enforcing, staying,
30 denying, or dismissing the proceeding for enforcement;

31 (2) Enjoin the parties from continuing with the proceeding
32 for enforcement; or

33 (3) Proceed with the modification under conditions it
34 considers appropriate.

§48C-2-207. Inconvenient forum.

1 (a) A court of this state which has jurisdiction under this
2 chapter to make a child custody determination may decline to
3 exercise its jurisdiction at any time if it determines that it is an
4 inconvenient forum under the circumstances and that a court of
5 another state is a more appropriate forum. The issue of inconve-
6 nient forum may be raised upon the motion of a party, the
7 court's own motion or request of another court.

8 (b) Before determining whether it is an inconvenient forum,
9 a court of this state shall consider whether it is appropriate for
10 a court of another state to exercise jurisdiction. For this
11 purpose, the court shall allow the parties to submit information
12 and shall consider all relevant factors, including:

13 (1) Whether domestic violence has occurred and is likely to
14 continue in the future and which state could best protect the
15 parties and the child;

16 (2) The length of time the child has resided outside this
17 state;

18 (3) The distance between the court in this state and the
19 court in the state that would assume jurisdiction;

20 (4) The relative financial circumstances of the parties;

21 (5) Any agreement of the parties as to which state should
22 assume jurisdiction;

23 (6) The nature and location of the evidence required to
24 resolve the pending litigation, including testimony of the child;

25 (7) The ability of the court of each state to decide the issue
26 expeditiously and the procedures necessary to present the
27 evidence; and

28 (8) The familiarity of the court of each state with the facts
29 and issues in the pending litigation.

30 (c) If a court of this state determines that it is an inconve-
31 nient forum and that a court of another state is a more appropri-
32 ate forum, it shall stay the proceedings upon condition that a
33 child custody proceeding be promptly commenced in another
34 designated state and may impose any other condition the court
35 considers just and proper.

36 (d) A court of this state may decline to exercise its jurisdic-
37 tion under this chapter if a child custody determination is
38 incidental to an action for divorce or another proceeding while
39 still retaining jurisdiction over the divorce or other proceeding.

§48C-2-208. Jurisdiction declined by reason of conduct.

1 (a) Except as otherwise provided in section two hundred
2 four of this article or by other law of this state, if a court of this
3 state has jurisdiction under this chapter because a person
4 seeking to invoke its jurisdiction has engaged in unjustifiable
5 conduct, the court shall decline to exercise its jurisdiction
6 unless:

7 (1) The parents and all persons acting as parents have
8 acquiesced in the exercise of jurisdiction;

9 (2) A court of the state otherwise having jurisdiction under
10 sections two hundred one through two hundred three, inclusive,
11 of this article determines that this state is a more appropriate
12 forum under section two hundred seven of this article; or

13 (3) No court of any other state would have jurisdiction
14 under the criteria specified in sections two hundred one through
15 two hundred three, inclusive, of this article.

16 (b) If a court of this state declines to exercise its jurisdiction
17 pursuant to subsection (a) of this section, it may fashion an

18 appropriate remedy to ensure the safety of the child and prevent
19 a repetition of the unjustifiable conduct, including staying the
20 proceeding until a child custody proceeding is commenced in
21 a court having jurisdiction under sections two hundred one
22 through two hundred three, inclusive, of this article.

23 (c) If a court dismisses a petition or stays a proceeding
24 because it declines to exercise its jurisdiction pursuant to
25 subsection (a) of this section, it shall assess against the party
26 seeking to invoke its jurisdiction necessary and reasonable
27 expenses including costs, communication expenses, attorney's
28 fees, investigative fees, expenses for witnesses, travel expenses
29 and child care during the course of the proceedings, unless the
30 party from whom fees are sought establishes that the assess-
31 ment would be clearly inappropriate. The court may not assess
32 fees, costs or expenses against this state unless authorized by
33 law other than this chapter.

§48C-2-209. Information to be submitted to court.

1 (a) Subject to local law providing for the confidentiality of
2 procedures, addresses and other identifying information in a
3 child custody proceeding, each party, in its first pleading or in
4 an attached affidavit, shall give information, if reasonably
5 ascertainable, under oath as to the child's present address or
6 whereabouts, the places where the child has lived during the
7 last five years and the names and present addresses of the
8 persons with whom the child has lived during that period. The
9 pleading or affidavit must state whether the party:

10 (1) Has participated, as a party or witness or in any other
11 capacity, in any other proceeding concerning the custody of or
12 visitation with the child and, if so, identify the court, the case
13 number and the date of the child custody determination, if any;

14 (2) Knows of any proceeding that could affect the current
15 proceeding, including proceedings for enforcement and

16 proceedings relating to domestic violence, protective orders,
17 termination of parental rights and adoptions, and, if so, identify
18 the court, the case number and the nature of the proceeding; and

19 (3) Knows the names and addresses of any person not a
20 party to the proceeding who has physical custody of the child
21 or claims rights of legal custody or physical custody of, or
22 visitation with, the child and, if so, the names and addresses of
23 those persons.

24 (b) If the information required by subsection (a) of this
25 section is not furnished, the court, upon motion of a party or its
26 own motion, may stay the proceeding until the information is
27 furnished.

28 (c) If the declaration as to any of the items described in
29 subdivision (1) through (3), inclusive, subsection (a) of this
30 section is in the affirmative, the declarant shall give additional
31 information under oath as required by the court. The court may
32 examine the parties under oath as to details of the information
33 furnished and other matters pertinent to the court's jurisdiction
34 and the disposition of the case.

35 (d) Each party has a continuing duty to inform the court of
36 any proceeding in this or any other state that could affect the
37 current proceeding.

38 (e) If a party alleges in an affidavit or a pleading under oath
39 that the health, safety or liberty of a party or child would be
40 jeopardized by disclosure of identifying information, the
41 information must be sealed and may not be disclosed to the
42 other party or the public unless the court orders the disclosure
43 to be made after a hearing in which the court takes into consid-
44 eration the health, safety or liberty of the party or child and
45 determines that the disclosure is in the interest of justice.

§48C-2-210. Appearance of parties and child.

1 (a) In a child custody proceeding in this state, the court may
2 order a party to the proceeding who is in this state to appear
3 before the court in person with or without the child. The court
4 may order any person who is in this state and who has physical
5 custody or control of the child to appear in person with the
6 child.

7 (b) If a party to a child custody proceeding whose presence
8 is desired by the court is outside this state, the court may order
9 that a notice given pursuant to section one hundred eight, article
10 one of this chapter include a statement directing the party to
11 appear in person with or without the child and informing the
12 party that failure to appear may result in a decision adverse to
13 the party.

14 (c) The court may enter any orders necessary to ensure the
15 safety of the child and of any person ordered to appear under
16 this section.

17 (d) If a party to a child custody proceeding who is outside
18 this state is directed to appear under subsection (b) of this
19 section or desires to appear personally before the court with or
20 without the child, the court may require another party to pay
21 reasonable and necessary travel and other expenses of the party
22 so appearing and of the child.

ARTICLE 3. ENFORCEMENT.

§48C-3-301. Definitions.

§48C-3-302. Enforcement under Hague convention.

§48C-3-303. Duty to enforce.

§48C-3-304. Temporary visitation.

§48C-3-305. Registration of child custody determination.

§48C-3-306. Enforcement of registered determination.

§48C-3-307. Simultaneous proceedings.

§48C-3-308. Expedited enforcement of child custody determination.

§48C-3-309. Service of petition and order.

§48C-3-310. Hearing and order.

§48C-3-311. Warrant to take physical custody of child.

- §48C-3-312. Costs, fees and expenses.
- §48C-3-313. Recognition and enforcement.
- §48C-3-314. Appeals.
- §48C-3-315. Role of prosecutor or public official.
- §48C-3-316. Role of law enforcement.
- §48C-3-317. Costs and expenses.

§48C-3-301. Definitions.

1 (a) "Petitioner" means a person who seeks enforcement of
2 an order for return of a child under the Hague Convention on
3 the Civil Aspects of International Child Abduction or enforce-
4 ment of a child custody determination.

5 (b) "Respondent" means a person against whom a proceed-
6 ing has been commenced for enforcement of an order for return
7 of a child under the Hague Convention on the Civil Aspects of
8 International Child Abduction or enforcement of a child
9 custody determination.

§48C-3-302. Enforcement under Hague convention.

1 Under this article a court of this state may enforce an order
2 for the return of the child made under the Hague Convention on
3 the Civil Aspects of International Child Abduction as if it were
4 a child custody determination.

§48C-3-303. Duty to enforce.

1 (a) A court of this state shall recognize and enforce a child
2 custody determination of a court of another state if the latter
3 court exercised jurisdiction in substantial conformity with this
4 chapter or the determination was made under factual circum-
5 stances meeting the jurisdictional standards of this chapter and
6 the determination has not been modified in accordance with this
7 chapter.

8 (b) A court of this state may utilize any remedy available
9 under other law of this state to enforce a child custody determi-

10 nation made by a court of another state. The remedies provided
11 in this article are cumulative and do not affect the availability
12 of other remedies to enforce a child custody determination.

§48C-3-304. Temporary visitation.

1 (a) A court of this state which does not have jurisdiction to
2 modify a child custody determination may issue a temporary
3 order enforcing:

4 (1) A visitation schedule made by a court of another state;
5 or

6 (2) The visitation provisions of a child custody determina-
7 tion of another state that does not provide for a specific
8 visitation schedule.

9 (b) If a court of this state makes an order under subdivision
10 (2), subsection (a) of this section, it shall specify in the order a
11 period that it considers adequate to allow the petitioner to
12 obtain an order from a court having jurisdiction under the
13 criteria specified in article two of this chapter. The order
14 remains in effect until an order is obtained from the other court
15 or the period expires.

§48C-3-305. Registration of child custody determination.

1 (a) A child custody determination issued by a court of
2 another state may be registered in this state, with or without a
3 simultaneous request for enforcement, by sending to the
4 appropriate court in this state:

5 (1) A letter or other document requesting registration;

6 (2) Two copies, including one certified copy, of the
7 determination sought to be registered, and a statement under
8 penalty of perjury that to the best of the knowledge and belief

9 of the person seeking registration the order has not been
10 modified; and

11 (3) Except as otherwise provided in section two hundred
12 nine, article two of this chapter, the name and address of the
13 person seeking registration and any parent or person acting as
14 a parent who has been awarded custody or visitation in the child
15 custody determination sought to be registered.

16 (b) On receipt of the documents required by subsection (a)
17 of this section, the registering court shall:

18 (1) Cause the determination to be filed as a foreign judg-
19 ment, together with one copy of any accompanying documents
20 and information, regardless of their form; and

21 (2) Serve notice upon the persons named pursuant to
22 subdivision (3), subsection (a) of this section and provide them
23 with an opportunity to contest the registration in accordance
24 with this section.

25 (c) The notice required by subdivision (2), subsection (b) of
26 this section must state that:

27 (1) A registered determination is enforceable as of the date
28 of the registration in the same manner as a determination issued
29 by a court of this state;

30 (2) A hearing to contest the validity of the registered
31 determination must be requested in writing to the court within
32 twenty days after service of notice; and

33 (3) Failure to contest the registration will result in confir-
34 mation of the child custody determination and preclude further
35 contest of that determination with respect to any matter that
36 could have been asserted.

37 (d) A person seeking to contest the validity of a registered
38 order must request a hearing within twenty days after service of

39 the notice. At that hearing, the court shall confirm the registered
40 order unless the person contesting registration establishes that:

41 (1) The issuing court did not have jurisdiction under article
42 two of this chapter;

43 (2) The child custody determination sought to be registered
44 has been vacated, stayed, or modified by a court having
45 jurisdiction to do so under article two of this chapter; or

46 (3) The person contesting registration was entitled to notice,
47 but notice was not given in accordance with the standards of
48 section one hundred eight, article one of this chapter in the
49 proceedings before the court that issued the order for which
50 registration is sought.

51 (e) If a timely request for a hearing to contest the validity
52 of the registration is not made, the registration is confirmed as
53 a matter of law and the person requesting registration and all
54 persons served must be notified of the confirmation.

55 (f) Confirmation of a registered order, whether by operation
56 of law or after notice and hearing, precludes further contest of
57 the order with respect to any matter that could have been
58 asserted at the time of registration.

§48C-3-306. Enforcement of registered determination.

1 (a) A court of this state may grant any relief normally
2 available under the law of this state to enforce a registered child
3 custody determination made by a court of another state.

4 (b) A court of this state shall recognize and enforce, but
5 may not modify, except in accordance with article two of this
6 chapter, a registered child custody determination of a court of
7 another state.

§48C-3-307. Simultaneous proceedings.

1 If a proceeding for enforcement under this article is
2 commenced in a court of this state and the court determines that
3 a proceeding to modify the determination is pending in a court
4 of another state having jurisdiction to modify the determination
5 under article two of this chapter, the enforcing court shall
6 immediately communicate with the modifying court. The
7 proceeding for enforcement continues unless the enforcing
8 court, after consultation with the modifying court, stays or
9 dismisses the proceeding.

§48C-3-308. Expedited enforcement of child custody determination.

1 (a) A petition under this article must be verified. Certified
2 copies of all orders sought to be enforced and of any order
3 confirming registration must be attached to the petition. A copy
4 of a certified copy of an order may be attached instead of the
5 original.

6 (b) A petition for enforcement of a child custody determina-
7 tion must state:

8 (1) Whether the court that issued the determination identi-
9 fied the jurisdictional basis it relied upon in exercising jurisdic-
10 tion and, if so, what the basis was;

11 (2) Whether the determination for which enforcement is
12 sought has been vacated, stayed or modified by a court whose
13 decision must be enforced under this chapter and, if so, identify
14 the court, the case number and the nature of the proceeding;

15 (3) Whether any proceeding has been commenced that
16 could affect the current proceeding, including proceedings
17 relating to domestic violence, protective orders, termination of
18 parental rights and adoptions and, if so, identify the court, the
19 case number and the nature of the proceeding;

20 (4) The present physical address of the child and the
21 respondent, if known;

22 (5) Whether relief in addition to the immediate physical
23 custody of the child and attorney's fees is sought, including a
24 request for assistance from law-enforcement officials and, if so,
25 the relief sought; and

26 (6) If the child custody determination has been registered
27 and confirmed under section three hundred five of this article,
28 the date and place of registration.

29 (c) Upon the filing of a petition, the court shall issue an
30 order directing the respondent to appear in person with or
31 without the child at a hearing and may enter any order neces-
32 sary to ensure the safety of the parties and the child. The
33 hearing must be held on the judicial day after service of the
34 order unless that date is impossible. In that event, the court shall
35 hold the hearing on the first judicial day possible. The court
36 may extend the date of hearing at the request of the petitioner.

37 (d) An order issued under subsection (c) of this section
38 must state the time and place of the hearing and advise the
39 respondent that at the hearing the court will order that the
40 petitioner may take immediate physical custody of the child and
41 the payment of fees, costs and expenses under section three
42 hundred twelve of this article, and may schedule a hearing to
43 determine whether further relief is appropriate, unless the
44 respondent appears and establishes that:

45 (1) The child custody determination has not been registered
46 and confirmed under section three hundred five of this article,
47 and that:

48 (A) The issuing court did not have jurisdiction under article
49 two of this chapter;

50 (B) The child custody determination for which enforcement
51 is sought has been vacated, stayed or modified by a court
52 having jurisdiction to do so under article two of this chapter;

53 (C) The respondent was entitled to notice, but notice was
54 not given in accordance with the standards of section one
55 hundred eight, article one of this chapter, in the proceedings
56 before the court that issued the order for which enforcement is
57 sought; or

58 (2) The child custody determination for which enforcement
59 is sought was registered and confirmed under section three
60 hundred four of this article, but has been vacated, stayed or
61 modified by a court of a state having jurisdiction to do so under
62 article two of this chapter; or

63 (3) There is credible evidence of abuse or neglect of the
64 child or children who are the subject of the petition and the
65 credible evidence has been reported to a child welfare agency,
66 a law-enforcement officer, a licensed physician, a licensed
67 social worker, or a licensed mental health professional and an
68 investigation or other proceeding has not been concluded:
69 *Provided*, That the court may continue the hearing to a day
70 certain to monitor the investigation or proceedings or take any
71 further action as the circumstances and the best interest of the
72 child may warrant.

§48C-3-309. Service of petition and order.

1 Except as otherwise provided in section three hundred
2 eleven of this article, the petition and order must be served, by
3 any method authorized by the law of this state, upon respondent
4 and any person who has physical custody of the child.

§48C-3-310. Hearing and order.

1 (a) Unless the court issues a temporary emergency order
2 pursuant to section two hundred four, article two of this chapter,

3 upon a finding that a petitioner is entitled to immediate physical
4 custody of the child, the court shall order that the petitioner
5 may take immediate physical custody of the child unless the
6 respondent establishes that:

7 (1) The child custody determination has not been registered
8 and confirmed under section three hundred five of this article
9 and that:

10 (A) The issuing court did not have jurisdiction under article
11 two of this chapter;

12 (B) The child custody determination for which enforcement
13 is sought has been vacated, stayed or modified by a court of a
14 state having jurisdiction to do so under article two of this
15 chapter; or

16 (C) The respondent was entitled to notice, but notice was
17 not given in accordance with the standards of section one
18 hundred eight, article one of this chapter, in the proceedings
19 before the court that issued the order for which enforcement is
20 sought; or

21 (2) The child custody determination for which enforcement
22 is sought was registered and confirmed under section three
23 hundred five of this article, but has been vacated, stayed or
24 modified by a court of a state having jurisdiction to do so under
25 article two of this chapter; or

26 (3) There is credible evidence of abuse or neglect of the
27 child or children who are the subject of the petition and the
28 credible evidence has been reported to a child welfare agency,
29 a law-enforcement officer, a licensed physician, a licensed
30 social worker, or a licensed mental health professional and an
31 investigation or other proceeding has not been concluded:
32 *Provided*, That the court may continue the hearing to a day
33 certain to monitor the investigation or proceedings or take any

34 further action as the circumstances and the best interest of the
35 child may warrant.

36 (b) The court shall award the fees, costs and expenses
37 authorized under section three hundred twelve of this article
38 and may grant additional relief, including a request for the
39 assistance of law-enforcement officials, and set a further
40 hearing to determine whether additional relief is appropriate.

41 (c) If a party called to testify refuses to answer on the
42 ground that the testimony may be self-incriminating, the court
43 may draw an adverse inference from the refusal.

44 (d) A privilege against disclosure of communications
45 between spouses and a defense of immunity based on the
46 relationship of husband and wife or parent and child may not be
47 invoked in a proceeding under this article.

§48C-3-311. Warrant to take physical custody of child.

1 (a) Upon the filing of a petition seeking enforcement of a
2 child custody determination, the petitioner may file a verified
3 application for the issuance of a warrant to take physical
4 custody of the child if the child is imminently likely to suffer
5 serious physical harm or be removed from this state.

6 (b) If the court, upon the testimony of the petitioner or other
7 witness, finds that the child is imminently likely to suffer
8 serious physical harm or be removed from this state, it may
9 issue a warrant to take physical custody of the child. The
10 petition must be heard on the next judicial day after the warrant
11 is executed unless that date is impossible. In that event, the
12 court shall hold the hearing on the first judicial day possible.
13 The application for the warrant must include the statements
14 required by subsection (b), section three hundred eight of this
15 article.

16 (c) A warrant to take physical custody of a child must:

17 (1) Recite the facts upon which a conclusion of imminent
18 serious physical harm or removal from the jurisdiction is based;

19 (2) Direct law-enforcement officers to take physical
20 custody of the child immediately; and

21 (3) Provide for the placement of the child pending final
22 relief.

23 (d) The respondent must be served with the petition,
24 warrant and order immediately after the child is taken into
25 physical custody.

26 (e) A warrant to take physical custody of a child is enforce-
27 able throughout this state. If the court finds on the basis of the
28 testimony of the petitioner or other witness that a less intrusive
29 remedy is not effective, it may authorize law-enforcement
30 officers to enter private property to take physical custody of the
31 child. If required by exigent circumstances of the case, the court
32 may authorize law-enforcement officers to make a forcible
33 entry at any hour.

34 (f) The court may impose conditions upon placement of a
35 child to ensure the appearance of the child and the child's
36 custodian.

§48C-3-312. Costs, fees and expenses.

1 (a) The court shall award the prevailing party, including a
2 state, necessary and reasonable expenses incurred by or on
3 behalf of the party, including costs, communication expenses,
4 attorney's fees, investigative fees, expenses for witnesses,
5 travel expenses and child care during the course of the proceed-
6 ings, unless the party from whom fees or expenses are sought
7 establishes that the award would be clearly inappropriate.

8 (b) The court may not assess fees, costs or expenses against
9 a state unless authorized by law other than this chapter.

§48C-3-313. Recognition and enforcement.

1 A court of this state shall accord full faith and credit to an
2 order issued by another state and consistent with this chapter
3 which enforces a child custody determination by a court of
4 another state unless the order has been vacated, stayed or
5 modified by a court have jurisdiction to do so under article two
6 of this chapter.

§48C-3-314. Appeals.

1 An appeal may be taken from a final order in a proceeding
2 under this article in accordance with expedited appellate
3 procedures in other civil cases. Unless the court enters a
4 temporary emergency order under section two hundred four,
5 article two of this chapter, the enforcing court may not stay an
6 order enforcing a child custody determination pending appeal.

§48C-3-315. Role of prosecutor or public official.

1 (a) In a case arising under this chapter or involving the
2 Hague Convention on the Civil Aspects of International Child
3 Abduction, the prosecutor or other appropriate public official
4 may take any lawful action, including resort to a proceeding
5 under this article or any other available civil proceeding, to
6 locate a child, obtain the return of a child or enforce a child
7 custody determination if there is:

8 (1) An existing child custody determination;

9 (2) A request to do so from a court in a pending child
10 custody proceeding;

11 (3) A reasonable belief that a criminal statute has been
12 violated; or

13 (4) A reasonable belief that the child has been wrongfully
14 removed or retained in violation of the Hague Convention on
15 the Civil Aspects of International Child Abduction.

16 (b) A prosecutor or appropriate public official acting under
17 this section acts on behalf of the court and may not represent
18 any party.

§48C-3-316. Role of law enforcement.

1 At the request of a prosecutor or other appropriate public
2 official acting under section three hundred fifteen of this article,
3 a law-enforcement officer may take any lawful action reason-
4 ably necessary to locate a child or a party and assist a prosecu-
5 tor or appropriate public official with responsibilities under said
6 section.

§48C-3-317. Costs and expenses.

1 If the respondent is not the prevailing party, the court may
2 assess against the respondent all direct expenses and costs
3 incurred by the prosecutor or other appropriate public official
4 and law-enforcement officers under section three hundred
5 fifteen or three hundred sixteen of this article.

ARTICLE 4. MISCELLANEOUS PROVISIONS.

§48C-4-401. Application and construction.

§48C-4-402. Severability clause.

§48C-4-403. Effective date.

§48C-4-404. Transitional provision.

§48C-4-401. Application and construction.

1 In applying and construing this uniform act, consideration
2 must be given to the need to promote uniformity of the law with
3 respect to its subject matter among states that enact it.

§48C-4-402. Severability clause.

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

§48C-4-403. Effective date.

1 This chapter takes effect on the first day of July, two
2 thousand.

§48C-4-404. Transitional provision.

1 A motion or other request for relief made in a child custody
2 proceeding or to enforce a child custody determination which

3 was commenced before the effective date of this chapter is
4 governed by the law in effect at the time the motion or other
5 request was made.

CHAPTER 45

(Com. Sub. for S. B. 565 — By Senators Walker and Prezioso)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT to repeal section three, article four-a, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, three, four, five and six, article sixteen-b, chapter five of said code; and to amend and reenact section two-b, article four-a, chapter nine of said code, all relating to the children's health insurance program; creating the agency within the department of administration; adding certain definitions; authority to transfer personnel, equipment and funds; and expanding availability of insurance coverage to certain eligible children.

Be it enacted by the Legislature of West Virginia:

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

Chapter

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

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

**ARTICLE 16B. WEST VIRGINIA CHILDREN'S HEALTH INSURANCE
PROGRAM.**

- §5-16B-1. Expansion of health care coverage to children; creation of program; legislative directives.
- §5-16B-2. Definitions.
- §5-16B-3. Reporting requirements.
- §5-16B-4. Children's health policy board created; qualifications and removal of members; powers; duties; meetings; and compensation.
- §5-16B-5. Director of the children's health insurance program; qualifications; powers and duties.
- §5-16B-6. Financial plans requirements.

**§5-16B-1. Expansion of health care coverage to children; creation
of program; legislative directives.**

1 (a) It is the intent of the Legislature to expand access to
2 health services for eligible children and to pay for this coverage
3 by using private, state and federal funds to purchase those
4 services or purchase insurance coverage for those services. To
5 achieve this intention, the West Virginia children's health
6 insurance program is hereby created. The program shall be
7 administered by the children's health insurance agency within
8 the department of administration in accordance with the
9 provisions of this article and the applicable provisions of Title
10 XXI of the Social Security Act of 1997. Participation in the
11 program may be made available to families of eligible children,
12 subject to eligibility criteria and processes to be established,
13 which shall not create an entitlement to coverage in any person.
14 Nothing in this article may be construed to require any appro-
15 priation of state general revenue funds for the payment of any
16 benefit provided for in this article. In the event that this article
17 conflicts with the requirements of federal law, federal law
18 governs.

19 (b) In developing a children's health insurance program that
20 operates with the highest degree of simplicity and governmental
21 efficiency, the board shall avoid duplicating functions available
22 in existing agencies and may enter into interagency agreements
23 for the performance of specific tasks or duties at a specific or
24 maximum contract price.

25 (c) In developing benefit plans, the board may consider any
26 cost savings, administrative efficiency or other benefit to be
27 gained by considering existing contracts for services with state
28 health plans and negotiating modifications of those contracts to
29 meet the needs of the program.

30 (d) Upon the transfer of the functions of the children's
31 health insurance program from the department of health and
32 human resources to the children's health insurance agency
33 within the department of administration, the secretary of the
34 department of health and human resources and the secretary of
35 the department of administration, acting jointly, are empowered
36 to authorize and shall authorize such transfers of program funds
37 including, but not limited to, the West Virginia children's
38 health fund created in section seven of this article and associ-
39 ated investment accounts; and transfers of children's health
40 insurance program personnel and equipment, as are necessary,
41 to facilitate an orderly transfer of the functions of the children's
42 health insurance program. Authority to make transfers pursuant
43 to this subsection expires on the thirty-first day of December,
44 two thousand.

45 (e) In order to enroll as many eligible children as possible
46 in the program created by this article and to expedite the
47 effective date of their health insurance coverage, the board shall
48 develop and implement a plan whereby applications for
49 enrollment may be taken at any primary care center or other
50 health care provider, as determined by the director, and
51 transmitted electronically to the program's offices for eligibility
52 screening and other necessary processing. The board may use

53 any funds available to it in the development and implementa-
54 tion of the plan, including grant funds or other private or public
55 moneys.

§5-16B-2. Definitions.

1 As used in this article, unless the context clearly requires a
2 different meaning:

3 (a) "Agency" means the children's health insurance agency
4 within the department of administration;

5 (b) "Board" means the children's health insurance program
6 board;

7 (c) "Director" means the director of the children's health
8 insurance agency;

9 (d) "Essential community health service provider" means
10 a health care provider that:

11 (1) Has historically served medically needy or medically
12 indigent patients and demonstrates a commitment to serve low-
13 income and medically indigent populations which constitute a
14 significant portion of its patient population or, in the case of a
15 sole community provider, serves medically indigent patients
16 within its medical capability; and

17 (2) Either waives service fees or charges fees based on a
18 sliding scale and does not restrict access or services because of
19 a client's financial limitations. Essential community health
20 service provider includes, but is not limited to, community
21 mental health centers, school health clinics, primary care
22 centers, pediatric health clinics or rural health clinics.

23 (e) "Program" means the West Virginia children's health
24 insurance program.

§5-16B-3. Reporting requirements.

1 (a) Annually on the first day of January, the director shall
2 report to the governor and the Legislature regarding the number
3 of children enrolled in the program or programs; the average
4 annual cost per child per program; the estimated number of
5 remaining uninsured children; and the outreach activities for the
6 previous year. The report shall include any information that can
7 be obtained regarding the prior insurance and health status of
8 the children enrolled in programs created pursuant to this
9 article. The report shall include information regarding the cost,
10 quality and effectiveness of the health care delivered to
11 enrollees of this program; satisfaction surveys; and health status
12 improvement indicators. The agency, in conjunction with other
13 state health and insurance agencies, shall develop indicators
14 designed to measure the quality and effectiveness of children's
15 health programs, which information shall be included in the
16 annual report.

17 (b) On a quarterly basis, the director shall provide reports
18 to the legislative oversight commission on health and human
19 resources accountability on the number of children served,
20 including the number of newly enrolled children for the
21 reporting period and current projections for future enrollees;
22 outreach efforts and programs; statistical profiles of the families
23 served and health status indicators of covered children; the
24 average annual cost of coverage per child; the total cost of
25 children served by provider type, service type and contract type;
26 outcome measures for children served; reductions in uncompen-
27 sated care; performance with respect to the financial plan; and
28 any other information as the legislative oversight commission
29 on health and human resources accountability may require.

**§5-16B-4. Children's health policy board created; qualifications
and removal of members; powers; duties; meet-
ings; and compensation.**

1 (a) There is hereby created the West Virginia children's
2 health insurance board, which shall consist of the director of the

3 public employees insurance agency, the secretary of the
4 department of health and human resources, or his or her
5 designee, and six citizen members appointed by the governor,
6 one of whom shall represent children's interests and one of
7 whom shall be a certified public accountant, to assume the
8 duties of the office immediately upon appointment, pending the
9 advice and consent of the Senate. A member of the Senate, as
10 appointed by the Senate president and a member of the House
11 of Delegates, as appointed by the speaker of the House of
12 Delegates, shall serve as nonvoting members. Of the five
13 citizen members first appointed, one shall serve one year, two
14 shall serve two years and two shall serve three years. All
15 subsequent appointments shall be for terms of three years,
16 except that an appointment to fill a vacancy shall be for the
17 unexpired term only: *Provided*, That the citizen member to be
18 appointed upon the reenactment of this section during the
19 regular session of the Legislature, two thousand, shall serve a
20 term which corresponds to the term of the member initially
21 appointed to serve one year. Three of the citizen members shall
22 have at least a bachelor's degree and experience in the adminis-
23 tration or design of public or private employee or group benefit
24 programs and the children's representative shall have experi-
25 ence that demonstrates knowledge in the health, educational
26 and social needs of children. No more than three citizen
27 members may be members of the same political party and no
28 board member shall represent or have a pecuniary interest in an
29 entity reasonably expected to compete for contracts under this
30 article. Members of the board shall assume the duties of the
31 office immediately upon appointment. The director of the
32 agency shall serve as the chairperson of the board. No member
33 may be removed from office by the governor except for official
34 misconduct, incompetence, neglect of duty, neglect of fiduciary
35 duty or other specific responsibility imposed by this article or
36 gross immorality. Vacancies in the board shall be filled in the
37 same manner as the original appointment.

38 (b) The purpose of the board is to develop plans for health
39 services or health insurance that are specific to the needs of
40 children and to bring fiscal stability to this program through
41 development of an annual financial plan designed in accordance
42 with the provisions of this article.

43 (c) Notwithstanding any other provisions of this code to the
44 contrary, any insurance benefits offered as a part of the pro-
45 grams designed by the board are exempt from the minimum
46 benefits and coverage requirements of articles fifteen and
47 sixteen, chapter thirty-three of this code.

48 (d) The board may consider adopting the maximum period
49 of continuous eligibility permitted by applicable federal law,
50 regardless of changes in a family's economic status, so long as
51 other group insurance does not become available to a covered
52 child.

53 (e) The board shall meet at the time and place as specified
54 by the call of the chairperson or upon the written request to the
55 chairperson by at least two members. Notice of each meeting
56 shall be given in writing to each member by the chairperson at
57 least three days in advance of the meeting. Four voting mem-
58 bers shall constitute a quorum.

59 (f) For each day or portion of a day spent in the discharge
60 of duties pursuant to this article, the board shall pay each of its
61 citizen members the same compensation and expense reim-
62 bursement as is paid to members of the Legislature for their
63 interim duties.

**§5-16B-5. Director of the children's health insurance program;
qualifications; powers and duties.**

1 (a) An agency director shall be appointed by the governor,
2 with the advice and consent of the Senate, and shall be respon-
3 sible for the implementation, administration and management
4 of the children's health insurance program created under this

5 article. The director shall have at least a bachelor's degree and
6 a minimum of three years' experience in health insurance
7 administration.

8 (b) The director shall employ any administrative, technical
9 and clerical employees that are required for the proper adminis-
10 tration of the program and for the work of the board. He or she
11 shall present recommendations and alternatives for the design
12 of the annual plans and other actions undertaken by the board
13 in furtherance of this article.

14 (c) The director is responsible for the administration and
15 management of the program and has the power and authority to
16 make all rules necessary to effectuate the provisions of this
17 article. Nothing in this article may be construed as limiting the
18 director's otherwise lawful authority to manage the program on
19 a day-to-day basis.

20 (d) The director has exclusive authority to execute any
21 contracts that are necessary to effectuate the provisions of this
22 article: *Provided*, That the board shall approve all contracts for
23 the provision of services or insurance coverage under the
24 program. The provisions of article three, chapter five-a of this
25 code, relating to the division of purchasing of the department of
26 finance and administration, shall not apply to any contracts for
27 any health insurance coverage, health services, or professional
28 services authorized to be executed under the provisions of this
29 article: *Provided, however*, That before entering into any
30 contract the director shall invite competitive bids from all
31 qualified entities and shall deal directly with those entities in
32 , presenting specifications and receiving quotations for bid
33 purposes. The director shall award those contracts on a compet-
34 itive basis taking into account the experience of the offering
35 agency, corporation, insurance company or service organiza-
36 tion. Before any proposal to provide benefits or coverage under
37 the plan is selected, the offering agency, corporation, insurance
38 company or service organization shall provide assurances of

39 utilization of essential community health service providers to
40 the greatest extent practicable. In evaluating these factors, the
41 director may employ the services of independent, professional
42 consultants. The director shall then award the contracts on a
43 competitive basis.

44 (e) The director shall issue requests for proposals on a
45 regional or statewide basis from essential community health
46 service providers for defined portions of services under the
47 children's health insurance plan and shall, to the greatest extent
48 practicable, either contract directly with, or require participating
49 providers to contract with, essential community health service
50 providers to provide the services under the plan.

51 (f) Subject to the advice and consent of the board, the
52 director may require reinsurance of primary contracts, as
53 contemplated in the provisions of sections fifteen and fifteen-a,
54 article four, chapter thirty-three of this code.

§5-16B-6. Financial plans requirements.

1 (a) *Benefit plan design.* — All financial plans required by
2 this section shall establish: (1) The design of a benefit plan or
3 plans; (2) the maximum levels of reimbursement to categories
4 of health care providers; (3) any cost containment measures for
5 implementation during the applicable fiscal year; and (4) the
6 types and levels of cost to families of covered children. To the
7 extent compatible with simplicity of administration, fiscal
8 stability and other goals of the program established in this
9 article, the financial plans may provide for different levels of
10 costs based on ability to pay.

11 (b) *Actuary requirements.* — Any financial plan, or modifi-
12 cations, approved or proposed by the board shall be submitted
13 to and reviewed by an actuary before final approval. The
14 financial plan shall be submitted to the governor and the
15 Legislature with the actuary's written professional opinion that

16 all estimated program and administrative costs of the agency
17 under the plan, including incurred but unreported claims, will
18 not exceed ninety percent of the funding available to the
19 program for the fiscal year for which the plan is proposed and
20 that the financial plan allows for no more than thirty days of
21 accounts payable to be carried over into the next fiscal year.
22 This actuarial requirement is in addition to any requirement
23 imposed by Title XXI of the Social Security Act of 1997.

24 (c) *Annual plans.* — The board shall review implementation
25 of its current financial plan in light of actual experience and
26 shall prepare an annual financial plan for each fiscal year during
27 which the board remains in existence. For each fiscal year, the
28 governor shall provide an estimate of requested appropriations
29 and total funding available to the board no later than the
30 fifteenth day of October preceding the fiscal year. The board
31 shall afford interested and affected persons an opportunity to
32 offer comment on the plan at a public meeting of the board and,
33 in developing any proposed plan under this article, shall solicit
34 comments in writing from interested and affected persons. The
35 board shall submit its final, approved financial plan, subject to
36 the actuarial requirements of this article, to the governor and to
37 the Legislature no later than the first day of January preceding
38 the fiscal year. The financial plan for a fiscal year becomes
39 effective and shall be implemented by the director on the first
40 day of July of that fiscal year. Annual plans developed pursuant
41 to this subsection are subject to the provisions of subsections
42 (a) and (b) of this section and the following guidelines:

43 (1) The aggregate actuarial value of the plan established as
44 the benchmark plan should be considered as a targeted maxi-
45 mum or limitation in developing the benefits package;

46 (2) All estimated program and administrative costs,
47 including incurred but not reported claims, shall not exceed
48 ninety percent of the funding available to the program for the
49 applicable fiscal year; and

50 (3) The state's interest in achieving health care services for
51 all its children at less than two hundred percent of the federal
52 poverty guideline shall take precedence over enhancing the
53 benefits available under this program.

54 (d) The provisions of chapter twenty-nine-a of this code do
55 not apply to the preparation, approval and implementation of
56 the financial plans required by this section.

57 (e) The board shall meet no less than once each quarter to
58 review implementation of its current financial plan and, using
59 actuarial data, shall make those modifications to the plan that
60 are necessary to ensure its fiscal stability and effectiveness of
61 service. The board may not increase the types and levels of cost
62 to families of covered children during its quarterly review
63 except in the event of a true emergency. The board may not
64 expand the population of children to whom the program is made
65 available except in its annual plan: *Provided*, That upon the
66 effective date of this article, the board may expand coverage to
67 any child eligible under the provisions of Title XXI of the
68 Social Security Act of 1997: *Provided, however*, That the board
69 shall implement cost-sharing provisions for children who may
70 qualify for such expanded coverage and whose family income
71 exceeds one hundred fifty percent of the federal poverty
72 guideline. Such cost-sharing provisions may be imposed
73 through any one or a combination of the following: enrollment
74 fees, premiums, copayments and deductibles.

75 (f) The board may develop and implement programs that
76 provide for family coverage and/or employer subsidies within
77 the limits authorized by the provisions of Title XXI of the
78 Social Security Act of 1997 or the federal regulations promul-
79 gated thereunder: *Provided*, That any family health insurance
80 coverage offered by or through the program shall be structured
81 so that the board assumes no financial risk: *Provided, however*,
82 That families covered by any insurance offered by or through
83 the program shall be subject to cost-sharing provisions which

84 may include, without limitation, enrollment fees, premiums,
85 copayments and/or deductibles, as determined by the board,
86 which shall be based on ability to pay: *Provided further*, That
87 enrollment fees or premiums, if imposed, may be paid, in whole
88 or in part, through employer subsidies or other private funds or
89 public funds, subject to availability, all as allowed by applicable
90 state and federal law.

91 (g) For any fiscal year in which legislative appropriations
92 differ from the governor's estimate of general and special
93 revenues available to the agency, the board shall, within thirty
94 days after passage of the budget bill, make any modifications to
95 the plan necessary to ensure that the total financial requirements
96 of the agency for the current fiscal year are met.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 4A. MEDICAID UNCOMPENSATED CARE FUND.

§9-4A-2b. Expansion of coverage to children and terminally ill.

1 (a) It is the intent of the Legislature that steps be taken to
2 expand coverage to children and the terminally ill and to pay
3 for this coverage by fully utilizing federal funds. To achieve
4 this intention, the department of health and human resources
5 shall undertake the following:

6 (1) The department shall provide a streamlined application
7 form, which shall be no longer than two pages, for all families
8 applying for medical coverage for children under any of the
9 programs set forth in this section; and

10 (2) The department shall provide the option of hospice care
11 to terminally ill West Virginians who otherwise qualify for
12 medicaid. The department shall provide quarterly reports to the
13 legislative oversight commission on health and human re-
14 sources accountability created pursuant to section four, article
15 twenty-nine-e, chapter sixteen of this code regarding the

16 program provided for in this subdivision. The report shall
17 include, but not be limited to, the total number, by age, of
18 newly eligible clients served, the average annual cost of
19 coverage per client and the total cost, by provider type, to serve
20 all clients.

21 (3) The department shall accelerate the medicaid option for
22 coverage of medicaid to all West Virginia children whose
23 family income is below one hundred percent of the federal
24 poverty guideline. The department shall provide quarterly
25 reports to the legislative oversight commission on health and
26 human resources accountability regarding the program accelera-
27 tion provided for in this subdivision. The report shall include,
28 but not be limited to, the number of newly eligible clients, by
29 age, served as a result of the acceleration, the average annual
30 cost of coverage per client and the total cost of all clients served
31 by provider type.

32 (b) Notwithstanding the provisions of section two-a of this
33 article, the accruing interest in the medical services trust fund
34 may be utilized to pay for the programs specified in subsection
35 (a) of this section: *Provided*, That to the extent the accrued
36 interest is not sufficient to fully fund the specified programs,
37 the disproportionate share hospital funds paid into the medical
38 services trust fund after the thirtieth day of June, one thousand
39 nine hundred ninety-four, may be applied to cover the cost of
40 the specified programs.

41 (c) Annually on the first day of January, the department
42 shall report to the governor and to the Legislature information
43 regarding the number of children and elderly covered by the
44 programs in subdivisions (2) and (3) of subsection (a), the cost
45 of services by type of service provided, a cost-benefit analysis
46 of the acceleration and expansion on other insurers and the
47 reduction of uncompensated care in hospitals as a result of the
48 programs.

CHAPTER 46

**(S. B. 639 — By Senators Kessler, Mitchell, Oliverio, Redd,
Deem, Wooton, Ball, Dawson, Dittmar, Fanning, Hunter, McCabe,
Minard, Ross and McKenzie)**

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section seventeen, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four, article three, chapter nine of said code; to amend and reenact section twelve, article five, chapter sixteen of said code; to amend and reenact sections fifteen-a and fifteen-b, article two, chapter forty-eight of said code; to amend and reenact section six, article two-a of said chapter; to amend and reenact section three, article one, chapter forty-eight-a of said code; to amend article one-a of said chapter by adding thereto a new section, designated section thirty-three; to amend and reenact section eleven, article one-b of said chapter; to amend and reenact sections twenty-four, twenty-four-a, twenty-eight, thirty-three-a and forty-one, article two of said chapter; to amend and reenact section three, article three of said chapter; to amend and reenact sections two and three, article five of said chapter; to further amend said article by adding thereto a new section, designated section ten; to amend and reenact section four, article five-a of said chapter; and to amend and reenact sections one, three, four and six, article six of said chapter, all relating to the establishment and enforcement of support obligations generally; providing for the assignment of support and maintenance to the department of health and human resources; providing for the registration of births and acknowledgment of paternity; establishing procedure for rescission of acknowledgment of

paternity; authorizing income withholding for purposes of medical support enforcement; requiring protective order to prohibit possessing a firearm or ammunition; establishing liens against personal and real property for child support arrearages pursuant to a protective order; authorizing payment plan for interest on child support arrearages in certain instances; defining “arrearages” and “past due support”; providing for service of notice of filing in procedure for expedited modification; authorizing income withholding for overpayment of child support and establishing limitations thereon; providing for the disbursement of support; permitting redirection of support based upon custodial parent’s death certificate; providing for the distribution of state income tax interceptions; requiring payment to financial institutions for data matching services; precluding need for court order for release of certain information to the division; authorizing division to provide additional services for purposes of establishing paternity; making certain technical revisions; authorizing judgment liens against property owned by nonresidents; authorizing the division to institute income withholding without necessity of additional legal proceedings; providing for a review and contest of withholding; reducing percentages of disposable income which may be withheld from obligors; establishing effective date; establishing administrative enforcement of child support; clarifying the use of the word “application” with regard to licenses; clarifying terminology for purposes of paternity establishment; establishing right of father to request blood test; limiting reimbursement support under certain conditions; and providing for the establishment of child support based upon the execution of a voluntary paternity acknowledgment.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section four, article three, chapter nine of said code be amended and reenacted; that section twelve, article five, chapter

sixteen of said code be amended and reenacted; that sections fifteen-a and fifteen-b, article two, chapter forty-eight of said code be amended and reenacted; that section six, article two-a of said chapter be amended and reenacted; that section three, article one, chapter forty-eight-a of said code be amended and reenacted; that article one-a of said chapter be amended by adding thereto a new section, designated section thirty-three; that section eleven, article one-b of said chapter be amended and reenacted; that sections twenty-four, twenty-four-a, twenty-eight, thirty-three-a and forty-one, article two of said chapter be amended and reenacted; that section three, article three of said chapter be amended and reenacted; that sections two and three, article five of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section ten; that section four, article five-a of said chapter be amended and reenacted; and that sections one, three, four and six, article six of said chapter be amended and reenacted, all to read as follows:

Chapter

- 9. Human Services.
- 16. Public Health.
- 48. Domestic Relations.
- 48A. Enforcement of Family Obligations.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 3. APPLICATION FOR AND GRANTING OF ASSISTANCE.

§9-3-4. Assignment of support obligations.

1 Any recipient of financial assistance under the program of
2 state and federal assistance established by Title IV of the
3 federal Social Security Act of 1965, as amended, or any
4 successor act thereto, shall, as a condition of receiving such
5 assistance, assign to the department of health and human
6 resources all rights, title and interest the family member may
7 have (on behalf of the family member or of any other person for
8 whom the family member has applied for or is receiving such
9 assistance) to the receipt of support and maintenance moneys

10 from any other person, not exceeding the total amount of
11 assistance provided to the family, which accrue (or have
12 accrued) before the date the family ceases to receive assistance
13 under the program. The assignment, on and after the date the
14 family ceases to receive assistance under the program, does not
15 apply with respect to any support (other than support collected
16 pursuant to 42 U.S.C. §664) which accrued before the family
17 received such assistance and which the state has not collected
18 by the date the family ceases to receive assistance under the
19 program.

20 Persons responsible for support and maintenance shall
21 include all persons who under the laws of the state of West
22 Virginia owe obligations of support or maintenance to a child
23 or to the caretaker of a child. The assignment contemplated
24 herein shall include all amounts of support and maintenance
25 which accrued to the recipient of assistance and was not
26 received prior to the recipient's receipt of assistance, and all
27 amounts of support and maintenance which accrue during
28 recipient's receipt of assistance: *Provided*, That subject to
29 applicable federal and state laws, the assignment may not
30 exceed the total amount of assistance provided to the family.

31 Each applicant for assistance subject to the assignment
32 established herein shall (during the application process) be
33 informed in writing of the nature of the assignment.

34 Any payment of federal and state assistance made to or for
35 the benefit of any child or children or the caretaker of a child or
36 children creates a debt due and owing to the department of
37 health and human resources by the person or persons responsi-
38 ble for the support and maintenance of such child, children or
39 caretaker in an amount equal to the amount of assistance money
40 paid: *Provided*, That the debt shall be limited by the amount
41 established in any court order or final decree of divorce if the
42 amount in such order or decree is less than the amount of
43 assistance paid.

44 The assignment hereunder shall subrogate the department
45 of health and human resources to the rights of the child,
46 children or caretaker to the prosecution or maintenance of any
47 action or procedure existing under law providing a remedy
48 whereby the department of health and human resources may be
49 reimbursed for moneys expended on behalf of the child,
50 children or caretaker. The department of health and human
51 resources shall further be subrogated to the debt created by any
52 order or decree awarding support and maintenance to or for the
53 benefit of any child, children or caretaker included within the
54 assignment hereunder and shall be empowered to receive such
55 money judgments and endorse any check, draft, note or other
56 negotiable document in payment thereof.

57 The assignment created hereunder shall be released
58 upon closure of the assistance case and the termination of
59 assistance payments except for such support and maintenance
60 obligations accrued and owing at the time of closure which
61 shall be necessary to reimburse the department for any balance
62 of assistance payments made.

63 The department of health and human resources may, at the
64 election of the recipient, continue to receive support and
65 maintenance moneys on behalf of the recipient following
66 closure of the assistance case and shall distribute such moneys
67 to the caretaker, child or children. The department of health and
68 human resources shall notify in writing all appropriate persons
69 of the terms of the release of assignment hereunder.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5. VITAL STATISTICS.

§16-5-12. Birth registration generally; acknowledgment of paternity.

1 (a) A certificate of birth for each live birth which occurs in
2 this state shall be filed with the local registrar of the district in

3 which the birth occurs within seven days after such birth and
4 shall be registered by such registrar if it has been completed and
5 filed in accordance with this section. When a birth occurs in a
6 moving conveyance, a birth certificate shall be filed in the
7 district in which the child is first removed from the conveyance.
8 When a birth occurs in a district other than where the mother
9 resides, a birth certificate shall be filed in the district in which
10 the child is born and in the district in which the mother resides.

11 (b) When a birth occurs in an institution, the person in
12 charge of the institution or his designated representative shall
13 obtain the personal data, prepare the certificate, secure the
14 signatures required for the certificate and file it with the local
15 registrar. The physician in attendance shall certify to the facts
16 of birth and provide the medical information required for the
17 certificate within five days after the birth.

18 (c) When a birth occurs outside an institution, the certificate
19 shall be prepared and filed by one of the following in the
20 indicated order of priority:

21 (1) The physician in attendance at or immediately after the
22 birth, or in the absence of such a person;

23 (2) Any other person in attendance at or immediately after
24 the birth, or in the absence of such a person; or

25 (3) The father, the mother, or, in the absence of the father
26 and the inability of the mother, the person in charge of the
27 premises where the birth occurred.

28 (d) Either of the parents of the child shall sign the certifi-
29 cate of live birth to attest to the accuracy of the personal data
30 entered thereon, in time to permit its filing within the seven
31 days prescribed above.

32 (e) In order that each county may have a complete record of
33 the births occurring in said county, the local registrar shall

34 transmit each month to the county clerk of his or her county the
35 copies of the certificates of all births occurring in said county,
36 from which copies the clerk shall compile a record of such
37 births and shall enter the same in a systematic and orderly way
38 in a well-bound register of births, which said register shall be
39 a public record: *Provided*, That such copies and register shall
40 not state that any child was either legitimate or illegitimate. The
41 form of said register of births shall be prescribed by the state
42 registrar of vital statistics.

43 (f) On and after the first day of November, one thousand
44 nine hundred ninety, in addition to the personal data furnished
45 for the certificate of birth issued for a live birth in accordance
46 with the provisions of this section, a person whose name is to
47 appear on such certificate of birth as a parent shall contempora-
48 neously furnish to the person preparing and filing the certificate
49 of birth the social security account number (or numbers, if the
50 parent has more than one such number) issued to the parent. A
51 record of the social security number or numbers shall be filed
52 with the local registrar of the district in which the birth occurs
53 within seven days after such birth, and the local registrar shall
54 transmit such number or numbers to the state registrar of vital
55 statistics in the same manner as other personal data is transmit-
56 ted to the state registrar.

57 (g) If the mother was married either at the time of concep-
58 tion or birth, the name of the husband shall be entered on the
59 certificate as the father of the child unless paternity has been
60 determined otherwise by a court of competent jurisdiction
61 pursuant to the provisions of article six, chapter forty-eight-a of
62 this code or other applicable law, in which case the name of the
63 father as determined by the court shall be entered.

64 (h) If the mother was not married either at the time of
65 conception or birth, the name of the father shall not be entered
66 on the certificate of birth without the written consent of the
67 mother and of the person to be named as the father unless a

68 determination of paternity has been made by a court of compe-
69 tent jurisdiction pursuant to the provisions of article six, chapter
70 forty-eight-a of this code or other applicable law, in which case
71 the name of the father as determined by the court shall be
72 entered.

73 (i) A written, notarized acknowledgment of both the man
74 and the woman that the man is the father of a named child
75 legally establishes the man as the father of the child for all
76 purposes, and child support may be established pursuant to the
77 provisions of chapter forty-eight-a of this code.

78 (1) The written acknowledgment shall include filing
79 instructions, the parties' social security number and addresses
80 and a statement, given orally and in writing, of the alternatives
81 to, the legal consequences of, and the rights and obligations of
82 acknowledging paternity, including, but not limited to, the duty
83 to support a child. If either of the parents is a minor, the
84 statement shall include an explanation of any rights that may be
85 afforded due to the minority status.

86 (2) The failure or refusal to include all information required
87 by subdivision (1) of this subsection shall not affect the validity
88 of the written acknowledgment, in the absence of a finding by
89 a court of competent jurisdiction that the acknowledgment was
90 obtained by fraud, duress or material mistake of fact, as
91 provided in subdivision (4) of this subsection.

92 (3) The original written acknowledgment should be filed
93 with the state registrar of vital statistics. Upon receipt of any
94 acknowledgment executed pursuant to this section, the registrar
95 shall forward the copy of the acknowledgment to the child
96 support enforcement division and the parents, if the address of
97 the parents is known to the registrar. If a birth certificate for the
98 child has been previously issued which is incorrect or incom-
99 plete, a new birth certificate shall be issued.

100 (4) An acknowledgment executed under the provisions of
101 this subsection may be rescinded as follows:

102 (A) The parent wishing to rescind the acknowledgment
103 shall file with the clerk of the circuit court of the county in
104 which the child resides a verified complaint stating the name of
105 the child, the name of the other parent, the date of the birth of
106 the child, the date of the signing of the affidavit, and a state-
107 ment that he or she wishes to rescind the acknowledgment of
108 the paternity. If the complaint is filed more than sixty days from
109 the date of execution or the date of an administrative or judicial
110 proceeding relating to the child in which the signatory is a
111 party, the complaint shall include specific allegations concern-
112 ing the elements of fraud, duress or material mistake of fact.

113 (B) The complaint shall be served upon the other parent as
114 provided in rule 4 of the West Virginia rules of civil procedure.

115 (C) The family law master shall hold a hearing within sixty
116 days of the service of process upon the other parent. If the
117 complaint was filed within sixty days of the date the acknowl-
118 edgment of paternity was executed, the court shall order the
119 acknowledgment to be rescinded without any requirement of a
120 showing of fraud, duress, or material mistake of fact. If the
121 complaint was filed more than sixty days from the date of
122 execution or the date of an administrative or judicial proceeding
123 relating to the child in which the signatory is a party, the court
124 may only set aside the acknowledgment upon a finding, by clear
125 and convincing evidence, that the acknowledgment was
126 executed under circumstances of fraud, duress or material
127 mistake of fact. The circuit clerk shall forward a copy of any
128 order entered pursuant to this proceeding to the state registrar
129 of vital statistics by certified mail.

CHAPTER 48. DOMESTIC RELATIONS.

Article

2. Divorce, Annulment and Separate Maintenance.

2A. Prevention and Treatment of Domestic and Family Violence.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-15a. Medical support enforcement.

§48-2-15b. Withholding from income.

§48-2-15a. Medical support enforcement.

1 (a) For the purposes of this section:

2 (1) "Custodian for the children" means a parent, legal
3 guardian, committee or other third party appointed by court
4 order as custodian of a child or children for whom child support
5 is ordered.

6 (2) "Obligated parent" means a natural or adoptive parent
7 who is required by agreement or order to pay for insurance
8 coverage and medical care, or some portion thereof, for his or
9 her child.

10 (3) "Insurance coverage" means coverage for medical,
11 dental, including orthodontic, optical, psychological, psychiat-
12 ric or other health care service.

13 (4) "Child" means a child to whom a duty of child support
14 is owed.

15 (5) "Medical care" means medical, dental, optical, psycho-
16 logical, psychiatric or other health care service for children in
17 need of child support.

18 (6) "Insurer" means any company, health maintenance
19 organization, self-funded group, multiple employer welfare
20 arrangement, hospital or medical services corporation, trust,
21 group health plan, as defined in 29 U.S.C. §1167, Section
22 607(1) of the Employee Retirement Income Security Act of
23 1974 or other entity which provides insurance coverage or
24 offers a service benefit plan.

25 (b) In every action to establish or modify an order which
26 requires the payment of child support, the court shall ascertain

27 the ability of each parent to provide medical care for the
28 children of the parties. In any temporary or final order estab-
29 lishing an award of child support or any temporary or final
30 order modifying a prior order establishing an award of child
31 support, the court shall order one or more of the following:

32 (1) The court shall order either parent or both parents to
33 provide insurance coverage for a child, if such insurance
34 coverage is available to that parent on a group basis through an
35 employer or through an employee's union. If similar insurance
36 coverage is available to both parents, the court shall order the
37 child to be insured under the insurance coverage which provides
38 more comprehensive benefits. If such insurance coverage is not
39 available at the time of the entry of the order, the order shall
40 require that if such coverage thereafter becomes available to
41 either party, that party shall promptly notify the other party of
42 the availability of insurance coverage for the child.

43 (2) If the court finds that insurance coverage is not avail-
44 able to either parent on a group basis through an employer,
45 multiemployer trust or employees' union, or that the group
46 insurer is not accessible to the parties, the court may order
47 either parent or both parents to obtain insurance coverage which
48 is otherwise available at a reasonable cost.

49 (3) Based upon the respective ability of the parents to pay,
50 the court may order either parent or both parents to be liable for
51 reasonable and necessary medical care for a child. The court
52 shall specify the proportion of the medical care for which each
53 party shall be responsible.

54 (4) If insurance coverage is available, the court shall also
55 determine the amount of the annual deductible on insurance
56 coverage which is attributable to the children and designate the
57 proportion of the deductible which each party shall pay.

58 (5) The order shall require the obligor to continue to
59 provide the child support enforcement division created by
60 article two, chapter forty-eight-a of this code with information
61 as to his or her employer's name and address and information
62 as to the availability of employer-related insurance programs
63 providing medical care coverage so long as the child continues
64 to be eligible to receive support.

65 (c) The cost of insurance coverage shall be considered by
66 the court in applying the child support guidelines provided for
67 in article one-b, chapter forty-eight-a of this code.

68 (d) Within thirty days after the entry of an order requiring
69 the obligated parent to provide insurance coverage for the
70 children, that parent shall submit to the custodian for the child
71 written proof that the insurance has been obtained or that an
72 application for insurance has been made. Such proof of insur-
73 ance coverage shall consist of, at a minimum:

74 (1) The name of the insurer;

75 (2) The policy number;

76 (3) An insurance card;

77 (4) The address to which all claims should be mailed;

78 (5) A description of any restrictions on usage, such as prior
79 approval for hospital admission, and the manner in which to
80 obtain such approval;

81 (6) A description of all deductibles; and

82 (7) Five copies of claim forms.

83 (e) The custodian for the child shall send the insurer or the
84 obligated parent's employer the children's address and notice
85 that the custodian will be submitting claims on behalf of the
86 children. Upon receipt of such notice, or an order for insurance

87 coverage under this section, the obligated parent's employer,
88 multiemployer trust or union shall, upon the request of the
89 custodian for the child, release information on the coverage for
90 the children, including the name of the insurer.

91 (f) A copy of the court order for insurance coverage shall
92 not be provided to the obligated parent's employer or union or
93 the insurer unless ordered by the court, or unless:

94 (1) The obligated parent, within thirty days of receiving
95 effective notice of the court order, fails to provide to the
96 custodian for the child written proof that the insurance has been
97 obtained or that an application for insurance has been made;

98 (2) The custodian for the child serves written notice by mail
99 at the obligated parent's last known address of intention to
100 enforce the order requiring insurance coverage for the child;
101 and

102 (3) The obligated parent fails within fifteen days after the
103 mailing of the notice to provide written proof to the custodian
104 for the child that the child has insurance coverage.

105 (g) (1) Upon service of the order requiring insurance
106 coverage for the children, the employer, multiemployer trust or
107 union shall enroll the child as a beneficiary in the group
108 insurance plan and withhold any required premium from the
109 obligated parent's income or wages.

110 (2) If more than one plan is offered by the employer,
111 multiemployer trust or union, the child shall be enrolled in the
112 same plan as the obligated parent at a reasonable cost.

113 (3) Insurance coverage for the child which is ordered
114 pursuant to the provisions of this section shall not be terminated
115 except as provided in subsection (k) of this section.

116 (h) Where a parent is required by a court or administrative
117 order to provide health coverage, which is available through an
118 employer doing business in this state, the employer is required:

119 (1) To permit the parent to enroll under family coverage
120 any child who is otherwise eligible for coverage without regard
121 to any enrollment season restrictions;

122 (2) If the parent is enrolled but fails to make application to
123 obtain coverage of the child, to enroll the child under family
124 coverage upon application by the child's other parent, by the
125 state agency administering the medicaid program or by the
126 child support enforcement division;

127 (3) Not to disenroll or eliminate coverage of any such child
128 unless the employer is provided satisfactory written evidence
129 that:

130 (A) The court or administrative order is no longer in effect;
131 or

132 (B) The child is or will be enrolled in comparable coverage
133 which will take effect no later than the effective date of
134 disenrollment; or

135 (C) The employer has eliminated family health coverage for
136 all of its employees;

137 (4) To withhold from the employee's compensation the
138 employee's share, if any, of premiums for health coverage and
139 to pay this amount to the insurer: *Provided*, That the amount so
140 withheld may not exceed the maximum amount permitted to be
141 withheld under 15 U.S.C. §1673, Section 303(b) of the Con-
142 sumer Credit Protection Act.

143 (i) (1) The signature of the custodian for the child shall
144 constitute a valid authorization to the insurer for the purposes

145 of processing an insurance payment to the provider of medical
146 care for the child.

147 (2) No insurer, employer or multiemployer trust in this state
148 may refuse to honor a claim for a covered service when the
149 custodian for the child or the obligated parent submits proof of
150 payment for medical bills for the child.

151 (3) The insurer shall reimburse the custodian for the child
152 or the obligated parent who submits copies of medical bills for
153 the child with proof of payment.

154 (4) All insurers in this state shall comply with the provi-
155 sions of section sixteen, article fifteen, chapter thirty-three of
156 this code and section eleven, article sixteen of said chapter and
157 shall provide insurance coverage for the child of a covered
158 employee notwithstanding the amount of support otherwise
159 ordered by the court and regardless of the fact that the child
160 may not be living in the home of the covered employee.

161 (j) Where an obligated parent changes employment, and the
162 new employer provides the obligated parent's health care
163 coverage, the child support enforcement division shall transfer
164 to the new employer notice of the obligated parent's duty to
165 provide health care coverage. Unless contested by the obligated
166 parent in writing and in accordance with section eight, article
167 five, chapter forty-eight-a of this code, the notice shall operate
168 to enroll the child in the new employer's health care plan.

169 (k) When an order for insurance coverage for a child
170 pursuant to this section is in effect and the obligated parent's
171 employment is terminated, or the insurance coverage for the
172 child is denied, modified or terminated, the insurer shall in
173 addition to complying with the requirements of article sixteen-
174 a, chapter thirty-three of this code, within ten days after the
175 notice of change in coverage is sent to the covered employee,

176 notify the custodian for the child and provide an explanation of
177 any conversion privileges available from the insurer.

178 (l) A child of an obligated parent shall remain eligible for
179 insurance coverage until the child is emancipated or until the
180 insurer under the terms of the applicable insurance policy
181 terminates said child from coverage, whichever is later in time,
182 or until further order of the court.

183 (m) If the obligated parent fails to comply with the order to
184 provide insurance coverage for the child, the court shall:

185 (1) Hold the obligated parent in contempt for failing or
186 refusing to provide the insurance coverage or for failing or
187 refusing to provide the information required in subsection (d)
188 of this section;

189 (2) Enter an order for a sum certain against the obligated
190 parent for the cost of medical care for the child and any
191 insurance premiums paid or provided for the child by the child
192 support enforcement division during any period in which the
193 obligated parent failed to provide the required coverage, and
194 directing that such judgment be collected through income
195 withholding;

196 (3) In the alternative, other enforcement remedies available
197 under sections two and three, article five, chapter forty-eight-a
198 of this code, or otherwise available under law, may be used to
199 recover from the obligated parent the cost of medical care or
200 insurance coverage for the child;

201 (4) In addition to other remedies available under law, the
202 child support enforcement division may initiate an income
203 withholding against the wages, salary or other employment
204 income of, and withhold amounts from state tax refunds to any
205 person who:

206 (A) Is required by court or administrative order to provide
207 coverage of the cost of health services to a child; and

208 (B) Has received payment from a third party for the costs
209 of such services but has not used the payments to reimburse
210 either the other parent or guardian of the child or the provider
211 of the services, to the extent necessary to reimburse the state
212 medicaid agency for its costs: *Provided*, That claims for current
213 and past-due child support shall take priority over these claims.

214 (n) Proof of failure to maintain court-ordered insurance
215 coverage for the child constitutes a showing of substantial
216 change in circumstances or increased need pursuant to section
217 fifteen of this article, and provides a basis for modification of
218 the child support order.

§48-2-15b. Withholding from income.

1 (a) Every order entered or modified under the provisions of
2 this article, not described in subsection (d) of this section,
3 which requires the payment of child support or spousal support
4 shall include a provision for automatic withholding from
5 income of the obligor, in order to facilitate income withholding
6 as a means of collecting support.

7 (b) Every such order as described in subsection (a) of this
8 section shall contain language authorizing income withholding
9 for both current support and for any arrearages to commence
10 without further court action as follows:

11 (1) The order shall provide that income withholding will
12 begin immediately, without regard to whether there is an
13 arrearage:

14 (A) When a child for whom support is ordered is included
15 or becomes included in a grant of assistance from the division
16 of human services or a similar agency of a sister state for

17 temporary assistance for needy families benefits, medical
18 assistance only benefits or foster care benefits; or

19 (B) When the support obligee has applied for services from
20 the child support enforcement division created pursuant to
21 article two, chapter forty-eight-a of this code, or the support
22 enforcement agency of another state or is otherwise receiving
23 services from the child support enforcement division as
24 provided for in said chapter. In any case where one of the
25 parties demonstrates, and the court finds, that there is good
26 cause not to require immediate income withholding, or in any
27 case where there is filed with the court a written agreement
28 between the parties which provides for an alternative arrange-
29 ment, such order shall not provide for income withholding to
30 begin immediately.

31 (2) The order shall also provide that income withholding
32 will begin immediately upon the occurrence of any of the
33 following:

34 (A) When the payments which the obligor has failed to
35 make under the order are at least equal to the support payable
36 for one month, if the order requires support to be paid in
37 monthly installments;

38 (B) When the payments which the obligor has failed to
39 make under the order are at least equal to the support payable
40 for four weeks, if the order requires support to be paid in
41 weekly or bi-weekly installments;

42 (C) When the obligor requests the child support enforce-
43 ment division to commence income withholding; or

44 (D) When the obligee requests that such withholding begin,
45 if the request is approved by the court in accordance with
46 procedures and standards established by rules promulgated by
47 the commission pursuant to this section and to chapter twenty-
48 nine-a of this code.

49 (c) On and after the first day of January, one thousand nine
50 hundred ninety-four, the wages of an obligor shall be subject to
51 withholding, regardless of whether child support payments are
52 in arrears, on the date the order for child support is entered:
53 *Provided*, That where one of the parties demonstrates, and the
54 court finds, that there is good cause not to require immediate
55 income withholding, or in any case where there is filed with the
56 court a written agreement between the parties which provides
57 for an alternative arrangement, such order shall not provide for
58 income withholding to begin immediately.

59 (d) The supreme court of appeals shall make available to
60 the circuit courts standard language to be included in all such
61 orders, so as to conform such orders to the applicable require-
62 ments of state and federal law regarding the withholding from
63 income of amounts payable as support.

64 (e) Every support order entered by a circuit court of this
65 state prior to the effective date of this section shall be consid-
66 ered to provide for an order of income withholding, by opera-
67 tion of law, which complies with the provisions of this section,
68 notwithstanding the fact that such support order does not in fact
69 provide for such order of withholding.

70 (f) The court shall consider the best interests of the child in
71 determining whether "good cause" exists under this section.
72 The court may also consider the obligor's payment record in
73 determining whether "good cause" has been demonstrated.

74 (g) The West Virginia support enforcement commission
75 shall promulgate legislative rules pursuant to chapter twenty-
76 nine-a of this code further defining the duties of the child
77 support enforcement division and the employer in wage
78 withholding.

**ARTICLE 2A. PREVENTION AND TREATMENT OF DOMESTIC AND
FAMILY VIOLENCE.**

§48-2A-6. Protective orders.

1 (a) At the conclusion of the hearing, if the petitioner has
2 proven the allegations of domestic or family violence, or that he
3 or she reported or witnessed domestic or family violence
4 against another and has, as a result, been abused, threatened,
5 harassed or has been the subject of other actions to attempt to
6 intimidate him or her, by a preponderance of the evidence, the
7 court shall issue a protective order directing the respondent to
8 refrain from abusing, harassing, stalking, threatening or
9 otherwise intimidating the petitioner, the person who reported
10 or witnessed family or domestic violence or the minor children,
11 or engaging in other conduct that would place the petitioner, the
12 person who reported or witnessed family or domestic violence
13 or the minor children in reasonable fear of bodily injury. The
14 court's order shall inform the respondent that he or she is
15 prohibited from possessing any firearm or ammunition,
16 notwithstanding the fact that the respondent may have a valid
17 license to possess a firearm, and that possession of a firearm or
18 ammunition while subject to the court's protective order is a
19 criminal offense under federal law. Where the respondent is
20 present at the hearing and elects not to contest the allegations of
21 domestic or family violence or does not contest the relief
22 sought, the petitioner is not required to adduce evidence and
23 prove the allegations of domestic or family violence and the
24 court may directly address the issues of the relief requested.

25 (b) Where the petitioner is the victim of domestic or family
26 violence, the terms of a protective order may include:

27 (1) Granting possession to the petitioner of the residence or
28 household jointly resided in at the time the abuse occurred;

29 (2) Awarding temporary custody of or establishing tempo-
30 rary visitation rights with regard to minor children named in the
31 order;

32 (3) Establishing terms of temporary visitation with regard
33 to the minor children named in the order including, but not
34 limited to, requiring third party supervision of visitations if
35 necessary to protect the petitioner and/or the minor children;

36 (4) Ordering the noncustodial parent to pay to the caretaker
37 parent a sum for temporary support and maintenance of the
38 petitioner and children, if any;

39 (5) Ordering the respondent to pay to the petitioner a sum
40 for temporary support and maintenance of the petitioner, where
41 appropriate;

42 (6) Ordering the respondent to refrain from entering the
43 school, business or place of employment of the petitioner or
44 household or family members for the purpose of violating the
45 protective order;

46 (7) Ordering the respondent to participate in an intervention
47 program for perpetrators;

48 (8) Ordering the respondent to refrain from contacting,
49 telephoning, communicating, harassing or verbally abusing the
50 petitioner;

51 (9) Providing for either party to obtain personal property or
52 other items from a location, including granting temporary
53 possession of motor vehicles owned by either or both of the
54 parties, and providing for the safety of the parties while this
55 occurs, including ordering a law-enforcement officer to
56 accompany one or both of the parties;

57 (10) Ordering the respondent to reimburse the petitioner or
58 other person for any expenses incurred as a result of the
59 domestic or family violence, including, but not limited to,
60 medical expenses, transportation and shelter; and

61 (11) Ordering the petitioner and respondent to refrain from
62 transferring, conveying, alienating, encumbering, or otherwise
63 dealing with property which could otherwise be subject to the
64 jurisdiction of the court or another court in an action for divorce
65 or support, partition or in any other action affecting their
66 interests in property.

67 (c) Where the petitioner or other person to be protected
68 reported or was a witness to the family or domestic violence,
69 the terms of a protective order may include:

70 (1) Ordering the respondent to refrain from abusing,
71 contacting, telephoning, communicating, harassing, verbally
72 abusing or otherwise intimidating the petitioner or other person
73 to be protected; and

74 (2) Ordering the respondent to refrain from entering the
75 school, business or place of employment of the petitioner or
76 other person to be protected, for the purpose of violating the
77 protective order.

78 (d) Except as otherwise provided by subsection (d), section
79 three-a of this article, a protective order issued by a magistrate,
80 family law master or circuit judge pursuant to this article or
81 subsection (a), section thirteen, article two of this chapter, is
82 effective for either ninety days or one hundred eighty days, in
83 the discretion of the court. If the court enters an order for a
84 period of ninety days, upon receipt of a written request from the
85 petitioner prior to the expiration of the ninety-day period, the
86 court shall extend its order for an additional ninety-day period.

87 (e) To be effective, a written request to extend an order
88 from ninety days to one hundred eighty days must be submitted
89 to the court prior to the expiration of the original ninety-day
90 period. A notice of the extension shall be sent by the clerk of
91 the court to the respondent by first class mail, addressed to the
92 last known address of the respondent as indicated by the court's

93 case filings. The extension of time is effective upon mailing of
94 the notice.

95 (f) The court may amend the terms of a protective order at
96 any time upon subsequent petition filed by either party. The
97 protective order shall be in full force and effect in every county
98 of this state and shall so state.

99 (g) No order entered pursuant to this article may in any
100 manner affect title to any real property, except as provided in
101 section four, article five, chapter forty-eight-a of this code for
102 past-due child support. The personal property of any person
103 ordered to pay child support pursuant to the provisions of this
104 article is subject to a lien for past-due child support as provided
105 in section two, article five, chapter forty-eight-a of this code.

106 (h) Certified copies of any order or extension notice made
107 under the provisions of this section shall be issued to the
108 petitioner, the respondent and any law-enforcement agency
109 having jurisdiction to enforce the order, including the city
110 police, the county sheriff's office or local office of the West
111 Virginia state police within twenty-four hours of the entry of
112 the order.

113 (i) Mutual protective orders are prohibited unless both
114 parties have filed a petition under section four of this article and
115 have proven the allegations of domestic or family violence by
116 a preponderance of the evidence. This shall not prevent other
117 persons, including the respondent, from filing a separate
118 petition. The court may consolidate two or more petitions if he
119 or she determines that consolidation will further the interest of
120 justice and judicial economy. The court shall enter a separate
121 order for each petition filed.

122 (j) Any protective order issued pursuant to this article shall
123 contain on its face the following statement, printed in bold-
124 faced type or in capital letters:

125 “VIOLATION OF THIS ORDER MAY BE PUNISHED
126 BY CONFINEMENT IN A REGIONAL OR COUNTY JAIL
127 FOR AS LONG AS ONE YEAR AND BY A FINE OF AS
128 MUCH AS TWO THOUSAND DOLLARS”.

129 (k) Any person against whom a protective order is issued
130 after a full hearing pursuant to this section shall be assessed a
131 fee of twenty-five dollars. Such fee shall be paid to the family
132 court fund established pursuant to section twenty-three, article
133 four, chapter forty-eight-a of this code.

134 (l) The supreme court of appeals shall promulgate a
135 procedural rule to establish time-keeping requirements for
136 magistrates, magistrate court clerks, and magistrate assistants
137 so as to assure the maximum funding of incentive payments,
138 grants and other funding sources available to the state for the
139 processing of cases filed for the establishment of temporary
140 orders of child support pursuant to the provisions of this
141 section.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

Article

- 1. General Provisions.**
- 1A. Definitions.**
- 1B. Guidelines for Child Support Awards.**
- 2. West Virginia Support Enforcement Commission; Child Support Enforcement Division; Establishment and Organization.**
- 3. Children’s Advocate.**
- 5. Remedies for the Enforcement of Support Obligations and Visitation.**
- 5A. Enforcement of Support Order through Action against License.**
- 6. Establishment of Paternity.**

ARTICLE 1. GENERAL PROVISIONS.

§48A-1-3. Calculation of interest.

- 1 (a) If an obligation to pay interest arises under this chapter,
- 2 the rate of interest is that specified in section thirty-one, article

3 six, chapter fifty-six of this code. Interest shall accrue only
4 upon the outstanding principal of such obligation. On and after
5 the ninth day of June, one thousand nine hundred ninety-five,
6 this section shall be construed to permit the accumulation of
7 simple interest and may not be construed to permit the com-
8 pounding of interest. Interest which accrued on unpaid install-
9 ments accruing before the ninth day of June, one thousand nine
10 hundred ninety-five, may not be modified by any court,
11 irrespective of whether such installment accrued simple or
12 compound interest: *Provided*, That unpaid installments upon
13 which interest was compounded before the effective date of this
14 section shall accrue only simple interest thereon on and after
15 the ninth day of June, one thousand nine hundred ninety-five.

16 (b) Except as otherwise provided in this subsection,
17 prejudgment interest shall not be awarded in a domestic
18 relations action. The circuit court may only award prejudgment
19 interest in a domestic relations action against a party if the court
20 finds, in writing, that the party engaged in conduct that would
21 violate subsection (b), rule 11 of the West Virginia rules of civil
22 procedure. If prejudgment interest is awarded, the court shall
23 calculate prejudgment interest from the date the offending
24 representation was presented to the court.

25 (c) Upon written agreement by both parties, an obligor may
26 petition the court to enter an order conditionally suspending the
27 collection of all or part of the interest that has accrued on past-
28 due child support prior to the date of the agreement: *Provided*,
29 That said agreement shall also establish a reasonable payment
30 plan which is calculated to fully discharge all arrearages within
31 twenty-four months. Upon successful completion of the
32 payment plan, the court shall enter an order which permanently
33 relieves the obligor of the obligation to pay the accrued interest.
34 If the obligor fails to comply with the terms of the written
35 agreement, then the court shall enter an order which reinstates
36 the accrued interest. Any proceeding commenced pursuant to

37 the provisions of this subsection may only be filed after the first
38 day of January, two thousand one, and before the thirty-first day
39 of December, two thousand one.

ARTICLE 1A. DEFINITIONS.

§48A-1A-33. Arrearages and past-due support.

1 “Arrearages” or “past-due support” means the total of any
2 matured, unpaid installments of child support required to be
3 paid by an order entered or modified by a court of competent
4 jurisdiction, or by the order of a magistrate court of this state,
5 and shall stand, by operation of law, as a decretal judgment
6 against the obligor owing such support. The amount of unpaid
7 support shall bear interest from the date it accrued, at a rate of
8 ten dollars upon one hundred dollars per annum, and propor-
9 tionately for a greater or lesser sum, or for a longer or shorter
10 time. Except as provided in rule 19 of rules of practice and
11 procedure for family law and as provided in subsection (c),
12 section three, article one of this chapter, a child support order
13 may not be retroactively modified so as to cancel or alter
14 accrued installments of support.

ARTICLE 1B. GUIDELINES FOR CHILD SUPPORT AWARDS.

§48A-1B-11. Modification.

1 (a) The provisions of a child support order may be modified
2 if there is a substantial change of circumstances. For purposes
3 of this section, if application of the guideline would result in a
4 new order that is more than fifteen percent different, then the
5 circumstances are considered to be a substantial change.

6 (b) An expedited process for modification of a child support
7 order may be utilized if either parent experiences a substantial
8 change of circumstances resulting in a decrease in income due
9 to loss of employment or other involuntary cause or an increase
10 in income due to promotion, change in employment,

11 reemployment, or other such change in employment status. The
12 party seeking the recalculation of support and modification of
13 the support order shall file a description of the decrease or
14 increase in income and an explanation of the cause of the
15 decrease or increase on a standardized form to be provided by
16 the secretary-clerk or other employee of the family court. The
17 standardized form shall be verified by the filing party. Any
18 available documentary evidence shall be filed with the stan-
19 dardized form. Based upon the filing and information available
20 in the case record, the amount of support shall be tentatively
21 recalculated. The secretary-clerk shall serve a notice of the
22 filing, a copy of the standardized form, and the support calcula-
23 tions upon the other party by certified mail, return receipt
24 requested, with delivery restricted to the addressee, in accor-
25 dance with rule 4(d)(1)(D) of the West Virginia rules of civil
26 procedure. The secretary-clerk shall also mail a copy, by first
27 class mail, to the local office of the child support enforcement
28 division for the county in which the circuit court is located in
29 the same manner as original process under rule 4(d) of the rules
30 of civil procedure. The notice shall fix a date fourteen days
31 from the date of mailing, and inform the party that unless the
32 recalculation is contested and a hearing request is made on or
33 before the date fixed, the proposed modification will be made
34 effective. If the filing is contested, the proposed modification
35 shall be set for hearing; otherwise, the family law master shall
36 prepare a recommended default order for entry by the circuit
37 judge. Either party may move to set aside a default entered by
38 the circuit clerk or a judgment by default entered by the clerk
39 or the court, pursuant to the provisions of rule 55 or rule 60(b)
40 of the rules of civil procedure. If an obligor uses the provisions
41 of this section to expeditiously reduce his or her child support
42 obligation, the order that effected the reduction shall also
43 require the obligor to notify the obligee of reemployment, new
44 employment or other such change in employment status that
45 results in an increase in income. If an obligee uses the provi-

46 sions of this section to expeditiously increase his or her child
47 support obligation, the order that effected the increase shall also
48 require the obligee to notify the obligor of reemployment, new
49 employment or other such change in employment status that
50 results in an increase in income of the obligee.

51 (c) The supreme court of appeals shall develop the stan-
52 dardized form required by subsection (b) of this section.

53 (d) In any proceeding filed after the first day of January,
54 two thousand one, where a petition to modify child support is
55 granted which results in a reduction of child support owed so
56 that the obligor has overpaid child support, the court shall grant
57 a decretal judgment to the obligor for the amount of the
58 overpayment. The court shall inquire as to whether a support
59 arrearage was owed by the obligor for support due prior to the
60 filing of the petition for modification. If an arrearage exists, the
61 court shall order an offset of the overpayment against the child
62 support arrearages. If no prior arrearage exists or if the arrear-
63 age is not sufficient to offset the overpayment, then the court
64 may direct the child support enforcement division to collect the
65 overpayment through income withholding, if the person has, in
66 the court's opinion, sufficient income other than the child
67 support received. The income withholding shall be in all
68 respects as provided for in section three, article five of this
69 chapter, except that in no circumstances may the amount
70 withheld exceed thirty-five percent of the disposable earnings
71 for the period, regardless of the length of time that the overpay-
72 ment has been owed.

**ARTICLE 2. WEST VIRGINIA SUPPORT ENFORCEMENT COMMISSION;
CHILD SUPPORT ENFORCEMENT DIVISION; ESTAB-
LISHMENT AND ORGANIZATION.**

§48A-2-24. Disbursements of amounts collected as support.

§48A-2-24a. Amounts collected as support to be disbursed to person having custody; procedure for redirecting disbursement of payments where physical custody transferred to a person other than the custodial parent.

§48A-2-28. Obtaining support from state income tax refunds.

§48A-2-33a. Liability for financial institutions providing financial records to the child support enforcement division; agreements for data match system; encumbrance or surrender of assets.

§48A-2-41. Access to information.

§48A-2-24. Disbursements of amounts collected as support.

1 (a) Amounts collected as child or spousal support by the
2 child support enforcement division shall be distributed within
3 two business days after receipt from the employer or other
4 source of periodic income. The amounts collected as child
5 support shall be distributed by the child support enforcement
6 division in accordance with the provisions for distribution set
7 forth in 42 U.S.C. §657. The commission shall promulgate a
8 legislative rule to establish the appropriate distribution as may
9 be required by the federal law.

10 (b) Any payment required to be made under the provisions
11 of this section to a family shall be made to the resident parent,
12 legal guardian or caretaker relative having custody of or
13 responsibility for the child or children.

14 (c) The commission shall establish bonding requirements
15 for employees of the child support enforcement division who
16 receive, disburse, handle or have access to cash.

17 (d) The director shall maintain methods of administration
18 which are designed to assure that employees of the child
19 support enforcement division or any persons employed pursuant
20 to a contract who are responsible for handling cash receipts do
21 not participate in accounting or operating functions which
22 would permit them to conceal in the accounting records the
23 misuse of cash receipts: *Provided*, That the director may
24 provide for exceptions to this requirement in the case of
25 sparsely populated areas in this state where the hiring of
26 unreasonable additional staff in the local office would otherwise
27 be necessary.

28 (e) No penalty or fee may be collected by or distributed to
29 a recipient of child support enforcement division services from
30 the state treasury or from the child support enforcement fund
31 when child support is not distributed to the recipient in accor-
32 dance with the time frames established herein.

33 (f) For purposes of this section, "business day" means a day
34 on which state offices are open for regular business.

**§48A-2-24a. Amounts collected as support to be disbursed to
person having custody; procedure for redirecting
disbursement of payments where physical custody
transferred to a person other than the custodial
parent.**

1 (a) Any payment required to be made under the provisions
2 of section twenty-four of this article to a family shall be made
3 to the resident parent, legal guardian or caretaker relative
4 having custody of or responsibility for the child or children.

5 (b) Where physical custody of the child has been trans-
6 ferred from the custodial parent to another person, the child
7 support enforcement division may redirect disbursement of
8 support payments to such other person, on behalf of the child,
9 in the following circumstances:

10 (1) Where the noncustodial parent has physical custody of
11 the child, excluding visitation, upon filing with the child
12 support enforcement division:

13 (A) An affidavit attesting that the noncustodial parent has
14 obtained physical custody of the child, describing the circum-
15 stances under which the transfer of physical custody took place,
16 and stating that he or she anticipates that his or her physical
17 custody of the child will continue for the foreseeable future; and

18 (B) Documentary proof that the noncustodial parent has
19 instituted proceedings in the circuit court for a modification of

20 legal custody or a certified copy of the custodial parent's death
21 certificate.

22 (2) Where a person other than the custodial or noncustodial
23 parent has physical custody of the child, excluding visitation,
24 filing with the child support enforcement division:

25 (A) An affidavit attesting that the person has obtained
26 physical custody of the child, describing the circumstances
27 under which the transfer of physical custody took place, and
28 stating that he or she anticipates that his or her physical custody
29 of the child will continue for the foreseeable future; and

30 (B) Documentary proof that the person claiming physical
31 custody is currently the person responsible for the child by
32 producing at least one of the following:

33 (i) School records demonstrating that school authorities
34 consider the person claiming physical custody the adult
35 responsible for the child;

36 (ii) Medical records demonstrating that the person claiming
37 physical custody is empowered to make medical decisions on
38 behalf of the child;

39 (iii) Documents from another public assistance agency
40 showing that the person claiming physical custody is currently
41 receiving other public assistance on behalf of the child;

42 (iv) A notarized statement from the custodial parent
43 attesting to the fact that he or she has transferred physical
44 custody to the person;

45 (v) A verifiable order of a court of competent jurisdiction
46 transferring physical or legal custody to the person;

47 (vi) Documentation that the person claiming physical
48 custody has filed a petition in circuit court to be appointed the
49 child's guardian;

50 (vii) Documentation that the child, if over the age of
51 fourteen, has instituted proceedings in circuit court to have the
52 person claiming physical custody nominated as his or her
53 guardian; or

54 (viii) Any other official documents of a federal, state or
55 local agency or governing body demonstrating that the person
56 currently has physical custody of the child and has taken action
57 indicating that he or she anticipates such physical custody to
58 continue in the foreseeable future.

59 (c) The child support enforcement division shall mail, by
60 first class mail, a copy of the affidavit and supporting document-
61 tary evidence required under subsection (b) of this section, to
62 the circuit court which issued the support order being enforced
63 by child support enforcement division and to the parties to the
64 order, at their last known addresses, together with a written
65 notice stating that any party has ten days to object to the
66 redirection of support payments by filing an affidavit and
67 evidence showing that the person seeking redirection of the
68 payments does not have physical custody of the child. If no
69 objection is received by the child support enforcement division
70 by the end of the ten-day period, the division may order
71 payments redirected to the person claiming physical custody for
72 the benefit of the child. If a responsive affidavit and supporting
73 evidence is filed within the ten-day period and, in the opinion
74 of the child support enforcement division, either disproves the
75 claim of the person seeking redirection of support payments or
76 raises a genuine issue of fact as to whether the person has actual
77 physical custody of the child, the child support enforcement
78 division shall continue to forward support payments to the
79 custodial parent. Any person who disagrees with the determina-
80 tion of the child support enforcement division may petition the
81 circuit court for modification of the child support order.

82 (d) Any person who files a false affidavit pursuant to this
83 section shall be guilty of false swearing and, upon conviction
84 thereof, shall be punished as provided by law for such offense.

§48A-2-28. Obtaining support from state income tax refunds.

1 (a) The tax commissioner shall establish procedures
2 necessary for the child support enforcement division to obtain
3 payment of past-due support from state income tax refunds
4 from overpayment made to the tax commissioner pursuant to
5 the provisions of article twenty-one, chapter eleven of this code.

6 (b) The commission shall, by legislative rule promulgated
7 pursuant to chapter twenty-nine-a of this code, establish
8 procedures necessary for the child support enforcement division
9 to enforce a support order through a notice to the tax commis-
10 sioner which will cause any refund of state income tax which
11 would otherwise be payable to an obligor to be reduced by the
12 amount of overdue support owed by such obligor.

13 (1) Such legislative rule shall, at a minimum, prescribe:

14 (A) The time or times at which the child support enforce-
15 ment division shall serve on the obligor or submit to the tax
16 commissioner notices of past-due support;

17 (B) The manner in which such notices shall be served on
18 the obligor or submitted to the tax commissioner;

19 (C) The necessary information which shall be contained in
20 or accompany the notices;

21 (D) The amount of the fee to be paid to the tax commis-
22 sioner for the full cost of applying the procedure whereby past-
23 due support is obtained from state income tax refunds; and

24 (E) Circumstances when the child support enforcement
25 division may deduct a twenty-five dollar fee from the obligor's
26 state income tax refund. Such rule may not require that an

27 applicant who is a recipient of assistance from the department
28 of human services in the form of temporary assistance for needy
29 families.

30 (2) Withholding from state income tax refunds may not be
31 pursued unless the child support enforcement division has
32 examined the obligor's pattern of payment of support and the
33 obligee's likelihood of successfully pursuing other enforcement
34 actions, and has determined that the amount of past-due support
35 which will be owed, at the time the withholding is to be made,
36 will be one hundred dollars or more. In determining whether the
37 amount of past-due support will be one hundred dollars or
38 more, the child support enforcement division shall consider the
39 amount of all unpaid past-due support, including that which
40 may have accrued prior to the time that the child support
41 enforcement division first agreed to enforce the support order.

42 (c) The director of the child support enforcement division
43 shall enter into agreements with the secretary of the treasury
44 and the tax commissioner, and other appropriate governmental
45 agencies, to secure information relating to the social security
46 number or numbers and the address or addresses of any obligor,
47 in order to provide notice between such agencies to aid the
48 child support enforcement division in requesting state income
49 tax deductions and to aid the tax commissioner in enforcing
50 such deductions. In each such case, the tax commissioner, in
51 processing the state income tax deduction, shall notify the child
52 support enforcement division of the obligor's home address and
53 social security number or numbers. The child support enforce-
54 ment division shall provide this information to any other state
55 involved in processing the support order.

56 (d) For the purposes of this section, "past-due support"
57 means the amount of unpaid past-due support owed under the
58 terms of a support order to or on behalf of a child, or to or on
59 behalf of a minor child and the parent with whom the child is

60 living, regardless of whether the amount has been reduced to a
61 judgment or not.

62 (e) The child support enforcement division may, under the
63 provisions of this section, enforce the collection of past-due
64 support on behalf of a child who has reached the age of
65 majority.

66 (f) The legislative rule promulgated by the commission
67 pursuant to the provisions of this section and pursuant to
68 chapter twenty-nine-a of this code, shall, at a minimum, provide
69 that prior to notifying the tax commissioner of past due support,
70 a notice to the obligor as prescribed under subsection (a) of this
71 section shall:

72 (1) Notify the obligor that a withholding will be made from
73 any refund otherwise payable to such obligor;

74 (2) Instruct the obligor of the steps which may be taken to
75 contest the determination of the child support enforcement
76 division that past-due support is owed or the amount of the
77 past-due support; and

78 (3) Provide information with respect to the procedures to be
79 followed, in the case of a joint return, to protect the share of the
80 refund which may be payable to another person.

81 (g) If the child support enforcement division is notified by
82 the tax commissioner that the refund from which withholding
83 is proposed to be made is based upon a joint return, and if the
84 past-due support which is involved has not been assigned to the
85 department of human services, the child support enforcement
86 division may delay distribution of the amount withheld until
87 such time as the tax commissioner notifies the child support
88 enforcement division that the other person filing the joint return
89 has received his or her proper share of the refund, but such
90 delay shall not exceed six months.

91 (h) In any case in which an amount is withheld by the tax
92 commissioner under the provisions of this section and paid to
93 the child support enforcement division, if the child support
94 enforcement division subsequently determines that the amount
95 certified as past due was in excess of the amount actually owed
96 at the time the amount withheld is to be distributed, the agency
97 shall pay the excess amount withheld to the obligor thought to
98 have owed the past-due support or, in the case of amounts
99 withheld on the basis of a joint return, jointly to the parties
100 filing such return.

101 (i) The amounts received by the child support enforcement
102 division shall be distributed in accordance with the provisions
103 for distribution set forth in 42 U.S.C. §657. The commission
104 shall promulgate a legislative rule to establish the appropriate
105 distribution as may be required by the federal law.

§48A-2-33a. Liability for financial institutions providing financial records to the child support enforcement division; agreements for data match system; encumbrance or surrender of assets.

1 (a) Notwithstanding any other provision of this code, a
2 financial institution shall not be liable under the law of this state
3 to any person for:

4 (1) Disclosing any financial record of an individual to the
5 child support enforcement division in response to a subpoena
6 issued by the division pursuant to section thirty-three of this
7 article;

8 (2) Disclosing any financial record of an individual to the
9 child support enforcement division pursuant to the terms of an
10 agreement with such financial institution pursuant to subsection
11 (f) of this section;

12 (3) Encumbering or surrendering assets held by such
13 financial institution in response to a notice of lien or levy issued

14 by the child support enforcement division as provided in
15 subsection (g) of this section; or

16 (4) For any other action taken in good faith to comply with
17 the requirements of this section.

18 (b) The child support enforcement division, after obtaining
19 a financial record of an individual from a financial institution,
20 may disclose such financial record only for the purpose of, and
21 to the extent necessary in, establishing, modifying or enforcing
22 a child support obligation of such individual.

23 (c) The civil liability of a person who knowingly, or by
24 reason of negligence, discloses a financial record of an individ-
25 ual in violation of subsection (b) of this section is governed by
26 the provisions of federal law as set forth in 42 U.S.C. §669A.

27 (d) For purposes of this section, the term “financial
28 institution” means:

29 (1) Any bank or savings association;

30 (2) A person who is an institution-affiliated party, as that
31 term is defined in the Federal Deposit Insurance Act, 12 U.S.C.
32 §1813(u);

33 (3) Any federal credit union or state-chartered credit union,
34 including an institution-affiliated party of a credit union; and

35 (4) Any benefit association, insurance company, safe
36 deposit company, money-market mutual fund, or similar entity
37 authorized to do business in this state.

38 (e) For purposes of this section, the term “financial record”
39 means an original of, a copy of, or information known to have
40 been derived from, any record held by a financial institution
41 pertaining to a customer’s relationship with the financial
42 institution.

43 (f) Notwithstanding any provision of this code to the
44 contrary, the child support enforcement division shall enter into
45 agreements with financial institutions doing business in the
46 state to develop and operate, in coordination with such financial
47 institutions, a data match system, using automated data ex-
48 changes, to the maximum extent feasible, in which each
49 financial institution is required to provide for each calendar
50 quarter the name, record address, social security number or
51 other taxpayer identification number, and other identifying
52 information for each obligor, as defined in section twenty-three,
53 article one-a of this chapter, who maintains an account at such
54 institution and who owes past-due support. The child support
55 enforcement division will identify to the financial institution an
56 obligor who owes past due support by his or her name and
57 social security number or other taxpayer identification number.
58 The child support enforcement division, upon written request
59 and proof of actual costs incurred, shall pay a reasonable fee to
60 a financial institution for conducting the data matching services
61 not to exceed the actual costs incurred by such financial
62 institution or one hundred dollars per institution per quarter,
63 whichever is less.

64 (g) The financial institution, in response to a notice of a lien
65 or levy, shall encumber or surrender, as the case may be, assets
66 held by such institution on behalf of any noncustodial parent
67 who is subject to a lien for child support.

§48A-2-41. Access to information.

1 (a) All state, county and municipal agencies' offices and
2 employers, including profit, nonprofit and governmental
3 employers, receiving a request for information and assistance
4 from the child support enforcement division or any out-of-state
5 agency administering a program under Title IV-D of the Social
6 Security Act, shall cooperate with the division or with the out-
7 of-state agency in the location of parents who have abandoned
8 and deserted children and shall provide the division or the out-

9 of-state agency with all available pertinent information con-
10 cerning the location, income and property of those parents.

11 (b) Notwithstanding any other provision of law to the
12 contrary, any entity conducting business in this state or incorpo-
13 rated under the laws of this state shall, upon certification by the
14 division or any out-of-state agency administering a program
15 under Title IV-D of the Social Security Act that the information
16 is needed to locate a parent for the purpose of collecting or
17 distributing child support, provide the division or the out-of-
18 state agency with the following information about the parent:
19 Full name, social security number, date of birth, home address,
20 wages and number of dependents listed for income tax pur-
21 poses: *Provided*, That no entity may provide any information
22 obtained in the course of providing legal services, medical
23 treatment or medical services.

24 (c) (1) The child support enforcement division shall have
25 access, subject to safeguards on privacy and information
26 security, and to the nonliability of entities that afford such
27 access under this subdivision, to information contained in the
28 following records, including automated access, in the case of
29 records maintained in automated data bases:

30 (A) Records of other state and local government agencies,
31 including, but not limited to:

32 (i) Vital statistics, including records of marriage, birth and
33 divorce;

34 (ii) State and local tax and revenue records, including
35 information on residence address, employer, income and assets;

36 (iii) Records concerning real and titled personal property;

37 (iv) Records of occupational and professional licenses, and
38 records concerning the ownership and control of corporations,
39 partnerships and other business entities;

40 (v) Employment security records;

41 (vi) Records of agencies administering public assistance
42 programs;

43 (vii) Records of the division of motor vehicles; and

44 (viii) Corrections records.

45 (B) Certain records held by private entities with respect to
46 individuals who owe or are owed support or certain individuals
47 against, or with respect to, whom a support obligation is sought,
48 consisting of:

49 (i) The names and addresses of such individuals and the
50 names and addresses of the employers of such individuals, as
51 appearing in the customer records of public utilities and cable
52 television companies, pursuant to an administrative subpoena
53 authorized by section thirty-three, article two of this chapter;
54 and

55 (ii) Information, including information on assets and
56 liabilities, on such individuals held by financial institutions.

57 (2) Out-of-state agencies administering programs under
58 Title IV-D of the Social Security Act shall, without the need for
59 any court order, have the authority to access records in this state
60 by making a request through the child support enforcement
61 division.

62 (d) All federal and state agencies conducting activities
63 under Title IV-D of the Social Security Act shall have access to
64 any system used by this state to locate an individual for
65 purposes relating to motor vehicles or law enforcement.

66 (e) Out-of-state agencies administering programs under
67 Title IV-D of the Social Security Act shall have the authority
68 and right to access and use, for the purpose of establishing or

69 enforcing a support order, the state law-enforcement and motor
70 vehicle data bases.

71 (f) The child support enforcement division and out-of-state
72 agencies administering programs under Title IV-D of the Social
73 Security Act shall have the authority and right to access and
74 use, for the purpose of establishing or enforcing a support order,
75 interstate networks that state law-enforcement agencies and
76 motor vehicle agencies subscribe to or participate in, such as
77 the national law-enforcement telecommunications system
78 (NLETS) and the American association of motor vehicle
79 administrators (AAMVA) networks.

80 (g) No state, county or municipal agency or licensing board
81 required to release information pursuant to the provisions of
82 this section to the child support enforcement division or to any
83 out-of-state agency administering programs under Title IV-D of
84 the Social Security Act may require the child support enforce-
85 ment division or any out-of-state agency to obtain a court order
86 prior to the release of the information.

87 (h) Any information received pursuant to the provisions of
88 this section is subject to the confidentiality provisions set forth
89 in section forty, article two of this chapter.

ARTICLE 3. CHILDREN'S ADVOCATE.

§48A-3-3. Duties of the children's advocate.

1 Subject to the control and supervision of the director:

2 (a) The children's advocate shall supervise and direct the
3 secretarial, clerical and other employees in his or her office in
4 the performance of their duties as such performance affects the
5 delivery of legal services. The children's advocate will provide
6 appropriate instruction and supervision to employees of his or
7 her office who are nonlawyers, concerning matters of legal
8 ethics and matters of law, in accordance with applicable state
9 and federal statutes, rules and regulations.

10 (b) In accordance with the requirements of rule 5.4(c) of the
11 rules of professional conduct as promulgated and adopted by
12 the supreme court of appeals, the children's advocate shall not
13 permit a nonlawyer who is employed by the department of
14 health and human resources in a supervisory position over the
15 children's advocate to direct or regulate the advocate's profes-
16 sional judgment in rendering legal services to recipients of
17 services in accordance with the provisions of this chapter; nor
18 shall any nonlawyer employee of the department attempt to
19 direct or regulate the advocate's professional judgment.

20 (c) The children's advocate shall make available to the
21 public an informational pamphlet, designed in consultation with
22 the director. The informational pamphlet shall explain the
23 procedures of the court and the children's advocate; the duties
24 of the children's advocate; the rights and responsibilities of the
25 parties; and the availability of human services in the commu-
26 nity. The informational pamphlet shall be provided as soon as
27 possible after the filing of a complaint or other initiating
28 pleading. Upon request, a party to a domestic relations proceed-
29 ing shall receive an oral explanation of the informational
30 pamphlet from the office of the children's advocate.

31 (d) The children's advocate shall act to establish the
32 paternity of every child born out of wedlock for whom paternity
33 has not been established, when such child's primary caretaker
34 is an applicant for or recipient of temporary assistance for
35 needy families, and when such primary caretaker has assigned
36 to the division of human services any rights to support for the
37 child which might be forthcoming from the putative father:
38 *Provided*, That if the children's advocate is informed by the
39 secretary of the department of health and human resources or
40 his or her authorized employee that it has been determined that
41 it is against the best interest of the child to establish paternity,
42 the children's advocate shall decline to so act. The children's
43 advocate, upon the request of the mother, alleged father or the
44 primary caretaker of a child born out of wedlock, regardless of

45 whether the mother, alleged father or the primary caretaker is
46 an applicant or recipient of temporary assistance for needy
47 families, shall undertake to establish the paternity of such child.

48 (e) The children's advocate shall undertake to secure
49 support for any individual who is receiving temporary assis-
50 tance for needy families when such individual has assigned to
51 the division of human services any rights to support from any
52 other person such individual may have: *Provided*, That if the
53 children's advocate is informed by the secretary of the depart-
54 ment of health and human resources or his or her authorized
55 employee that it has been determined that it is against the best
56 interests of a child to secure support on the child's behalf, the
57 children's advocate shall decline to so act. The children's
58 advocate, upon the request of any individual, regardless of
59 whether such individual is an applicant or recipient of tempo-
60 rary assistance for needy families, shall undertake to secure
61 support for the individual. If circumstances require, the
62 children's advocate shall utilize the provisions of chapter forty-
63 eight-b of this code and any other reciprocal arrangements
64 which may be adopted with other states for the establishment
65 and enforcement of support obligations, and if such arrange-
66 ments and other means have proven ineffective, the children's
67 advocate may utilize the federal courts to obtain and enforce
68 court orders for support.

69 (f) The children's advocate shall pursue the enforcement of
70 support orders through the withholding from income of
71 amounts payable as support:

72 (1) Without the necessity of an application from the obligee
73 in the case of a support obligation owed to an obligee to whom
74 services are already being provided under the provisions of this
75 chapter; and

76 (2) On the basis of an application for services in the case of
77 any other support obligation arising from a support order
78 entered by a court of competent jurisdiction.

79 (g) The children's advocate may decline to commence an
80 action to obtain an order of support under the provisions of
81 section one, article five of this chapter if an action for divorce,
82 annulment or separate maintenance is pending, or the filing of
83 such action is imminent, and such action will determine the
84 issue of support for the child: *Provided*, That such action shall
85 be deemed to be imminent if it is proposed by the obligee to be
86 commenced within the twenty-eight days next following a
87 decision by the children's advocate that an action should
88 properly be brought to obtain an order for support.

89 (h) If the child advocate office, through the children's
90 advocate, shall undertake paternity determination services,
91 child support collection or support collection services for a
92 spouse or former spouse upon the written request of an individ-
93 ual who is not an applicant or recipient of assistance from the
94 division of human services, the office may impose an applica-
95 tion fee for furnishing such services. Such application fee shall
96 be in a reasonable amount, not to exceed twenty-five dollars, as
97 determined by the director: *Provided*, That the director may fix
98 such amount at a higher or lower rate which is uniform for this
99 state and all other states if the secretary of the federal depart-
100 ment of health and human services determines that a uniform
101 rate is appropriate for any fiscal year to reflect increases or
102 decreases in administrative costs. Any cost in excess of the
103 application fee so imposed may be collected from the obligor
104 who owes the child or spousal support obligation involved.

**ARTICLE 5. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLI-
GATIONS AND VISITATION.**

§48A-5-2. Arrearages; liens on personal property; enforcement through writ of execution, suggestion or suggestee execution.

§48A-5-3. Withholding from income of amounts payable as support.

§48A-5-10. High-volume automated administrative enforcement of child support in interstate cases.

§48A-5-2. Arrearages; liens on personal property; enforcement through writ of execution, suggestion or suggestee execution.

1 (a) When an obligor is in arrears in the payment of support
2 which is required to be paid by the terms of an order for support
3 of a child, an obligee or the child support enforcement division
4 may file an abstract of the order giving rise to the support
5 obligation and an "affidavit of accrued support", setting forth
6 the particulars of such arrearage and requesting a writ of
7 execution, suggestion or suggestee execution. The filing of the
8 abstract and affidavit shall give rise, by operation of law, to a
9 lien against personal property of an obligor who resides within
10 this state or who owns property within this state for overdue
11 support.

12 (b) If the duty of support is based upon an order from
13 another jurisdiction, the obligee shall first register the order in
14 accordance with the provisions of chapter forty-eight-b of this
15 code: *Provided*, That nothing in this subsection shall prevent
16 the child support enforcement division from enforcing foreign
17 orders for support without registration of the order in accor-
18 dance with the provisions of section five hundred seven, article
19 five, chapter forty-eight-b of this code.

20 (c) The affidavit may be filed with the clerk of the circuit
21 court in the county wherein the obligee or the obligor resides,
22 or where the obligor's source of income is located.

23 (d) The affidavit may be filed when a payment required by
24 such order has been delinquent, in whole or in part, for a period
25 of fourteen days.

26 (e) The affidavit shall:

27 (1) Identify the obligee and obligor by name and address,
28 and shall list the obligor's social security number or numbers,
29 if known;

30 (2) Name the court which entered the support order and set
31 forth the date of such entry;

32 (3) State the total amount of accrued support which has not
33 been paid by the obligor;

34 (4) List the date or dates when support payments should
35 have been paid but were not, and the amount of each such
36 delinquent payment; and

37 (5) If known, the name and address of the obligor's source
38 of income.

39 (f) Upon receipt of the affidavit, the clerk shall issue a writ
40 of execution, suggestion or suggestee execution, and shall mail
41 a copy of the affidavit and a notice of the filing of the affidavit
42 to the obligor, at his last known address. If the child support
43 enforcement division is not acting on behalf of the obligee in
44 filing the affidavit, the clerk shall forward a copy of the
45 affidavit and the notice of the filing to the child support
46 enforcement division.

47 (g) The notice provided for in subsection (f) of this section
48 shall inform the obligor that if he or she desires to contest the
49 affidavit on the grounds that the amount claimed to be in arrears
50 is incorrect or that a writ of execution, suggestion or suggestee
51 execution is not proper because of mistakes of fact, he or she
52 must, within fourteen days of the date of the notice: (1) Inform
53 the child support enforcement division in writing of the reasons
54 why the affidavit is contested and request a meeting with the
55 child support enforcement division; or (2) where a court of this
56 state has jurisdiction over the parties, obtain a date for a hearing
57 before the circuit court or the family law master and mail
58 written notice of such hearing to the obligee and to the child

59 support enforcement division on a form prescribed by the
60 administrative office of the supreme court of appeals and made
61 available through the office of the clerk of the circuit court.

62 (h) Upon being informed by an obligor that he or she
63 desires to contest the affidavit, the child support enforcement
64 division shall inform the circuit court of such fact, and the
65 circuit court shall require the obligor to give security, post a
66 bond, or give some other guarantee to secure payment of
67 overdue support.

68 (i) The clerk of the circuit court shall make available form
69 affidavits for use under the provisions of this section. Such
70 form affidavits shall be provided to the clerk by the child
71 support enforcement division. The notice of the filing of an
72 affidavit shall be in a form prescribed by the child support
73 enforcement division.

74 (j) Writs of execution, suggestions or suggestee executions
75 issued pursuant to the provisions of this section shall have
76 priority over any other legal process under the laws of this state
77 against the same income, except for withholding from income
78 of amounts payable as support in accordance with the provi-
79 sions of section three of this article, and shall be effective
80 notwithstanding any exemption that might otherwise be
81 applicable to the same income.

82 (k) Notwithstanding any other provision of this code to the
83 contrary, the amount to be withheld from the disposable
84 earnings of an obligor pursuant to a suggestee execution in
85 accordance with the provisions of this section shall be the same
86 amount which could properly be withheld in the case of a
87 withholding order under the provisions of subsection (e),
88 section three of this article.

89 (l) Any person who files a false affidavit shall be guilty of
90 false swearing and, upon conviction thereof, shall be punished
91 as provided by law for such offense.

92 (m) The provisions of this section apply to support orders
93 issued by an out-of-state court or tribunal, as defined in section
94 one hundred one, article one, chapter forty-eight-b of this code,
95 of any other state.

96 (n) The provisions of this section do not apply to income
97 withholding, as provided in section three of this article.

§48A-5-3. Withholding from income of amounts payable as support.

1 (a) The withholding from an obligor's income of amounts
2 payable as spousal or child support shall be enforced by the
3 child support enforcement division in accordance with the
4 provisions of section fifteen-a or fifteen-b, article two, chapter
5 forty-eight of this code. Every support order heretofore or
6 hereafter entered by a circuit court or a magistrate of this state
7 and every support order entered by a court of competent
8 jurisdiction of another state shall be considered to provide for
9 an order of income withholding in accordance with the provi-
10 sions of said sections, notwithstanding the fact that such support
11 order does not in fact provide for such an order of withholding.
12 A withholding may be instituted under this section for any
13 arrearage without the necessity of additional judicial or legal
14 action.

15 (b) When immediate income withholding is not required
16 due to the findings required by subsection (c), section fifteen-b,
17 article two, chapter forty-eight of this code, the child support
18 enforcement division shall mail a notice to the obligor pursuant
19 to this section when the support payments required by the order
20 are in arrears in an amount equal to:

21 (1) One month's support, if the order requires support to be
22 paid in monthly installments;

23 (2) Four weeks' support, if the order requires support to be
24 paid in weekly or biweekly installments; or

25 (3) Two biweekly installments, if biweekly payments are
26 provided.

27 (c) When withholding is required by either subsection (a)
28 or (b) of this section, the child support enforcement division
29 shall send by first class mail or electronic means to the obligor
30 notice that withholding has commenced. The notice shall
31 inform the obligor of the following:

32 (1) The amount owed;

33 (2) That a withholding from the obligor's income of
34 amounts payable as support has commenced;

35 (3) That the amount withheld will be equal to the amount
36 required under the terms of the current support order, plus
37 amounts for any outstanding arrearage;

38 (4) The definition of "gross income" as defined in section
39 nineteen, article one-a of this chapter;

40 (5) That the withholding will apply to the obligor's present
41 source of income, and to any future source of income and,
42 therefore, no other notice of withholding will be sent to the
43 obligor. A copy of any new or modified withholding notice will
44 be sent to the obligor at approximately the same time the
45 original is sent to the source of income;

46 (6) That any action by the obligor to purposefully minimize
47 his or her income will result in the enforcement of support
48 being based upon potential and not just actual earnings;

49 (7) That payment of the arrearage after the date of the
50 notice is not a bar to such withholding;

51 (8) That the obligor may request a review of the withhold-
52 ing by written request to the child support enforcement division
53 when the obligor has information showing an error in the

54 current or overdue support amount or a mistake as to the
55 identity of the obligor;

56 (9) That a mistake of fact exists only when there is an error
57 in the amount of current or overdue support claimed in the
58 notice, or there is a mistake as to the identity of the obligor;

59 (10) That matters such as lack of visitation, inappropriate-
60 ness of the support award, or changed financial circumstances
61 of the obligee or the obligor will not be considered at any
62 hearing held pursuant to the withholding, but may be raised by
63 the filing of a separate petition in circuit court;

64 (11) That if the obligor desires to contest the with holding,
65 the obligor may petition the circuit court for a resolution;
66 and

67 (12) That while the withholding is being contested through
68 the court, the income withholding may not be stayed, but may
69 be modified.

70 (d) Withholding shall occur and the notice to withhold shall
71 be sent to the source of income when the support order provides
72 for immediate income withholding, or if immediate income
73 withholding is not so provided, when the support payments are
74 in arrears in the amount specified in subsection (b) of this
75 section. The source of income shall withhold so much of the
76 obligor's income as is necessary to comply with the order
77 authorizing such withholding, up to the maximum amount
78 permitted under applicable law for both current support and for
79 any arrearages which are due. Such withholding, unless
80 otherwise terminated under the provisions of this section, shall
81 apply to any subsequent source of income or any subsequent
82 period of time during which income is received by the obligor.

83 (e) Notwithstanding any other provision of this code to the
84 contrary which provides for a limitation upon the amount which

85 may be withheld from earnings through legal process, the
86 amount of an obligor's aggregate disposable earnings for any
87 given workweek which may be withheld as support payments
88 is to be determined in accordance with the provisions of this
89 subsection, as follows:

90 (1) After ascertaining the status of the payment record of
91 the obligor under the terms of the support order, the payment
92 record shall be examined to determine whether any arrearage is
93 due for amounts which should have been paid prior to a
94 twelve-week period which ends with the workweek for which
95 withholding is sought to be enforced.

96 (2) Prior to the first day of January, two thousand one,
97 when none of the withholding is for amounts which came due
98 prior to such twelve-week period, then:

99 (A) When the obligor is supporting another spouse or
100 dependent child other than the spouse or child for whom the
101 proposed withholding is being sought, the amount withheld may
102 not exceed fifty percent of the obligor's disposable earnings for
103 that week; and

104 (B) When the obligor is not supporting another spouse or
105 dependent child as described in paragraph (A) of this subdivi-
106 sion, the amount withheld may not exceed sixty percent of the
107 obligor's disposable earnings for that week.

108 (3) Prior to the first day of January, two thousand one,
109 when a part of the withholding is for amounts which came due
110 prior to such twelve-week period, then:

111 (A) Where the obligor is supporting another spouse or
112 dependent child other than the spouse or child for whom the
113 proposed withholding is being sought, the amount withheld may
114 not exceed fifty-five percent of the obligor's disposable
115 earnings for that week; and

116 (B) Where the obligor is not supporting another spouse or
117 dependent child as described in paragraph (A) of this subdivi-
118 sion, the amount withheld may not exceed sixty-five percent of
119 the obligor's disposable earnings for that week.

120 (4) Beginning the first day of January, two thousand one,
121 when none of the withholding is for amounts which came due
122 prior to such twelve-week period, then:

123 (A) When the obligor is supporting another spouse or
124 dependent child other than the spouse or child for whom the
125 proposed withholding is being sought, the amount withheld may
126 not exceed forty percent of the obligor's disposable earnings for
127 that week; and

128 (B) When the obligor is not supporting another spouse or
129 dependent child as described in paragraph (A) of this subdivi-
130 sion, the amount withheld may not exceed fifty percent of the
131 obligor's disposable earnings for that week.

132 (5) Beginning the first day of January, two thousand one,
133 when a part of the withholding is for amounts which came due
134 prior to such twelve-week period, then:

135 (A) When the obligor is supporting another spouse or
136 dependent child other than the spouse or child for whom the
137 proposed withholding is being sought, the amount withheld may
138 not exceed forty-five percent of the obligor's disposable
139 earnings for that week; and

140 (B) Where the obligor is not supporting another spouse or
141 dependent child as described in paragraph (A) of this subdivi-
142 sion, the amount withheld may not exceed fifty-five percent of
143 the obligor's disposable earnings for that week.

144 (6) In addition to the percentage limitations set forth in
145 subdivisions (2) and (3) of this subsection, it shall be a further
146 limitation that when the current month's obligation plus

147 arrearages are being withheld from salaries or wages in no case
148 shall the total amounts withheld for the current month's
149 obligation plus arrearage exceed the amounts withheld for the
150 current obligation by an amount greater than twenty-five
151 percent of the current monthly support obligation.

152 (7) The provisions of this subsection shall apply directly to
153 the withholding of disposable earnings of an obligor regardless
154 of whether the obligor is paid on a weekly, biweekly, monthly
155 or other basis.

156 (8) The child support enforcement division has the author-
157 ity to prorate the current support obligation in accordance with
158 the pay cycle of the source of income. This prorated current
159 support obligation shall be known as the "adjusted support
160 obligation". The current support obligation or the adjusted
161 support obligation is the amount, if unpaid, on which interest
162 will be charged.

163 (9) When an obligor acts so as to purposefully minimize his
164 or her income and to thereby circumvent the provisions of this
165 section which provide for withholding from income of amounts
166 payable as support, the amount to be withheld as support
167 payments may be based upon the obligor's potential earnings
168 rather than his or her actual earnings, and such obligor may not
169 rely upon the percentage limitations set forth in this subsection
170 which limit the amount to be withheld from disposable earn-
171 ings.

172 (f) The source of income of any obligor who is subject to
173 withholding, upon being given notice of withholding, shall
174 withhold from such obligor's income the amount specified by
175 the notice and pay such amount to the child support enforce-
176 ment division for distribution. The notice given to the source of
177 income shall contain only such information as may be neces-
178 sary for the source of income to comply with the withholding
179 order and no source of income may require additional informa-

180 tion or documentation. Such notice to the source of income
181 shall include, at a minimum, the following:

182 (1) The amount to be withheld from the obligor's dispos-
183 able earnings, and a statement that the amount to be withheld
184 for support and other purposes, including the fee specified
185 under subdivision (3) of this subsection, may not be in excess
186 of the maximum amounts permitted under Section 303(b) of the
187 federal Consumer Credit Protection Act or limitations imposed
188 under the provisions of this code;

189 (2) That the source of income shall send the amount to be
190 withheld from the obligor's income to the child support
191 enforcement division, along with such identifying information
192 as may be required by the division, the same day that the
193 obligor is paid;

194 (3) That, in addition to the amount withheld under the
195 provisions of subdivision (1) of this subsection, the source of
196 income may deduct a fee, not to exceed one dollar, for adminis-
197 trative costs incurred by the source of income, for each with-
198 holding;

199 (4) That withholding is binding on the source of income
200 until further notice by the child support enforcement division or
201 until the source of income notifies the child support enforce-
202 ment division of a termination of the obligor's employment in
203 accordance with the provisions of subsection (1) of this section;

204 (5) That the source of income is subject to a fine for
205 discharging an obligor from employment, refusing to employ,
206 or taking disciplinary action against any obligor because of the
207 withholding;

208 (6) That when the source of income fails to withhold
209 income in accordance with the provisions of the notice, the
210 source of income is liable for the accumulated amount the

211 source of income should have withheld from the obligor's
212 income;

213 (7) That the withholding under the provisions of this section
214 shall have priority over any other legal process under the laws
215 of this state against the same income, and shall be effective
216 despite any exemption that might otherwise be applicable to the
217 same income;

218 (8) That when an employer has more than one employee
219 who is an obligor who is subject to wage withholding from
220 income under the provisions of this code, the employer may
221 combine all withheld payments to the child support enforce-
222 ment division when the employer properly identifies each
223 payment with the information listed in this section. A source of
224 income is liable to an obligee, including the state of West
225 Virginia or the department of health and human resources
226 where appropriate, for any amount which the source of income
227 fails to identify with the information required by this section
228 and is therefore not received by the obligee;

229 (9) That the source of income shall implement withholding
230 no later than the first pay period or first date for payment of
231 income that occurs after fourteen days following the date the
232 notice to the source of income was mailed; and

233 (10) That the source of income shall notify the child
234 support enforcement division promptly when the obligor
235 terminates his or her employment or otherwise ceases receiving
236 income from the source of income, and shall provide the
237 obligor's last known address and the name and address of the
238 obligor's new source of income, if known.

239 (g) The commission shall, by administrative rule, establish
240 procedures for promptly refunding to obligors amounts which
241 have been improperly withheld under the provisions of this
242 section.

243 (h) After implementation in accordance with the provisions
244 of subsection (k) of this section, a source of income shall send
245 the amount to be withheld from the obligor's income to the
246 child support enforcement division and shall notify the child
247 support enforcement division of the date of withholding, the
248 same date that the obligor is paid.

249 (i) In addition to any amounts payable as support withheld
250 from the obligor's income, the source of income may deduct a
251 fee, not to exceed one dollar, for administrative costs incurred
252 by the source of income, for each withholding.

253 (j) Withholding of amounts payable as support under the
254 provisions of this section is binding on the source of income
255 until further notice by the child support enforcement division or
256 until the source of income notifies the child support enforce-
257 ment division of a termination of the obligor's employment in
258 accordance with the provisions of subsection (l) of this section.

259 (k) Every source of income who receives a notice of
260 withholding under the provisions of this section shall imple-
261 ment withholding no later than the first pay period or first date
262 for the payment of income which occurs after fourteen days
263 following the date the notice to the source of income was
264 mailed.

265 (l) A source of income who employs or otherwise pays
266 income to an obligor who is subject to withholding under the
267 provisions of this section shall notify the child support enforce-
268 ment division promptly when the obligor terminates employ-
269 ment or otherwise ceases receiving income from the source of
270 income, and shall provide the child support enforcement
271 division with the obligor's last known address and the name and
272 address of the obligor's new source of income, if known.

273 (m) When an employer has more than one employee who
274 is an obligor who is subject to wage withholding from income
275 for amounts payable as support, the employer may combine all

276 withheld payments to the child support enforcement division
277 when the employer properly identifies each payment with the
278 information listed in this section. A source of income is liable
279 to an obligee, including the state of West Virginia or the
280 department of health and human resources where appropriate,
281 for any amount which the source of income fails to identify in
282 accordance with this section and is therefore not received by the
283 obligee.

284 (n) A source of income is liable to an obligee, including the
285 state of West Virginia or the department of health and human
286 resources where appropriate, for any amount which the source
287 of income fails to withhold from income due an obligor
288 following receipt by such source of income of proper notice
289 under subsection (f) of this section: *Provided*, That a source of
290 income shall not be required to vary the normal pay and
291 disbursement cycles in order to comply with the provisions of
292 this section.

293 (o) Any source of income who knowingly and willfully
294 conceals the fact that the source of income is paying income to
295 an obligor, with the intent to avoid withholding from the
296 obligor's income of amounts payable as support, is guilty of a
297 misdemeanor and, upon conviction thereof, shall be fined not
298 more than one hundred dollars.

299 (p) When the child support enforcement division makes a
300 written request to a source of income to provide information as
301 to whether the source of income has paid income to a specific
302 obligor, within the preceding sixty-day period, the source of
303 income shall, within fourteen days thereafter, respond to such
304 request, itemizing all such income, if any, paid to the obligor
305 during such sixty-day period. A source of income shall not be
306 liable, civilly or criminally, for providing such information in
307 good faith.

308 (q) Support collection under the provisions of this section
309 shall have priority over any other legal process under the laws
310 of this state against the same income, and shall be effective
311 despite any exemption that might otherwise be applicable to the
312 same income.

313 (r) Any source of income who discharges from employ-
314 ment, refuses to employ, or takes disciplinary action against any
315 obligor subject to income withholding required by this section
316 because of the existence of such withholding and the obliga-
317 tions or additional obligations which it imposes on the source
318 of income, shall be guilty of a misdemeanor and, upon convic-
319 tion thereof, shall be fined not less than five hundred dollars nor
320 more than one thousand dollars.

**§48A-5-10. High-volume automated administrative enforcement
of child support in interstate cases.**

1 (a) As used in this chapter:

2 (1) "High-volume automated administrative enforcement"
3 in interstate cases shall mean at the request of another state, the
4 identification by a state, through automated data matches with
5 financial institutions and other entities where assets may be
6 found, of assets owned by persons who owe child support in
7 other states, and the seizure of such assets by the state, through
8 levy or other appropriate processes.

9 (2) "Assisting state" shall mean a state which matches the
10 requesting state's delinquent obligors against the databases of
11 financial institutions and other entities within its own state
12 boundaries where assets may be found, and, if appropriate,
13 seizes assets on behalf of the requesting state.

14 (3) "Requesting state" shall mean a state transmitting a
15 request for administrative enforcement to another state.

16 (4) "State" shall mean a state of the United States, or the
17 District of Columbia, Puerto Rico, the United States Virgin
18 Islands, or any territory or insular possession subject to the
19 jurisdiction of the United States. The term "state" shall also
20 include Indian tribes and a foreign jurisdiction that has enacted
21 a law or established procedures for issuance and enforcement
22 of support which are substantially similar to the procedures
23 under this chapter or under the uniform reciprocal enforcement
24 of support act, the revised uniform reciprocal enforcement of
25 support act, or the uniform interstate family support act.

26 (b) The child support enforcement division shall use
27 automated administrative enforcement to the same extent as
28 used for intrastate cases in response to a request made by
29 another state to enforce support orders, and shall promptly
30 report the results of such enforcement procedures to the
31 requesting state.

32 (c) The child support enforcement division may, by
33 electronic or other means, transmit to, or receive from, another
34 state a request for assistance in enforcing support orders
35 through automated administrative enforcement. Such request
36 shall include:

37 (1) Information as will enable the assisting state to compare
38 the information about the cases to the information in the
39 databases of the state;

40 (2) All supporting documentation necessary under the laws
41 of this state to support an attachment of the asset or assets,
42 should such assets be located; and

43 (3) Said transmittal shall constitute a certification by the
44 requesting state:

45 (A) Of the amount of past-due support owed; and

46 (B) That the requesting state has complied with all proce-
47 dural due process requirements applicable to each case.

48 (d) A requesting state may transmit to an assisting state
49 either:

50 (1) A request to locate and seize assets; or

51 (2) A request to seize an asset already identified by the
52 requesting state.

**ARTICLE 5A. ENFORCEMENT OF SUPPORT ORDER THROUGH AC-
TION AGAINST LICENSE.**

**§48A-5A-4. Hearing on denial, nonrenewal, suspension or restric-
tion of license.**

1 (a) The court shall order a licensing authority to deny,
2 refuse to renew, suspend or restrict a license if it finds that:

3 (1) All appropriate enforcement methods have been
4 exhausted or are not available;

5 (2) The person is the holder of a license or has an applica-
6 tion pending for a license;

7 (3) The requisite amount of child support or medical
8 support arrearage exists or health insurance for the child has not
9 been provided as ordered, or the person has failed to comply
10 with a subpoena or warrant relating to a paternity or child
11 support proceeding;

12 (4) No motion to modify the child support order, filed prior
13 to the date that the notice was sent by the child support enforce-
14 ment division, is pending before the court; and

15 (5) There is no equitable reason, such as involuntary
16 unemployment, disability, or compliance with a court-ordered
17 plan for the periodic payment of the child support arrearage

18 amount, for the person's noncompliance with the child support
19 order.

20 (b) If the court is satisfied that the conditions described in
21 subsection (a) of this section exist, it shall first consider
22 suspending or restricting a driver's license prior to professional
23 license. If the person fails to appear at the hearing after being
24 properly served with notice, the court shall order the suspension
25 of all licenses held by the person.

26 (c) If the court finds that a license suspension will result in
27 a significant hardship to the person, to the person's legal
28 dependents under eighteen years of age living in the person's
29 household, to the person's employees, or to persons, businesses
30 or entities to whom the person provides goods or services, the
31 court may allow the person to pay a percentage of the past-due
32 child support amount as an initial payment, and establish a
33 payment schedule to satisfy the remainder of the arrearage
34 within one year, and require that the person comply with any
35 current child support obligation. If the person agrees to this
36 arrangement, no suspension or restriction of any licenses shall
37 be ordered. Compliance with the payment agreement shall be
38 monitored by the child support enforcement division.

39 (d) If a person has good cause for not complying with the
40 payment agreement within the time permitted, the person shall
41 immediately file a motion with the court and the child support
42 enforcement division requesting an extension of the payment
43 plan. The court may extend the payment plan if it is satisfied
44 that the person has made a good faith effort to comply with the
45 plan and is unable to satisfy the full amount of past-due support
46 within the time permitted due to circumstances beyond the
47 person's control. If the person fails to comply with the court-
48 ordered payment schedule, the court shall, upon receipt of a
49 certification of noncompliance from the child support enforce-
50 ment division, and without further hearing, order the immediate
51 suspension or restriction of all licenses held by the person.

52 (e) For purposes of this section, the term “application”
53 means a request to have a license issued, a request for renewal
54 of an existing license or a request to change the status of an
55 existing license.

ARTICLE 6. ESTABLISHMENT OF PATERNITY.

§48A-6-1. Paternity proceedings.

§48A-6-3. Medical testing procedures to aid in the determination of paternity.

§48A-6-4. Establishment of paternity and duty of support.

§48A-6-6. Establishing paternity by acknowledgment of natural father.

§48A-6-1. Paternity proceedings.

1 (a) A civil action to establish the paternity of a child and to
2 obtain an order of support for the child may be instituted, by
3 verified complaint, in the circuit court of the county where the
4 child resides: *Provided*, That if such venue creates a hardship
5 for the parties, or either of them, or if judicial economy
6 requires, the court may transfer the action to the county where
7 either of the parties resides.

8 (b) A “paternity proceeding” is a summary proceeding,
9 equitable in nature and within the domestic relations jurisdic-
10 tion of the courts, wherein a circuit court upon the petition of
11 the state or another proper party may intervene to determine and
12 protect the respective personal rights of a child for whom
13 paternity has not been lawfully established, of the mother of the
14 child and of the putative father of the child. The parties to a
15 paternity proceeding are not entitled to a trial by jury.

16 (c) The sufficiency of the statement of the material allega-
17 tions in the complaint set forth as grounds for relief and the
18 grant or denial of the relief prayed for in a particular case shall
19 rest in the sound discretion of the court, to be exercised by the
20 court according to the circumstances and exigencies of the case,
21 having due regard for precedent and the provisions of the
22 statutory law of this state.

23 (d) A decree or order made and entered by a court in a
24 paternity proceeding shall include a determination of the filial
25 relationship, if any, which exists between a child and his or her
26 putative father, and, if such relationship is established, shall
27 resolve dependent claims arising from family rights and
28 obligations attendant to such filial relationship.

29 (e) A paternity proceeding may be brought by any of the
30 following persons:

31 (1) An unmarried woman with physical or legal custody of
32 a child to whom she gave birth;

33 (2) A married woman with physical or legal custody of a
34 child to whom she gave birth, if the complaint alleges that:

35 (A) The married woman lived separate and apart from her
36 husband preceding the birth of the child;

37 (B) The married woman did not cohabit with her husband
38 at any time during such separation and that such separation has
39 continued without interruption; and

40 (C) The defendant, rather than her husband, is the father of
41 the child;

42 (3) The state of West Virginia, including the child support
43 enforcement division defined in article two of this chapter;

44 (4) Any person who is not the mother of the child, but who
45 has physical or legal custody of the child;

46 (5) The guardian or committee of the child;

47 (6) The next friend of the child when the child is a minor;

48 (7) By the child in his own right at any time after the child's
49 eighteenth birthday but prior to the child's twenty-first birth-
50 day; or

51 (8) A man who believes he is the father of a child born out
52 of wedlock, when there has been no prior judicial determination
53 of paternity.

54 (f) Blood or tissue samples taken pursuant to the provisions
55 of this article may be ordered to be taken in such locations as
56 may be convenient for the parties so long as the integrity of the
57 chain of custody of the samples can be preserved.

58 (g) A person who has sexual intercourse in this state
59 submits to the jurisdiction of the courts of this state for a
60 proceeding brought under this article with respect to a child
61 who may have been conceived by that act of intercourse.
62 Service of process may be perfected according to the rules of
63 civil procedure.

64 (h) When the person against whom the proceeding is
65 brought has failed to plead or otherwise defend the action after
66 proper service has been obtained, judgment by default shall be
67 issued by the court as provided by the rules of civil procedure.

**§48A-6-3. Medical testing procedures to aid in the determination
of paternity.**

1 (a) Prior to the commencement of an action for the estab-
2 lishment of paternity, the child support enforcement division
3 may order the mother, her child and the man to submit to
4 genetic tests to aid in proving or disproving paternity. The
5 division may order the tests upon the request, supported by a
6 sworn statement, of any person entitled to petition the court for
7 a determination of paternity as provided in section one of this
8 article. If the request is made by a party alleging paternity, the
9 statement shall set forth facts establishing a reasonable possibil-
10 ity or requisite sexual contact between the parties. If the request
11 is made by a party denying paternity, the statement may set
12 forth facts establishing a reasonable possibility of the nonexis-
13 tence of sexual contact between the parties or other facts
14 supporting a denial of paternity. If genetic testing is not

15 performed pursuant to an order of the child support enforce-
16 ment division, the court may, on its own motion, or shall upon
17 the motion of any party, order such tests. A request or motion
18 may be made upon ten days' written notice to the mother and
19 alleged father, without the necessity of filing a complaint.
20 When the tests are ordered, the court or the division shall direct
21 that the inherited characteristics, including, but not limited to,
22 blood types be determined by appropriate testing procedures at
23 a hospital, independent medical institution or independent
24 medical laboratory duly licensed under the laws of this state, or
25 any other state, and an expert qualified as an examiner of
26 genetic markers shall analyze, interpret and report on the results
27 to the court or to the division of child support enforcement. The
28 results shall be considered as follows:

29 (1) Blood or tissue test results which exclude the man as the
30 father of the child are admissible and shall be clear and con-
31 vincing evidence of nonpaternity and, if a complaint has been
32 filed, the court shall, upon considering such evidence, dismiss
33 the action.

34 (2) Blood or tissue test results which show a statistical
35 probability of paternity of less than ninety-eight percent are
36 admissible and shall be weighed along with other evidence of
37 the defendant's paternity.

38 (3) Undisputed blood or tissue test results which show a
39 statistical probability of paternity of more than ninety-eight
40 percent shall, when filed, legally establish the man as the father
41 of the child for all purposes and child support may be estab-
42 lished pursuant to the provisions of this chapter.

43 (4) When a party desires to challenge the results of the
44 blood or tissue tests or the expert's analysis of inherited
45 characteristics, he or she shall file a written protest with the
46 family law master or circuit court or with the division of child
47 support enforcement, if appropriate, within thirty days of the

48 filing of such test results, and serve a copy of such protest upon
49 the other party. The written protest shall be filed at least thirty
50 days prior to any hearing involving the test results. The court or
51 the child support enforcement division, upon reasonable request
52 of a party, shall order that additional tests be made by the same
53 laboratory or another laboratory within thirty days of the entry
54 of the order, at the expense of the party requesting additional
55 testing. Costs shall be paid in advance of the testing. When the
56 results of the blood or tissue tests or the expert's analysis which
57 show a statistical probability of paternity of more than ninety-
58 eight percent are confirmed by the additional testing, then the
59 results are admissible evidence which is clear and convincing
60 evidence of paternity. The admission of the evidence creates a
61 presumption that the man tested is the father.

62 (b) Documentation of the chain of custody of the blood or
63 tissue specimens is competent evidence to establish the chain of
64 custody. A verified expert's report shall be admitted at trial
65 unless a challenge to the testing procedures or a challenge to the
66 results of test analysis has been made before trial. The costs and
67 expenses of making the tests shall be paid by the parties in
68 proportions and at times determined by the court.

69 (c) Except as provided in subsection (d) of this section,
70 when a blood test is ordered pursuant to this section, the
71 moving party shall initially bear all costs associated with the
72 blood test unless that party is determined by the court to be
73 financially unable to pay those costs. This determination shall
74 be made following the filing of an affidavit pursuant to section
75 one, article two, chapter fifty-nine of this code. When the court
76 finds that the moving party is unable to bear that cost, the cost
77 shall be borne by the state of West Virginia. Following the
78 finding that a person is the father based on the results of a blood
79 test ordered pursuant to this section, the court shall order that
80 the father be ordered to reimburse the moving party for the

81 costs of the blood tests unless the court determines, based upon
82 the factors set forth in this section, that the father is financially
83 unable to pay those costs.

84 (d) When a blood test is ordered by the child support
85 enforcement division, the division shall initially bear all costs
86 subject to recoupment from the alleged father if paternity is
87 established.

§48A-6-4. Establishment of paternity and duty of support.

1 (a) When the defendant, by verified responsive pleading,
2 admits that the man is the father of the child and owes a duty of
3 support, or if after a hearing on the merits, the court shall find,
4 by clear and convincing evidence that the man is the father of
5 the child, the court shall, subject to the provisions of subsection
6 (c) of this section, order support in accordance with the
7 provisions of article one-b of this chapter and the payment of
8 incurred expenses as provided in subsection (e) of this section.

9 (b) Upon motion by a party, the court shall issue a tempo-
10 rary order for child support pending a judicial determination of
11 parentage if there is clear and convincing evidence of paternity
12 on the basis of genetic tests or other scientifically recognized
13 evidence.

14 (c) Reimbursement support ordered pursuant to this section
15 shall be limited to a period not to exceed thirty-six months prior
16 to the service of notice of the commencement of paternity or
17 support establishment, unless the court finds, by clear and
18 convincing evidence:

19 (1) That the defendant had actual knowledge that he was
20 believed to be the father of the child;

21 (2) That the defendant deliberately concealed his where-
22 abouts or deliberately evaded attempts to serve process upon
23 him; or

24 (3) That the defendant deliberately misrepresented relevant
25 information which would have enabled the plaintiff to proceed
26 with the cause of action.

27 If the court finds by clear and convincing evidence that the
28 circumstances in subsection (1), (2) or (3) exist, then the court
29 shall order reimbursement support to the date of birth of the
30 child, subject to the equitable defense of laches.

31 (d) The court shall give full faith and credit to a determina-
32 tion of paternity made by any other state, based on the laws of
33 that state, whether established through voluntary acknowledg-
34 ment or through administrative or judicial process.

35 (e) Bills for pregnancy, childbirth and genetic testing are
36 admissible and constitute prima facie evidence of medical
37 expenses incurred.

38 (f) The thirty-six month limitation on reimbursement
39 support does not apply to the award of medical expenses
40 incurred.

41 (g) For purposes of this section, "reimbursement support"
42 means the amount of money awarded as child support for a
43 period of time prior to the entry of the order which establishes
44 the support obligation.

**§48A-6-6. Establishing paternity by acknowledgment of natural
father.**

1 A written, notarized acknowledgment executed pursuant to
2 the provisions of section twelve, article five, chapter sixteen of
3 this code legally establishes the man as the father of the child
4 for all purposes and child support may be established in
5 accordance with the provisions of article one-b of this chapter.

CHAPTER 47

(Com. Sub. for H. B. 4364 — By Delegates Givens, Douglas,
Facemyer, Fleischauer, Mezzatesta, Staton and Trump)

[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article two, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to subsidized adoption and legal guardianship; and expanding authority of the department of health and human resources to subsidize legal guardianship of a child without regard to the status of the parents' rights.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION AND CARE OF CHILDREN.

§49-2-17. Subsidized adoption and legal guardianship.

1 From funds appropriated to the department of health and
2 human resources, the secretary shall establish a system of
3 assistance for facilitating the adoption or legal guardianship of
4 children. An adoption subsidy shall be available for children
5 who are legally free for adoption and who are dependents of the
6 department or a child welfare agency licensed to place children
7 for adoption. A legal guardianship subsidy shall not require the
8 surrender or termination of parental rights. For either subsidy,
9 the children must be in special circumstances either because
10 they:

11 (a) Have established emotional ties with prospective
12 adoptive parents or prospective legal guardians while in their
13 care; or

14 (b) Are not likely to be adopted or become a ward of a legal
15 guardian by reason of one or more of the following conditions:

16 (1) They have a physical or mental disability;

17 (2) They are emotionally disturbed;

18 (3) They are older children;

19 (4) They are a part of a sibling group;

20 (5) They are a member of a racial or ethnic minority; or

21 (6) They have any combination of these conditions.

22 The department shall provide assistance in the form of
23 subsidies or other services to parents who are found and
24 approved for adoption or legal guardianship of a child certified
25 as eligible for subsidy by the department, but before the final
26 decree of adoption or order of legal guardianship is entered,
27 there must be a written agreement between the family entering
28 into the subsidized adoption or legal guardianship and the
29 department. Adoption or legal guardianship subsidies in
30 individual cases may commence with the adoption or legal
31 guardianship placement, and will vary with the needs of the
32 child as well as the availability of other resources to meet the
33 child's needs. The subsidy may be for special services only, or
34 for money payments, and either for a limited period, or for a
35 long term, or for any combination of the foregoing. The specific
36 financial terms of the subsidy shall be included in the agree-
37 ment between the department and the adoptive parents or legal
38 guardians. The amount of the time-limited or long-term subsidy
39 may in no case exceed that which would be allowable from time
40 to time for such child under foster family care, or, in the case of
41 a special service, the reasonable fee for the service rendered. In

42 addition, the department shall provide either medicaid or other
43 health insurance coverage for any special needs child for whom
44 there is an adoption or legal guardianship assistance agreement
45 between the department and the adoptive parent or legal
46 guardian and who the department determines cannot be placed
47 with an adoptive parent or legal guardian without medical
48 assistance because the child has special needs for medical,
49 mental health or rehabilitative care.

50 Whenever significant emotional ties have been established
51 between a child and his or her foster parents, and the foster
52 parents seek to adopt the child or to become legal guardians, the
53 child shall be certified as eligible for a subsidy conditioned
54 upon his or her adoption or his or her becoming a ward of a
55 legal guardian under applicable procedures by the foster
56 parents.

57 In all other cases, after reasonable efforts have been made
58 without the use of subsidy and no appropriate adoptive family
59 or legal guardian has been found for the child, the department
60 shall certify the child as eligible for a subsidy in the event of
61 adoption or a legal guardianship.

62 If the child is the dependent of a voluntary licensed child-
63 placing agency, that agency shall present to the department
64 evidence of significant emotional ties between the child and his
65 foster parents or evidence of inability to place the child for
66 adoption. In no event shall the value of the services and
67 assistance provided by the department under an agreement
68 pursuant to this section exceed the value of assistance available
69 to foster families in similar circumstances. All records regard-
70 ing subsidized adoptions or legal guardianships shall be held in
71 confidence, however, records regarding the payment of public
72 funds for subsidized adoptions or legal guardianships shall be
73 available for public inspection provided they do not directly or
74 indirectly identify any child or persons receiving funds for such
75 child.

CHAPTER 48

(Com. Sub. for S. B. 388 — By Senators Prezioso, Oliverio, Hunter and Minear)

[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen-d, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the teen court program; giving counties the option to institute program; removing requirement that program be administered by the governor's committee on crime, delinquency and correction; eliminating continuing legal education credit for participation in the program; allowing teenagers to act as jurors in program; and removing the provision that declares these programs to be pilot projects.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-13d. Teen court program.

- 1 (a) Notwithstanding any provision of this article to the
- 2 contrary, in any county that chooses to institute a teen court
- 3 program in accordance with the provisions of this section, any
- 4 juvenile who is alleged to have committed a status offense or an
- 5 act of delinquency which would be a misdemeanor if commit-
- 6 ted by an adult and who is otherwise subject to the provisions
- 7 of this article may be given the option of proceeding in the teen

8 court program as an alternative to the filing of a formal petition
9 under section seven of this article or proceeding to a disposition
10 as provided by section eleven-a or thirteen of this article, as the
11 case may be. The decision to extend the option to enter the teen
12 court program as an alternative procedure shall be made by the
13 circuit court if the court finds that the offender is a suitable
14 candidate for the program. No juvenile may enter the teen court
15 program unless he or she and his or her parent or guardian
16 consent. Any juvenile who does not successfully cooperate in
17 and complete the teen court program and any disposition
18 imposed therein shall be returned to the circuit court for further
19 disposition as provided by section eleven-a or thirteen of this
20 article, as the case may be.

21 (b) The following provisions apply to all teen court
22 programs:

23 (1) The judge for each teen court proceeding shall be an
24 acting or retired circuit court judge or an active member of the
25 West Virginia state bar, who serves on a voluntary basis.

26 (2) Any juvenile who selects the teen court program as an
27 alternative disposition shall agree to serve thereafter on at least
28 two occasions as a teen court juror.

29 (3) Volunteer students from grades seven through twelve of
30 the schools within the county shall be selected to serve as
31 defense attorney, prosecuting attorney, court clerk, bailiff and
32 jurors for each proceeding.

33 (4) Disposition in a teen court proceeding shall consist of
34 requiring the juvenile to perform sixteen to forty hours of
35 community service, the duration and type of which shall be
36 determined by the teen court jury from a standard list of
37 available community service programs provided by the county
38 juvenile probation system and a standard list of alternative
39 consequences that are consistent with the purposes of this
40 article. The performance of the juvenile shall be monitored by

41 the county juvenile probation system. The juvenile shall also
42 perform at least two sessions of teen court jury service and, if
43 considered appropriate by the circuit court judge, participate in
44 an education program. Nothing in this section may be construed
45 so as to deny availability of the services provided under section
46 eleven-a of this article to juveniles who are otherwise eligible
47 therefor.

48 (c) The rules for administration, procedure and admission
49 of evidence shall be determined by the chief circuit judge, but
50 in no case may the court require a juvenile to admit the allega-
51 tion against him or her as a prerequisite to participation in the
52 teen court program. A copy of these rules shall be provided to
53 every teen court participant.

CHAPTER 49

(H. B. 4791 — By Delegates Staton, Hines,
C. White, L. White, Mahan, Capito and Wills)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-a, relating to resolution of disputes between prosecuting attorneys and the department of health and human resources in child abuse and neglect cases; and clarifying a prosecutor's ability to file an abuse or neglect petition independently of the department.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.

§49-6-10a. Dispute resolution.

1 (a) Whenever, pursuant to the provisions of this article, a
2 prosecuting attorney acts as counsel for the department of
3 health and human resources and a dispute arises between the
4 prosecuting attorney and the department's representative
5 because an action proposed by the other is believed to place the
6 child at imminent risk of abuse or serious neglect, either the
7 prosecuting attorney or the department's representative may
8 contact the secretary of the department and the executive
9 director of the West Virginia prosecuting attorneys institute for
10 prompt mediation and resolution. The secretary may designate
11 either his or her general counsel or the director of social
12 services to act as his or her designee and the executive director
13 may designate an objective prosecuting attorney as his or her
14 designee.

15 (b) Nothing in this code shall be construed to limit the
16 authority of a prosecuting attorney to file an abuse or neglect
17 petition, including the duties and responsibilities owed to its
18 client the department of health and human resources, in his or
19 her fulfillment of the provisions of chapter forty-nine, article
20 six of this code.

CHAPTER 50

(Com. Sub. for H. B. 4300 — By Delegates Houston, Hatfield, Rowe,
Susman, Johnson and Marshall)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-e, relating to the voluntary delivery of infants to hospitals or health care facilities by persons who do not express an intent to return for the child; requiring hospitals to take possession of the infants and report the possession to the child protective services division of the department of health and human resources; requiring hospital or health care facility to respect anonymity; requiring department to take possession of child immediately upon notification; requiring department to cause petition to be brought in conjunction with assistance of county prosecutor; providing affirmative defense to certain child neglect crime; and providing that the department may place child for adoption.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6E. EMERGENCY POSSESSION OF CERTAIN ABANDONED CHILDREN.

§49-6E-1. Accepting possession of certain abandoned children.

§49-6E-2. Notification of possession of abandoned child.

§49-6E-3. Filing petition after accepting possession of abandoned child.

§49-6E-4. Affirmative defense for certain prosecutions.

§49-6E-5. Placement of child for adoption.

§49-6E-1. Accepting possession of certain abandoned children.

1 A hospital or health care facility operating in this state,
2 shall, without a court order, take possession of a child if the
3 child is voluntarily delivered to the hospital or health care
4 facility by the child's parent within thirty days of the child's
5 birth and the parent did not express an intent to return for the
6 child. A hospital or health care facility that takes possession of
7 a child under this section shall perform any act necessary to
8 protect the physical health or safety of the child. In accepting
9 possession of the child, the hospital or health care facility may
10 not require the person to identify themselves, but shall other-
11 wise respect the person's desire to remain anonymous.

§49-6E-2. Notification of possession of abandoned child.

1 (a) Not later than the close of the first business day after the
2 date on which a hospital or health care facility takes possession
3 of a child under section one of this article, the hospital or health
4 care facility shall notify the child protective services division of
5 the department of health and human resources that it has taken
6 possession of the child and shall provide to the department of
7 health and human resources division of child protective services
8 any information provided by the parent delivering the child.
9 The hospital or health care facility shall refer any inquiries
10 about the child to the department of health and human resources
11 protective services division.

12 (b) The department of health and human resources shall
13 assume the care, control and custody of the child as of the time
14 of delivery of the child to the hospital or health care facility,
15 and may contract with private child care agency for the care and
16 placement of the child after the child leaves the hospital or
17 health care facility.

§49-6E-3. Filing petition after accepting possession of abandoned child.

1 A child of whom the department of health and human
2 resources assumes care, control and custody under the provi-
3 sions of this article shall be deemed an abandoned child and be
4 treated in all respects as a child taken into custody under the
5 provisions of section nine, article six of this chapter. Upon
6 taking custody of a child under the provisions of this article, the
7 department with the cooperation of the county prosecuting
8 attorney shall cause a petition to be presented pursuant to the
9 provisions of section three, article six of this chapter. Thereaf-
10 ter, the department shall proceed in compliance with the
11 provisions of article six of this chapter.

§49-6E-4. Affirmative defense for certain prosecutions.

1 It is an affirmative defense to prosecution under subsection
2 (a), section four, article eight-d, chapter sixty-one of this code
3 if a parent charged under that section delivered the child, for
4 whom the parent is charged, within thirty days of the child's
5 birth.

§49-6E-5. Placement of child for adoption.

1 The child shall be eligible for adoption as an abandoned
2 child under article four, chapter forty-eight of the code.

CHAPTER 51

(H. B. 4365 —By Delegates Givens, Douglas, Facemyer,
Fleischauer, Mezzatesta, Staton and Trump)

[Passed March 9, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article seven, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to releasing or disclosing state held records of a juvenile by a court of record after review.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. GENERAL PROVISIONS.

§49-7-1. Confidentiality of records.

1 (a) Except as otherwise provided in this chapter or by order
2 of the court, all records and information concerning a child or
3 juvenile which are maintained by the division of juvenile
4 services, the department of health and human resources, a child

5 agency or facility, court or law-enforcement agency shall be
6 kept confidential and shall not be released or disclosed to
7 anyone, including any federal or state agency.

8 (b) Notwithstanding the provisions of subsection (a) of this
9 section or any other provision of this code to the contrary,
10 records concerning a child or juvenile, except adoption records,
11 juvenile court records and records disclosing the identity of a
12 person making a complaint of child abuse or neglect shall be
13 made available:

14 (1) Where otherwise authorized by this chapter;

15 (2) To:

16 (A) The child;

17 (B) A parent whose parental rights have not been termi-
18 nated; or

19 (C) The attorney of the child or parent;

20 (3) With the written consent of the child or of someone
21 authorized to act on the child's behalf; or

22 (4) Pursuant to an order of a court of record: *Provided*, That
23 the court shall review such record or records for relevancy and
24 materiality to the issues in the proceeding, and may issue an
25 order to limit the examination and use of the records or any part
26 thereof.

27 (c) In addition to those persons or entities to whom infor-
28 mation may be disclosed under subsection (b) of this section,
29 information related to child abuse or neglect proceedings,
30 except information relating to the identity of the person
31 reporting or making a complaint of child abuse or neglect, shall
32 be made available, upon request, to:

33 (1) Federal, state or local government entities, or any agent
34 of such entities, including law-enforcement agencies and
35 prosecuting attorneys, having a need for such information in
36 order to carry out its responsibilities under law to protect
37 children from abuse and neglect;

- 38 (2) The child fatality review team;
- 39 (3) Child abuse citizen review panels;
- 40 (4) Multidisciplinary investigative and treatment teams; or
- 41 (5) A grand jury, circuit court or family law master, upon
42 a finding that information in the records is necessary for the
43 determination of an issue before the grand jury, circuit court or
44 family law master.

45 (d) In the event of a child fatality or near fatality due to
46 child abuse and neglect, information relating to such fatality or
47 near fatality shall be made public by the department of health
48 and human resources and to the entities described in subsection
49 (c) of this section, all under the circumstances described in that
50 subsection: *Provided*, That information released by the depart-
51 ment of health and human resources pursuant to this subsection
52 shall not include the identity of a person reporting or making a
53 complaint of child abuse or neglect. For purposes of this
54 subsection, “near fatality” means any medical condition of the
55 child which is certified by the attending physician to be life-
56 threatening.

57 (e) Except in juvenile proceedings which are transferred to
58 criminal proceedings, law-enforcement records and files
59 concerning a child or juvenile shall be kept separate from the
60 records and files of adults and not included within the court
61 files. Law-enforcement records and files concerning a child or
62 juvenile shall only be open to inspection pursuant to the
63 provisions of sections seventeen and eighteen, article five of
64 this chapter.

65 (f) Any person who willfully violates the provisions of this
66 section is guilty of a misdemeanor and, upon conviction
67 thereof, shall be fined not more than one thousand dollars, or
68 confined in the county or regional jail for not more than six
69 months, or be both fined and confined. A person convicted of
70 violating the provisions of this section shall also be liable for
71 damages in the amount of three hundred dollars or actual
72 damages, whichever is greater.

73 (g) Notwithstanding the provisions of this section, or any
74 other provision of this code to the contrary, the name and
75 identity of any juvenile adjudicated or convicted of a violent or
76 felonious crime shall be made available to the public.

CHAPTER 52

(H. B. 4529 — By Delegates Kelley, Beane, Compton, Evans and Hall)

[Passed March 10, 2000; 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 attorney general's office; division of corrections; division of labor; and the supreme court of appeals to be moral obligations of the state and directing payments thereof.

1 The Legislature has heretofore made findings of fact that
2 the state has received the benefit of the commodities received
3 and/or services rendered by certain claimants herein and has
4 considered these claims against the state, and agencies thereof,
5 which have arisen due to overexpenditures of the departmental
6 appropriations by officers of the state spending units, the claims
7 having been previously considered by the court of claims which
8 also found that the state has received the benefit of the com-
9 modities received and/or services rendered by the claimants, but
10 were denied by the court of claims on the purely statutory
11 grounds that to allow the claims would be condoning illegal

12 acts contrary to the laws of the state. The Legislature pursuant
 13 to its findings of fact and also by the adoption of the findings of
 14 fact by the court of claims as its own, and, while not condoning
 15 such illegal acts, hereby declares it to be the moral obligation
 16 of the state to pay these claims in the amounts specified below,
 17 and directs the auditor to issue warrants upon receipt of
 18 properly executed requisitions supported by itemized invoices,
 19 statements or other satisfactory documents as required by
 20 section ten, article three, chapter twelve of the code of West
 21 Virginia, one thousand nine hundred thirty-one as amended, for
 22 the payments thereof out of any fund appropriated and available
 23 for the purpose.

24 (a) *Claim against the Attorney General's Office:*

25 (TO BE PAID FROM GENERAL REVENUE FUND)

26 (1) Juliet R. Stevenson \$11,706.13

27 (b) *Claims against the Division of Corrections:*

28 (TO BE PAID FROM GENERAL REVENUE FUND)

29 (1) Anthony Creek Rescue Squad. 481.50

30 (2) Associated Surgical Care, P.L.L.C. 593.00

31 (3) Ramsey Behnam, M.D.. 150.00

32 (4) Bluefield Anesthesia Associates, Inc.. 558.00

33 (5) Cabell County Commission 10.08

34 (6) Arthur L. Calhoun, M.D., Janus E. LeVos, M.D.,
 35 Partners dba Harrisville Medical Center. 347.50

36 (7) Central WV Medcorp, Inc. 8,510.00

37 (8) Charleston Area Medical Center, Inc. 286,590.93

38 (9) Charleston Cardiology Group 1,380.00

39	(10) Charleston Radiation Therapy	29,837.00
40	(11) Clarksburg Anesthesia Assoc.	900.72
41	(12) Community Radiology of Virginia	1,200.00
42	(13) Thomas Condron, D.D.S..	343.00
43	(14) Correctional Medical Services, Inc.	315,427.47
44	(15) Davis Memorial Hospital	34,331.13
45	(16) EMP of Harrison County	195.10
46	(17) EMP of Wood County	587.40
47	(18) G.Y. Dagher, M.D.	1,275.00
48	(19) J. Patrick Galey, M.D.	2,541.00
49	(20) General Ambulance, Inc.	250.00
50	(21) General Anesthesia Services	8,175.00
51	(22) Grafton City Hospital	24,110.71
52	(23) Greenbrier Physicians, Inc.	3,960.00
53	(24) Greenbrier Valley Medical Center	547.38
54	(25) Heiskell & King Surgical Associates, Inc.	1,162.00
55	(26) Hatem Hossino, M.D.	2,350.00
56	(27) Steven A. Issenberg, M.D.	150.00
57	(28) Jackson General Hospital	69.00
58	(29) Jan Care Ambulance	12,159.00
59	(30) Kanawha County Emergency	
60	Ambulance Auth.	516.00
61	(31) Kelly Medical Corporation	2,679.30

436	CLAIMS	[Ch. 52
62	(32) Stephen C. Lau, M.D.	130.00
63	(33) Edward M. Litz, M.D.	410.00
64	(34) Medbrook Medical Associates, Inc.	234.00
65	(35) Monongalia County Commission	103.50
66	(36) Montgomery General Hospital	9,772.63
67	(37) Pharmacy Association, Inc., dba	
68	Option Care	30,846.69
69	(38) Radiological Physicians Associates	2,030.00
70	(39) Radiology, Inc.	513.00
71	(40) Rose Associated Radiologists	312.00
72	(41) St. Joseph's Hospital	4,298.55
73	(42) Jashvantlal Thakker, M.D.	2,330.00
74	(43) Tincher Dental Laboratory	119.60
75	(44) Tygart Valley Total Care Clinic	9,253.00
76	(45) United Anesthesia, Inc.	840.00
77	(46) United Hospital Center	2,426.10
78	(47) University Health Associates	77,501.75
79	(48) Valley Community Mental Health Center ..	810.00
80	(49) West Virginia University Hospitals, Inc.	93,593.43
81	(c) <i>Claim against the Division of Labor:</i>	
82	(TO BE PAID FROM GENERAL REVENUE FUND)	
83	(1) Goodyear Tire & Rubber Company	240.04

84	(d) <i>Claim against the Supreme Court of Appeals:</i>	
85	(TO BE PAID FROM GENERAL REVENUE FUND)	
86	Cabell County Commission	8,908.00
87	Total amount of general revenue -	\$ 997,765.64

CHAPTER 53

(S. B. 492 — By Senators Love, Edgell, Helmick,
Sharpe, Minear, Hunter, Ross and Ball)

[Passed March 11, 2000; 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; board of barbers and cosmetologists; board of trustees of the university system of West Virginia; department of administration; department of health and human resources; department of tax and revenue; division of banking; division of corrections; division of highways; division of juvenile services; division of labor; division of motor vehicles; ethics commission; insurance commission; public service commission; regional jail and correctional facility authority; state rail authority; and West Virginia state police to be moral obligations of the state and directing payment thereof.

1 The Legislature has considered the findings of fact and
 2 recommendations reported to it by the court of claims concern-
 3 ing various claims against the state and agencies thereof, and in
 4 respect to each of the following claims the Legislature adopts
 5 those findings of fact as its own, and in respect of certain claims
 6 herein, the Legislature has independently made findings of fact
 7 and determinations of award and hereby declares it to be the
 8 moral obligation of the state to pay each such claim in the
 9 amount specified below and directs the auditor to issue warrants
 10 for the payment thereof out of any fund appropriated and
 11 available for the purpose.

12 (a) *Claims against the Adjutant General:*

13 (TO BE PAID FROM GENERAL REVENUE FUND)

- 14 (1) Bell Atlantic-West Virginia, Inc \$1,108.32
- 15 (2) Danka 303.87
- 16 (3) Brian R. Debow 732.00
- 17 (4) Vickie Marie Tetrick 609.03

18 (b) *Claim against the Alcohol Beverage*
 19 *Control Administration:*

20 (TO BE PAID FROM SPECIAL REVENUE FUND)

- 21 (1) Dickinson Fuel Company, Inc. 508.57

22 (c) *Claim against the Board of Barbers*
 23 *and Cosmetologists:*

24 (TO BE PAID FROM SPECIAL REVENUE FUND)

- 25 (1) Phyllis Haynes Edens, CCR 209.60

26 (d) *Claims against the Board of Trustees of*
 27 *the University System of WV:*

28 (TO BE PAID FROM GENERAL REVENUE FUND)

- 29 (1) Sherene N. Ballengee 53.00

30	(2) Logan Merritt	339.18
31	(3) Jason R. Simmons	100.00
32	(e) <i>Claims against the Department of Administration:</i>	
33	(TO BE PAID FROM GENERAL REVENUE FUND)	
34	(1) The Continental Insurance Company	21,255.00
35	(2) West Virginia Association of	
36	Rehabilitation Facilities	27.62
37	(f) <i>Claims against the Department of</i>	
38	<i>Health and Human Resources:</i>	
39	(TO BE PAID FROM GENERAL REVENUE FUND)	
40	(1) Charles E. McElfish, D.D.S.	20,564.59
41	(2) River Valley Child Development Services .	5,000.00
42	(g) <i>Claims against the Department of Tax and Revenue:</i>	
43	(TO BE PAID FROM GENERAL REVENUE FUND)	
44	(1) Computer Associates International,	
45	Inc.	254,000.00
46	(2) Tax Net Governmental Communications	
47	Corporation	2,124.43
48	(h) <i>Claim against the Division of Banking:</i>	
49	(TO BE PAID FROM SPECIAL REVENUE FUND)	
50	(1) Board of Governors of the Federal	
51	Reserve System	1,600.00
52	(i) <i>Claims against the Division of Corrections:</i>	
53	(TO BE PAID FROM GENERAL REVENUE FUND)	
54	(1) Barbour County Commission	16,225.00

440	CLAIMS	[Ch. 53
55	(2) Browning Ferris Industries	374.25
56	(3) Correctional Foodservice Management . .	69,289.25
57	(4) Roy J. Cunningham	74.24
58	(5) Thomas E. Gardner, Jr.	250.00
59	(6) Goldfarb Electric Supply Company, Inc. . . .	272.64
60	(7) Goodyear Tire and Rubber Company	523.16
61	(8) Green Acres Reg. Ctr.,	
62	c/o Sheltered Workshop	468.40
63	(9) John J. Haddox	18.50
64	(10) Hampshire County Commission	13,813.53
65	(11) Hancock County Commission	48,234.56
66	(12) Harrison County Commission	15,250.00
67	(13) Hervis Leasing	13,589.89
68	(14) Lexis Law Publishing.	632.45
69	(15) Lexis Publishing	149.21
70	(16) Lincoln County Commission	17,893.50
71	(17) Marion County Commission	12,469.11
72	(18) Marshall County Commission	4,050.79
73	(19) McDowell County Correctional	
74	Center	224,690.14
75	(20) Monongalia County Commission	38,725.00
76	(21) Preston County Commission	450.00
77	(22) Randolph County Commission	3,713.00
78	(23) Sergeant Robert L. Richard	22.46

79	(24) Taylor County Commission	34,550.00
80	(25) Tyler County Commission	3,120.50
81	(26) WV Regional Jail and Correctional	
82	Facility Authority	4,017,465.50
83	(27) John Kenneth Walters	100.00
84	(28) Phillip A. Ward	32.75
85	(29) West Group	5,317.08
86	(30) Jess W. White	12.00
87	(31) Wirt County Commission	5,175.00
88	(32) Wood County Commission	30,375.00
89	(33) York International Corporation	291.00
90	(j) <i>Claims against the Division of Highways:</i>	
91	(TO BE PAID FROM STATE ROAD FUND)	
92	(1) AT & T Corporation	90,000.00
93	(2) Cindy Adkins	145.15
94	(3) Shannon Adkins	500.00
95	(4) Brenda Alvarado	260.95
96	(5) Dolores Artis	167.71
97	(6) John Allen Bailey	1,000.00
98	(7) Ronald E. Bailey	50.00
99	(8) Joseph J. and Mary V. Baniak	5,000.00
100	(9) Robert C. Booker	4,000.00
101	(10) Clyde W. Boyles	295.56

442	CLAIMS	[Ch. 53
102	(11) Larry T. Bragg	567.52
103	(12) Ronald Brown	559.88
104	(13) David W. Burge	1,460.30
105	(14) Charles Burkiewicz	216.24
106	(15) Treva Clutter	250.00
107	(16) Iris J. Crook	184.23
108	(17) George A. Deer	500.00
109	(18) Fred L. Donato	3,947.22
110	(19) Willie Lee Dotson, as Admin. of	
111	the Estate of Tresa Myretta Dotson	99,000.00
112	(20) Willie Lee Dotson, as Guardian of	
113	Austin Ryan Dotson, an infant	26,000.00
114	(21) Richard E. and Debra Sue Easter	500.00
115	(22) David Scott Gillenwater	4,450.00
116	(23) Nancy Godsey-Mayle	2,163.87
117	(24) Sanford D. Green	250.00
118	(25) Kenneth L. and Elizabeth F. Gue	79.50
119	(26) Randall W. Hall	200.00
120	(27) Angela D. Harless	202.11
121	(28) Dorothy Hartley	148.39
122	(29) Terry L. Hundagen	1,550.00
123	(30) Janet Jackson	3,500.00
124	(31) Cornelius R. Lewis	171.72
125	(32) Tracy Loosemore	200.00

126	(33) Steve M. Matusky	500.00
127	(34) Anna Elizabeth Mount	7,500.00
128	(35) Brenda S. Napier	244.51
129	(36) Bertha Noble	500.00
130	(37) James H. Oxley	269.74
131	(38) Charles G. and Murle A. Perry	300.00
132	(39) Edward Pinkerton	275.00
133	(40) Putnam Truckload Direct	4,142.72
134	(41) Michael Edward Queen	213.66
135	(42) Bobbie J. Rardon	250.00
136	(43) Lawrence Ratcliff, as the guardian and	
137	next friend of Benjamin Nichols Ratcliff,	
138	an infant	6,000.00
139	(44) Paula J. Rothwell	778.00
140	(45) Shelia F. Seabolt	358.15
141	(46) Christina Selman	902.27
142	(47) Jason L. Shaffer	500.00
143	(48) Margaret Ann Shields	596.48
144	(49) Clifford S. Summerfield	200.00
145	(50) David Allen Toto	105.82
146	(51) Joan L. Williams	315.80
147	(52) Deloris B. Young	576.20
148	(k) <i>Claims against the Division of Juvenile Services:</i>	
149	(TO BE PAID FROM GENERAL REVENUE FUND)	

444	CLAIMS	[Ch. 53
150	(1) Batra Cardiology Associates, Inc.	276.00
151	(2) Bluefield Regional Medical Center	209.75
152	(3) CAMC Dental Center	1,159.00
153	(4) Arthur L. Calhoun, M.D., James E. LeVos, M.D.,	
154	dba Doddridge County Medical Center . . .	113.00
155	(5) Camden Clark Memorial Hospital	75.00
156	(6) Clarksburg Anesthesia Associates	549.00
157	(7) EMP of Harrison County	801.30
158	(8) EMP of Kanawha County	123.90
159	(9) EMP of Ohio County	1,298.90
160	(10) Ferenc C. Gyimesi, M.D.	40.00
161	(11) Princeton Community Hospital	300.00
162	(12) Sargent's Court Reporting Service, Inc. . . .	604.70
163	(13) Thomas Memorial Hospital	256.90
164	(14) Valley Radiologists, Inc.	226.00
165	(1) <i>Claims against the Division of Labor:</i>	
166	(TO BE PAID FROM GENERAL REVENUE FUND)	
167	(1) Goodyear Tire & Rubber Company	922.86
168	(2) Tartan Textile Services, Inc.	329.75
169	(m) <i>Claim against the Division of Motor Vehicles:</i>	
170	(TO BE PAID FROM STATE ROAD FUND)	
171	(1) A & B Sales, Inc.	9,013.17
172	(2) J. Christopher Burket	2,500.00

173	(3) Roy A. and Glenna Y. Wiles	2,000.00
174	(n) <i>Claim against the Ethics Commission:</i>	
175	(TO BE PAID FROM GENERAL REVENUE FUND)	
176	(1) Sherri Goodman Reveal	2,706.28
177	(o) <i>Claim against the Insurance Commission:</i>	
178	(TO BE PAID FROM SPECIAL REVENUE FUND)	
179	(1) Taylor & James, PLLC	4,127.00
180	(p) <i>Claims against the Public Service Commission:</i>	
181	(TO BE PAID FROM SPECIAL REVENUE FUND)	
182	(1) Charleston Department Store	826.55
183	(2) Weston Armory Committee	54.47
184	(q) <i>Claims against the Regional Jail and</i>	
185	<i>Correctional Facility Authority:</i>	
186	(TO BE PAID FROM SPECIAL REVENUE FUND)	
1	(1) Steven Benjamin Adkins	120.00
2	(2) Anthony Keith Leonard	234.90
3	(3) Keith Parker	47.50
4	(4) Gary Phillips	200.00
5	(r) <i>Claim against the State Rail Authority:</i>	
6	(TO BE PAID FROM GENERAL REVENUE FUND)	
7	(1) Garrett B. Kuykendall, Jr.	2,000.00
8	(s) <i>Claim against the WV State Police:</i>	
9	(TO BE PAID FROM GENERAL REVENUE FUND)	

10 (1) Sgt. Joseph M. Menendez 159.98

11 The Legislature finds that the above moral obligations and
 12 the appropriations made in satisfaction thereof shall be the full
 13 compensation for all claimants, and that prior to the payments
 14 to any claimant provided for in this bill, the court of claims
 15 shall receive a release from said claimant releasing any and all
 16 claims for moral obligations arising from the matters consid-
 17 ered by the Legislature in the finding of the moral obligations
 18 and the making of the appropriations for said claimant. The
 19 court of claims shall deliver all releases obtained from claim-
 20 ants to the department against which the claim was allowed.

CHAPTER 54

**(H. B. 4104 — By Delegates Jenkins, Hubbard, J. Smith,
 Campbell, Williams, Hall and Harrison)**

[Passed March 9, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section five, article ten-d, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to award of disability retirement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§1. Repeal of section relating to award of disability retirement.

1 Section five, article ten-d, chapter five of the code of West
 2 Virginia, one thousand nine hundred thirty-one, as amended, is
 3 hereby repealed.

CHAPTER 55

(H. B. 4646 — By Delegates Douglas, Kuhn, Varner,
Marshall, Perdue, Stalnaker and Willison)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section ten, article eight, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the charity food bank advisory committee.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article creating charity food bank advisory committee.

1 That section ten, article eight, chapter nine of the code of
2 West Virginia, one thousand nine hundred thirty-one, as
3 amended, is hereby repealed.

CHAPTER 56

(Com. Sub. for S. B. 202 — By Senators Love, Hunter and Bailey)

[Passed March 6, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section eight, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring that male and female inmates be kept separate; and providing for the care of infants born in the penitentiary.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. THE PENITENTIARY.

§1. Repeal of section relating to keeping male and female convicts separate and providing for infants born in the penitentiary.

1 Section eight, article five, chapter twenty-eight of the code
2 of West Virginia, one thousand nine hundred thirty-one, is
3 hereby repealed.

CHAPTER 57

(Com. Sub. for S. B. 153 — By Senator Sprouse)

[Passed March 8, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and seven, article three-c, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing criminal penalties for the introduction of computer contaminants; defining terms; and making certain technical revisions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.

§61-3C-3. Definitions.

§61-3C-7. Alteration, destruction, etc., of computer equipment.

§61-3C-3. Definitions.

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

3 (a) "Access" means to instruct, communicate with, store
4 data in, retrieve data from, intercept data from or otherwise
5 make use of any computer, computer network, computer
6 program, computer software, computer data or other computer
7 resources.

8 (b) "Authorization" means the express or implied consent
9 given by a person to another to access or use said person's
10 computer, computer network, computer program, computer
11 software, computer system, password, identifying code or
12 personal identification number.

13 (c) "Computer" means an electronic, magnetic, optical,
14 electrochemical or other high speed data processing device
15 performing logical, arithmetic or storage functions and includes
16 any data storage facility or communication facility directly
17 related to or operating in conjunction with such device. The
18 term "computer" includes any connected or directly related
19 device, equipment or facility which enables the computer to
20 store, retrieve or communicate computer programs, computer
21 data or the results of computer operations to or from a person,
22 another computer or another device, but such term does not
23 include an automated typewriter or typesetter, a portable hand-
24 held calculator or other similar device.

25 (d) "Computer contaminant" means any set of computer
26 instructions that are designed to damage or destroy information
27 within a computer, computer system or computer network
28 without the consent or permission of the owner of the informa-
29 tion. They include, but are not limited to, a group of computer
30 instructions commonly called viruses or worms that are self-
31 replicating or self-propagating and are designed to contaminate
32 other computer programs or computer data, consume computer

33 resources or damage or destroy the normal operation of the
34 computer.

35 (e) "Computer data" means any representation of knowl-
36 edge, facts, concepts, instruction or other information com-
37 puted, classified, processed, transmitted, received, retrieved,
38 originated, stored, manifested, measured, detected, recorded,
39 reproduced, handled or utilized by a computer, computer
40 network, computer program or computer software and may be
41 in any medium, including, but not limited to, computer
42 print-outs, microfilm, microfiche, magnetic storage media,
43 optical storage media, punch paper tape or punch cards, or it
44 may be stored internally in read-only memory or random access
45 memory of a computer or any other peripheral device.

46 (f) "Computer network" means a set of connected devices
47 and communication facilities, including more than one com-
48 puter, with the capability to transmit computer data among
49 them through such communication facilities.

50 (g) "Computer operations" means arithmetic, logical,
51 storage, display, monitoring or retrieval functions or any
52 combination thereof and includes, but is not limited to, commu-
53 nication with, storage of data in or to, or retrieval of data from
54 any device and the human manual manipulation of electronic
55 magnetic impulses. A "computer operation" for a particular
56 computer shall also mean any function for which that computer
57 was designed.

58 (h) "Computer program" means an ordered set of computer
59 data representing instructions or statements, in a form readable
60 by a computer, which controls, directs or otherwise influences
61 the functioning of a computer or computer network.

62 (i) "Computer software" means a set of computer programs,
63 procedures and associated documentation concerned with
64 computer data or with the operation of a computer, computer
65 program or computer network.

66 (j) "Computer services" means computer access time,
67 computer data processing or computer data storage and the
68 computer data processed or stored in connection therewith.

69 (k) "Computer supplies" means punch cards, paper tape,
70 magnetic tape, magnetic disks or diskettes, optical disks or
71 diskettes, disk or diskette packs, paper, microfilm and any other
72 tangible input, output or storage medium used in connection
73 with a computer, computer network, computer data, computer
74 software or computer program.

75 (l) "Computer resources" includes, but is not limited to,
76 information retrieval; computer data processing, transmission
77 and storage; and any other functions performed, in whole or in
78 part, by the use of a computer, computer network, computer
79 software or computer program.

80 (m) "Owner" means any person who owns or leases or is a
81 licensee of a computer, computer network, computer data,
82 computer program, computer software, computer resources or
83 computer supplies.

84 (n) "Person" means any natural person, general partnership,
85 limited partnership, trust, association, corporation, joint venture
86 or any state, county or municipal government and any subdivi-
87 sion, branch, department or agency thereof.

88 (o) "Property" includes:

89 (1) Real property;

90 (2) Computers and computer networks;

91 (3) Financial instruments, computer data, computer
92 programs, computer software and all other personal property
93 regardless of whether they are:

94 (i) Tangible or intangible;

95 (ii) In a format readable by humans or by a computer;

96 (iii) In transit between computers or within a computer
97 network or between any devices which comprise a computer; or

98 (iv) Located on any paper or in any device on which it is
99 stored by a computer or by a human; and

100 (4) Computer services.

101 (p) "Value" means having any potential to provide any
102 direct or indirect gain or advantage to any person.

103 (q) "Financial instrument" includes, but is not limited to,
104 any check, draft, warrant, money order, note, certificate of
105 deposit, letter of credit, bill of exchange, credit or debit card,
106 transaction authorization mechanism, marketable security or
107 any computerized representation thereof.

108 (r) "Value of property or computer services" shall be: (1)
109 The market value of the property or computer services at the
110 time of a violation of this article; or (2) if the property or
111 computer services are unrecoverable, damaged or destroyed as
112 a result of a violation of section six or seven of this article, the
113 cost of reproducing or replacing the property or computer
114 services at the time of the violation.

§61-3C-7. Alteration, destruction, etc., of computer equipment.

1 (a) *Misdemeanor offenses.* — Any person who knowingly,
2 willfully and without authorization, directly or indirectly,
3 tampers with, deletes, alters, damages or destroys or attempts
4 to tamper with, delete, alter, damage or destroy any computer,
5 computer network, computer software, computer resources,
6 computer program or computer data or who knowingly intro-
7 duces, directly or indirectly, a computer contaminant into any
8 computer, computer program or computer network which
9 results in a loss of value of property or computer services up to
10 one thousand dollars, is guilty of a misdemeanor and, upon

11 conviction thereof, shall be fined not more than one thousand
12 dollars or confined in the county or regional jail not more than
13 six months, or both.

14 (b) *Felony offenses.* — Any person who knowingly,
15 willfully and without authorization, directly or indirectly,
16 damages or destroys or attempts to damage or destroy any
17 computer, computer network, computer software, computer
18 resources, computer program or computer data by knowingly
19 introducing, directly or indirectly, a computer contaminant into
20 any computer, computer program or computer network which
21 results in a loss of value of property or computer services more
22 than one thousand dollars is guilty of a felony and, upon
23 conviction thereof, shall be fined not less than two hundred
24 dollars and not more than ten thousand dollars or confined in a
25 state correctional facility not more than ten years, or both, or,
26 in the discretion of the court, be fined not less than two hundred
27 nor more than one thousand dollars and confined in the county
28 or regional jail not more than one year.

CHAPTER 58

(Com. Sub. for H. B. 2605 — By Delegates Proudfoot,
Kominar, Staton and Mezzatesta)

[Passed February 15, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to concealed weapons licensing; limiting licenses to pistols and revolvers; changing the age requirement for obtaining a concealed weapon license from eighteen to twenty-one years of age and creating exceptions thereto; requiring sheriffs to provide duplicate license; and

providing that sheriffs shall issues permits within a specified time period and only upon qualification.

Be it enacted by the Legislature of West Virginia:

That section four, article seven, 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 7. DANGEROUS WEAPONS.

§61-7-4. License to carry deadly weapons; how obtained.

1 (a) Except as provided in subsection (h) of this section, any
2 person desiring to obtain a state license to carry a concealed
3 deadly weapon shall apply to the sheriff of his or her county for
4 such license, and shall pay to the sheriff, at the time of applica-
5 tion, a fee of sixty dollars. Concealed weapons permits may
6 only be issued for pistols or revolvers. Each applicant shall file
7 with the sheriff, a complete application, as prepared by the
8 superintendent of the West Virginia state police, in writing,
9 duly verified, which sets forth only the following licensing
10 requirements:

11 (1) The applicant's full name, date of birth, social security
12 number and a description of the applicant's physical features;

13 (2) That, on the date the application is made, the applicant
14 is a bona fide resident of this state and of the county in which
15 the application is made and has a valid driver's license or other
16 state-issued photo identification showing such residence;

17 (3) That the applicant is twenty-one years of age or older:
18 *Provided*, That any individual who is less than twenty-one years
19 of age and possesses a properly issued concealed weapons
20 license as of the effective date of this article shall be licensed to
21 maintain his or her concealed weapons license notwithstanding
22 the provisions of this section requiring new applicants to be at
23 least twenty-one years of age: *Provided, however*, That upon a

24 showing of any applicant who is eighteen years of age or older
25 that he or she is required to carry a concealed weapon as a
26 condition for employment, and presents satisfactory proof to the
27 sheriff thereof, then he or she shall be issued a license upon
28 meeting all other conditions of this section. Upon discontinu-
29 ance of employment that requires the concealed weapons
30 license, if the individual issued the license is not yet twenty-one
31 years of age, then the individual issued the license is no longer
32 eligible and must return his or her license to the issuing sheriff;

33 (4) That the applicant is not addicted to alcohol, a con-
34 trolled substance or a drug, and is not an unlawful user thereof;

35 (5) That the applicant has not been convicted of a felony or
36 of an act of violence involving the misuse of a deadly weapon;

37 (6) That the applicant has no criminal charges pending and
38 is not currently serving a sentence of confinement, parole,
39 probation or other court-ordered supervision, because of a
40 charge of domestic violence as provided for in section twenty-
41 eight, article two of this chapter, or is the subject of a restrain-
42 ing order as a result of a domestic violence act as defined in that
43 section, or because of a verified petition of domestic violence
44 as provided for in article two-a, chapter forty-eight of this code
45 or is subject to a protective order as provided for in that article;

46 (7) That the applicant is physically and mentally competent
47 to carry such weapon;

48 (8) That the applicant has not been adjudicated to be
49 mentally incompetent;

50 (9) That the applicant has qualified under the minimum
51 requirements set forth in subsection (d) of this section for
52 handling and firing such weapon: *Provided*, That this require-
53 ment shall be waived in the case of a renewal applicant who has
54 previously qualified;

55 (10) That the applicant authorizes the sheriff of the county,
56 or his or her designee, to conduct an investigation relative to the
57 information contained in the application.

58 (b) The sheriff shall conduct an investigation which shall
59 verify that the information required in subdivisions (1), (2), (3),
60 (5), (6), (8) and (9), subsection (a) of this section are true and
61 correct.

62 (c) The sixty-dollar application fee and any fees for
63 replacement of lost or stolen licenses received by the sheriff
64 shall be deposited by the sheriff into a concealed weapons
65 license administration fund. Such fund shall be administered by
66 the sheriff and shall take the form of an interest bearing account
67 with any interest earned to be compounded to the fund. Any
68 funds deposited in this concealed weapon license administration
69 fund are to be expended by the sheriff to pay for the costs
70 associated with issuing concealed weapons licenses. Any
71 surplus in the fund on hand at the end of each fiscal year may
72 be expended for other law-enforcement purposes or operating
73 needs of the sheriff's office, as the sheriff may deem appropri-
74 ate.

75 (d) All persons applying for a license must complete a
76 training course in handling and firing a handgun. The successful
77 completion of any of the following courses fulfills this training
78 requirement:

79 (1) Any official national rifle association handgun safety or
80 training course;

81 (2) Any handgun safety or training course or class available
82 to the general public offered by an official law-enforcement
83 organization, community college, junior college, college or
84 private or public institution or organization or handgun training
85 school utilizing instructors duly certified by such institution;

86 (3) Any handgun training or safety course or class con-
87 ducted by a handgun instructor certified as such by the state or
88 by the national rifle association;

89 (4) Any handgun training or safety course or class con-
90 ducted by any branch of the United States military, reserve or
91 national guard.

92 A photocopy of a certificate of completion of any of the
93 courses or classes or an affidavit from the instructor, school,
94 club, organization or group that conducted or taught said course
95 or class attesting to the successful completion of the course or
96 class by the applicant or a copy of any document which shows
97 successful completion of the course or class shall constitute
98 evidence of qualification under this section.

99 (e) All concealed weapons license applications must be
100 notarized by a notary public duly licensed under article four,
101 chapter twenty-nine of this code. Falsification of any portion of
102 the application constitutes false swearing and is punishable
103 under the provisions of section two, article five, chapter sixty-
104 one of this code.

105 (f) If the information in the application is found to be true
106 and correct, the sheriff shall issue a license. The sheriff shall
107 issue or deny the license within forty-five days after the
108 application is filed if all required background checks authorized
109 by this section are completed.

110 (g) Before any approved license shall be issued or become
111 effective, the applicant shall pay to the sheriff a fee in the
112 amount of fifteen dollars which the sheriff shall forward to the
113 superintendent of the West Virginia state police within thirty
114 days of receipt. Any such license shall be valid for five years
115 throughout the state, unless sooner revoked.

116 (h) All persons holding a current and valid concealed
117 weapons license as of the sixteenth day of December, one

118 thousand nine hundred ninety-five, shall continue to hold a
119 valid concealed weapons license until his or her license expires
120 or is revoked as provided for in this article: *Provided*, That all
121 reapplication fees shall be waived for applications received by
122 the first day of January, one thousand nine hundred ninety-
123 seven, for any person holding a current and valid concealed
124 weapons license as of the sixteenth day of December, one
125 thousand nine hundred ninety-five, which contains use restric-
126 tions placed upon the license as a condition of issuance by the
127 issuing circuit court. Any licenses reissued pursuant to this
128 subsection will be issued for the time period of the original
129 license.

130 (i) Each license shall contain the full name, social security
131 number and address of the licensee and a space upon which the
132 signature of the licensee shall be signed with pen and ink. The
133 issuing sheriff shall sign and attach his or her seal to all license
134 cards. The sheriff shall provide to each new licensee a duplicate
135 license card, in size similar to other state identification cards
136 and licenses, suitable for carrying in a wallet, and such license
137 card is deemed a license for the purposes of this section.

138 (j) The superintendent of the West Virginia state police
139 shall prepare uniform applications for licenses and license cards
140 showing that such license has been granted and shall do any
141 other act required to be done to protect the state and see to the
142 enforcement of this section.

143 (k) In the event an application is denied, the specific
144 reasons for the denial shall be stated by the sheriff denying the
145 application. Any person denied a license may file, in the circuit
146 court of the county in which the application was made, a
147 petition seeking review of the denial. Such petition shall be
148 filed within thirty days of the denial. The court shall then
149 determine whether the applicant is entitled to the issuance of a
150 license under the criteria set forth in this section. The applicant
151 may be represented by counsel, but in no case shall the court be

152 required to appoint counsel for an applicant. The final order of
153 the court shall include the court's findings of fact and conclu-
154 sions of law. If the final order upholds the denial, the applicant
155 may file an appeal in accordance with the rules of appellate
156 procedure of the supreme court of appeals.

157 (l) In the event a license is lost or destroyed, the person to
158 whom the license was issued may obtain a duplicate or substi-
159 tute license for a fee of five dollars by filing a notarized
160 statement with the sheriff indicating that the license has been
161 lost or destroyed.

162 (m) The sheriff shall, immediately after the license is
163 granted as aforesaid, furnish the superintendent of the West
164 Virginia state police a certified copy of the approved applica-
165 tion. It shall be the duty of the sheriff to furnish to the superin-
166 tendent of the West Virginia state police at any time so re-
167 quested a certified list of all such licenses issued in the county.
168 The superintendent of the West Virginia state police shall
169 maintain a registry of all persons who have been issued
170 concealed weapons licenses.

171 (n) All licensees must carry with them a state-issued photo
172 identification card with the concealed weapons license when-
173 ever the licensee is carrying a concealed weapon. Any licensee
174 who fails to have in his or her possession a state-issued photo
175 identification card and a current concealed weapons license
176 while carrying a concealed weapon shall be guilty of a misde-
177 meanor and, upon conviction thereof, shall be fined not less
178 than fifty or more than two hundred dollars for each offense.

179 (o) The sheriff shall deny any application or revoke any
180 existing license upon determination that any of the licensing
181 application requirements established in this section have been
182 violated by the licensee.

183 (p) No person who is engaged in the receipt, review or in
184 the issuance or revocation of a concealed weapon license shall

185 incur any civil liability as the result of the lawful performance
186 of his or her duties under this article.

187 (q) Notwithstanding the provisions of subsection (a) of this
188 section, with respect to application by a former
189 law-enforcement officer honorably retired from agencies
190 governed by article fourteen, chapter seven; article fourteen,
191 chapter eight; article two, chapter fifteen; and article seven,
192 chapter twenty of this code, an honorably retired officer is
193 exempt from payment of fees and costs as otherwise required
194 by this section, and the application of the honorably retired
195 officer shall be granted without proof or inquiry by the sheriff
196 as to those requirements set forth in subdivision (9), subsection
197 (a) of this section, if the officer meets the remainder of the
198 requirements of this section and has the approval of the
199 appropriate chief law-enforcement officer.

CHAPTER 59

**(Com. Sub. for H. B. 4322 — By Mr. Speaker, Mr. Kiss, and
Delegates Staton, Hunt, Wills, Stemple, Smirl and Laird)**

[Passed February 23, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article two-b, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the taking of blood samples for DNA analysis; and requiring the taking of blood samples from persons convicted of certain additional offenses.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2B.DNA DATA.**§15-2B-6. Blood sample required for DNA analysis upon conviction; blood sample required for certain prisoners.**

1 (a) Any person convicted of an offense described in section
2 one, two, three, four, seven, nine, nine-a (when that offense
3 constitutes a felony), ten, ten-a, ten-b, twelve, fourteen or
4 fourteen-a, article two, chapter sixty-one of this code or section
5 twelve, article eight of said chapter, when that offense consti-
6 tutes a felony, shall provide a blood sample to be used for DNA
7 analysis as described in this article. Further, any person
8 convicted of any offense described in article eight-b or eight-d
9 of said chapter shall provide a blood sample to be used for
10 DNA analysis as described in this article.

11 (b) All persons incarcerated in a state correctional facility
12 or any county or regional jail in this state who are incarcerated
13 due to the conviction of any offense listed in subsection (a) of
14 this section who are incarcerated on the first day of July, one
15 thousand nine hundred ninety-five, or who are convicted of any
16 such offense on or after the first day of July, one thousand nine
17 hundred ninety-five, shall have a blood sample drawn for
18 purposes of analysis and storage of the DNA.

19 (c) Any person convicted after the first day of July, two
20 thousand, of a violation of section five or thirteen, article two,
21 chapter sixty-one of this code, section one, two, three, four,
22 five, seven, eleven, twelve (when that offense constitutes a
23 felony) or subsection (a), section thirteen, article three of said
24 chapter, section three, four, five or ten, article three-e of said
25 chapter or section three, article four of said chapter, shall
26 provide a blood sample to be used for DNA analysis as de-
27 scribed in this article.

28 (d) When a person who is required to submit to blood
29 testing as required by this section refuses to comply with any
30 blood testing, the state shall apply to a circuit court for an order

31 requiring the prisoner to permit a blood sample to be withdrawn
32 for the purpose of DNA typing and testing. The circuit court
33 shall order the prisoner to submit to blood testing in conformity
34 with the provisions of this article.

CHAPTER 60

(S. B. 98 — By Senators Wooton, Ball, Dawson, Dittmar,
Kessler, McCabe, Minard, Redd, Ross and Snyder)

[Passed January 31, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section one, article thirteen, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article one, chapter twenty-five of said code by adding thereto a new section, designated section one-a, relating to clarifying the purpose of the division of corrections.

Be it enacted by the Legislature of West Virginia:

That section one, article thirteen, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article one, chapter twenty-five of said code be amended by adding thereto a new section, designated section one-a, to read as follows:

**ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS
MANAGEMENT.**

§25-1-1a. Purpose and legislative intent.

- 1 (a) The primary purpose of the division of corrections is to
- 2 enhance public safety by providing for the incarceration and
- 3 care of convicted offenders who have been sentenced by courts

4 of proper jurisdiction to serve terms of incarceration. It is the
5 intent of the Legislature:

6 (1) That persons committed to correctional institutions of
7 the state for whom release is available for crimes be afforded
8 appropriate treatment to reestablish their ability to live peace-
9 ably, consistent with the protection of the community;

10 (2) That persons committed to correctional institutions of
11 the state be released at the earliest possible date, consistent with
12 public safety;

13 (3) To establish a just, humane and efficient corrections
14 program; and

15 (4) To avoid duplication and waste of effort and money on
16 the part of public and private agencies.

17 (b) This section shall be construed in favor of public safety.



CHAPTER 61

**(Com. Sub. for S. B. 177 — By Senators Love, Dawson,
Ball, Mitchell, Hunter and Sprouse)**



[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]



AN ACT to repeal section six, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three-a, article one, chapter twenty-five of said code, relating to inmate funds; requiring commissioner to make an annual report regarding the average cost of incarceration; and authorizing the division of corrections to collect certain costs from inmates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-3a. Trustee accounts and funds, earnings and personal property of inmates.

1 (a) The commissioner of corrections is authorized to
2 establish at each institution under his or her jurisdiction a
3 “trustee fund”. The warden or administrator of each institution
4 shall receive and take charge of the money and personal
5 property, as defined by policy, of all inmates in his or her
6 institution and all money or personal property, as defined by
7 policy, sent to the inmates or earned by the inmates as compen-
8 sation for work performed while they are domiciled there. The
9 warden or administrator shall credit the money and earnings to
10 the inmate entitled to it and shall keep an accurate account of
11 all such money and personal property so received, which
12 account is subject to examination by the state commissioner of
13 corrections. The warden or administrator shall deposit the
14 moneys in one or more responsible banks in accounts to be
15 designated a “trustee fund”.

16 (b) For all inmates, except those serving life without mercy,
17 the warden or administrator shall keep in an account at least ten
18 percent of all money earned during the inmate’s incarceration
19 and pay same to the inmate at the time of the inmate’s release.

20 (c) The commissioner of corrections may direct that
21 offenders who work in community work programs, including
22 work release inmates who have obtained employment, make
23 reimbursement to the state towards the cost of his or her
24 incarceration.

25 (d) (1) Prior to ordering an incarcerated offender to make
26 reimbursement towards the costs of his or her incarceration, the
27 commissioner, or his or her designee, shall consider the
28 following:

29 (A) The offender's ability to pay;

30 (B) The nature and extent of the offender's responsibilities
31 to his or her dependents, if any;

32 (C) The length of probable incarceration under the court's
33 sentence; and

34 (D) The effect, if any, that reimbursement might have on
35 the offender's rehabilitation.

36 (2) No order of reimbursement entered pursuant to this
37 section may exceed five hundred dollars per month unless the
38 offender gives his or her express consent.

39 (3) The commissioner of corrections shall, prior to the
40 beginning of each fiscal year, prepare a report that details the
41 average cost per inmate incurred by the division for the care
42 and supervision of those individuals in his or her custody.

43 (e) The chief executive officer of any correctional institu-
44 tion, on request of an inmate, may expend up to one half of the
45 money earned by the inmate on behalf of the family of the
46 inmate if the ten percent mandatory savings has first been set
47 aside and other fees owed by the inmate have been paid. The
48 remainder of the money earned, after deducting amounts
49 expended as authorized, shall be accumulated to the credit of
50 the inmate and be paid to the inmate at times as may be
51 prescribed by rules. The funds so accumulated on behalf of
52 inmates shall be held by the chief executive officer of each
53 institution, under a bond approved by the attorney general.

54 (f) The warden or administrator shall deliver to the inmate
55 at the time he or she leaves the institution, or as soon as

56 practicable thereafter, all personal property, moneys and
57 earnings then credited to the inmate, or in case of the death of
58 the inmate before authorized release from the institution, the
59 warden or administrator shall deliver the property to the
60 inmate's personal representative. In case a conservator is
61 appointed for the inmate while he or she is domiciled at the
62 institution, the warden or administrator shall deliver to the
63 conservator, upon proper demand, all moneys and personal
64 property belonging to the inmate that are in the custody of the
65 warden or administrator.

CHAPTER 62

(Com. Sub. for S. B. 178 — By Senators Love, Ball,
Dawson, Hunter, Mitchell and Ross)

[Passed March 11, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend and reenact section three-b, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the creation and operation of inmate benefit funds in correctional institutions; creating special revenue accounts; and providing for an automated inmate family and victim notification system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-3b. Inmate benefit funds.

1 (a) The commissioner of corrections shall establish an
2 inmate benefit fund for each of the institutions under his or her
3 jurisdiction. The inmate benefit fund is a fund held by the
4 institutions for the benefit and welfare of inmates incarcerated
5 in state correctional facilities and for the benefit of victims.

6 (b) There is hereby created a special revenue account in the
7 state treasury for each inmate benefit fund established by the
8 commissioner. Moneys received by an institution for deposit in
9 an inmate benefit fund shall be deposited with the state trea-
10 surer to be credited to the special revenue account created for
11 the institution's inmate benefit fund. Moneys in a special
12 revenue account established for an inmate benefit fund may be
13 expended by the institution for the purposes set forth in this
14 section. Moneys to be deposited into an inmate benefit fund
15 consist of:

16 (1) All profit from the exchange or commissary operation;

17 (2) All net proceeds from vending machines used for
18 inmate visitation;

19 (3) All proceeds from contracted inmate telephone commis-
20 sions;

21 (4) Any funds that may be assigned by inmates or donated
22 to the institution by the general public or an inmate service
23 organization on behalf of all inmates;

24 (5) Any funds confiscated considered contraband; and

25 (6) Any unexpended balances in individual inmate trustee
26 funds if designated by the inmate upon his or her discharge
27 from the institution.

28 (c) The inmate benefit fund may only be used for the
29 following purposes at correctional facilities:

30 (1) Open-house visitation functions or other nonroutine
31 inmate functions;

- 32 (2) Holiday functions which may include decorations and
33 gifts for children of inmates;
- 34 (3) Cable television service;
- 35 (4) Rental of video cassettes;
- 36 (5) Payment of video license;
- 37 (6) Recreational supplies, equipment or area surfacing;
- 38 (7) Reimbursement of employee wages for overtime
39 incurred during open house visitations and holiday functions;
- 40 (8) Post-secondary education classes;
- 41 (9) Reimbursement of a pro rata share of inmate work
42 compensation;
- 43 (10) Household equipment and supplies in day rooms or
44 units as approved by chief executive officers of institutions,
45 excluding supplies used in the daily maintenance and sanitation
46 of the unit;
- 47 (11) Christmas or other holidays gift certificates for each
48 inmate to be used at the exchange or commissary;
- 49 (12) Any expense associated with the operation of the fund;
- 50 (13) Expenditures necessary to properly operate an auto-
51 mated inmate family and victim information notification
52 system; and
- 53 (14) Any expense for improvement of the facility which
54 will benefit the inmate population that is not otherwise funded.
- 55 (d) The institution shall compile a monthly report that
56 specifically documents inmate benefit fund receipts and
57 expenditures and a yearly report for the previous fiscal year by
58 the first day of September of each year and submit the reports
59 to the commissioner.

CHAPTER 63

(Com. Sub. for S. B. 201 — By Senator Love)

[Passed February 9, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eleven-e, relating to prohibiting the unauthorized use of a uniform, badge, identification card or other insignia of the division of corrections and the impersonation of its employees; and establishing a criminal penalty.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-11e. Unauthorized use of uniform, badge, identification card or other insignia; impersonation of member; and penalty.

- 1 (a) No person who is not an officer or employee of the
- 2 division of corrections, and no officer or employee of the
- 3 division who is not authorized to do so, may, with intent to
- 4 deceive, wear, use, order to be used or worn, copy or imitate in
- 5 any respect or manner the uniform, badge, identification card or
- 6 other insignia prescribed for employees of the division.

7 (b) No person who is not an officer or employee of the
8 division of corrections may falsely represent himself or herself
9 to be an officer or employee of the division of corrections or to
10 be under the order or direction of any officer or employee of the
11 division.

12 (c) Any person who violates the provisions of subsection
13 (a) or (b) of this section is guilty of a misdemeanor and, upon
14 conviction thereof, shall be fined not more than two hundred
15 dollars, or confined in the county or regional jail for not more
16 than six months, or both fined and confined.

CHAPTER 64

(Com. Sub. for H. B. 4169 — By Delegates Stemple, Manuel, Warner and Pino)

[Passed March 8, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the electronic monitoring of offenders; permitting use of electronic monitoring equipment to aid in supervision of any offender; providing for the use of fees collected in the program; and revising restrictions on the types of equipment that may be used.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-14. Electronic monitoring of offenders; special account.

1 The commissioner may use electronic monitoring equip-
2 ment to aid in the supervision of offenders. The commissioner
3 shall charge offenders subject to supervision by means of
4 electronic monitoring equipment a reasonable fee, to be
5 established under a legislative rule promulgated by the commis-
6 sioner pursuant to article three, chapter twenty-nine-a of this
7 code, to help defray the costs of the purchase and use of the
8 equipment and the division of correction's operational costs:
9 *Provided*, That an offender's inability to pay a fee does not
10 preclude the offender from being eligible for this program.

11 All fees collected shall be deposited in a special account in
12 the state treasury designated the "electronic monitoring
13 program account". The funds deposited in the account may be
14 used by the commissioner only for the operation of the program
15 and for the administration of the division of corrections.

16 "Electronic monitoring equipment" means an electronic
17 device or apparatus approved by the division of corrections
18 which is capable of recording or transmitting information
19 regarding the offender's presence or nonpresence in a desig-
20 nated area. The device shall be minimally intrusive. Except to
21 the extent provided in this section, the division of corrections
22 shall not approve any monitoring device which is capable of
23 recording or transmitting (i) visual images, except for that of a
24 still image of the offender that can only be transmitted by the
25 offender triggering the monitoring system, or (ii) information
26 as to the offender's activities while he or she is within the
27 designated area. A monitoring device may transmit information
28 regarding blood alcohol levels. The monitoring device shall not
29 be used to eavesdrop or record any conversation: *Provided*,
30 That conversations between the offender and the person
31 supervising the offender may be recorded solely for purpose of
32 voice identification.

CHAPTER 65

(S. B. 179 — By Senators Love, Mitchell, Hunter, Dawson, Ball and Ross)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to diagnostic and classification divisions of the division of corrections; and removing restrictions and obsolete language concerning the location of the divisions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-15. Diagnostic and classification divisions.

1 The commissioner of corrections may establish diagnostic
2 and classification divisions.

3 Notwithstanding any provision of the code to the contrary,
4 all persons committed to the custody of the commissioner of the
5 division of corrections for presentence diagnosis and classifica-
6 tion and all persons sentenced to the custody of the division of
7 corrections shall, upon transfer to the division of corrections,
8 undergo diagnosis and classification.

CHAPTER 66

(Com. Sub. for S. B. 109 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-a, relating to inmate litigation reform; defining terms; requiring exhaustion of administrative remedies; providing for full payment of filing fees; requiring judicial review of initial pleading; requiring dismissal of actions; permitting hearings at correctional facilities; limiting recovery; allowing forfeiture of good-time credit; and providing for payment of pending judgments.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. WEST VIRGINIA PRISONER LITIGATION REFORM ACT.

- §25-1A-1. Definitions.
- §25-1A-2. Mandatory exhaustion of administrative remedies.
- §25-1A-3. Payment of filing fees and court costs.
- §25-1A-4. Judicial review of initial pleading; dismissal.
- §25-1A-5. Hearings.
- §25-1A-6. Loss of good-time credit.
- §25-1A-7. Court-ordered payments.
- §25-1A-8. Attorney fees.

§25-1A-1. Definitions.

- 1 As used in this article,

2 (a) "Civil action" means any action or appeal from an
3 action filed by any current or former inmate or his or her
4 personal representative with respect to conditions of confine-
5 ment, including, but not limited to, petitions for extraordinary
6 writs, civil actions under 42 U.S.C. §1983 and other federal and
7 state laws and negligence actions. Actions that exclusively
8 concern an inmate's sentence or conviction are not subject to
9 the requirements of this article.

10 (b) "Correctional facility" means any county jail, regional
11 jail or any facility operated by the division of corrections, the
12 West Virginia regional jail and correctional facility authority or
13 division of juvenile services for the confinement of inmates.

14 (c) "Inmate" means any person confined in a correctional
15 facility who is accused of, convicted of, sentenced for or
16 adjudicated delinquent for violations of criminal law or the
17 terms and conditions of parole, probation, pretrial release or a
18 diversionary program.

§25-1A-2. Mandatory exhaustion of administrative remedies.

1 (a) An inmate may not bring a civil action until the admin-
2 istrative remedies promulgated by the facility have been
3 exhausted: *Provided*, That the remedies promulgated by the
4 facility will be deemed completed within sixty days from the
5 date the inmate filed his or her initial complaint if the inmate
6 fully complied with the requirements for filing and appealing
7 the administrative complaint.

8 (b) The commissioner of the division of corrections and the
9 executive director of the regional jail authority shall propose
10 joint legislative rules for promulgation in accordance with the
11 provisions of article three, chapter twenty-nine-a of this code to
12 establish administrative rules for processing inmate complaints
13 concerning food quality, health care, nonviolent or nonsexual
14 conduct of employees or contractors of the division of correc-
15 tions or regional jail authority, loss of privileges and other

16 general complaints about daily living conditions which do not
17 directly and seriously concern an inmate's physical health or
18 security.

19 (c) Notwithstanding any other provision of this code, no
20 inmate shall be prevented from filing an appeal of his or her
21 conviction or bringing a civil or criminal action alleging past,
22 current or imminent physical or sexual abuse; if such a civil or
23 criminal action is ultimately dismissed by a judge as frivolous,
24 then the inmate shall pay the filing costs associated with the
25 civil or criminal action as provided for in this article.

§25-1A-3. Payment of filing fees and court costs.

1 (a) Notwithstanding any other provision of this code, an
2 inmate may not file with any court of this state a civil action
3 without the payment of filing fees as set forth in this section:
4 *Provided*, That the collection of the full filing fee is not
5 required before the inmate's claim may be filed and served.

6 (b) When an inmate seeks to file a civil action as an
7 indigent and requests that customary filing fees and court costs
8 be waived, the clerk of the court in which the inmate has filed
9 his or her complaint shall notify the warden or designated
10 representative of the facility in which the inmate resides of the
11 inmate's request and the amount of filing costs. Once the
12 facility receives notification, the custodian of the inmate's trust
13 account shall immediately compute the average monthly
14 balance of the inmate's trust account over the preceding three-
15 month period and deduct from the inmate's trust account thirty
16 percent of the average balance as a partial filing fee. The
17 custodian shall deduct that same amount or up to thirty percent
18 of the balance of the inmate's trust account, whichever is
19 greater, on a monthly basis until the filing fee is paid in full.

20 (c) The custodian of the inmate's trust account shall place
21 all funds deducted from the inmate's trust into a special account
22 designated as the "filing fees account", to be established for

23 each correctional facility and to be administered by the custo-
24 dian and warden or chief administrator of each facility. Biannu-
25 ally the custodian and warden or chief administrator of the
26 filing fees account shall distribute the balance of the account,
27 minus any expense in maintaining that account, to the circuit
28 clerk of the county in which the state correctional facility
29 resides as a filing fee for all suits filed by indigent inmates of
30 that facility.

§25-1A-4. Judicial review of initial pleading; dismissal.

1 (a) The court shall, prior to issuance of process, review the
2 complaint, petition or other initial pleading to determine
3 whether a civil action is frivolous or malicious as defined in
4 subsection (b) of this section and fails to state a claim for which
5 relief can be granted or seeks monetary relief from a party who
6 is immune from such relief. If the complaint, petition or other
7 initial pleading is frivolous or malicious, fails to state a claim
8 for which relief can be granted or seeks monetary relief from a
9 party who is immune from such relief, the court shall not issue
10 process and shall dismiss the case.

11 (b) A civil action is frivolous or malicious if it:

12 (1) Has no arguable basis in fact or law; or

13 (2) Is substantially similar to a previous civil action in
14 which the inmate did not substantially prevail, either in that it
15 is brought against the same parties or in that the civil action
16 arises from the same operative facts of a previous civil action;
17 or

18 (3) Has been brought with the intent to harass an opposing
19 party.

§25-1A-5. Hearings.

1 (a) To the extent practicable, a court shall conduct pretrial
2 proceedings in any civil action in which an inmate's participa-
3 tion is required or permitted by telephone, video conference or
4 other telecommunications technology without removing the
5 inmate from the facility in which an inmate is confined.

6 (b) Subject to the agreement of the official with custody
7 over an inmate, the court may conduct hearings at the correc-
8 tional facility in which an inmate is confined. To the extent
9 practicable, the court shall allow counsel to participate by
10 telephone, video conference or other communications technol-
11 ogy in any hearing held at the facility.

12 (c) No court may compel the commissioner of the division
13 of corrections or warden of any correctional facility operated by
14 the division of corrections or the executive director of the West
15 Virginia regional jail and correctional facility authority or any
16 administrator of any facility operated by the West Virginia
17 regional jail and correctional facility authority to transport to
18 court any inmate having a maximum security classification if
19 the warden or administrator of the facility tenders to the court
20 an affidavit attesting to the custody level of the inmate and
21 stating that, in the warden's or administrator's opinion, the
22 inmate possesses a substantial risk of escape if transported. If
23 a warden or administrator files an affidavit, then the warden or
24 administrator shall, upon demand of the court, provide suitable
25 room to conduct any trial or hearings at which an inmate's
26 presence is required. The warden or administrator shall allow
27 the court, counsel and all court personnel access to the correc-
28 tional facility to conduct the proceedings the court considers
29 necessary.

§25-1A-6. Loss of good-time credit.

1 Upon a finding by the court that a civil action is frivolous,
2 malicious or intended to harass the party against whom the civil
3 action is brought or that the inmate knowingly testified falsely

4 or otherwise knowingly presented false evidence or information
5 to the court, the court may order that the inmate forfeit earned
6 good-time credit. A court may take additional evidence to
7 determine the appropriate amount of good-time credit to be
8 forfeited.

§25-1A-7. Court-ordered payments.

1 Any compensatory damages awarded to an inmate in
2 connection with a civil action, after deduction for any attorney
3 fees, shall be paid directly to satisfy any outstanding court-
4 ordered payments pending against the inmate, including, but not
5 limited to, restitution or child support. The remainder of the
6 award after full payment of all pending court orders shall be
7 forwarded to the inmate.

§25-1A-8. Attorney fees.

1 (a) In any action based upon prison conditions brought
2 under any statute or constitutional provision, if attorney fees are
3 recoverable pursuant to any state statute, no attorney fees shall
4 be awarded to a prisoner, except to the extent that:

5 (1) The fees were directly and reasonably incurred by an
6 attorney in proving an actual violation of prisoner's rights
7 protected by the constitution or statute; and

8 (2) The amount of the fees is proportionately related to the
9 court-ordered relief for the violation, or the fees were directly
10 and reasonably incurred in enforcing the relief ordered for the
11 violation.

12 (b) Nothing in this section shall prohibit a prisoner from
13 entering into an agreement to pay an attorney fee in excess of
14 the amount authorized in this section, if the fee is paid by the
15 prisoner rather than by another party to a civil action.

CHAPTER 67

(Com. Sub. for H. B. 4106 — By Mr. Speaker, Mr. Kiss, and Delegates Michael, Varner, Martin, Kominar, Kuhn and Douglas)

[Passed February 8, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the West Virginia regional jail and correctional facility authority board to appoint an executive director; and providing a term of five years.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-4. Governing body; organization and meetings; quorum; administrative expenses.

1 The governing body of the authority shall consist of the
2 voting members of the board as provided for in section three of
3 this article and shall exercise all the powers given to the
4 authority in this article. On the second Monday of July of each
5 odd-numbered year, the board shall meet to elect a chairman
6 and a secretary from among its own members. The secretary of
7 the department of administration or his or her designated
8 representative shall serve as treasurer of the board. The board
9 shall otherwise meet quarterly, unless a special meeting is
10 called by its chairman.

11 A majority of the members of the board constitute a
12 quorum, and a quorum must be present for the board to conduct
13 business. Unless the bylaws require a larger number, action
14 may be taken by majority vote of the members present.

15 The board shall prescribe, amend and repeal bylaws and
16 rules governing the manner in which the business of the
17 authority is conducted and shall review and approve the budget
18 prepared by the executive director annually.

19 On or before the first day of April, two thousand, the West
20 Virginia regional jail and correctional facility authority board
21 shall, with the advice and consent of the Senate, appoint an
22 executive director to act as its chief executive officer, to serve
23 at the will and pleasure of the board at an annual salary of
24 seventy thousand dollars. The appointment shall be for a term
25 of five years to begin on the first day of April, two thousand.
26 The executive director is empowered to employ any other
27 personnel he or she determines necessary and may appoint
28 counsel and legal staff for the authority and retain such tempo-
29 rary engineering, financial and other consultants or technicians
30 as may be required for any special study or survey consistent
31 with the provisions of this article. The executive director is
32 further empowered to engage in negotiations and carry out
33 plans to implement the provisions of this article and to exercise
34 those powers listed in section five of this article on behalf of the
35 authority. The executive director shall prepare annually a
36 budget to be submitted to the board for its review and approval.

37 All costs incidental to the administration of the authority,
38 including office expense, personal services expense and current
39 expense, shall be paid from the regional jail and correctional
40 facility development fund in accordance with guidelines issued
41 by the board of the authority.

CHAPTER 68

(S. B. 97 — By Senators Love, Ball, Kessler, Hunter, Sharpe and Dawson)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and two, article eight, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to criminal offenses by inmates; and creating the additional criminal offense of killing, wounding or injuring any person at a correctional facility, or conspiring to do the same.

Be it enacted by the Legislature of West Virginia:

That sections one and two, article eight, 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 8. CRIMES BY AND PROCEEDINGS AGAINST CONVICTS.

§62-8-1. Offenses by inmates; conspiracy.

§62-8-2. Punishment of convicts; no discharge from correctional institution while prosecution is pending.

§62-8-1. Offenses by inmates; conspiracy.

1 A person imprisoned or otherwise in the custody of the
2 commissioner of corrections is guilty of a felony if he or she
3 kills, wounds or inflicts other bodily injury upon any person at
4 any correctional facility; or breaks, cuts or injures any building,
5 fixture or fastening of any correctional facility, or any part
6 thereof, for the purpose of escaping or aiding any other inmate
7 to escape therefrom, or renders any correctional facility less
8 secure as a place of confinement; or makes, procures, secretes
9 or has in his or her possession, any instrument, tool or other
10 thing for such purpose, or with intent to kill, wound or inflict
11 bodily injury; or resists the lawful authority of an officer or
12 guard of any correctional facility for such purpose or with such
13 intent. Any three or more inmates so confined, or in such

14 custody, who conspire together to commit any offense men-
15 tioned in this section are each guilty of a felony.

§62-8-2. Punishment of convicts; no discharge from correctional institution while prosecution is pending.

1 (a) Any inmate who violates the provisions of section one
2 of this article and the violation results in the death of any
3 person is guilty of a felony and, upon conviction thereof, shall
4 be confined in a state correctional facility for life, and he or she
5 shall not be eligible for parole, notwithstanding the provisions
6 of article twelve, chapter sixty-two of this code.

7 (b) Any inmate who violates the provisions of section one
8 of this article and is serving a term of confinement for life, is
9 guilty of a felony and, upon conviction thereof, he or she may
10 not be eligible for parole, notwithstanding the provisions of
11 article twelve, chapter sixty-two of this code.

12 (c) Any inmate who is not serving a term of confinement
13 for life and who violates the provisions of section one of this
14 article and whose violation did not result in the death of any
15 person is guilty of a felony and, upon conviction thereof, shall
16 be confined in a state correctional facility not less than one nor
17 more than five years. Any term of confinement imposed
18 pursuant to this subsection is to be consecutive to any term of
19 confinement already imposed.

20 (d) An inmate prosecuted for an offense under this article
21 may not be discharged from a state correctional facility while
22 the prosecution is pending.

23 (e) Any person convicted pursuant to the provisions of this
24 section may not be sentenced under sections eighteen or
25 nineteen, article eleven, chapter sixty-one of this code: *Pro-*
26 *vided*, That if an inmate commits an offense punishable by
27 confinement in a state correctional facility, other than the
28 offenses defined in section one of this article, he or she shall be
29 punished as if he or she had been discharged before committing
30 the offense.

CHAPTER 69

(Com. Sub. for S. B. 592 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 11, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article eight, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to records management and preservation of county records; alternate storage of county records; creating a records management and preservation board; setting the qualifications of and providing for the appointment of members; providing for reimbursement of expenses; providing that the director of the division of archives and history section shall be the staff to the board; giving the board rule-making authority; providing for the study of records management needs of state agencies; providing for grants to counties; and providing for the termination of the board.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION
ACT.**

§5A-8-15. Records management and preservation of county records; alternate storage of county records; records management and preservation board created; qualifications and appointment of members; reimbursement of expenses; staffing; rule-making authority; study of records management needs of state agencies; grants to counties; termination of board.

1 The Legislature finds that the use of electronic technology
2 and other procedures to manage and preserve public records by
3 counties should be uniform throughout the state where possible.

4 (a) The governing body and the chief elected official of any
5 unit of each county, hereinafter referred to as a county govern-
6 ment entity, whether organized and existing under a charter or
7 under general law, shall promote the principles of efficient
8 records management and preservation of local records. Such
9 county governing entity may, as far as practical, follow the
10 program established for the uniform management and preserva-
11 tion of county records as set out in a rule or rules proposed for
12 legislative approval in accordance with the provisions of article
13 three, chapter twenty-nine-a of this code as proposed by the
14 records management and preservation board established herein.

15 (b) In the event any such governing body or the chief
16 elected official of a unit of a county government entity decides
17 to destroy or otherwise dispose of a county record, the govern-
18 ing body or such chief elected official may, prior to destruction
19 or disposal thereof, offer the record to the director of the section
20 of archives and history of the division of culture and history for
21 preservation of the record as a document of historical value.
22 Unless authorized by the supreme court of appeals, the records
23 of courts of record and magistrate courts are not affected by the
24 provisions of this section.

25 (c) A preservation duplicate of a county government entity
26 record may be stored in any format, approved by the board as
27 hereinafter established, where the image of the original record
28 is preserved in a form, including CD-ROM and optical image
29 storage media in which the image thereof is incapable of
30 erasure or alteration, and from which a reproduction of the
31 stored record may be retrieved which truly and accurately
32 depicts the image of the original county government record.

33 Except for those formats, processes and systems used for
34 the storage of records on the effective date of this section, no
35 alternate format for the storage of county government entity

36 records described in this section is authorized for the storage of
37 county government entity records unless the particular format
38 has been approved pursuant to a legislative rule promulgated by
39 the board as herein created in accordance with the provisions of
40 chapter twenty-nine-a of this code. The board as herein estab-
41 lished may prohibit the use of any format, process or system
42 used for the storage of records upon its determination that the
43 same is not reasonably adequate to preserve the records from
44 destruction, alteration or decay.

45 Upon creation of a preservation duplicate which stores an
46 original county government entity record in an approved format
47 in which the image thereof is incapable of erasure or alteration,
48 and from which a reproduction of the stored record may be
49 retrieved which truly and accurately depicts the image of the
50 original record, the county government entity may destroy or
51 otherwise dispose of the original in accordance with the
52 provisions of section seven-c, article one, chapter fifty-seven of
53 this code.

54 (d) There is hereby created a records management and
55 preservation board for county government entities, to be
56 composed of nine members.

57 (1) Three members shall serve ex officio. One member
58 shall be the commissioner of the division of culture and history
59 who shall be the chairman of the board. One member shall be
60 the administrator of the supreme court of appeals. One member
61 shall be the administrator of the governor's office of technology
62 or his or her designee.

63 (2) The governor shall appoint six members of the board
64 with the advice and consent of the Senate. Not more than five
65 appointments to the board may be from the same political party
66 and not more than three members may be appointed from the
67 same congressional district. Of the six members appointed by
68 the governor: (i) Three appointments shall be county elected
69 officials, one of whom shall be a clerk of the county commis-
70 sion, one of whom shall be a circuit court clerk and one of

71 whom shall be a county commissioner, to be selected from a list
72 of nine names, including the names of three clerks of county
73 commissions and three circuit court clerks submitted to the
74 governor by the West Virginia association of counties and the
75 names of three county commissioners, submitted to the gover-
76 nor jointly by the West Virginia association of counties and the
77 West Virginia county commissioners association; (ii) one
78 appointment shall be a county prosecuting attorney to be
79 selected from a list of three names submitted by the West
80 Virginia prosecuting attorney's institute; (iii) one appointment
81 shall be an attorney licensed in West Virginia and in good
82 standing as a member of the state bar with experience in real
83 estate and mineral title examination, to be selected from a list
84 of three names submitted by the state bar; and (iv) one appoint-
85 ment shall be a representative of a local historical or genealogi-
86 cal society;

87 (e) The members of the board shall serve without compen-
88 sation but shall be reimbursed for all reasonable and necessary
89 expenses actually incurred in the performance of their duties as
90 members of the board. In the event the expenses are paid, or are
91 to be paid, by a third party, the member shall not be reimbursed
92 by the state.

93 (f) The staff of the board shall consist of the director of the
94 archives and history section of the division of culture and
95 history and such staff as he or she may designate to assist him
96 or her.

97 (g) On or before the first day of July, two thousand one, the
98 board shall propose rules for legislative approval in accordance
99 with the provisions of article three, chapter twenty-nine-a of
100 this code to establish a system of records management and
101 preservation for county governments: *Provided*, That, for the
102 retention and disposition of records of courts of record and
103 magistrate courts, the implementation of the rule is subject to
104 action of the West Virginia supreme court of appeals. The
105 proposed rule or rules shall include provisions for establishing
106 a program of grants to county governments for making records

107 management and preservation uniform throughout the state. The
108 board is not authorized to propose or promulgate emergency
109 rules under the provisions of this section.

110 (h) On or before the first day of April, two thousand two,
111 the board, in cooperation with the administrator and state
112 executive agencies under the general authority of the governor,
113 shall conduct a study of the records management and preserva-
114 tion needs of state executive agencies. Should the board
115 determine a need for a uniform records management and
116 preservation system for such agencies, it shall recommend that
117 the administrator propose rules for legislative approval in
118 accordance with the provisions of article three, chapter twenty-
119 nine-a of this code, to provide for the implementation of a
120 uniform records management and preservation system for state
121 executive agencies.

122 (i) In addition to the fees charged by the clerk of the county
123 commission under the provisions of section ten, article one,
124 chapter fifty-nine of this code, the clerk shall charge and collect
125 an additional one dollar fee for every document containing less
126 than ten pages filed for recording and an additional one dollar
127 fee for each additional ten pages of such document filed for
128 recording. At the end of each month, the clerk of the county
129 commission shall deposit into the special public records and
130 preservation account as herein established in the state treasury
131 all fees collected: *Provided*, That the clerk may retain not more
132 than ten percent of such fees for costs associated with the
133 collection of the fees. Clerks shall be responsible for accounting
134 for the collection and deposit in the state treasury of all fees
135 collected by such clerk under the provisions of this section.

136 There is hereby created in the state treasury a special
137 account entitled the "public records and preservation revenue
138 account". The account shall consist of all fees collected under
139 the provisions of this section, legislative appropriations, interest
140 earned from fees, investments, gifts, grants or contributions
141 received by the board. Expenditures from the account shall be
142 for the purposes set forth in this article and are not authorized

143 from collections but are to be made only in accordance with
144 appropriation by the Legislature and in accordance with the
145 provisions of article three, chapter twelve of this code and upon
146 the fulfillment of the provisions set forth in article two, chapter
147 five-a of this code: *Provided*, That for the fiscal year ending the
148 thirtieth day of June, two thousand one, expenditures are
149 authorized from collections rather than pursuant to an appropri-
150 ation by the Legislature.

151 Subject to the above provision, the board may expend the
152 funds in the account to implement the provisions of this article.
153 In expending funds from the account, the board shall allocate
154 not more than fifty percent of such funds for grants to counties
155 for records management, access and preservation purposes. The
156 board shall provide for applications, set guidelines and establish
157 procedures for distributing grants to counties including a
158 process for appealing an adverse decision on a grant applica-
159 tion. Expenditures from the account shall be for the purposes
160 set forth in this section, including the cost of additional staff of
161 the division of archives and history.

162 (j) The board shall terminate on the first day of July, two
163 thousand two, pursuant to the provisions of article ten, chapter
164 four of this code.

CHAPTER 70

(Com. Sub. for S. B. 125 — By Senators McKenzie, Mitchell,
Bowman, Oliverio, Snyder and Kessler)

[Passed March 9, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-eg, relating

to empowering county commissions to execute lease agreements to obtain equipment or materials.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3gg. Lease agreements for equipment or materials with option to cancel or renew.

1 (a) In addition to all other powers and duties now conferred
2 by law upon county commissions, county commissions are
3 hereby authorized and empowered to enter into and execute a
4 lease agreement to obtain equipment or material.

5 (b) The lease agreement may not be voided because it
6 provides: (1) That title to the equipment or material shall vest
7 in the county commission at or before the expiration of the
8 leasehold term upon fulfillment of the terms and conditions
9 stipulated in the lease agreement; (2) for application of the
10 annual rental payments made under the lease agreement toward
11 the purchase price of the equipment or material, although the
12 total rental payments under the lease agreement are in excess of
13 the cash price of the equipment or material described in the
14 lease agreement, whether the excess is by way of interest or a
15 time-price differential; and/or (3) that the risk of loss of the
16 equipment or material shall be borne by the county commission.

17 (c) A lease agreement shall be void, unless the lease
18 agreement provides that the county commission has the
19 following options, during each fiscal year of the lease agree-
20 ment: (1) The option to terminate the lease agreement and
21 return the equipment or material without any further obligation
22 on the part of the county commission; and (2) the option to

23 continue the lease agreement for an additional rental period not
24 to exceed one year in length.

25 When the lease agreement contains the provisions described
26 in subdivisions (1), (2) and (3), subsection (b) of this section,
27 then the following option must be included: The option to pay
28 in advance at any time during any fiscal year the balance due
29 under the lease agreement, with an appropriate rebate of the
30 unearned interest or time-price differential.

31 (d) The funds for the initial rental payment under a lease
32 agreement must be legally at the disposal of the county com-
33 mission for expenditure in the fiscal year in which the lease
34 agreement is executed. If the county commission elects during
35 any subsequent fiscal year to continue the lease agreement for
36 any additional rental period or to pay in advance the balance
37 due, the funds for the additional rental period or the funds to be
38 used to pay the balance in advance must be legally at the
39 disposal of the county commission for expenditure in the fiscal
40 year in which the county commission elects to continue the
41 lease agreement or to pay in advance the balance due.

CHAPTER 71

(Com. Sub. for H. B. 4669 — By Delegate Michael)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twelve, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the appointment and removal of members of a county development authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. COUNTY AND MUNICIPAL DEVELOPMENT AUTHORITIES.

§7-12-3. Management and control of county authority vested in board; appointment and terms of members; vacancies; removal of members.

1 The management and control of a county authority, its
2 property, operations, business and affairs shall be lodged in a
3 board of not fewer than twelve nor more than twenty-one
4 persons who shall be appointed by the county commission and
5 be known as members of the authority. The county commission
6 shall appoint one member to represent the county commission
7 on the board and, for each municipality located within the
8 county, the county commission shall appoint one member to
9 represent the municipality. The city and town council of each
10 municipality located within the county shall submit to the
11 county commission the names of three persons, one of whom
12 the county commission shall appoint to be the municipality's
13 representative on the board. Other members of the board shall
14 be appointed by the county commission and shall include
15 representatives of business, industry and labor. The members of
16 the authority first appointed shall serve respectively for terms
17 of one year, two years and three years, divided equally or as
18 nearly equal as possible between these terms. Thereafter,
19 members shall be appointed for terms of three years each. A
20 member may be reappointed for such additional term or terms
21 as the county commission may deem proper. If a member
22 resigns, is removed or for any other reason his membership
23 terminates during his term of office, a successor shall be
24 appointed by the county commission to fill out the remainder of
25 his term. Members in office at the expiration of their respective
26 terms shall continue to serve until their successors have been
27 appointed and have qualified. The county commission may at

28 any time remove any member of the board by an order duly
 29 entered of record and may appoint a successor member for any
 30 member so removed.

31 Other persons, firms, unincorporated associations, and
 32 corporations, who reside, maintain offices, or have economic
 33 interests, as the case may be, in the county, shall be eligible to
 34 participate in and request the county commission to appoint
 35 members to the development authority as the said authority
 36 shall by its bylaws provide.

CHAPTER 72

(H. B. 2866 — By Delegates Stalnaker, Staton, Hines,
 Amores, Trump and Williams)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing concurrent juvenile jurisdiction of circuit courts, magistrate courts and municipal courts for violation of laws prohibiting public intoxication, unlawful drinking, possession or sale of alcoholic liquor, beverages or nonintoxicating beer in a public place or illegal possession of alcoholic liquor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-2. Juvenile jurisdiction of circuit courts, magistrate courts and municipal courts; constitutional guarantees; hearings; evidence and transcripts.

1 (a) The circuit court has original jurisdiction of proceedings
2 brought under this article.

3 (b) If during a criminal proceeding in any court it is
4 ascertained or appears that the defendant is under the age of
5 nineteen years and was under the age of eighteen years at the
6 time of the alleged offense, the matter shall be immediately
7 certified to the juvenile jurisdiction of the circuit court. The
8 circuit court shall assume jurisdiction of the case in the same
9 manner as cases which are originally instituted in the circuit
10 court by petition.

11 (c) Notwithstanding any other provision of this article,
12 magistrate courts have concurrent juvenile jurisdiction with the
13 circuit court for a violation of a traffic law of West Virginia, for
14 a violation of section nine, article six, chapter sixty or section
15 nineteen, article sixteen, chapter eleven of this code, or for any
16 violation of chapter twenty of this code. Juveniles are liable for
17 punishment for violations of these laws in the same manner as
18 adults except that magistrate courts have no jurisdiction to
19 impose a sentence of incarceration for the violation of these
20 laws.

21 (d) Notwithstanding any other provision of this article,
22 municipal courts have concurrent juvenile jurisdiction with the
23 circuit court for a violation of any municipal ordinance regulat-
24 ing traffic, for any municipal curfew ordinance which is
25 enforceable or for any municipal ordinance regulating or
26 prohibiting public intoxication, drinking or possessing alcoholic
27 liquor or nonintoxicating beer in public places, or any other act
28 prohibited by section nine, article six, chapter sixty or section
29 nineteen, article sixteen, chapter eleven of this code. Municipal
30 courts may impose the same punishment for these violations as
31 a circuit court exercising its juvenile jurisdiction could properly
32 impose, except that municipal courts have no jurisdiction to
33 impose a sentence of incarceration for the violation of these
34 laws.

35 (e) A juvenile may be brought before the circuit court for
36 proceedings under this article only by the following means:

37 (1) By a juvenile petition requesting that the juvenile be
38 adjudicated as a status offender or a juvenile delinquent; or

39 (2) By certification or transfer to the juvenile jurisdiction of
40 the circuit court from the criminal jurisdiction of the circuit
41 court, from any foreign court, or from any magistrate court or
42 municipal court in West Virginia.

43 (f) If a juvenile commits an act which would be a crime if
44 committed by an adult, and the juvenile is adjudicated delin-
45 quent for that act, the jurisdiction of the court which adjudged
46 the juvenile delinquent continues until the juvenile becomes
47 twenty-one years of age. The court has the same power over
48 that person that it had before he or she became an adult, and has
49 the further power to sentence that person to a term of incarceration:
50 *Provided*, That any such term of incarceration may not
51 exceed six months. This authority does not preclude the court
52 from exercising criminal jurisdiction over that person if he or
53 she violates the law after becoming an adult or if the proceed-
54 ings have been transferred to the court's criminal jurisdiction
55 pursuant to section ten of this article.

56 (g) A juvenile is entitled to be admitted to bail or recogni-
57 zance in the same manner as an adult and shall be afforded the
58 protection guaranteed by Article III of the West Virginia
59 constitution.

60 (h) A juvenile has the right to be effectively represented by
61 counsel at all stages of proceedings under the provisions of this
62 article. If the juvenile or the juvenile's parent or custodian
63 executes an affidavit showing that the juvenile cannot afford an
64 attorney, the court shall appoint an attorney, who shall be paid
65 in accordance with article twenty-one, chapter twenty-nine of
66 this code.

67 (i) In all proceedings under this article, the juvenile shall be
68 afforded a meaningful opportunity to be heard. This includes

69 the opportunity to testify and to present and cross-examine
70 witnesses. The general public shall be excluded from all
71 proceedings under this article except that persons whose
72 presence is requested by the parties and other persons whom the
73 circuit court determines have a legitimate interest in the
74 proceedings may attend: *Provided*, That in cases in which a
75 juvenile is accused of committing what would be a felony if the
76 juvenile were an adult, an alleged victim or his or her represen-
77 tative may attend any related juvenile proceedings, at the
78 discretion of the presiding judicial officer: *Provided, however*,
79 That in any case in which the alleged victim is a juvenile, he or
80 she may be accompanied by his or her parents or representative,
81 at the discretion of the presiding judicial officer.

82 (j) At all adjudicatory hearings held under this article, all
83 procedural rights afforded to adults in criminal proceedings
84 shall be afforded the juvenile unless specifically provided
85 otherwise in this chapter.

86 (k) At all adjudicatory hearings held under this article, the
87 rules of evidence applicable in criminal cases apply, including
88 the rule against written reports based upon hearsay.

89 (l) Except for *res gestae*, extrajudicial statements made by
90 a juvenile who has not attained fourteen years of age to law-
91 enforcement officials or while in custody are not admissible
92 unless those statements were made in the presence of the
93 juvenile's counsel. Except for *res gestae*, extrajudicial state-
94 ments made by a juvenile who has not attained sixteen years of
95 age but who is at least thirteen years of age to law-enforcement
96 officers or while in custody, are not admissible unless made in
97 the presence of the juvenile's counsel or made in the presence
98 of, and with the consent of, the juvenile's parent or custodian,
99 and the parent or custodian has been fully informed regarding
100 the juvenile's right to a prompt detention hearing, the juvenile's
101 right to counsel, including appointed counsel if the juvenile
102 cannot afford counsel, and the juvenile's privilege against self-
103 incrimination.

104 (m) A transcript or recording shall be made of all transfer,
105 adjudicatory and dispositional hearings held in circuit court. At
106 the conclusion of each of these hearings, the circuit court shall
107 make findings of fact and conclusions of law, both of which
108 shall appear on the record. The court reporter shall furnish a
109 transcript of the proceedings at no charge to any indigent
110 juvenile who seeks review of any proceeding under this article
111 if an affidavit is filed stating that neither the juvenile nor the
112 juvenile's parents or custodian have the ability to pay for the
113 transcript.

CHAPTER 73

(Com. Sub. for H. B. 4009 — By Delegate Hines)

[Passed March 11, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section four, article three of said chapter, all relating to magistrate courts; providing for the number of magistrates; eliminating the formula for determining the number and location of magistrates for elections held after the year two thousand; providing for the disposition of court costs collected in magistrate courts; continuing and increasing allowable deposits in magistrate court funds to be used to defray expenses incurred by counties for providing services to magistrate courts; and allowing court costs collected in excess of limitations on deposits in magistrate court funds to be placed in a newly created surplus account for distribution to counties with underfunded magistrate court funds.

Be it enacted by the Legislature of West Virginia:

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

Article

1. Courts and Officers.
3. Costs, Fines and Records.

ARTICLE 1. COURTS AND OFFICERS.

§50-1-2. Number of magistrates.

1 (a) The number of magistrates to be elected in each county
2 of this state shall be determined in accordance with the provi-
3 sions of this section.

4 (b) The number of magistrates serving in each county of the
5 state shall comport with the numbers certified by the supreme
6 court of appeals to the ballot commissioners of each county on
7 or before the thirty-first day of January, two thousand, for
8 purposes of the primary and general elections to be held in the
9 year two thousand.

10 (c) (1) The Legislature finds that there exists among the
11 various counties large and unwarranted disparities of caseload
12 between the magistrate courts. The Legislature further finds that
13 the disparity causes an inequity with regard to magistrate court
14 resources and the ability of such courts to effectively meet the
15 needs of the citizens of this state who need to avail themselves
16 of this judicial resource. The Legislature further finds that the
17 system currently in place for allocating magistrate court
18 resources which has been in effect since the year one thousand
19 nine hundred ninety-one produces certain anomalies which
20 cause quadrennial reallocation of magistrate resources based
21 upon said anomalies which in turn cause a waste of funds,
22 inequitable workloads, unnecessary shifting of resources and
23 confusion among the various counties.

24 (2) The office of legislative services is hereby directed to
25 undertake a comprehensive study of the magistrate courts of the
26 various counties to determine, among other things, the work
27 performed by various personnel in the magistrate court system,
28 how work time is spent by said employees and to report its
29 findings no later than the tenth day of December, two thousand
30 one, to the joint standing committee on the judiciary.

31 (3) The division of criminal justice and highway safety
32 shall, in conjunction with the administrative office of the West
33 Virginia supreme court of appeals, compile for consideration by
34 the Legislature statistical information and documentation
35 regarding caseloads, cases handled per year per magistrate,
36 cases per county, cases per circuit and provide to the president
37 of the Senate and the speaker of the House of Delegates no later
38 than the first day of the regular session of the Legislature, two
39 thousand two, their recommendations for improving the
40 magistrate process, better utilization of court resources,
41 including, but not limited to, categorizing the various types of
42 cases heard in magistrate court and developing a new weighted
43 formula to evaluate types of cases by the amount of time
44 necessary to bring said cases to a resolution.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-4. Disposition of costs; magistrate court fund.

1 (a) All costs collected in magistrate courts in a civil
2 proceeding pursuant to the provisions of section one of this
3 article, and all costs collected in magistrate courts in a criminal
4 proceeding pursuant to the provisions of section two of this
5 article, shall be submitted on or before the tenth day of the
6 month following the month of their collection to the magistrate
7 court clerk or, if there is no magistrate court clerk, to the clerk
8 of the circuit court along with such information as may be
9 required by the rules of the supreme court of appeals and by the
10 rules of the chief inspector of public offices.

11 (b) (1) The special county fund known as the magistrate
12 court fund established in each county by chapter thirty-three,
13 Acts of the Legislature, regular session, one thousand nine
14 hundred seventy-six, as amended and reenacted in subsequent
15 Acts of the Legislature, is hereby continued. The moneys
16 credited to the fund may be used solely for the purposes
17 provided in this section.

18 (2) The magistrate court clerk of each county shall pay the
19 sum of ten dollars collected by magistrates in each civil and
20 criminal proceeding into the magistrate court fund during each
21 fiscal year until there is paid a sum equal to fifteen thousand
22 dollars multiplied by the number of magistrates authorized for
23 the county.

24 (3) A county may, in accordance with the supervisory rules
25 of the supreme court of appeals, appropriate and spend from the
26 fund such sums as are necessary to defray the expenses of
27 providing services to magistrate courts.

28 (c)(1) There is hereby created in the state treasury a special
29 escrow account designated as the "magistrate court surplus
30 account." The moneys credited to the account may be used
31 solely for the purposes provided in this subsection.

32 (2) Beginning on the first day of July, two thousand, all
33 costs collected during a fiscal year in excess of the sum
34 specified in subdivision (2), subsection (b) of this section shall
35 be deposited in the magistrate court surplus account in the state
36 treasury.

37 (3) Beginning on the first day of September, two thousand
38 one, and on the first day of September of each year thereafter,
39 in accordance with the supervisory rules of the supreme court
40 of appeals, funds from the magistrate court surplus account
41 deposited therein as excess costs collected in the prior fiscal
42 year pursuant to the provisions of subdivision (2) of this

43 subsection shall be disbursed as a supplement to any county
44 magistrate court fund which generated less than fifteen thou-
45 sand dollars per magistrate in the prior fiscal year in accordance
46 with the provisions of this subsection.

47 (4) The amount disbursed to a county magistrate court fund
48 from the magistrate court surplus account, when combined with
49 the court costs generated by the magistrate court fund of the
50 county in the prior fiscal year, may not exceed fifteen thousand
51 dollars per magistrate.

52 (5) The disbursements described in subdivision (3) of this
53 subsection shall be made as follows:

54 (A) There shall be distributed to each county magistrate
55 court fund that generated less than nine thousand dollars in the
56 prior fiscal year the sum of nine thousand dollars less the
57 amount of court costs generated by the county magistrate court
58 fund in the prior fiscal year. To the extent that the funds
59 available for this disbursement are insufficient to fully fund this
60 disbursement, the funds available shall be disbursed to these
61 counties on a pro rata basis.

62 (B) Any funds that remain available for disbursement after
63 disbursements made pursuant to paragraph (A) of this subdivi-
64 sion shall be disbursed in equal shares to each county magis-
65 trate court fund that generated less than fifteen thousand dollars
66 per magistrate in the prior fiscal year. The shares to be dis-
67 bursed to each county magistrate court fund are to be equal to
68 the number of magistrates in the county. Any disbursement
69 made under this paragraph shall be subject to the limitations
70 specified in subdivision (4) of this subsection.

71 (6) Any funds that remain available in the magistrate court
72 surplus account after the disbursements have been made
73 pursuant to the provisions of paragraphs (A) and (B), subdivi-
74 sion (5) of this subsection shall be deposited by the state
75 treasurer into the general revenue fund of the state.

CHAPTER 74

(H. B. 4735 — By Delegate Webb)

[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article two-a, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing the appointment of a person who has previously served as a family law master as a temporary family law master; and establishing limitations thereon.

Be it enacted by the Legislature of West Virginia:

That section three, article two-a, 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 2A. CIRCUIT COURTS; FAMILY COURT DIVISION.

§51-2A-3. Assignment of family law masters by family court circuits.

1 (a) A total of thirty-three family law masters shall be
2 appointed to serve throughout the state. The state is divided into
3 twenty-four family court circuits with the number of family law
4 masters allocated as follows:

5 The counties of Brooke, Hancock and Ohio constitute the
6 first family court circuit and have two family law masters; the
7 counties of Marshall, Wetzel and Tyler constitute the second
8 family court circuit and have one family law master; the
9 counties of Pleasants, Wood, Wirt, Ritchie and Doddridge
10 constitute the third family court circuit and have two family law
11 masters; the counties of Jackson, Roane, Calhoun and Gilmer

12 constitute the fourth family court circuit and have one family
13 law master; the counties of Mason and Putnam constitute the
14 fifth family court circuit and have one family law master; the
15 county of Cabell constitutes the sixth family court circuit and
16 has two family law masters; the county of Wayne constitutes
17 the seventh family court circuit and has one family law master;
18 the county of Mingo constitutes the eighth family court circuit
19 and has one family law master; the county of Logan constitutes
20 the ninth family court circuit and has one family law master; the
21 counties of Lincoln and Boone constitute the tenth family court
22 circuit and have one family law master; the county of Kanawha
23 constitutes the eleventh family court circuit and has four family
24 law masters; the counties of McDowell and Mercer constitute
25 the twelfth family court circuit and have two family law
26 masters; the counties of Raleigh and Wyoming constitute the
27 thirteenth family court circuit and have two family law masters;
28 the counties of Fayette and Summers constitute the fourteenth
29 family court circuit and have one family law master; the
30 counties of Greenbrier, Monroe and Pocahontas constitute the
31 fifteenth family court circuit and have one family law master;
32 the counties of Clay, Nicholas and Webster constitute the
33 sixteenth family court circuit and have one family law master;
34 the counties of Braxton, Lewis and Upshur constitute the
35 seventeenth family court circuit and have one family law
36 master; the county of Harrison constitutes the eighteenth family
37 court circuit and has one family law master; the county of
38 Marion constitutes the nineteenth family court circuit and has
39 one family law master; the county of Monongalia constitutes
40 the twentieth family court circuit and has one family law
41 master; the counties of Barbour, Preston and Taylor constitute
42 the twenty-first family court circuit and have one family law
43 master; the counties of Grant, Tucker and Randolph constitute
44 the twenty-second family court circuit and have one family law
45 master; the counties of Mineral, Hampshire, Hardy and
46 Pendleton constitute the twenty-third family court circuit and
47 have one family law master; and the counties of Berkeley,

48 Jefferson and Morgan constitute the twenty-fourth family court
49 circuit and have two family law masters.

50 (b) The chief justice of the supreme court of appeals may
51 temporarily assign a family law master from one family court
52 circuit to another family court circuit as caseload, disqualifica-
53 tion, recusal, vacation or illness may dictate.

54 (c) The chief justice of the supreme court of appeals may
55 appoint a person who has previously served as a law master to
56 serve as a temporary law master as disqualification, recusal,
57 vacation or illness may dictate. Only persons who have com-
58 pleted courses of continuing education instruction in principles
59 of family law and procedure, as required by supervisory rule of
60 the supreme court of appeals, are eligible for such appointment.



CHAPTER 75

(H. B. 4481 — By Delegates Douglas, Kuhn, Mahan, Staton, Houston and Wills)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-a; and to amend article three, chapter fifty-six of said code by adding thereto a new section, designated section thirty-four, all relating to registration of bail bond enforcers with the West Virginia state police; definitions; requiring registration of bail bond enforcers and filing of authorization to act by bail bondsmen; authorizing superintendent of the state police to enforce registration and set fees; creation of the “bail bond enforcers account” in the state treasury; effect of authorization; prohibited conduct; unauthorized acts; criminal and civil penalties; and secretary of state to be agent or attorney in

fact to accept service of process on behalf of bail bondsmen and bail bond enforcers.

Be it enacted by the Legislature of West Virginia:

That chapter fifty-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 ten-a; and that article three, chapter fifty-six of said code be amended by adding thereto a new section, designated section thirty-four, all to read as follows:

Chapter

51. Courts and Their Officers.

56. Pleading and Practice.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 10A. BAIL BOND ENFORCERS.

§51-10A-1. Definitions.

§51-10A-2. Registration of bail bond enforcers and authorization by bail bondsman required; fees.

§51-10A-3. Effect of authorization.

§51-10A-4. Prohibited conduct.

§51-10A-5. Unauthorized acts; penalties.

§51-10A-1. Definitions.

1 As used in this article:

2 (a) "Bail bondsman" means any person, partnership or
3 corporation engaged for profit in the business of furnishing bail,
4 making bonds or entering into undertakings, as surety, for the
5 appearance of persons charged with a criminal offense or
6 violation of law punishable by fine or imprisonment before any
7 court within or without this state. The term "bail bondsman"
8 includes, but is not limited to, persons conducting a bonding
9 business as defined in section one, article ten of this chapter.

10 (b) "Bail bond enforcer" means a person who on behalf of
11 a bail bondsman enters this state or is present in this state for
12 the purposes of: (1) Assisting a bail bondsman in presenting the
13 defendant in court when required; (2) assisting in the apprehen-
14 sion and surrender of the defendant to a court; (3) keeping a
15 defendant under surveillance; or (4) executing bonds on behalf
16 of a bail bondsman when a power of attorney has been duly
17 recorded. The term "bail bond enforcer" does not include a duly
18 licensed attorney-at-law or a law-enforcement officer assisting
19 a bail bondsman.

**§51-10A-2. Registration of bail bond enforcers and authorization
by bail bondsman required; fees.**

1 (a) No person may act in the capacity of a bail bond
2 enforcer within this state or perform any of the functions,
3 duties, or powers prescribed for bail bond enforcers under
4 section one of this article unless duly registered with the West
5 Virginia state police as provided in this section.

6 (b) The superintendent of the West Virginia state police
7 shall design registration, authorization and notice forms, which,
8 at minimum, shall require:

9 (1) Identifying information as to the registrant and at least
10 one bail bondsman on whose behalf he or she is authorized to
11 act as agent: *Provided*, That a registrant may not act on behalf
12 of any bail bondsman until authorization to act is filed with the
13 superintendent;

14 (2) A complete set of the registrant's fingerprints, certified
15 by an authorized law enforcement officer;

16 (3) A recent credential-sized, full-face photograph of the
17 registrant;

18 (4) Certification, under penalties of perjury, that the
19 registrant is at least twenty-one years of age, is a citizen of the

20 United States, and has never been convicted of a felony in any
21 state of the United States;

22 (5) Authorization in writing, as provided in subsection (b)
23 or (c) of this section, from any bail bondsman on whose behalf
24 the bail bond enforcer is authorized to enter this state or act
25 within this state; and

26 (6) Other information as the superintendent determines is
27 reasonable and necessary.

28 (c) A bail bondsman conducting a bonding business in this
29 state may grant continuing authorization to a bail bond enforcer
30 who is a citizen and resident of this state to act as his or her
31 agent on a continuing basis, for a period of time not to exceed
32 two years, either statewide or within named counties or judicial
33 circuits of the state, with respect to all defendants for whom the
34 bail bondsman acts as surety to secure an appearance. A
35 continuing authorization shall state the expiration date of the
36 authorization on the face of the document.

37 (d) A bail bondsman within or without this state may grant
38 authorization to a bail bond enforcer within or without this state
39 to act as his or her agent with respect to a named defendant or
40 named defendants, for a period of time not to exceed sixty days,
41 in which case notice in advance of any action to the West
42 Virginia state police of the time and place of any proposed
43 action within this state with respect to any defendant, and the
44 date any bail bond enforcer who is not a resident of this state
45 will enter the state, is required. An authorization shall state the
46 expiration date of the authorization on the face of the document.

47 (e) The superintendent may require any reasonable interro-
48 gatories or examinations relating to a registrant's qualifications
49 or other matters which are reasonably necessary to protect the
50 public.

51 (f)(1) The superintendent may establish and collect a
52 reasonable registration fee not to exceed fifty dollars to
53 accompany registration, and a filing fee not to exceed ten
54 dollars to accompany the filing of any authorization, to be used
55 for the purposes of defraying administrative and other expenses
56 incurred due to the enactment of this article. No fee is autho-
57 rized for the filing of notices required under this article.

58 (2) There is hereby created in the state treasury a special
59 account, designated the "bail bond enforcer account". All fees
60 collected pursuant to the provisions of this article shall be
61 deposited in the bail bond enforcer account. Expenditures from
62 the account shall be for the purposes set forth in this subsection
63 and are not authorized from collections but are to be made only
64 in accordance with appropriation by the Legislature and in
65 accordance with the provisions of article three, chapter twelve
66 of this code and upon the fulfillment of the provisions set forth
67 in article two, chapter five-a of this code: *Provided*, That for the
68 fiscal year ending the thirtieth day of June, two thousand,
69 expenditures are authorized from collections rather than
70 pursuant to an appropriation by the Legislature.

71 (g) The superintendent is authorized to file and disseminate
72 an interpretive rule for the purpose of providing information
73 and guidance to prospective registrants, bail bondsmen, and the
74 general public with respect to the enforcement of this article.
75 The superintendent is charged with the enforcement of this
76 article in the civil and criminal courts of the state and may take
77 any lawful action reasonably necessary to effectuate its pur-
78 poses.

§51-10A-3. Effect of authorization.

1 A bail bond enforcer authorized or employed by a bail
2 bondsman to act within this state with respect to any defendant
3 whose custody or appearance the bail bond enforcer secures or
4 attempts to secure, is the agent of the bail bondsman for any act

5 related to the purposes set forth in section one of this article. A
6 bail bond enforcer who acts in that capacity within this state is
7 the agent of the bail bondsman with whom the bail bond
8 enforcer has an agreement or written or verbal contract, whether
9 or not authorization is filed with the West Virginia state police
10 as required in section two of this article.

§51-10A-4. Prohibited conduct.

1 A bail bond enforcer may not:

2 (a) Enter an occupied residential structure without the
3 consent of the occupants who are present at the time of the
4 entry;

5 (b) Conduct a bail recovery arrest or apprehension without
6 written authorization from a bail bondsman;

7 (c) Wear, carry or display any uniform, badge, shield or
8 other insignia or emblem that implies that the bail bond
9 enforcer is an employee, officer or agent of this state, a political
10 subdivision of this state or the federal government. A bail bond
11 enforcer may display identification that indicates his or her
12 status as a bail bond enforcer only; or

13 (d) Conduct a bail bond apprehension or arrest without
14 exercising due care to protect the safety of persons other than
15 the defendant and the property of persons other than the
16 defendant.

§51-10A-5. Unauthorized acts; penalties.

1 (a) A person who willfully violates any provision of section
2 four of this article, or who acts as a bail bond enforcer within
3 this state without filing a registration, authorization or notice
4 required by this article, is guilty of a misdemeanor and, upon
5 conviction thereof, shall be fined not less than five hundred or

6 more than ten thousand dollars, or imprisoned in the county jail
7 not more than sixty days, or both fined and imprisoned.

8 (b) A bail bondsman who, without filing the authorization
9 required in this article, employs or contracts with a bail bond
10 enforcer who enters this state or acts on the bondsman’s behalf
11 within this state; who authorizes an unregistered bail bond
12 enforcer to act on his or her behalf; or whose agent acts in a
13 manner prohibited in section four of this article, is subject to a
14 civil penalty of ten thousand dollars, enforceable by civil action
15 in the circuit court of Kanawha County or the circuit court of
16 any county in which the unauthorized action as a bail bond
17 enforcer has occurred. The superintendent of the West Virginia
18 state police is authorized to enforce payment of civil penalties
19 through the courts of this state. Civil penalties pursuant to this
20 section are payable one-half to the state police death, disability
21 and retirement fund and one-half to the crime victims compen-
22 sation fund.

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

**§56-3-34. Actions by or against nonresident bail bond enforce-
ment agents or bail bondsmen; appointment of
secretary of state as agents; service of process.**

1 (a) Every nonresident bail bond enforcer or bail bondsman,
2 for the privilege of entering this state to act in the capacity of a
3 bail bond enforcer, either personally or through an agent,
4 appoints the secretary of state, or his or her successor in office,
5 to be his or her agent or attorney-in-fact upon whom may be
6 served all lawful process in any action or proceeding against
7 him or her in any court of record in this state for any act
8 occurring within this state resulting in injury arising out of any
9 breach of the applicable standard of care with respect to any
10 person other than a defendant whose custody or appearance the

11 bail bond enforcer secures or attempts to secure, or with respect
12 to the property of any person other than a defendant whose
13 custody or appearance the bail bond enforcer secures or
14 attempts to secure; or for enforcement of any civil penalty for
15 breach of a duty imposed by this code with respect to bail
16 bondsmen employing or contracting with bail bond enforcers:
17 *Provided*, That in the event process against a nonresident
18 defendant cannot be effected through the secretary of state, as
19 provided by this section, for the purpose only of service of
20 process, the nonresident bail bond enforcer or bondsman shall
21 be deemed to have appointed as his or her agent or attor-
22 ney-in-fact any insurance company which has a contract of
23 liability insurance for his or her activities.

24 (b) For purposes of service of process as provided in this
25 section, every insurance company shall be deemed the agent or
26 attorney-in-fact of every nonresident bail bond enforcer or
27 bondsman insured by the company if the insured nonresident
28 bail bond enforcer or bondsman is involved in any bail bond
29 enforcement activity occurring within this state resulting in
30 injury arising out of any breach of the applicable standard of
31 care with respect to any person other than a defendant whose
32 custody or appearance the bail bond enforcer secures or
33 attempts to secure, or with respect to the property of any person
34 other than a defendant whose custody or appearance the bail
35 bond enforcer secures or attempts to secure and service of
36 process cannot be effected upon the nonresident through the
37 office of the secretary of state. Upon receipt of process as
38 hereinafter provided, the insurance company may, within thirty
39 days, file an answer or other pleading or take any action
40 allowed by law on behalf of the defendant.

41 (c) A nonresident bail bond enforcer or bail bondsman
42 entering this state, either personally or through an agent, is
43 deemed to acknowledge the appointment of the secretary of
44 state, or, as the case may be, his or her liability insurance

45 company, as his or her agent or attorney-in-fact, or the agent or
46 attorney-in-fact of his or her administrator, administratrix,
47 executor or executrix in the event the nonresident dies, and
48 furthermore is deemed to agree that any process against him or
49 her or against his or her administrator, administratrix, executor
50 or executrix, which is served in the manner hereinafter pro-
51 vided, shall be of the same legal force and validity as though
52 said nonresident or his or her administrator, administratrix,
53 executor or executrix were personally served with a summons
54 and complaint within this state.

55 Any action or proceeding may be instituted, continued or
56 maintained on behalf of or against the administrator,
57 administratrix, executor or executrix of any nonresident who
58 dies subsequent to bail bond enforcement activity in this state
59 by the nonresident or his or her duly authorized agent.

60 (d) At the time of filing a complaint against a nonresident
61 bail bond enforcer or bondsman who has been involved in bail
62 bond enforcement activity in the state of West Virginia and
63 before a summons is issued thereon, the plaintiff, or someone
64 for him or her, shall execute a bond in the sum of one hundred
65 dollars before the clerk of the court in which the action is filed,
66 with surety to be approved by said clerk, conditioned that on
67 failure of the plaintiff to prevail in the action he or she will
68 reimburse the defendant, or cause the defendant to be reim-
69 bursed, the necessary expense incurred in the defense of the
70 action in this state. Upon the issue of a summons the clerk will
71 certify thereon that the bond has been given and approved.

72 (e) Service of process upon a nonresident defendant shall be
73 made by leaving the original and two copies of both the
74 summons and complaint, together with the bond certificate of
75 the clerk, and the fee required by section two, article one,
76 chapter fifty-nine of this code with the secretary of state, or in
77 his or her office, and said service shall be sufficient upon the
78 nonresident defendant or, if a natural person, his or her adminis-

79 trator, administratrix, executor or executrix: *Provided*, That
80 notice of service and a copy of the summons and complaint
81 shall be sent by registered or certified mail, return receipt
82 requested, by the secretary of state to the nonresident defendant.
83 The return receipt signed by the defendant or his or her duly
84 authorized agent shall be attached to the original summons and
85 complaint and filed in the office of the clerk of the court from
86 which process is issued. In the event the registered or certified
87 mail sent by the secretary of state is refused or unclaimed by
88 the addressee or if the addressee has moved without any
89 forwarding address, the registered or certified mail returned to
90 the secretary of state, or to his or her office, showing thereon
91 the stamp of the post-office department that delivery has been
92 refused or not claimed or that the addressee has moved without
93 any forwarding address, shall be appended to the original
94 summons and complaint and filed in the clerk's office of the
95 court from which process issued. The court may order such
96 continuances as may be reasonable to afford the defendant
97 opportunity to defend the action.

98 (f) The fee remitted to the secretary of state at the time of
99 service, shall be taxed in the costs of the proceeding and the
100 secretary of state shall pay into the state treasury all funds so
101 coming into his or her hands from the service. The secretary of
102 state shall keep a record in his or her office of all service of
103 process and the day and hour of service thereof.

104 (g) In the event service of process upon a nonresident
105 defendant cannot be effected through the secretary of state as
106 provided by this section, service may be made upon the
107 defendant's insurance company. The plaintiff must file with the
108 clerk of the circuit court an affidavit alleging that the defendant
109 is not a resident of this state; that process directed to the
110 secretary of state was sent by registered or certified mail, return
111 receipt requested; that the registered or certified mail was
112 returned to the office of the secretary of state showing the
113 stamp of the post-office department that delivery was refused

114 or that the notice was unclaimed or that the defendant addressee
115 moved without any forwarding address; and that the secretary
116 of state has complied with the provisions of subsection (e) of
117 this section. Upon receipt of process the insurance company
118 may, within thirty days, file an answer or other pleading and
119 take any action allowed by law in the name of the defendant.

120 (h) The following words and phrases, when used in this
121 article, shall, for the purpose of this article and unless a
122 different intent on the part of the Legislature is apparent from
123 the context, have the following meanings:

124 (1) “Agent” or “duly authorized agent” means and includes,
125 among others, a bail bond enforcer who, on behalf of a bail
126 bondsman, is involved in any bail bond enforcement activity
127 occurring within this state resulting in injury arising out of any
128 breach of the applicable standard of care with respect to any
129 person other than a defendant whose custody or appearance the
130 bail bond enforcer secures or attempts to secure, or with respect
131 to the property of any person other than a defendant whose
132 custody or appearance the bail bond enforcer secures or
133 attempts to secure;

134 (2) “Nonresident” means any person who is not a resident
135 of this state or a resident who has moved from the state subse-
136 quent to bail bond enforcement activity within this state, and
137 among others includes a nonresident firm, partnership, corpora-
138 tion or voluntary association, or a firm, partnership, corporation
139 or voluntary association that has moved from the state subse-
140 quent to bail bond enforcement activity;

141 (3) “Nonresident defendant or defendants” means a
142 nonresident bail bond enforcer or bondsman who, either
143 personally or through his or her agent, is involved in any bail
144 bond enforcement activity occurring within this state resulting
145 in injury arising out of any breach of the applicable standard of
146 care with respect to any person other than a defendant whose

147 custody or appearance the bail bond enforcer secures or
148 attempts to secure, or with respect to the property of any person
149 other than a defendant whose custody or appearance the bail
150 bond enforcer secures or attempts to secure, which has given
151 rise to a civil action filed in any court in this state;

152 (4) "Insurance company" means any firm, corporation,
153 partnership or other organization which issues liability insur-
154 ance.

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

159 (j) This section is not retroactive and its provisions are not
160 available to a plaintiff in a cause of action arising out of acts
161 occurring prior to the effective date of this section.

CHAPTER 76

(Com. Sub. for H. B. 4645 — By Delegates Pettit, Martin, Kuhn and Shelton)

[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, six, and nine, article three-d, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certification of crane operators; excluding aircraft and helicopter from the definition of crane; defining additional terms; extending certain implementation dates; directing the labor commissioner to propose additional legislative rules and setting forth new time frames; permitting the successful completion of a commissioner-approved training course be substituted for the

written examination or for the practical demonstration in some instances; allowing the practical demonstration be administered on-site by a qualified company representative; permitting experience or training to be substituted for the written examination or practical demonstration until September 1, 2001; allowing the labor commissioner to set fees for training courses; requiring the labor commissioner to set standards, criteria and establish a dual classification certification; setting forth components towards a national classification and a state classification certification; setting forth time limits; and authorizing certification reciprocity without the required training.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3D. CRANE OPERATOR CERTIFICATION ACT.

§21-3D-1. Definitions.

§21-3D-2. Certification required; exemptions.

§21-3D-3. Powers and duties of commissioner.

§21-3D-4. Minimum certification requirements.

§21-3D-6. Effect of accident.

§21-3D-9. Reciprocity.

§21-3D-1. Definitions.

1 For purposes of this article:

2 (a) "Commissioner" means the commissioner of the
3 division of labor, or his or her authorized representative.

4 (b) "Crane" means a power-operated hoisting machine used
5 in construction, demolition or excavation work, which has a
6 power-operated winch and load line and a power-operated
7 boom that moves laterally by the rotation of the machine on a
8 carrier, and which has a manufacturer's rated lifting capacity of

9 five tons or more. “Crane” does not mean a forklift, digger
10 derrick truck, bucket truck or any vehicle, aircraft or helicopter,
11 or equipment which does not have a power-operated winch and
12 load line.

13 (c) “Emergency basis” means an occurrence of an event,
14 circumstance or situation that presents an imminent threat to
15 persons or property and constitutes a serious health or safety
16 hazard.

17 (d) “Employer” means any person, firm, corporation or
18 other entity who hires or permits any individual to work.

19 (e) “Employee” means any individual employed by an
20 employer and also as defined by the commissioner.

21 (f) “Training or training course” means a course approved
22 by the commissioner which includes some form of testing
23 throughout, or a final written examination or practical test, or
24 both, which ensures, or tends to ensure that learning has
25 occurred and that the objectives of the training have been
26 realized. The commissioner will evaluate whether the approved
27 training adequately demonstrates competency to safely operate
28 cranes.

***§21-3D-2. Certification required; exemptions.**

1 (a) Commencing with the first day of September, two
2 thousand one and notwithstanding the provisions contained in
3 subsection (b) of this section, a person may not operate a crane
4 with a lifting capacity of five tons or more without certification
5 issued under this article.

6 (b) A person is not required to obtain certification under
7 this article if the person:

8 (1) Is a member of the armed forces of the United States or
9 an employee of the United States, when such member or

***Clerk’s Note:** This section was also amended by H. B. 4004 (Chapter 77), which passed prior to this act.

10 employee is engaged in the work of a crane operator exclu-
11 sively for such governmental unit; or

12 (2) Is primarily an operator of farm machinery who is
13 performing the work of a crane operator as part of an agricul-
14 tural operation; or

15 (3) Is operating a crane on an emergency basis; or

16 (4) Is operating a crane for personal use and not for profit
17 on the site of real property which the person owns or leases; or,

18 (5) Is under the direct supervision of a certified crane
19 operator, and

20 (A) Who is enrolled in an industry recognized in-house
21 training course based on the American national standards
22 institute standards for crane operators and who is employed by
23 the entity that either taught the training course or contracted to
24 have the training course taught, all of which is approved by the
25 commissioner; or

26 (B) Who is enrolled in an apprenticeship program or
27 training program for crane operators approved by the United
28 States department of labor, bureau of apprenticeship and
29 training;

30 (6) Is an employee of and operating a crane at the direction
31 of any manufacturing plant or other industrial establishment,
32 including any mill, factory, tannery, paper or pulp mill, mine,
33 colliery, breaker or mineral processing operation, quarry,
34 refinery or well, or is an employee of and operating a crane at
35 the direction of the person, firm or corporation who owns or is
36 operating such plant or establishment;

37 (7) Is an employee of a public utility operating a crane to
38 perform work in connection with facilities used to provide a
39 public service under the jurisdiction of the public service

40 commission, federal energy regulatory commission or federal
41 communications commission; or

42 (8) Is operating timbering harvesting machinery associated
43 with the production of timber and the manufacturing of wood
44 products.

***§21-3D-3. Powers and duties of commissioner.**

1 The commissioner shall:

2 (a) Propose rules for legislative approval in accordance
3 with the provisions of article three, chapter twenty-nine-a of
4 this code, no later than the first day of July, two thousand,
5 which rules at the minimum must include provisions for:

6 (1) Certification of individuals who operate cranes in the
7 state of West Virginia, which certification process must include
8 a written examination and a practical demonstration, and must
9 utilize standards no less restrictive than those prescribed by the
10 American society of mechanical engineers/American national
11 standards institute safety code as of the effective date of this
12 article: *Provided*, That the rule governing the practical exami-
13 nation must be a separate rule and provide for the implementa-
14 tion of the practical examination on or before the first day of
15 July, two thousand one: *Provided, however*, That the successful
16 completion of a training course approved by the commissioner
17 may be substituted for the written examination and for the
18 practical demonstration as set forth in section four of this
19 article.

20 (2) Certification categories that must include lattice boom
21 truck cranes; lattice boom crawler cranes; small telescoping
22 boom cranes, with a lifting capacity of at least five tons but not
23 more than seventeen and one-half tons; and large telescopic
24 boom cranes, with a lifting capacity greater than seventeen and
25 one-half tons;

***Clerk's Note:** This section was also amended by H. B. 4004 (Chapter 77), which passed prior to this act.

26 (3) Certification renewal requirements of individuals who
27 operate cranes in the state of West Virginia, that may not be
28 more restrictive than those prescribed for the individual's initial
29 certification, but must include a written examination and a
30 current physician's certificate at least every five years: *Pro-*
31 *vided*, That the successful completion of a training course
32 approved by the commissioner may be substituted for the
33 written examination.

34 (b) Prescribe application forms for original and renewal
35 certification.

36 (c) Set application fees in amounts that are reasonable and
37 necessary to defray the costs of the administration of this article
38 in an amount not to exceed seventy-five dollars per year.

39 (d) Set examination and training course fees in an amount
40 not to exceed the actual cost of the examination and the training
41 course.

42 (e) Administer or cause to be administered the written
43 examination, practical demonstrations and the training course
44 as required for certification.

45 (f) Determine the standards for acceptable performance on
46 the written examination, practical demonstration and the
47 required training course: *Provided*, That the minimum standards
48 must be consistent with national standards, current operating
49 procedures and technology and be transferable to other states
50 where possible: *Provided, however*, That the commissioner shall
51 develop standards and criteria to establish a dual classification
52 system of certification and implement this dual system of certi-
53 fication no later than the first day of January, two thousand one.

54 (g) Provide the option for applicants and crane operators to
55 take examinations that meet or exceed requirements for national
56 crane operator certification.

57 (h) Take other action as necessary to enforce this article.

***§21-3D-4. Minimum certification requirements.**

1 (a) The commissioner shall certify an applicant who:

2 (1) Is at least eighteen years of age;

3 (2) Meets the application requirements as prescribed by
4 rule;

5 (3) Passes the written examination: *Provided*, That any
6 person who documents at least two thousand hours of on-the-
7 job experience operating a crane during the four years immedi-
8 ately preceding filing for application, or successfully completes
9 a training course approved by the commissioner, and applies for
10 certification no later than the first day of September, two
11 thousand one, and meets all other requirements and pays all
12 applicable fees, is entitled to certification without a written
13 examination;

14 (4) Passes the practical demonstration: *Provided*, That the
15 practical demonstration approved by the commissioner may be
16 administered on-site by a qualified company representative:
17 *Provided, however*, That any person who documents at least
18 two thousand hours of on-the-job experience operating a crane
19 during the preceding four years next prior to filing for applica-
20 tion or the successful completion of a training course approved
21 by the commissioner is entitled to certification without a
22 practical demonstration under this article if the person applies
23 for certification no later than the first day of September, two
24 thousand one, meets all other requirements and pays applicable
25 application and examination fees;

26 (5) Presents the original, or a photographic copy, of a
27 physician's certificate that he or she is physically qualified to
28 drive a commercial motor vehicle as required by 49 C.F.R.

29 §391.41 as of the effective date of this article, or an equivalent
30 physician's certificate as approved by the commissioner; and,

31 (6) Pays the application, training or examination fees as is
32 appropriate.

33 (b) Certification issued under this article is valid throughout
34 the state and is not assignable or transferable, and is valid for
35 one year from the date on which it was issued.

36 (c) Notwithstanding any other provision of this section, the
37 division of labor may issue a temporary certification, to expire
38 on the first day of January, two thousand one, to an applicant
39 who: (1) Documents at least two thousand hours of on-the-job
40 experience during the preceding four years; (2) submits scores
41 for the written examination; and (3) provides proof of atten-
42 dance at an approved crane safety training course, in an
43 application for certification filed not later than the first day of
44 July, two thousand.

45 (d) Notwithstanding any other provision of this article to
46 the contrary, the commissioner shall establish a dual classifica-
47 tion system of certification no later than the first day of
48 January, two thousand one. One classification will provide
49 eligibility for national certification, and the applicant must
50 achieve a passing score of seventy on the national commission
51 for the certification of crane operators written examination. To
52 be classified for West Virginia certification, the commissioner
53 may accept a lesser score on the national commission for the
54 certification of crane operators written examination: *Provided,*
55 *That this score may not be less than sixty for state certification:*
56 *Provided, however,* That the successful completion of a training
57 course approved by the commissioner may be substituted for
58 the written examination and for the practical demonstration if
59 the applicant applies for certification no later than the first day
60 of September, two thousand one. The commissioner shall

61 propose a legislative rule as to the dual classification system no
62 later than the first day of July, two thousand.

§21-3D-6. Effect of accident.

1 (a) The commissioner may suspend or revoke the certifica-
2 tion of a person involved in an accident relating to the operation
3 of a crane by that person: *Provided*, That no disciplinary action
4 against a crane operator may be imposed without a proper prior
5 notice as served under section one, article two, chapter fifty-six
6 of this code, and hearing held before the commissioner or his or
7 her designee wherein the crane operator will be provided the
8 opportunity to present evidence in person, by counsel or both
9 and after which, the commissioner finds a violation of this
10 article has occurred, the commissioner may impose any
11 disciplinary action permitted in this article: *Provided, however*,
12 That the provisions of subsection (e) of section seven of this
13 article have not been met.

14 (b) If the commissioner makes a finding that the accident
15 was caused by the actions or omissions of the certificate holder,
16 the commissioner may require the certificate holder to retake
17 and pass the written certification examination, or practical
18 demonstration or both the certification examination and the
19 practical demonstration or successfully completes a training
20 course approved by the commissioner before the certificate
21 holder may apply to have the certification reinstated.

§21-3D-9. Reciprocity.

1 To the extent that other states provide for the certification
2 of crane operators for similar action, the commissioner, in his
3 or her discretion, may grant certification of the same or
4 equivalent classification to persons certified by other states,
5 without examination or without the required training upon
6 satisfactory proof furnished to the commissioner that the

7 qualifications for the applicants are equal to the qualifications
8 of the holders of similar certification in this state, and upon
9 payment of the required application fee.

CHAPTER 77

(H. B. 4004 — By Mr. Speaker, Mr. Kiss, and Delegates
Douglas, Varner, Martin, Stalnaker, Kuhn and Pettit)

[Passed January 17, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three and four, article three-d, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, providing for a six-month extension in implementing crane operator certification; permitting temporary certification for an additional six-month period in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That sections two, three and four, article three-d, 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 3D. CRANE OPERATOR CERTIFICATION ACT.

§21-3D-2. Certification required; exemptions.

§21-3D-3. Powers and duties of commissioner.

§21-3D-4. Minimum certification requirements.

***§21-3D-2. Certification required; exemptions.**

- 1 (a) Commencing with the first day of July, two thousand,
- 2 and notwithstanding the provisions contained in subsection (b)
- 3 of this section, a person may not operate a crane with a lifting

***Clerk's Note:** This section was also amended by H. B. 4645 (Chapter 76), which passed subsequent to this act.

4 capacity of five tons or more without certification issued under
5 this article.

6 (b) A person is not required to obtain certification under
7 this article if the person:

8 (1) Is a member of the armed forces of the United States or
9 an employee of the United States, when such member or
10 employee is engaged in the work of a crane operator exclu-
11 sively for such governmental unit; or

12 (2) Is primarily an operator of farm machinery who is
13 performing the work of a crane operator as part of an agricul-
14 tural operation; or

15 (3) Is operating a crane on an emergency basis; or

16 (4) Is operating a crane for personal use and not for profit
17 on the site of real property which the person owns or leases; or

18 (5) Is under the direct supervision of a certified crane
19 operator; and

20 (A) Who is enrolled in an industry recognized in-house
21 training course based on the American national standards
22 institute standards for crane operators and who is employed by
23 the entity that either taught the training course or contracted to
24 have the training course taught, all of which is approved by the
25 commissioner; or

26 (B) Who is enrolled in an apprenticeship program or
27 training program for crane operators approved by the United
28 States department of labor, bureau of apprenticeship and
29 training;

30 (6) Is an employee of and operating a crane at the direction
31 of any manufacturing plant or other industrial establishment,
32 including any mill, factory, tannery, paper or pulp mill, mine,

33 colliery, breaker or mineral processing operation, quarry,
34 refinery or well, or is an employee of and operating a crane at
35 the direction of the person, firm or corporation who owns or is
36 operating such plant or establishment;

37 (7) Is an employee of a public utility operating a crane to
38 perform work in connection with facilities used to provide a
39 public service under the jurisdiction of the public service
40 commission, federal energy regulatory commission or federal
41 communications commission; or

42 (8) Is operating timbering harvesting machinery associated
43 with the production of timber and the manufacturing of wood
44 products.

***§21-3D-3. Powers and duties of commissioner.**

1 The commissioner shall:

2 (a) Propose rules for legislative approval in accordance
3 with the provisions of article three, chapter twenty-nine-a of
4 this code, no later than the first day of July, one thousand nine
5 hundred ninety-eight, which rules at the minimum shall include
6 provisions for:

7 (1) Certification of individuals who operate cranes in the
8 state of West Virginia, which certification process shall include
9 a written examination and a practical demonstration, and shall
10 utilize standards no less restrictive than those prescribed by the
11 American society of mechanical engineers/American national
12 standards institute safety code as of the effective date of this
13 article: *Provided*, That the rule governing the practical exami-
14 nation shall be a separate rule and shall provide for the imple-
15 mentation of the practical examination on or before the first day
16 of July, two thousand one;

***Clerk's Note:** This section was also amended by H. B. 4645 (Chapter 76), which passed subsequent to this act.

17 (2) Certification categories that shall include lattice boom
18 truck cranes; lattice boom crawler cranes; small telescoping
19 boom cranes, with a lifting capacity of at least five tons but not
20 more than seventeen and one-half tons; and large telescopic
21 boom cranes, with a lifting capacity greater than seventeen and
22 one-half tons;

23 (3) Certification renewal requirements of individuals who
24 operate cranes in the state of West Virginia, that may not be
25 more restrictive than those prescribed for the individual's initial
26 certification, but shall include a written examination and a
27 current physician's certificate at least every five years;

28 (b) Prescribe application forms for original and renewal
29 certification;

30 (c) Set application fees in amounts that are reasonable and
31 necessary to defray the costs of the administration of this article
32 in an amount not to exceed seventy-five dollars per year;

33 (d) Set examination fees in an amount not to exceed the
34 actual cost of the examination;

35 (e) Administer or cause to be administered the written
36 examination and practical demonstrations as required for
37 certification;

38 (f) Determine the standards for acceptable performance on
39 the written examination and practical demonstration: *Provided,*
40 That the minimum standards shall be consistent with national
41 standards and transferable to other states where possible;

42 (g) If requested by an individual who fails an examination,
43 provide the person a written analysis of the person's perfor-
44 mance on the examination;

45 (h) Take other action as necessary to enforce this article.

***§21-3D-4. Minimum certification requirements.**

1 (a) The commissioner shall certify an applicant who:

2 (1) Is at least eighteen years of age;

3 (2) Meets the application requirements as prescribed by
4 rule;

5 (3) Passes the written examination;

6 (4) Passes the practical demonstration: *Provided*, That any
7 person who documents at least two thousand hours of on-the-
8 job experience operating a crane during the preceding four
9 years next prior to filing for application is entitled to certifica-
10 tion without a practical demonstration under this article if the
11 person applies for certification no later than the first day of
12 July, two thousand, meets all other requirements and pays
13 applicable application and examination fees;

14 (5) Presents the original, or a photographic copy, of a
15 physician's certificate that he or she is physically qualified to
16 drive a commercial motor vehicle as required by 49 C.F.R.
17 §391.41 as of the effective date of this article, or an equivalent
18 physician's certificate as approved by the commissioner; and

19 (6) Pays the application and examination fees.

20 (b) Certification issued under this article is valid throughout
21 the state and is not assignable or transferable, and is valid for
22 one year from the date on which it was issued.

23 (c) Notwithstanding any other provision of this section, the
24 division of labor may issue a temporary certification, to expire
25 on the first day of January, two thousand one, to an applicant
26 who: (1) Documents at least two thousand hours of on-the-job
27 experience during the preceding four years; (2) submits scores
28 for the written examination; and (3) provides proof of atten-
29 dance at an approved crane safety training course, in an
30 application for certification filed not later than the first day of
31 July, two thousand.

***Clerk's Note:** This section was also amended by H. B. 4645 (Chapter 76), which passed subsequent to this act.

CHAPTER 78

(Com. Sub. for H. B. 4340 — By Delegate Sparks)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four hundred six, article four, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the length of incarceration for persons convicted of selling drugs to minors by making them ineligible for parole for a longer period of time than under current law.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-406. Distribution to persons under the age of eighteen by persons over the age of twenty-one; distribution by persons eighteen or over in or on, or within one thousand feet of, school or college; increasing mandatory period of incarceration prior to parole eligibility.

- 1 (a) Notwithstanding any other provision of law to the
- 2 contrary, a person is ineligible for parole for a period of three
- 3 years if he or she is sentenced to the custody of the commis-
- 4 sioner of corrections for service of a sentence of incarceration
- 5 and is convicted of a felony violation under the provisions of

6 subdivision (i), subsection (a), section four hundred one of this
7 article for distribution of a controlled substance and:

8 (1) Is twenty-one years of age or older at the time of the
9 distribution upon which the conviction is based, and the person
10 to whom the controlled substance was distributed was under the
11 age of eighteen years at the time of the distribution; or

12 (2) Is eighteen years of age or older and the distribution
13 upon which the conviction is based occurred in or on, or within
14 one thousand feet of, the real property comprising a public or
15 private elementary, vocational or secondary school or a public
16 or private college, junior college or university in this state.

17 (b) Notwithstanding any other provision of law to the
18 contrary, a person is ineligible for parole for a period of two
19 years if he or she is sentenced to the custody of the commis-
20 sioner of corrections for service of a sentence of incarceration
21 and is convicted of a felony violation under the provisions of
22 subdivision (ii), subsection (a), section four hundred one of this
23 article for distribution of a controlled substance and:

24 (1) Is twenty-one years of age or older at the time of the
25 distribution upon which the conviction is based, and the person
26 to whom the controlled substance was distributed was under the
27 age of eighteen years at the time of the distribution; or

28 (2) Is eighteen years of age or older and the distribution
29 upon which the conviction is based occurred in or on, or within
30 one thousand feet of, the real property comprising a public or
31 private elementary, vocational or secondary school or a public
32 or private college, junior college or university in this state.

33 (c) The existence of any fact which would make any person
34 subject to the provisions of this section may not be considered
35 unless the fact is clearly stated and included in the indictment
36 or presentment by which the person is charged and is either:

37 (1) Found by the court upon a plea of guilty or nolo
38 contendere;

39 (2) Found by the jury, if the matter be tried before a jury,
40 upon submission to the jury of a special interrogatory for such
41 purpose; or

42 (3) Found by the court, if the matter be tried by the court
43 without a jury.

44 (d) Nothing in this section shall be construed to limit the
45 sentencing alternatives made available to circuit court judges
46 under other provisions of this code.

CHAPTER 79

(Com. Sub. for S. B. 371 — By Senators Redd, Mitchell, Unger, Kessler,
Dawson, McCabe, Hunter, Ball and Sharpe)

[Passed March 9, 2000; in effect ninety days from passage. Approved by the Governor.]

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; and to amend and reenact sections ten and seventeen, article five of said chapter, all relating to the treatment of parole officers; making certain criminal provisions concerning malicious assault, unlawful assault, battery, assault, obstructing, escaping and fleeing from specified law-enforcement personnel and their criminal penalties apply to those actions involving probation officers; and penalties.

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; and that sections ten and seventeen, article five of said chapter be amended and reenacted, all to read as follows:

Article

2. Crimes Against the Person.

5. Crimes Against Public Justice.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-10b. Malicious assault; unlawful assault; battery and recidivism of battery; assault on police officers, conservation officers, probation officers, humane officers, emergency medical service personnel, firefighters, fire marshal and county or state correctional employees; penalties.

1 (a) *Malicious assault.* — Any person who maliciously
2 shoots, stabs, cuts or wounds or by any means causes bodily
3 injury with intent to maim, disfigure, disable or kill a police
4 officer, probation officer, conservation officer, humane officer,
5 emergency medical service personnel, firefighter, state fire
6 marshal or employee, county correctional employee or state
7 correctional employee, employee of an urban mass transporta-
8 tion system acting in his or her official capacity and the person
9 committing the malicious assault knows or has reason to know
10 that the victim is a police officer, probation officer, conserva-
11 tion officer, humane officer, emergency medical service
12 personnel, firefighter, state fire marshal or employee, county
13 correctional employee, state correctional employee, employee
14 of an urban mass transportation system acting in his or her
15 official capacity, is guilty of a felony and, upon conviction
16 thereof, shall be confined in a correctional facility for not less
17 than three nor more than fifteen years.

18 (b) *Unlawful assault.* — Any person who unlawfully but
19 not maliciously shoots, stabs, cuts or wounds or by any means

20 causes a police officer, probation officer, conservation officer,
21 humane officer, emergency medical service personnel,
22 firefighter, state fire marshal or employee, county correctional
23 employee or state correctional employee, employee of an urban
24 mass transportation system acting in his or her official capacity,
25 bodily injury with intent to maim, disfigure, disable or kill him
26 or her and the person committing the unlawful assault knows or
27 has reason to know that the victim is a police officer, probation
28 officer, conservation officer, humane officer, emergency
29 medical service personnel, firefighter, state fire marshal or
30 employee, county correctional employee, state correctional
31 employee, employee of an urban mass transportation system
32 acting in his or her official capacity, is guilty of a felony and,
33 upon conviction thereof, shall be confined in a correctional
34 facility for not less than two nor more than five years.

35 (c) *Battery*. — Any person who unlawfully, knowingly and
36 intentionally makes physical contact of an insulting or provok-
37 ing nature with a police officer, probation officer, conservation
38 officer, humane officer, emergency medical service personnel,
39 firefighter, state fire marshal or employee, county correctional
40 employee, state correctional employee, employee of a mass
41 transportation system acting in his or her official capacity, or
42 unlawfully and intentionally causes physical harm to a police
43 officer, probation officer, conservation officer, humane officer,
44 emergency medical service personnel, firefighter, state fire
45 marshal or employee, county correctional employee, state
46 correctional employee, employee of an urban mass transporta-
47 tion system acting in such capacity, is guilty of a misdemeanor
48 and, upon conviction thereof, shall be confined in the county or
49 regional jail for not less than one month nor more than twelve
50 months, fined the sum of five hundred dollars, or both. If any
51 person commits a second such offense, he or she is guilty of a
52 felony and, upon conviction thereof, shall be confined in a
53 correctional facility for not less than one year nor more than
54 three years or fined the sum of one thousand dollars or both

55 fined and confined. Any person who commits a third violation
56 of this subsection is guilty of a felony and, upon conviction
57 thereof, shall be confined in a correctional facility not less than
58 two years nor more than five years or fined not more than two
59 thousand dollars or both fined and confined.

60 (d) *Assault.* — Any person who unlawfully attempts to
61 commit a violent injury to the person of a police officer,
62 probation officer, conservation officer, humane officer,
63 emergency medical service personnel, firefighter, state fire
64 marshal or employee, county correctional employee, state
65 correctional employee, employee of a mass transportation
66 system acting in his or her official capacity, or unlawfully
67 commits an act which places a police officer, probation officer,
68 conservation officer, humane officer, emergency medical
69 service personnel, firefighter, county correctional employee or
70 state correctional employee, employee of a mass transportation
71 system acting in his or her official capacity in reasonable
72 apprehension of immediately receiving a violent injury, is
73 guilty of a misdemeanor and, upon conviction thereof, shall be
74 confined in the county or regional jail for not less than
75 twenty-four hours nor more than six months, fined not more
76 than two hundred dollars, or both fined and confined.

77 (e) For purposes of this section:

78 (1) “Police officer” means any person employed by the
79 state police, any person employed by the state to perform law-
80 enforcement duties, any person employed by a political
81 subdivision of this state who is responsible for the prevention
82 or detection of crime and the enforcement of the penal, traffic
83 or highway laws of this state or employed as a special police
84 officer as defined in section forty-one, article three of this
85 chapter.

86 (2) “Employee of an urban mass transportation system”
87 means any person employed by an urban mass transportation

88 system as such is defined in section three, article twenty-seven,
89 chapter eight of this code or by a system that receives federal
90 transit administration funding under 49 U.S.C. §5307 or 5311.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-10. Persons in custody of institutions or officers.

§61-5-17. Obstructing officer; fleeing from officer; fleeing from officer in a vehicle;
penalties; definitions.

§61-5-10. Persons in custody of institutions or officers.

1 Whoever escapes or attempts to escape by any means from
2 the custody of a county sheriff, the director of the regional jail
3 authority, an authorized representative of said persons, a
4 law-enforcement officer, probation officer, employee of the
5 division of corrections, court bailiff, or from any institution,
6 facility, or any alternative sentence confinement, by which he
7 or she is lawfully confined, if the custody or confinement is by
8 virtue of a charge or conviction for a felony, is guilty of a
9 felony and, upon conviction thereof, shall be confined in a
10 correctional facility for not more than five years; and if the
11 custody or confinement is by virtue of a charge or conviction
12 for a misdemeanor, is guilty of a misdemeanor and, upon
13 conviction thereof, he or she shall be confined in a county or
14 regional jail for not more than one year.

**§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 otherwise,
2 forcibly or illegally hinders or obstructs, or attempts to hinder
3 or obstruct, any law-enforcement officer, probation officer or
4 parole officer acting in his or her official capacity is guilty of a
5 misdemeanor and, upon conviction thereof, shall be fined not
6 less than fifty nor more than five hundred dollars, and may, in
7 the discretion of the court, be confined in the county or regional
8 jail not more than one year.

9 (b) Any person who intentionally flees or attempts to flee
10 by any means other than the use of a vehicle from any law-
11 enforcement officer, probation officer or parole officer acting

12 in his or her official capacity who is attempting to make a
13 lawful arrest of the person, and who knows or reasonably
14 believes that the officer is attempting to arrest him or her, is
15 guilty of a misdemeanor and, upon conviction thereof, shall be
16 fined not less than fifty nor more than five hundred dollars, and
17 may, in the discretion of the court, be confined in the county or
18 regional jail not more than one year.

19 (c) Any person who intentionally flees or attempts to flee
20 in a vehicle from any law-enforcement officer, probation officer
21 or parole officer acting in his or her official capacity, after the
22 officer has given a clear visual or audible signal directing the
23 person to stop, is guilty of a misdemeanor and, upon conviction
24 thereof, shall be fined not less than five hundred nor more than
25 one thousand dollars, and shall be confined in the county or
26 regional jail not more than one year.

27 (d) Any person who intentionally flees or attempts to flee
28 in a vehicle from any law-enforcement officer, probation officer
29 or parole officer acting in his or her official capacity, after the
30 officer has given a clear visual or audible signal directing the
31 person to stop, and who causes damage to the real or personal
32 property of any person during or resulting from his or her flight,
33 is guilty of a misdemeanor and, upon conviction thereof, shall
34 be fined not less than one thousand nor more than three
35 thousand dollars, and shall be confined in the county or regional
36 jail for not less than six months nor more than one year.

37 (e) Any person who intentionally flees or attempts to flee
38 in a vehicle from any law-enforcement officer, probation officer
39 or parole officer acting in his or her official capacity, after the
40 officer has given a clear visual or audible signal directing the
41 person to stop, and who causes bodily injury to any person
42 during or resulting from his or her flight, is guilty of a felony
43 and, upon conviction thereof, shall be imprisoned in a state
44 correctional facility not less than one nor more than five years.

45 (f) Any person who intentionally flees or attempts to flee in
46 a vehicle from any law-enforcement officer, probation officer
47 or parole officer acting in his or her official capacity, after the
48 officer has given a clear visual or audible signal directing the
49 person to stop, and who causes death to any person during or
50 resulting from his or her flight, is guilty of a felony and, upon
51 conviction thereof, shall be punished by a definite term of
52 imprisonment in a state correctional facility which is not less
53 than three nor more than fifteen years. A person imprisoned
54 pursuant to the provisions of this subsection is not eligible for
55 parole prior to having served a minimum of three years of his
56 or her sentence or the minimum period required by the provi-
57 sions of section thirteen, article twelve, chapter sixty-two of this
58 code, whichever is greater.

59 (g) Any person who intentionally flees or attempts to flee
60 in a vehicle from any law-enforcement officer, probation officer
61 or parole officer acting in his or her official capacity, after the
62 officer has given a clear visual or audible signal directing the
63 person to stop, and who is under the influence of alcohol,
64 controlled substances or drugs at the time, is guilty of a felony
65 and, upon conviction thereof, shall be imprisoned in a state
66 correctional facility not less than one nor more than five years.

67 (h) For purposes of this section, the term “vehicle” includes
68 any motor vehicle, motorcycle, motorboat, all-terrain vehicle or
69 snowmobile, as those terms are defined in section one, article
70 one, chapter seventeen-a of this code, whether or not it is being
71 operated on a public highway at the time and whether or not it
72 is licensed by the state.

73 (i) For purposes of this section, the terms “flee”, “fleeing”
74 and “flight” do not include any person’s reasonable attempt to
75 travel to a safe place, allowing the pursuing law-enforcement
76 officer to maintain appropriate surveillance, for the purpose of
77 complying with the officer’s direction to stop.

CHAPTER 80

(Com. Sub. for S. B. 81 — By Senators Craigo, Plymale,
Ball, Hunter, Kessler and Edgell)

[Passed March 6, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to including the use of temporarily disabling substances or devices, including disabling chemical substances and electronic shock devices, to commit robbery; and providing for penalties therefore.

Be it enacted by the Legislature of West Virginia:

That section twelve, 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.

§61-2-12. Robbery or attempted robbery; penalties.

1 (a) Any person who commits or attempts to commit robbery
2 by: (1) Committing violence to the person, including, but not
3 limited to, partial strangulation or suffocation or by striking or
4 beating; or (2) uses the threat of deadly force by the presenting
5 of a firearm or other deadly weapon, is guilty of robbery in the
6 first degree and, upon conviction thereof, shall be imprisoned
7 in a state correctional facility not less than ten years.

8 (b) Any person who commits or attempts to commit
9 robbery by placing the victim in fear of bodily injury by means
10 other than those set forth in subsection (a) of this section or any

11 person who commits or attempts to commit robbery by the use
12 of any means designed to temporarily disable the victim,
13 including, but not limited to, the use of a disabling chemical
14 substance or an electronic shock device, is guilty of robbery in
15 the second degree and, upon conviction thereof, shall be
16 confined in a correctional facility for not less than five years
17 nor more than eighteen years.

18 (c) If any person: (1) By force and violence, or by putting
19 in fear, feloniously takes, or feloniously attempts to take, from
20 the person or presence of another any property or money or any
21 other thing of value belonging to, or in the care, custody,
22 control, management or possession of, any bank, he shall be
23 guilty of a felony and, upon conviction, shall be confined in the
24 penitentiary not less than ten nor more than twenty years; and
25 (2) if any person in committing, or in attempting to commit, any
26 offense defined in the preceding clause (1) of this subsection,
27 assaults any person, or puts in jeopardy the life of any person
28 by the use of a dangerous weapon or device, disabling chemical
29 substance or an electronic shock device, he shall be guilty of a
30 felony and, upon conviction, shall be confined in the peniten-
31 tiary not less than ten years nor more than twenty- five years.

CHAPTER 81

**(Com. Sub. for S. B. 85 — By Senators Hunter, Ball, Dawson,
Dittmar, McCabe, McKenzie, Mitchell, Redd and Snyder)**

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-nine-a, 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 five new sections, designated sections thirty-nine-m, thirty-nine-n, thirty-nine-o, thirty-nine-p and thirty-nine-q, all relating to worthless checks; increasing fines for making a worthless check; creating a worthless check restitution program in the office of the prosecuting attorney; allowing the prosecuting attorney to adopt standards; requiring notice to persons accepted into program; allowing the prosecuting attorney to agree to suspend prosecution for person in program; allowing certain fees; requiring the sheriff to establish a special fund in the county treasury and requiring the county commission to appropriate funds therefrom; and making statements by participants in the program inadmissible in civil or criminal proceedings.

Be it enacted by the Legislature of West Virginia:

That section thirty-nine-a, 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 five new sections, designated sections thirty-nine-m, thirty-nine-n, thirty-nine-o, thirty-nine-p and thirty-nine-q, all to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-39a. Making, issuing, etc., worthless checks; penalty.

§61-3-39m. Creation and operation of a program for worthless check offenders; acceptance of person in program.

§61-3-39n. Notice to persons accepted to the worthless check restitution program.

§61-3-39o. Agreement to suspend prosecution of a person accepted into the restitution program.

§61-3-39p. Fees for participation in the worthless check restitution program.

§61-3-39q. Statements by individuals referred to or participating in the worthless check restitution program.

§61-3-39a. Making, issuing, etc., worthless checks; penalty.

- 1 (a) It is unlawful for any person, firm or corporation to
- 2 make, draw, issue, utter or deliver any check, draft or order for
- 3 the payment of money or its equivalent upon any bank or other
- 4 depository, knowing or having reason to know there is not
- 5 sufficient funds on deposit in or credit with the bank or other
- 6 depository with which to pay the check, draft or order upon
- 7 presentation. The making, drawing, issuing, uttering or deliver-

8 ing of any check, draft or order, for or on behalf of any corpora-
9 tion, or its name, by any officer or agent of the corporation,
10 shall subject the officer or agent to the penalty of this section to
11 the same extent as though the check, draft or order was his or
12 her own personal act.

13 (b) This section shall not apply to any such check, draft or
14 order when the payee or holder knows or has been expressly
15 notified prior to the acceptance of same or has reason to believe
16 that the drawer did not have on deposit or to his or her credit
17 with the drawee sufficient funds to insure payment as aforesaid,
18 nor shall this section apply to any postdated check, draft or
19 order. This section shall not apply when the insufficiency of
20 funds or credit is caused by any adjustment to the drawer's
21 account by the bank or other depository without notice to the
22 drawer or is caused by the dishonoring of any check, draft or
23 order deposited in the account unless there is knowledge or
24 reason to believe that the check, draft or order would be
25 dishonored.

26 (c) Any person violating the provisions of this section is
27 guilty of a misdemeanor and, upon conviction thereof, shall be
28 fined not more than two hundred dollars; and upon a third or
29 subsequent conviction thereof, shall be fined not more than two
30 hundred dollars, or confined in the county or regional jail not
31 more than ten days, or both.

**§61-3-39m. Creation and operation of a program for worthless
check offenders; acceptance of person in program.**

1 (a) A prosecuting attorney may create within his or her
2 office a worthless check restitution program for persons who
3 have violated sections thirty-nine or thirty-nine-a of this article.
4 This program may be conducted by the prosecuting attorney in
5 conjunction with a law-enforcement agency or by a private
6 entity under contract with the prosecuting attorney.

7 (b) The prosecuting attorney may adopt standards to
8 determine the appropriateness of an individual case for the
9 program. In developing these standards, the prosecuting
10 attorney should consider the following factors:

11 (1) The amount of the check, draft or order made, drawn,
12 issued, uttered or delivered;

13 (2) The person's criminal record;

14 (3) The number of times the person has participated in the
15 program; and

16 (4) The number of warrants or cases pending against the
17 person for violations of sections thirty-nine or thirty-nine-a of
18 this article.

19 (c) Except as provided in section thirty-nine-o of this
20 article, nothing in this section shall preclude the prosecuting
21 attorney from prosecuting violations of sections thirty-nine or
22 thirty-nine-a of this article.

23 (d) Nothing in this section may be construed or interpreted
24 to mandate funding for any worthless check restitution program
25 created in a prosecuting attorney's office or to require any
26 appropriation by the Legislature.

27 (e) Notwithstanding any other provision of law to the contrary,
28 no case is appropriate for referral to the program unless notice
29 has been provided pursuant to section thirty-nine-e or thirty-
30 nine-g of this article.

**§61-3-39n. Notice to persons accepted to the worthless check
restitution program.**

1 (a) Upon approval of an individual case for referral to the
2 worthless check restitution program, a representative of the
3 program shall send a notice by registered or certified mail to the
4 person named in the complaint or warrant.

5 (b) This notice must contain:

6 (1) The date and amount of the check, draft or order;

7 (2) The name of the payee or holder;

8 (3) The date by which the individual must contact the
9 designated representative of the worthless check restitution
10 program;

11 (4) A demand for full restitution of the face amount of the
12 check, draft or order and any fees reflected in the complaint or
13 warrant as having been imposed on the payee or holder by the
14 payee's or holder's bank or financial institution; and

15 (5) A statement that failure to pay restitution and fees may
16 result in criminal prosecution.

§61-3-39o. Agreement to suspend prosecution of a person accepted into the restitution program.

1 (a) The prosecuting attorney may enter into an agreement
2 with a participant of the worthless check restitution program to
3 suspend prosecution for a period to be determined by the
4 prosecuting attorney.

5 (b) To remain eligible for the worthless check restitution
6 program, the participant shall:

7 (1) Contact a representative of the program before the date
8 required by the notice sent pursuant to section thirty-nine-n of
9 this article;

10 (2) Agree to comply with all the program terms;

11 (3) Complete a class conducted by the prosecuting attorney,
12 his or her designee, or a private entity under contract with the
13 prosecuting attorney, which offers offender education and
14 instruction;

15 (4) Pay a fee in the amount of ten dollars to be deposited in
16 the "worthless check fund" established pursuant to the provi-
17 sions of section thirty-nine-h of this article;

18 (5) Pay the fee required to participate in the class;

19 (6) Pay full victim restitution; and

20 (7) Pay all fees for participation in the program, unless
21 those fees are waived.

22 (c) The prosecuting attorney shall agree not to file criminal
23 charges if the participant in the program completes the condi-
24 tions of the agreement.

**§61-3-39p. Fees for participation in the worthless check restitu-
tion program.**

1 (a) The prosecuting attorney, his or her designee, or a
2 private entity under contract with the prosecuting attorney may
3 collect a fee not to exceed one hundred dollars from any person
4 participating in the worthless check restitution program:
5 *Provided*, That the prosecuting attorney shall waive the fee if he
6 or she determines that the person is indigent and unable to pay
7 the fee.

8 (b) All fees collected pursuant to subsection (a) of this
9 section by the prosecutor shall be remitted to the sheriff. The
10 sheriff shall establish a special fund in the county treasury,
11 designated the worthless check restitution program fund, in
12 which the sheriff shall deposit all fees remitted by the prosecu-
13 tor. The county commission shall appropriate money from the
14 fund for the administration of the worthless check restitution
15 program. The county commission shall also appropriate any
16 excess money from the fund to supplement the annual operation
17 expense appropriation of the office of the prosecuting attorney,
18 if the prosecuting attorney certifies in writing to the county
19 commission that a surplus exists in the fund at the end of the
20 fiscal year.

**§61-3-39q. Statements by individuals referred to or participating
in the worthless check restitution program.**

1 Any statement made by a person referred to the worthless
2 check restitution program in connection with the determination
3 of his or her eligibility for participation in the program and any
4 statement made or information given by that person while
5 participating in the program is inadmissible in any civil or
6 criminal action or proceeding.

CHAPTER 82

(Com. Sub. for S. B. 389 — By Senators Oliverio, Ross and Ball)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, 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 fifty-five, relating to creating the criminal offense of failure to pay for gasoline; establishing criminal penalties; and providing for the suspension of a license to operate a motor vehicle.

Be it enacted by the Legislature of West Virginia:

That article three, 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 fifty-five, to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-55. Failure to pay for gasoline.

1 Any person who knowingly and willfully drives a motor
2 vehicle off the premises of an establishment where gasoline
3 offered for retail sale was dispensed into the fuel tank of the
4 motor vehicle with the intent to avoid payment for the gasoline

5 that was so dispensed shall be deemed to be guilty of the
6 larceny thereof. In addition to the penalties provided for by the
7 provisions of section thirteen, article three of this chapter, upon
8 a second conviction for larceny of gasoline, the court shall
9 order the suspension of the person's license to drive a motor
10 vehicle for six months, and upon a third or subsequent conviction,
11 the court shall order the suspension of the person's license
12 to drive a motor vehicle for one year.

13 Whenever a second or subsequent offense is had under the
14 provisions of this section, the clerk of the court shall transmit
15 a certified abstract of the judgment to the division of motor
16 vehicles within seventy-two hours of the conviction. Upon
17 receipt of the abstract of judgment the division of motor
18 vehicles shall enter an order suspending the person's license to
19 operate a motor vehicle for the appropriate time period.

CHAPTER 83

(Com. Sub. for H. B. 4641 — By Delegate Thompson)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three-a, 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 creating criminal offenses involving theft detection shielding devices and theft detection device removers; definitions; penalties; right to detain person suspected of violation; and, immunity from civil or criminal liability for detainers.

Be it enacted by the Legislature of West Virginia:

That article three-a, 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 3A. SHOPLIFTING.

§61-3A-4a. Criminal offenses involving theft detection shielding devices; detention.

1 (a) As used in this section:

2 (1) "Theft detection device" means any tag or other device
3 that is used to prevent or detect theft and that is attached to
4 merchandise held for resale by a merchant or to property of a
5 merchant.

6 (2) "Theft detection device remover" means any tool or
7 device specifically designed or manufactured to be used to
8 remove a theft detection device from merchandise held for
9 resale by a merchant or property of a merchant.

10 (3) "Theft detection shielding device" means any laminated
11 or coated bag or device designed to shield merchandise held for
12 resale by a merchant or property of a merchant from being
13 detected by an electronic or magnetic theft alarm sensor.

14 (b) A person commits unlawful distribution of a theft
15 detection shielding device when he or she knowingly manufac-
16 tures, sells, offers to sell or distribute any theft detection
17 shielding device.

18 (c) A person commits unlawful possession of a theft
19 detection shielding device when he or she knowingly possesses
20 any theft detection shielding device with the intent to commit
21 theft or retail theft.

22 (d) A person commits unlawful possession of a theft
23 detection shielding device remover when he or she knowingly
24 possesses any theft detection device remover with the intent to

25 use such tool to remove any theft detection device from any
26 merchandise without the permission of the merchant or person
27 owning or holding said merchandise.

28 (e) A person commits unlawful use of a theft detection
29 shielding device or a theft detection shielding remover when he
30 or she uses or attempts to use either device while committing a
31 violation of this article.

32 (f) A person commits unlawful removal of a theft detection
33 device when he or she intentionally removes any theft detection
34 device by the use of manual force or by any tool or device,
35 which is not specifically designed or manufactured to remove
36 theft detection devices, from merchandise prior to purchase.

37 (g) Any person convicted for violating the provisions of
38 subsections (b), (c), (d), or (e) of this section is guilty of a
39 misdemeanor, and upon conviction thereof, shall be confined in
40 a county or regional jail facility for not less than thirty days nor
41 more than one year, and fined not less than two hundred fifty
42 dollars nor more than one thousand dollars.

43 (h) Any person convicted of violating the provisions of
44 subsection (f) of this section is guilty of a misdemeanor, and
45 upon conviction thereof, shall be fined not less than one
46 hundred dollars nor more than five hundred dollars, and such
47 fine shall not be suspended, or the person shall be confined in
48 the county or regional jail not more than sixty days, or both.

49 (i) The activation of an anti-shoplifting or inventory control
50 device as a result of a person exiting the establishment or a
51 protected area within the establishment shall constitute reason-
52 able cause for the detention of the person so exiting by the
53 owner or operator or the establishment or by an agent or
54 employee of the owner or operator, provided sufficient notice
55 has been posted to advise the patrons that such a device is being
56 utilized. Each such detention shall be made only in a reasonable
57 manner and only for a reasonable period of time sufficient for

58 any inquiry into the circumstances surrounding the activation
59 of the device or for the recovery of goods.

60 (j) Such taking into custody and detention by a
61 law-enforcement officer, merchant, or merchant's employee, if
62 done in compliance with all the requirements of this section,
63 does not render such law-enforcement officer, merchant, or
64 merchant's employee criminally or civilly liable for false arrest,
65 false imprisonment, or unlawful detention.

CHAPTER 84

(S. B. 641 — By Senators Wooton, Ball, Dawson, Dittmar, Hunter, Kessler,
Minard, Mitchell, Oliverio, Redd, Ross, Snyder, Deem and McKenzie)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend article eight, 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 twenty-eight, relating to creating the offense of criminal invasion of privacy; definitions; penalties; and enhanced penalties for second and subsequent offenses.

Be it enacted by the Legislature of West Virginia:

That article eight, 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 twenty-eight, to read as follows:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-28. Criminal invasion of privacy; penalties.

1 (a) For the purposes of this section, the words or terms
2 defined in this subsection have the meanings ascribed to them.

3 These definitions are applicable unless a different meaning
4 clearly appears from the context:

5 (1) "A person fully or partially nude" means a male or
6 female who is either clothed or unclothed so that: (A) All or any
7 part of his or her genitals, pubic area or buttocks is visible; or
8 (B) in the case of a female only, a part of a nipple of her breast
9 is visible and is without a fully opaque covering;

10 (2) "To visually portray" a person means to create a
11 reproducible image of that person by means of:

12 (A) A photograph;

13 (B) A motion picture;

14 (C) A video tape;

15 (D) A digital recording; or

16 (E) Any other mechanical or electronic recording process
17 or device that can preserve, for later viewing, a visual image of
18 a person; and

19 (3) "Place where a reasonable person would have an
20 expectation of privacy" means a place where a reasonable
21 person would believe that he or she could, in privacy, be fully
22 or partially nude without expecting that the act of exposing his
23 or her body was being visually portrayed by another person.

24 (b) It is unlawful for a person to knowingly visually portray
25 another person without that other person's knowledge, while
26 that other person is fully or partially nude and is in a place
27 where a reasonable person would have an expectation of
28 privacy. A person who violates the provisions of this subsection
29 is guilty of a misdemeanor and, upon conviction, shall be
30 confined in a county or regional jail for not more than one year
31 or fined not more than five thousand dollars, or both.

32 (c) Any person who displays or distributes visual images of
33 another person with knowledge that said visual images were
34 obtained in violation of subsection (b) of this section is guilty
35 of a misdemeanor and, upon conviction, shall be confined in a

36 county or regional jail for not more than one year or fined not
 37 more than five thousand dollars, or both.

38 (d) A person who is convicted of a second or subsequent
 39 violation of subsection (b) or (c) of this section is guilty of a
 40 felony and, upon conviction, shall be confined in a state
 41 correctional facility for not less than one year nor more than
 42 five years or fined not more than ten thousand dollars, or both.

CHAPTER 85

(H. B. 4561 — By Delegates Mahan, Spencer, Hunt, Amores,
 Hines, Capito and Webb)

[Passed March 9, 2000: in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section six, article eight-b, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, three and five of said article, all relating to sexual assault.

Be it enacted by the Legislature of West Virginia:

That section six, article eight-b, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, three and five of said article be amended and reenacted, all to read as follows:

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-1. Definition of terms.

§61-8B-3. Sexual assault in the first degree.

§61-8B-5. Sexual assault in the third degree.

§61-8B-1. Definition of terms.

1 In this article, unless a different meaning plainly is re-
 2 quired:

3 (1) “Forcible compulsion” means:

4 (a) Physical force that overcomes such earnest resistance as
5 might reasonably be expected under the circumstances; or

6 (b) Threat or intimidation, expressed or implied, placing a
7 person in fear of immediate death or bodily injury to himself or
8 herself or another person or in fear that he or she or another
9 person will be kidnapped; or

10 (c) Fear by a person under sixteen years of age caused by
11 intimidation, expressed or implied, by another person who is at
12 least four years older than the victim.

13 For the purposes of this definition “resistance” includes
14 physical resistance or any clear communication of the victim’s
15 lack of consent.

16 (2) “Married”, for the purposes of this article in addition to
17 its legal meaning, includes persons living together as husband
18 and wife regardless of the legal status of their relationship.

19 (3) “Mentally defective” means that a person suffers from
20 a mental disease or defect which renders that person incapable
21 of appraising the nature of his or her conduct.

22 (4) “Mentally incapacitated” means that a person is
23 rendered temporarily incapable of appraising or controlling his
24 or her conduct as a result of the influence of a controlled or
25 intoxicating substance administered to that person without his
26 or her consent or as a result of any other act committed upon
27 that person without his or her consent.

28 (5) “Physically helpless” means that a person is uncon-
29 scious or for any reason is physically unable to communicate
30 unwillingness to an act.

31 (6) “Sexual contact” means any intentional touching, either
32 directly or through clothing, of the anus or any part of the sex

33 organs of another person, or the breasts of a female or inten-
34 tional touching of any part of another person's body by the
35 actor's sex organs, where the victim is not married to the actor
36 and the touching is done for the purpose of gratifying the sexual
37 desire of either party.

38 (7) "Sexual intercourse" means any act between persons
39 involving penetration, however slight, of the female sex organ
40 by the male sex organ or involving contact between the sex
41 organs of one person and the mouth or anus of another person.

42 (8) "Sexual intrusion" means any act between persons
43 involving penetration, however slight, of the female sex organ
44 or of the anus of any person by an object for the purpose of
45 degrading or humiliating the person so penetrated or for
46 gratifying the sexual desire of either party.

47 (9) "Bodily injury" means substantial physical pain, illness
48 or any impairment of physical condition.

49 (10) "Serious bodily injury" means bodily injury which
50 creates a substantial risk of death, which causes serious or
51 prolonged disfigurement, prolonged impairment of health or
52 prolonged loss or impairment of the function of any bodily
53 organ.

54 (11) "Deadly weapon" means any instrument, device or
55 thing capable of inflicting death or serious bodily injury, and
56 designed or specially adapted for use as a weapon, or possessed,
57 carried or used as a weapon.

58 (12) "Forensic medical examination" means an examination
59 provided to a possible victim of a violation of the provisions of
60 this article by medical personnel qualified to gather evidence of
61 the violation in a manner suitable for use in a court of law, to
62 include: An examination for physical trauma; a determination
63 of penetration or force; a patient interview; and the collection
64 and evaluation of other evidence that is potentially relevant to

65 the determination that a violation of the provisions of this
66 article occurred and to the determination of the identity of the
67 assailant.

§61-8B-3. Sexual assault in the first degree.

1 (a) A person is guilty of sexual assault in the first degree
2 when:

3 (1) The person engages in sexual intercourse or sexual
4 intrusion with another person and, in so doing:

5 (i) Inflicts serious bodily injury upon anyone; or

6 (ii) Employs a deadly weapon in the commission of the act;
7 or

8 (2) The person, being fourteen years old or more, engages
9 in sexual intercourse or sexual intrusion with another person
10 who is eleven years old or less and is not married to that person.

11 (b) Any person violating the provisions of this section is
12 guilty of a felony and, upon conviction thereof, shall be
13 imprisoned in a state correctional facility not less than fifteen
14 nor more than thirty-five years, or fined not less than one
15 thousand dollars nor more than ten thousand dollars and
16 imprisoned in a state correctional facility not less than fifteen
17 nor more than thirty-five years.

§61-8B-5. Sexual assault in the third degree.

1 (a) A person is guilty of sexual assault in the third degree
2 when:

3 (1) The person engages in sexual intercourse or sexual
4 intrusion with another person who is mentally defective or
5 mentally incapacitated; or

6 (2) The person, being sixteen years old or more, engages in
7 sexual intercourse or sexual intrusion with another person who

8 is less than sixteen years old and who is at least four years
9 younger than the defendant and is not married to the defendant.

10 (b) Any person violating the provisions of this section is
11 guilty of a felony and, upon conviction thereof, shall be
12 imprisoned in a state correctional facility not less than one year
13 nor more than five years, or fined not more than ten thousand
14 dollars and imprisoned in a state correctional facility not less
15 than one year nor more than five years.

CHAPTER 86

(Com. Sub. for S. B. 157 — By Senators Love, Hunter, Ross and Helmick)

[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twenty-two, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article eight-b, chapter sixty-one of said code by adding thereto a new section, designated section ten, relating to creating the felony criminal offenses of engaging in sexual intercourse or intrusion by persons employed at correctional institutions or as supervisory probation or parole officers; and penalties.

Be it enacted by the Legislature of West Virginia:

That section twenty-two, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article eight-b, chapter sixty-one of said code be amended by adding thereto a new section, designated section ten, to read as follows:

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-10. Imposition of sexual intercourse or sexual intrusion on incarcerated persons; penalties.

1 (a) Any person employed by the division of corrections, any
2 person working at a correctional facility managed by the
3 commissioner of corrections pursuant to contract or as an
4 employee of a state agency, any person working at a correc-
5 tional facility managed by the division of juvenile services
6 pursuant to contract or as an employee of a state agency, any
7 person employed by a county jail or by the regional jail and
8 correctional facility authority or any person working at a
9 facility managed by the regional jail and correctional facility
10 authority or a county jail who engages in sexual intercourse or
11 sexual intrusion with a person who is incarcerated in this state
12 is guilty of a felony and, upon conviction thereof, shall be
13 confined in a state correctional facility under the control of the
14 commissioner of corrections for not less than one nor more than
15 five years or fined not more than five thousand dollars.

16 (b) Any person employed by the division of corrections as
17 a parole officer or by the West Virginia supreme court of
18 appeals as an adult or juvenile probation officer who engages in
19 sexual intercourse or sexual intrusion with a person said parole
20 officer or probation officer is charged as part of his or her
21 employment with supervising, is guilty of a felony and, upon
22 conviction thereof, shall be confined in a state correctional
23 facility under the control of the commissioner of corrections for
24 not less than one nor more than five years or fined not more
25 than five thousand dollars, or both.

CHAPTER 87

**(Com. Sub. for S. B. 121 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article eleven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to sentencing of habitual

criminals; and doubling the minimum term of an indeterminate felony sentence for a twice-convicted felon.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-18. Punishment for second or third offense of felony.

1 (a) Except as provided by subsection (b) of this section,
2 when any person is convicted of an offense and is subject to
3 confinement in the state correctional facility therefor, and it is
4 determined, as provided in section nineteen of this article, that
5 such person had been before convicted in the United States of
6 a crime punishable by confinement in a penitentiary, the court
7 shall, if the sentence to be imposed is for a definite term of
8 years, add five years to the time for which the person is or
9 would be otherwise sentenced. Whenever in such case the court
10 imposes an indeterminate sentence, the minimum term shall be
11 twice the term of years otherwise provided for under such
12 sentence.

13 (b) Notwithstanding the provisions of subsection (a) or (c)
14 of this section or any other provision of this code to the
15 contrary, when any person is convicted of first degree murder
16 or second degree murder or a violation of section three, article
17 eight-b of this chapter and it is determined, as provided in
18 section nineteen of this article, that such person had been before
19 convicted in this state of first degree murder, second degree
20 murder or a violation of section three, article eight-b of said
21 chapter or has been so convicted under any law of the United
22 States or any other state for an offense which has the same
23 elements as any offense described in this subsection, such
24 person shall be punished by confinement in the state correc-
25 tional facility for life and is not eligible for parole.

26 (c) When it is determined, as provided in section nineteen
27 of this article, that such person shall have been twice before
28 convicted in the United States of a crime punishable by
29 confinement in a penitentiary, the person shall be sentenced to
30 be confined in the state correctional facility for life.

CHAPTER 88

(S. B. 519 — By Senators Wooton, Ball, Dawson, Dittmar,
Fanning, Hunter, Kessler, McCabe, Minard, Mitchell, Redd,
Ross, Snyder, Deem and McKenzie)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eleven, 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 twenty-five, relating to expungement of criminal records where a person is acquitted or where charges are dismissed.

Be it enacted by the Legislature of West Virginia:

That article eleven, 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 twenty-five, to read as follows:

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-25. Expungement of criminal records for those found not guilty of crimes or against whom charges have been dismissed.

1 (a) Any person who has been charged with a criminal
2 offense under the laws of this state and who has been found not
3 guilty of the offense, or against whom charges have been
4 dismissed, and not in exchange for a guilty plea to another
5 offense, may make a motion in the circuit court in which the

6 charges were filed to expunge all records relating to the arrest,
7 charge or other matters arising out of the arrest or charge:
8 *Provided*, That any person who has previously been convicted
9 of a felony may not make a motion for expungement pursuant
10 to this section. The term records as used in this section includes,
11 but is not limited to, arrest records, fingerprints, photographs,
12 index references or other data whether in documentary or
13 electronic form, relating to the arrest, charge or other matters
14 arising out of the arrest or charge. Criminal investigation
15 reports and all records relating to offenses subject to the
16 provisions of article twelve, chapter fifteen of this code because
17 the person was found not guilty by reason of mental illness,
18 mental retardation or addiction are exempt from the provisions
19 of this section.

20 (b) The expungement motion shall be filed not sooner than
21 sixty days following the order of acquittal or dismissal by the
22 court. Any court entering an order of acquittal or dismissal shall
23 inform the person who has been found not guilty or against
24 whom charges have been dismissed of his or her rights to make
25 a motion for expungement pursuant to this section.

26 (c) Following the filing of the motion, the court may set a
27 date for a hearing. If the court does so, it shall notify the
28 prosecuting attorney and the arresting agency of the motion and
29 provide an opportunity for a response to the expungement
30 motion.

31 (d) If the court finds that there are no current charges or
32 proceedings pending relating to the matter for which the
33 expungement is sought, the court may grant the motion and
34 order the sealing of all records in the custody of the court and
35 expungement of any records in the custody of any other agency
36 or official including law-enforcement records. Every agency
37 with records relating to the arrest, charge or other matters
38 arising out of the arrest or charge, that is ordered to expunge
39 records, shall certify to the court within sixty days of the entry
40 of the expungement order, that the required expungement has
41 been completed. All orders enforcing the expungement proce-
42 dure shall also be sealed.

43 (e) Upon expungement, the proceedings in the matter shall
44 be deemed never to have occurred. The court and other agencies
45 shall reply to any inquiry that no record exists on the matter.
46 The person whose record is expunged shall not have to disclose
47 the fact of the record or any matter relating thereto on an
48 application for employment, credit or other type of application.

49 (f) Inspection of the sealed records in the court's possession
50 may thereafter be permitted by the court only upon a motion by
51 the person who is the subject of the records or upon a petition
52 filed by a prosecuting attorney that inspection and possible use
53 of the records in question are necessary to the investigation or
54 prosecution of a crime in this state or another jurisdiction. If the
55 court finds that the interests of justice will be served by
56 granting the petition, it may be granted.

CHAPTER 89

(H. B. 4467 — By Delegates Varner and Pino)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article eight, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the filing of recidivist information in the appropriate county.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. CRIMES BY AND PROCEEDINGS AGAINST INMATES.

§62-8-4. Procedure in sentencing inmates to further confinement for second and third offenses.

1 When a inmate convicted of an offense and sentenced to
2 confinement therefor in a state correctional facility, is received

3 therein, if he or she was before convicted in the United States
4 of a crime punishable by imprisonment in a state correctional
5 facility, and the record of his or her conviction does not show
6 that he or she has been sentenced under section eighteen or
7 nineteen, article eleven, chapter sixty-one of this code, the
8 warden of a state correctional facility may give information
9 thereof, to the circuit court of the county in which the facility is
10 located, whether it be alleged or not in the indictment on which
11 he or she was convicted that he or she had before been previ-
12 ously so convicted. If such information is given, the court shall
13 cause the inmate to be brought before it, and upon an informa-
14 tion filed, setting forth the several records of conviction, and
15 alleging the identity of the inmate with the person named in
16 each, shall require the inmate named to say whether he or she
17 is the same person or not. If he or she say he or she is not, or
18 remain silent, his or her plea, or the fact of his or her silence,
19 shall be entered of record, and a jury shall be impaneled to
20 inquire whether the inmate is the same person mentioned in the
21 several records. If the jury find that he or she is not the same
22 person, he or she shall be remanded to a state correctional
23 facility; but if they find that he or she is the same person, or if
24 he or she acknowledge in open court, after being duly cau-
25 tioned, that he or she is the same person, the court shall
26 sentence him or her to such further confinement as is prescribed
27 by article eleven, chapter sixty-one of this code, on a second or
28 third conviction, as the case may be.

CHAPTER 90

**(Com. Sub. for S. B. 634 — By Senators Kessler, Edgell,
Hunter, Mitchell and Fanning)**

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-a, article eleven-a, chapter sixty-two of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to providing a sentencing alternative under which persons would be required to report to a day-reporting center for alcohol or drug testing or other medical testing where such monitoring is required on a regular basis.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.

§62-11A-1a. Other sentencing alternatives.

1 (a) Any person who has been convicted in a circuit court or
2 in a magistrate court under any criminal provision of this code
3 of a misdemeanor or felony, which is punishable by imposition
4 of a fine or confinement in the county or regional jail or a state
5 correctional facility, or both fine and confinement, may, in the
6 discretion of the sentencing judge or magistrate, as an alterna-
7 tive to the sentence imposed by statute for the crime, be
8 sentenced under one of the following programs:

9 (1) The weekend jail program under which persons would
10 be required to spend weekends or other days normally off from
11 work in jail;

12 (2) The work program under which sentenced persons
13 would be required to spend the first two or more days of their
14 sentence in jail and then, in the discretion of the court, would be
15 assigned to a county agency to perform labor within the jail, or
16 in and upon the buildings, grounds, institutions, bridges, roads,
17 including orphaned roads used by the general public and public
18 works within the county. Eight hours of labor shall be credited
19 as one day of the sentence imposed. Persons sentenced under

20 this program may be required to provide their own transporta-
21 tion to and from the work site, lunch and work clothes;

22 (3) The community service program under which persons
23 sentenced would spend no time in jail but would be sentenced
24 to a number of hours or days of community service work with
25 government entities or charitable or nonprofit entities approved
26 by the circuit court. Regarding any portion of the sentence
27 designated as confinement, eight hours of community service
28 work shall be credited as one day of the sentence imposed.
29 Regarding any portion of the sentence designated as a fine, the
30 fine shall be credited at an hourly rate equal to the prevailing
31 federal minimum wage at the time the sentence was imposed.
32 In the discretion of the court, the sentence credits may run
33 concurrently or consecutively. Persons sentenced under this
34 program may be required to provide their own transportation to
35 and from the work site, lunch and work clothes; or

36 (4) A day-reporting center program if the program has been
37 implemented in the sentencing court's jurisdiction or in the area
38 where the offender resides. For purposes of this subdivision
39 "day-reporting center" means a court-operated or court-ap-
40 proved facility where persons ordered to serve a sentence in
41 such a facility are required to report under the terms and
42 conditions set by the court for purposes which include, but are
43 not limited to, counseling, employment training, alcohol or drug
44 testing or other medical testing.

45 (b) In no event may the duration of the alternate sentence
46 exceed the maximum period of incarceration otherwise allowed.

47 (c) In imposing a sentence under the provisions of this
48 section, the court shall first make the following findings of fact
49 and incorporate them into the court's sentencing order:

50 (1) The person sentenced was not convicted of an offense
51 for which a mandatory period of confinement is imposed by
52 statute;

53 (2) In circuit court cases, that the person sentenced is not a
54 habitual criminal within the meaning of sections eighteen and
55 nineteen, article eleven, chapter sixty-one of this code;

56 (3) In circuit court cases, that the offense underlying the
57 sentence is not a felony offense for which violence or the threat
58 of violence to the person is an element of the offense;

59 (4) In circuit court cases, that adequate facilities for the
60 administration and supervision of alternative sentencing
61 programs are available through the court's probation officers or
62 the county sheriff or, in magistrate court cases, that adequate
63 facilities for the administration and supervision of alternative
64 sentencing programs are available through the county sheriff;
65 and

66 (5) That an alternative sentence under provisions of this
67 article will best serve the interests of justice.

68 (d) Persons sentenced by the circuit court under the
69 provisions of this article shall remain under the administrative
70 custody and supervision of the court's probation officers or the
71 county sheriff. Persons sentenced by a magistrate shall remain
72 under the administrative custody and supervision of the county
73 sheriff.

74 (e) Persons sentenced under the provisions of this section
75 may be required to pay the costs of their incarceration, includ-
76 ing meal costs, at the discretion of the court.

77 (f) Persons sentenced under the provisions of this section
78 remain under the jurisdiction of the court. The court may
79 withdraw any alternative sentence at any time by order entered
80 with or without notice and require that the remainder of the
81 sentence be served in the county jail, regional jail or a state
82 correctional facility: *Provided*, That no alternative sentence
83 directed by the sentencing judge or magistrate or administered
84 under the supervision of the sheriff, his or her deputies, a jailer

85 or a guard, shall require the convicted person to perform duties
86 which would be considered detrimental to the convicted
87 person's health as attested by a physician.

CHAPTER 91

(S. B. 657 — Originating in the Committee on Finance)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section ten, article twenty-two-a of said chapter, all relating to the grants for competitive arts program fund; establishing the cultural facilities and capital resources grant matching program; and dedicating moneys from the state lottery to the fund.

Be it enacted by the Legislature of West Virginia:

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

Article

1. **Division of Culture and History.**
- 22A. **Racetrack Video Lottery.**

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-3. Commission on the arts.

- 1 (a) The commission on the arts is continued and shall be
- 2 composed of fifteen appointed members.

3 (b)(1) The governor shall appoint, by and with the advice
4 and consent of the Senate, the members of the commission for
5 staggered terms of three years. A person appointed to fill a
6 vacancy shall be appointed only for the remainder of that term.

7 (2) No more than eight members may be of the same
8 political party. Members of the commission shall be appointed
9 so as to fairly represent both sexes, the ethnic and cultural
10 diversity of the state and the geographic regions of the state.

11 (3) The commission shall elect one of its members as chair.
12 It shall meet at the times specified by the chair. Notice of each
13 meeting shall be given to each member by the chair in compli-
14 ance with the open meetings laws of the state. A majority of the
15 members constitute a quorum for the transaction of business.
16 The director of the arts section shall be an ex officio nonvoting
17 member of the commission and shall serve as secretary. The
18 director or a majority of the members may also call a meeting
19 upon notice as provided in this section.

20 (4) Each member or ex officio member of the commission
21 shall serve without compensation, but shall be reimbursed for
22 all reasonable and necessary expenses actually incurred in the
23 performance of the duties of the office; except that in the event
24 the expenses are paid, or are to be paid, by a third party, the
25 member or ex officio member, as the case may be, shall not be
26 reimbursed by the state.

27 (5) Upon recommendation of the commissioner, the
28 governor may also appoint those officers of the state that are
29 appropriate to serve on the commission as ex officio nonvoting
30 members.

31 (c) The commission has the following powers:

32 (1) To advise the commissioner and the director of the arts
33 section concerning the accomplishment of the purposes of that
34 section and to establish a state plan with respect to the arts
35 section;

36 (2) To approve and distribute grants-in-aid and awards from
37 federal and state funds relating to the purposes of the arts
38 section;

39 (3) To request, accept or expend federal funds to accom-
40 plish the purposes of the arts section when federal law or
41 regulations would prohibit the same by the commissioner or
42 section director, but would permit the same to be done by the
43 commission on the arts;

44 (4) To otherwise encourage and promote the purposes of
45 the arts section;

46 (5) To approve rules concerning the professional policies
47 and functions of the section as promulgated by the director of
48 the arts section; and

49 (6) To advise and consent to the appointment of the director
50 by the commissioner.

51 (d) There is created in the state treasury a special revenue
52 account created by the amendment to this section in one
53 thousand nine hundred ninety-nine and hereby continued and
54 redesignated as the “cultural facilities and capital resources
55 matching grant program fund”. The fund shall consist of
56 moneys received under section ten, article twenty-two-a of this
57 chapter and funds from any other source. Moneys in the fund
58 shall be expended for capital improvements: *Provided*, That the
59 commission shall make a women’s veterans memorial statue a
60 priority when expending the funds: *Provided, however*, That the
61 commission shall submit the plans for the statue to the secretary
62 of administration for his or her approval. The commission on
63 the arts shall propose rules for legislative approval in accor-
64 dance with the provisions of article three, chapter twenty-nine-a
65 of this code, to create a matching grant program for cultural
66 facilities and capital resources.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

***§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.**

1 (a) The commission shall provide to manufacturers, or
2 applicants applying for a manufacturer's permit, the protocol
3 documentation data necessary to enable the respective manufac-
4 turer's video lottery terminals to communicate with the
5 commission's central computer for transmitting auditing
6 program information and for activation and disabling of video
7 lottery terminals.

8 (b) The gross terminal income of a licensed racetrack shall
9 be remitted to the commission through the electronic transfer of
10 funds. Licensed racetracks shall furnish to the commission all
11 information and bank authorizations required to facilitate the
12 timely transfer of moneys to the commission. Licensed race-
13 tracks must provide the commission thirty days' advance notice
14 of any proposed account changes in order to assure the uninter-
15 rupted electronic transfer of funds. From the gross terminal
16 income remitted by the licensee to the commission, the com-
17 mission shall deduct an amount sufficient to reimburse the
18 commission for its actual costs and expenses incurred in
19 administering racetrack video lottery at the licensed racetrack
20 and the resulting amount after such deduction shall be the net
21 terminal income. The amount deducted for administrative costs
22 and expenses of the commission may not exceed four percent
23 of gross terminal income.

24 (c) Net terminal income shall be divided as set out in this
25 subsection. The licensed racetrack's share shall be in lieu of all
26 lottery agent commissions and is considered to cover all costs

***Clerk's Note:** This section was also amended by H. B. 4689 (Chapter 137), which passed subsequent to this act.

27 and expenses required to be expended by the licensed racetrack
28 in connection with video lottery operations. The division shall
29 be made as follows:

30 (1) The commission shall receive thirty percent of net
31 terminal income, which shall be paid into the general revenue
32 fund of the state to be appropriated by the Legislature;

33 (2) Fourteen percent of net terminal income at a licensed
34 racetrack shall be deposited in the special fund established by
35 the licensee, and used for payment of regular purses in addition
36 to other amounts provided for in article twenty-three, chapter
37 nineteen of this code;

38 (3) The county where the video lottery terminals are located
39 shall receive two percent of the net terminal income: *Provided,*
40 That:

41 (A) Beginning the first day of July, one thousand nine
42 hundred ninety-nine, and thereafter, any amount in excess of
43 the two percent received during fiscal year one thousand nine
44 hundred ninety-nine by a county in which a racetrack is located
45 that has participated in the West Virginia thoroughbred devel-
46 opment fund since on or before the first day of January, one
47 thousand nine hundred ninety-nine, shall be divided as follows:

48 (i) The county shall receive fifty percent of the excess
49 amount; and

50 (ii) The municipalities of the county shall receive fifty
51 percent of the excess amount, said fifty percent to be divided
52 among the municipalities on a per capita basis as determined by
53 the most recent decennial United States census of population;
54 and

55 (B) Beginning the first day of July, one thousand nine
56 hundred ninety-nine, and thereafter, any amount in excess of
57 the two percent received during fiscal year one thousand nine
58 hundred ninety-nine by a county in which a racetrack other than
59 a racetrack described in paragraph (A) of this proviso is located

60 and where the racetrack has been located in a municipality
61 within the county since on or before the first day of January,
62 one thousand nine hundred ninety-nine, shall be divided, if
63 applicable, as follows:

64 (i) The county shall receive fifty percent of the excess
65 amount; and

66 (ii) The municipality shall receive fifty percent of the
67 excess amount; and

68 (C) This proviso shall not affect the amount to be received
69 under this subdivision by any county other than a county
70 described in paragraph (A) or (B) of this proviso;

71 (4) One half of one percent of net terminal income shall be
72 paid for and on behalf of all employees of the licensed racing
73 association by making a deposit into a special fund to be
74 established by the racing commission to be used for payment
75 into the pension plan for all employees of the licensed racing
76 association;

77 (5) The West Virginia thoroughbred development fund
78 created under section thirteen-b, article twenty-three, chapter
79 nineteen of this code and the West Virginia greyhound breeding
80 development fund created under section ten, article twenty-
81 three, chapter nineteen of this code shall receive an equal share
82 of a total of not less than one and one-half percent of the net
83 terminal income: *Provided*, That for any racetrack which does
84 not have a breeder's program supported by the thoroughbred
85 development fund or the greyhound breeding development
86 fund, the one and one-half percent provided for in this subdivi-
87 sion shall be deposited in the special fund established by the
88 licensee and used for payment of regular purses, in addition to
89 other amounts provided for in subdivision (2) of this subsection
90 and article twenty-three, chapter nineteen of this code;

91 (6) The West Virginia thoroughbred breeders classic shall
92 receive one percent of the net terminal income which shall be
93 used for purses. The moneys shall be deposited in the separate

94 account established for the classic under section thirteen, article
95 twenty-three, chapter nineteen of this code;

96 (7) A licensee shall receive forty-seven percent of net
97 terminal income;

98 (8) The tourism promotion fund established in section
99 twelve, article two, chapter five-b of this code shall receive
100 three percent of the net terminal income; and

101 (9) The veterans memorial program shall receive one
102 percent of the net terminal income until sufficient moneys have
103 been received to complete the veterans memorial on the
104 grounds of the state capitol complex in Charleston, West
105 Virginia. The moneys shall be deposited in the state treasury in
106 the division of culture and history special fund created under
107 section three, article one-i of this chapter: *Provided*, That only
108 after sufficient moneys have been deposited in the fund to
109 complete the veterans memorial and to pay in full the annual
110 bonded indebtedness on the veterans memorial, not more than
111 twenty thousand dollars of the one percent of net terminal
112 income provided for in this subdivision shall be deposited into
113 a special revenue fund in the state treasury, to be known as the
114 "John F. 'Jack' Bennett fund". The moneys in this fund shall be
115 expended by the division of veterans affairs to provide for the
116 placement of markers for the graves of veterans in perpetual
117 cemeteries in this state. The division of veterans affairs shall
118 promulgate legislative rules pursuant to the provisions of article
119 three, chapter twenty-nine-a of this code specifying the manner
120 in which the funds are spent, determine the ability of the
121 surviving spouse to pay for the placement of the marker and
122 setting forth the standards to be used to determine the priority
123 in which the veterans grave markers will be placed in the event
124 that there are not sufficient funds to complete the placement of
125 veterans grave markers in any one year, or at all. Upon payment
126 in full of the bonded indebtedness on the veterans memorial,
127 one hundred thousand dollars of the one percent of net terminal
128 income provided for in this subdivision shall be deposited in the

129 special fund in the division of culture and history created under
130 section three, article one-i of this chapter and be expended by
131 the division of culture and history to establish a West Virginia
132 veterans memorial archives within the cultural center to serve
133 as a repository for the documents and records pertaining to the
134 veterans memorial, to restore and maintain the monuments and
135 memorial on the capitol grounds, and not more than twenty
136 thousand dollars be deposited in the "John F. 'Jack' Bennett
137 fund": *Provided, however*, That five hundred thousand dollars
138 of the one percent of net terminal income shall be deposited in
139 the state treasury in a special fund of the department of admin-
140 istration, created under section five, article four, chapter five-a
141 of this code to be used for construction and maintenance of a
142 parking garage on the state capitol complex: *Provided further*,
143 That the remainder of the one percent of net terminal income
144 shall be deposited in equal amounts in the capitol dome and
145 improvements fund created under section two, article four,
146 chapter five-a of this code and the cultural facilities and capitol
147 resources matching grant program fund created under section
148 three, article one of this chapter.

149 (d) Each licensed racetrack shall maintain in its account an
150 amount equal to or greater than the gross terminal income from
151 its operation of video lottery machines, to be electronically
152 transferred by the commission on dates established by the
153 commission. Upon a licensed racetrack's failure to maintain
154 this balance, the commission may disable all of a licensed
155 racetrack's video lottery terminals until full payment of all
156 amounts due is made. Interest shall accrue on any unpaid
157 balance at a rate consistent with the amount charged for state
158 income tax delinquency under chapter eleven of this code,
159 which interest shall begin to accrue on the date payment is due
160 to the commission.

161 (e) The commission's central control computer shall keep
162 accurate records of all income generated by each video lottery
163 terminal. The commission shall prepare and mail to the licensed
164 racetrack a statement reflecting the gross terminal income

165 generated by the licensee's video lottery terminals. Each
166 licensed racetrack must report to the commission any discrep-
167 ancies between the commission's statement and each terminal's
168 mechanical and electronic meter readings. The licensed
169 racetrack is solely responsible for resolving income discrepan-
170 cies between actual money collected and the amount shown on
171 the accounting meters or on the commission's billing statement.

172 (f) Until an accounting discrepancy is resolved in favor of
173 the licensed racetrack, the commission may make no credit
174 adjustments. For any video lottery terminal reflecting a discrep-
175 ancy, the licensed racetrack shall submit to the commission the
176 maintenance log which includes current mechanical meter
177 readings and the audit ticket which contains electronic meter
178 readings generated by the terminal's software. If the meter
179 readings and the commission's records cannot be reconciled,
180 final disposition of the matter shall be determined by the
181 commission. Any accounting discrepancies which cannot be
182 otherwise resolved shall be resolved in favor of the commis-
183 sion.

184 (g) Licensed racetracks shall remit payment by mail if the
185 electronic transfer of funds is not operational or the commission
186 notifies licensed racetracks that remittance by this method is
187 required. The licensed racetracks shall report an amount equal
188 to the total amount of cash inserted into each video lottery
189 terminal operated by a licensee, minus the total value of game
190 credits which are cleared from the video lottery terminal in
191 exchange for winning redemption tickets, and remit such
192 amount as generated from its terminals during the reporting
193 period. The remittance shall be sealed in a properly addressed
194 and stamped envelope and deposited in the United States mail
195 no later than noon on the day when the payment would other-
196 wise be completed through electronic funds transfer.

197 (h) Licensed racetracks may, upon request, receive addi-
198 tional reports of play transactions for their respective video
199 lottery terminals and other marketing information not consid-
200 ered confidential by the commission. The commission may

201 charge a reasonable fee for the cost of producing and mailing
202 any report other than the billing statements.

203 (i) The commission has the right to examine all accounts,
204 bank accounts, financial statements and records in a licensed
205 racetrack's possession, under its control or in which it has an
206 interest and the licensed racetrack must authorize all third
207 parties in possession or in control of the accounts or records to
208 allow examination of any of those accounts or records by the
209 commission.

CHAPTER 92

(Com. Sub. for S. B. 460 — By Senators Craigo, Bowman, Plymale,
Walker, McCabe, Dittmar, Sharpe, Ross, Ball, Dawson, Hunter,
Oliverio, Love, Unger, Minear, Snyder and Prezioso)

[Passed March 11, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend and reenact section six, article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the archives and history section of the division of culture and history to provide matching grants to political subdivisions for document preservation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-6. Archives and history section; director.

1 (a) The purposes and duties of the archives and history
2 section are to locate, survey, investigate, register, identify,
3 preserve, protect, restore and recommend to the commissioner
4 for acquisition documents and records having historical,
5 evidential, administrative and/or legal value relating to the state
6 of West Virginia and the territory included in the state from the
7 earliest times to the present, upon its own initiative or in
8 cooperation with any private or public society, organization or
9 agency; to conduct a continuing survey and study throughout
10 the state to develop a state plan to determine the needs and
11 priorities for the preservation of the documents and records; to
12 direct, protect, preserve, study and disseminate information on
13 the documents and records; to provide matching grants to
14 political subdivisions of this state to protect and preserve the
15 documents and records; to operate and maintain a state library
16 for the preservation of all public records, state papers, docu-
17 ments and reports of all three branches of state government
18 including all boards, commissions, departments and agencies as
19 well as any other private or public papers, books or documents
20 of peculiar or historic interest or significance; to designate
21 appropriate monuments, tablets or markers for historic, archi-
22 tectural and scenic sites within the state and to arrange for the
23 purchase, replacement, care of and maintenance of the monu-
24 ments, tablets and markers and to formulate and prepare
25 suitable copy for them; to edit and publish a historical journal
26 devoted to the history, biography, bibliography and genealogy
27 of West Virginia; and to perform any other duties assigned to
28 the section by the commissioner.

29 (b) With the advice and consent of the archives and history
30 commission, the commissioner shall appoint a director of the
31 archives and history section, who shall have: (1) A graduate
32 degree in one of the social sciences, or equivalent training and
33 experience in the field of West Virginia history, history, or in
34 records, library or archives management; and (2) three years'
35 experience in administration in the field of West Virginia
36 history, history, or in records, library or archives management.
37 Notwithstanding these qualifications, the person serving as the
38 state historian and archivist on the date of enactment of this

39 article is eligible for appointment as the director of the archives
40 and history section. The director of the archives and history
41 section shall serve as the state historian and archivist.

42 (c) With the approval of the commissioner, the director
43 shall establish professional positions within the section and
44 develop appropriate organizational structures to carry out the
45 duties of the section. The director shall employ the personnel
46 with applicable professional qualifications to fill positions
47 within the organizational structure with the minimum profes-
48 sional qualifications. At the minimum, the following profes-
49 sions shall be represented within the section staff: Historian,
50 archivist, librarian and technical and clerical positions as are
51 required.

52 (d) The director shall promulgate rules with the approval of
53 the archives and history commission and in accordance with
54 chapter twenty-nine-a of this code concerning: (1) The profes-
55 sional policies and functions of the archives and history section;
56 and (2) any other rules determined necessary to effectuate the
57 purposes of this article.

CHAPTER 93

(S. B. 480 — By Senators Bowman and Bailey)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and five, article fourteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the commission for the deaf and hard-of-hearing; increasing the membership of the committee to seventeen; altering the membership to place the deaf and hard-of-hearing in the majority; and granting the secretary rule-making capability and the commissioner the

authority to test interpreters for certification and to collect and expend funds for that purpose.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. WEST VIRGINIA COMMISSION FOR THE DEAF AND HARD-OF-HEARING.

§5-14-3. Continuation of commission; membership.

§5-14-5. Powers and duties of the commission; register of hearing-impaired; duty to report to the commission; census; information clearinghouse; coordination of interpreters; outreach programs; seminars and training sessions.

§5-14-3. Continuation of commission; membership.

1 The West Virginia commission for the deaf and
2 hard-of-hearing is hereby continued within the department of
3 health and human resources consisting of seventeen persons,
4 eight of whom shall serve ex officio. The remaining members
5 are appointed by the governor by and with the advice and
6 consent of the Senate. The commission shall meet no less than
7 four times annually. All meetings and activities held by the
8 commission shall be attended by at least two qualified interpret-
9 ers who shall be hired at the commission's expense or provided
10 free of charge by agencies, organizations or individuals willing
11 to volunteer qualified interpreters. The members are:

12 (1) The secretary, or his or her designee, of the department
13 of health and human resources; the commissioner, or his or her
14 designee, of the division of labor; the director, or his or her
15 designee, of the division of health; the state superintendent of
16 schools, or his or her designee, of the state board of education;
17 the director, or his or her designee, of the division of rehabilita-
18 tion; the director, or his or her designee, of the division of
19 handicapped children's services in the division of human
20 services; the chairman, or his or her designee, of the advisory

21 council for the education of exceptional children; and the
22 superintendent, or his or her designee, of the West Virginia
23 school for the deaf and blind, all of whom serve ex officio; and

24 (2) Nine persons appointed by the governor, at least five of
25 whom are deaf or hard-of-hearing, one of whom is the parent of
26 a deaf child, one of whom is a certified teacher of the hearing-
27 impaired, one audiologist and one otolaryngologist. Of the five
28 deaf people, at least three shall be selected from a list of five
29 people recommended by the board of the West Virginia
30 association of the deaf.

§5-14-5. Powers and duties of the commission; register of hearing-impaired; duty to report to the commission; census; information clearinghouse; coordination of interpreters; outreach programs; seminars and training sessions.

1 The commission shall maintain a complete register of
2 persons who are deaf or hard-of-hearing in the state. For each
3 hearing-impaired person, the register shall describe the condi-
4 tion and cause of the hearing problem, the person's capacity for
5 education and industrial training and any other facts the
6 commission considers valuable. Identifying information
7 contained in the register is confidential: *Provided*, That
8 information collected and maintained in the register will be
9 available upon request to other government agencies in order to
10 facilitate services to their hearing-impaired clients. Every
11 health, educational and social agency and physician or other
12 medical professional serving hearing-impaired individuals shall
13 report to the commission, in writing, the name, age and
14 residence of persons who are deaf or hard-of-hearing.

15 In addition to the register, the commission is responsible for
16 conducting and maintaining a census of both the deaf and
17 hard-of-hearing populations in West Virginia. Such census shall
18 contain state, county and city figures.

19 The commission shall maintain a clearinghouse of informa-
20 tion, the purpose of which is to aid hearing-impaired persons
21 and others in obtaining appropriate services or information
22 about such services, including, but not limited to, education,
23 communication (including interpreters), group home facilities,
24 independent living skills, recreational facilities, employment,
25 vocational training, health and mental health services, substance
26 abuse and other services necessary to assure their ability to
27 function in society. The commission shall consult existing
28 public and private agencies and organizations in compiling and
29 maintaining the clearinghouse.

30 The commission shall establish, maintain and coordinate a
31 statewide service to provide courts, state and local legislative
32 bodies and others with a list of qualified and certified interpret-
33 ers for the deaf and a list of qualified and certified teachers of
34 American sign language.

35 The secretary of the department of health and human
36 resources shall promulgate rules pursuant to article three,
37 chapter twenty-nine-a of this code for the state quality assur-
38 ance evaluation, including the establishment of required
39 qualifications and ethical standards for interpreters, the ap-
40 proval of interpreters, the monitoring and investigation of
41 interpreters and the suspension and revocation of approvals.
42 The commission may conduct national association of the deaf
43 interpreter evaluations and collect and expend funds with regard
44 thereto.

45 The commission shall develop an outreach program to
46 familiarize the public with the rights and needs of hear-
47 ing-impaired people and of available services.

48 The commission shall investigate the condition of the
49 hearing-impaired in this state with particular attention to those
50 who are aged, homeless, needy, victims of rubella and victims
51 of abuse or neglect. It shall determine the means the state
52 possesses for establishing group homes for its hearing-impaired
53 citizens and the need for additional facilities. The commission
54 shall also determine the advisability and necessity of providing
55 services to the multihandicapped hearing-impaired.

CHAPTER 94

(H. B. 4066 — By Delegate Warner)

[Passed March 10, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article one-a, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the itemization of the proposed appropriations for the division of highways.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. ITEMIZATION OF PROPOSED APPROPRIATIONS IN BUDGET BILL SUBMITTED BY GOVERNOR TO LEGISLATURE.

§5-1A-5. Itemization of appropriations for state division of highways; state aid to schools.

- 1 (a) Proposed appropriations for the state division of
2 highways shall be itemized separately for:
 - 3 (1) “Debt service” which means the payment of principal
4 and interest due on all state bonds issued for the benefit of the
5 state road fund;
 - 6 (2) “General operations” which includes all expenses of
7 administration of the division of highways;
 - 8 (3) “Federal Aid Construction — Interstate Program”;
 - 9 (4) “Nonfederal Aid Construction”;

10 (5) "Appalachian Program";

11 (6) "Other Federal Aid Programs";

12 (7) "Inventory Purchases";

13 (8) "Maintenance";

14 (9) "Claims."

15 Any specific purposes which do not fall within the items in
16 the subsection may be itemized and designated separately by
17 the governor.

18 (b) Proposed appropriations for "State Aid to Schools" shall
19 be itemized separately for each allowance set forth in section
20 three, article nine-a, chapter eighteen of this code, for each
21 allowance mentioned elsewhere in said article and chapter, and
22 for any other purpose mentioned in said article and chapter for
23 which an appropriation must be made from the general revenue
24 fund.

CHAPTER 95

(S. B. 146 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eighteen-a, relating to marriages; requiring an application for a marriage license state that marriage is designed for a woman and a man;

and providing that certain acts, records and proceedings are not to be given effect in this state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. MARRIAGE.

§48-1-7. Contents of application for marriage license; execution of application; recordation of application.

§48-1-18a. Certain acts, records and proceedings not to be given effect in this state.

§48-1-7. Contents of application for marriage license; execution of application; recordation of application.

1 (a) The application for a marriage license must contain a
2 statement of the full names of both female and male parties,
3 their social security account numbers, dates of birth, places of
4 birth and residence addresses. If either of the parties is a legal
5 alien in the United States of America and has no social security
6 account number, the tourist or visitor visa number or number
7 equivalent to a United States social security account number
8 must be provided.

9 (b) Every application for a marriage license must contain
10 the following statement: "Marriage is designed to be a loving
11 and lifelong union between a woman and a man. The laws of
12 this state affirm your right to enter into this marriage and to live
13 within the marriage free from violence and abuse. Neither of
14 you is the property of the other. Physical abuse, sexual abuse,
15 battery and assault of a spouse or other family member, and
16 other provisions of the criminal laws of this state are applicable
17 to spouses and other family members and these violations are
18 punishable by law."

19 (c) Both female and male parties to a contemplated mar-
20 riage are required to sign the application for a marriage license,
21 under oath, before the clerk of the county commission or
22 another person authorized to administer oaths under the laws of
23 this state.

24 (d) The clerk shall record the application for a marriage
25 license in the register of marriages provided for in section
26 eleven of this article. The clerk shall note the date of the filing
27 of the application in the register. The notation, or a certified
28 copy thereof, is legal evidence of the facts contained in the
29 license.

§48-1-18a. Certain acts, records and proceedings not to be given effect in this state.

1 A public act, record or judicial proceeding of any other
2 state, territory, possession or tribe respecting a relationship
3 between persons of the same sex that is treated as a marriage
4 under the laws of any other state, territory, possession or tribe
5 or a right or claim arising from the relationship shall not be
6 given effect by this state.

CHAPTER 96

(H. B. 4780 — By Delegates Hines, Mahan, Wills,
Webb, Spencer, Faircloth and Capito)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-seven, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the confidentiality of domestic relations court files; and requiring the

clerk of the circuit court to maintain a log of all persons who examine or copy confidential documents.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-27. Confidentiality of domestic relations court files.

1 All orders in domestic relations cases entered in the civil
2 order books by circuit clerks are public records. For purposes
3 of this section, domestic relations cases shall include actions for
4 divorce, annulment, separate maintenance, paternity, child
5 support, custody, visitation, actions brought under the provi-
6 sions of the uniform interstate family support act and petitions
7 for writs of habeas corpus wherein the issue is child custody.

8 Upon the filing of a domestic relations case, all pleadings,
9 exhibits or other documents contained in the court file are
10 confidential and not open for public inspection either during the
11 pendency of the case or after the case is closed.

12 When sensitive information has been disclosed during a
13 hearing or in pleadings, evidence, or documents filed in the
14 record, a circuit judge or family law master may, sua sponte or
15 upon motion of a party, order such information sealed in the
16 court file. Sealed documents or court files shall only be opened
17 by order of a circuit judge or family law master: *Provided,*
18 That, in any case pending before a family law master, the
19 master may open and inspect the entire contents of the court
20 file.

21 The parties, their designees, their attorneys, a duly ap-
22 pointed guardian ad litem or any person who has standing to
23 modify or enforce a support order, shall have the right to
24 examine and copy any document in a confidential court file

25 which has not been sealed by order of a circuit judge or family
26 law master. Upon motion and for good cause shown, the circuit
27 court or family law master may permit a person not a party to
28 the action the right to examine and copy such documents as are
29 necessary to further the interests of justice.

30 The clerk of the circuit court shall keep a written log of all
31 persons who examine confidential documents as provided for
32 in this section. Every person who examines confidential
33 documents must sign the log, other than a circuit judge or
34 family law master before whom the case is pending, or court
35 personnel acting within the scope of their duties. The clerk shall
36 record the time and date of examination. The log shall be
37 retained by the clerk and shall be available upon request for
38 inspection by the court.



CHAPTER 97

(Com. Sub. for S. B. 128 — By Senators Kessler, Dawson, Minard,
Oliverio, Redd, Ross, Snyder, Deem, Bowman, McKenzie, Edgell,
Hunter, Mitchell, Fanning and Helmick)



[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]



AN ACT to amend and reenact section two, article two-a, chapter
forty-eight of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to redefining certain
terms for purposes of domestic or family violence proceedings.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 2A. PREVENTION AND TREATMENT OF DOMESTIC AND
FAMILY VIOLENCE.**

§48-2A-2. Definitions.

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

3 (a) “Family violence”, “domestic violence”, “domestic or
4 family violence” or “abuse” means the occurrence of one or
5 more of the following acts between family or household
6 members, as that term is defined in subsection (b) of this
7 section:

8 (1) Attempting to cause or intentionally, knowingly or
9 recklessly causing physical harm to another with or without
10 dangerous or deadly weapons;

11 (2) Placing another in reasonable apprehension of physical
12 harm;

13 (3) Creating fear of physical harm by harassment, psycho-
14 logical abuse or threatening acts;

15 (4) Committing either sexual assault or sexual abuse as
16 those terms are defined in articles eight-b and eight-d, chapter
17 sixty-one of this code; and

18 (5) Holding, confining, detaining or abducting another
19 person against that person’s will.

20 (b) “Family or household members” means persons who:

21 (1) Are or were married to each other;

22 (2) Are or were living together as spouses;

23 (3) Are or were sexual or intimate partners;

24 (4) Are or were dating: *Provided:* That a casual acquaint-
25 tance or ordinary fraternization between persons in a business
26 or social context does not establish a dating relationship;

27 (5) Are or were residing together in the same household;

28 (6) Are or were related by marriage or related by consan-
29 guinity within the second degree;

30 (7) Have a child in common, regardless of whether they
31 have ever married or lived together; or

32 (8) Are the father, stepfather, mother, stepmother, brother
33 or sister of a family or household member described in subdivi-
34 sions (1) through (7) of this subsection.

35 (c) “Program for victims of domestic or family violence”
36 means a licensed program for victims of domestic or family
37 violence and their children, which program provides advocacy,
38 shelter, crisis intervention, social services, treatment, counsel-
39 ing, education or training.

40 (d) “Program of intervention for perpetrators” means a
41 licensed program, where available, or if no licensed program is
42 available, a program that:

43 (1) Accepts perpetrators of domestic or family violence into
44 educational intervention groups or counseling pursuant to a
45 court order; or

46 (2) Offers educational intervention groups to perpetrators
47 of domestic or family violence.

CHAPTER 98

(Com. Sub. for S. B. 372 — By Senators Mitchell and Hunter)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article five-a of said chapter, all relating generally to the

offense of driving under the influence of alcohol, controlled substances or drugs; procedures for conducting a secondary test; administrative sanctions for driving under the influence; and amending the hearing procedure for revocation of license.

Be it enacted by the Legislature of West Virginia:

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

Article

5. Serious Traffic Offenses.

5A. Administrative Procedures for Suspension and Revocation of Licenses for Driving under the Influence of Alcohol, Controlled Substances or Drugs.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-4. Implied consent to test; administration at direction of law-enforcement officer; designation of type of test; definition of law-enforcement officer.

1 Any person who drives a motor vehicle in this state shall be
2 deemed to have given his consent by the operation thereof,
3 subject to the provisions of this article, to a preliminary breath
4 analysis and a secondary chemical test of either his blood,
5 breath or urine for the purposes of determining the alcoholic
6 content of his blood. A preliminary breath analysis may be
7 administered in accordance with the provisions of section five
8 of this article whenever a law-enforcement officer has reason-
9 able cause to believe a person to have committed an offense
10 prohibited by section two of this article or by an ordinance of
11 a municipality of this state which has the same elements as an
12 offense described in said section two of this article. A second-
13 ary test of blood, breath or urine shall be incidental to a lawful
14 arrest and shall be administered at the direction of the arresting
15 law-enforcement officer having reasonable grounds to believe

16 the person to have committed an offense prohibited by section
17 two of this article or by an ordinance of a municipality of this
18 state which has the same elements as an offense described in
19 said section two of this article. The law-enforcement agency by
20 which such law-enforcement officer is employed shall design-
21 nate which one of the aforesaid secondary tests shall be
22 administered: *Provided*, That if the test so designated is a blood
23 test and the person so arrested refuses to submit to such blood
24 test, then the law-enforcement officer making such arrest shall
25 designate in lieu thereof, either a breath or urine test to be
26 administered, and notwithstanding the provisions of section
27 seven of this article, such refusal to submit to a blood test only
28 shall not result in the revocation of the arrested person's license
29 to operate a motor vehicle in this state. Any person to whom a
30 preliminary breath test is administered who is then arrested
31 shall be given a written statement advising him that his refusal
32 to submit to the secondary chemical test finally designated as
33 provided in this section, will result in the revocation of his
34 license to operate a motor vehicle in this state for a period of at
35 least one year and up to life.

36 For the purpose of this article, the term "law-enforcement
37 officer" or "police officer" shall mean and be limited to: (1)
38 Any member of the department of public safety of this state; (2)
39 any sheriff and any deputy sheriff of any county; (3) any
40 member of a police department in any municipality as defined
41 in section two, article one, chapter eight of this code; (4) any
42 conservation officer of the division of natural resources; and (5)
43 any special police officer appointed by the governor pursuant
44 to the provisions of section forty-one, article three, chapter
45 sixty-one of this code who has completed the course of instruc-
46 tion at a law-enforcement training academy as provided for
47 under the provisions of section nine, article twenty-nine,
48 chapter thirty of this code. Any law-enforcement officer who
49 has been properly trained in the administration of any second-
50 ary chemical test which a law-enforcement officer may conduct

51 under this article, including, but not limited to, certification by
52 the division of health in the operation of any equipment
53 required for the collection and analysis of a breath sample, may
54 conduct such test at any location in the county wherein the
55 arrest is made that the equipment and the facilities may be
56 found. However, when the arresting officer lacks such training,
57 then any other law-enforcement officer who has received
58 training in the administration of the secondary chemical test to
59 be administered may, upon the request of such arresting
60 law-enforcement officer and in his presence, conduct such
61 secondary test and the results of such test may be used in
62 evidence to the same extent and in the same manner as if such
63 test had been conducted by such arresting law-enforcement
64 officer. Only the person actually administering or conducting
65 such test shall be competent to testify as to the results and the
66 veracity of such test.

**ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND
REVOCATION OF LICENSES FOR DRIVING UNDER
THE INFLUENCE OF ALCOHOL, CONTROLLED
SUBSTANCES OR DRUGS.**

§17C-5A-2. Hearing; revocation; review.

1 (a) Upon the written request of a person whose license to
2 operate a motor vehicle in this state has been revoked or
3 suspended under the provisions of section one of this article or
4 section seven, article five of this chapter, the commissioner of
5 motor vehicles shall stay the imposition of the period of
6 revocation or suspension and afford the person an opportunity
7 to be heard. The written request must be filed with the commis-
8 sioner in person or by registered or certified mail, return receipt
9 requested, within thirty calendar days after receipt of a copy of
10 the order of revocation or suspension or no hearing will be
11 granted. The hearing shall be before the commissioner or a
12 hearing examiner retained by the commissioner who shall rule
13 on evidentiary issues and submit proposed findings of fact and
14 conclusions of law for the consideration of the commissioner

15 and all of the pertinent provisions of article five, chapter
16 twenty-nine-a of this code shall apply. The hearing shall be held
17 at an office of the division located in or near the county wherein
18 the arrest was made in this state or at some other suitable place
19 in the county wherein the arrest was made if an office of the
20 division is not available.

21 (b) Any such hearing shall be held within one hundred
22 eighty days after the date upon which the commissioner
23 received the timely written request therefor, unless there is a
24 postponement or continuance. The commissioner may postpone
25 or continue any hearing on the commissioner's own motion, or
26 upon application for each person for good cause shown. The
27 commissioner shall adopt and implement by a procedural rule
28 written policies governing the postponement or continuance of
29 any such hearing on the commissioner's own motion or for the
30 benefit of any law-enforcement officer or any person requesting
31 the hearing, and such policies shall be enforced and applied to
32 all parties equally. For the purpose of conducting the hearing,
33 the commissioner shall have the power and authority to issue
34 subpoenas and subpoenas duces tecum in accordance with the
35 provisions of section one, article five, chapter twenty-nine-a of
36 this code: *Provided*, That the notice of hearing to the appropri-
37 ate law-enforcement officers by registered or certified mail,
38 return receipt requested, shall constitute a subpoena to appear
39 at the hearing without the necessity of payment of fees by the
40 division of motor vehicles.

41 (c) Law-enforcement officers shall be compensated for the
42 time expended in their travel and appearance before the
43 commissioner by the law-enforcement agency by whom they
44 are employed at their regular rate if they are scheduled to be on
45 duty during said time or at their regular overtime rate if they are
46 scheduled to be off duty during said time.

47 (d) The principal question at the hearing shall be whether
48 the person did drive a motor vehicle while under the influence

49 of alcohol, controlled substances or drugs, or did drive a motor
50 vehicle while having an alcohol concentration in the person's
51 blood of ten hundredths of one percent or more, by weight, or
52 did refuse to submit to the designated secondary chemical test,
53 or did drive a motor vehicle while under the age of twenty-one
54 years with an alcohol concentration in his or her blood of two
55 hundredths of one percent or more, by weight, but less than ten
56 hundredths of one percent, by weight.

57 The commissioner may propose a legislative rule in
58 compliance with the provisions of article three, chapter twenty-
59 nine-a of this code, which rule may provide that if a person
60 accused of driving a motor vehicle while under the influence of
61 alcohol, controlled substances or drugs, or accused of driving
62 a motor vehicle while having an alcohol concentration in the
63 person's blood of ten hundredths of one percent or more, by
64 weight, or accused of driving a motor vehicle while under the
65 age of twenty-one years with an alcohol concentration in his or
66 her blood of two hundredths of one percent or more, by weight,
67 but less than ten hundredths of one percent, by weight, intends
68 to challenge the results of any secondary chemical test of blood,
69 breath or urine, or intends to cross-examine the individual or
70 individuals who administered the test or performed the chemi-
71 cal analysis, the person shall, within an appropriate period of
72 time prior to the hearing, notify the commissioner in writing of
73 such intention. The rule may provide that when there is a failure
74 to comply with the notice requirement, the results of the
75 secondary test, if any, shall be admissible as though the person
76 and the commissioner had stipulated the admissibility of such
77 evidence. Any such rule shall provide that the rule shall not be
78 invoked in the case of a person who is not represented by
79 counsel unless the communication from the commissioner to
80 the person establishing a time and place for the hearing also
81 informed the person of the consequences of the person's failure
82 to timely notify the commissioner of the person's intention to
83 challenge the results of the secondary chemical test or cross-

84 examine the individual or individuals who administered the test
85 or performed the chemical analysis.

86 (e) In the case of a hearing wherein a person is accused of
87 driving a motor vehicle while under the influence of alcohol,
88 controlled substances or drugs, or accused of driving a motor
89 vehicle while having an alcohol concentration in the person's
90 blood of ten hundredths of one percent or more, by weight, or
91 accused of driving a motor vehicle while under the age of
92 twenty-one years with an alcohol concentration in his or her
93 blood of two hundredths of one percent or more, by weight, but
94 less than ten hundredths of one percent, by weight, the commis-
95 sioner shall make specific findings as to: (1) Whether the
96 arresting law-enforcement officer had reasonable grounds to
97 believe the person to have been driving while under the
98 influence of alcohol, controlled substances or drugs, or while
99 having an alcohol concentration in the person's blood of ten
100 hundredths of one percent or more, by weight, or to have been
101 driving a motor vehicle while under the age of twenty-one years
102 with an alcohol concentration in his or her blood of two
103 hundredths of one percent or more, by weight, but less than ten
104 hundredths of one percent, by weight; (2) whether the person
105 was lawfully placed under arrest for an offense involving
106 driving under the influence of alcohol, controlled substances or
107 drugs, or was lawfully taken into custody for the purpose of
108 administering a secondary test; and (3) whether the tests, if any,
109 were administered in accordance with the provisions of this
110 article and article five of this chapter.

111 (f) If, in addition to a finding that the person did drive a
112 motor vehicle while under the influence of alcohol, controlled
113 substances or drugs, or did drive a motor vehicle while having
114 an alcohol concentration in the person's blood of ten hun-
115 dredths of one percent or more, by weight, or did drive a motor
116 vehicle while under the age of twenty-one years with an alcohol
117 concentration in his or her blood of two hundredths of one

118 percent or more, by weight, but less than ten hundredths of one
119 percent, by weight, the commissioner also finds by a preponder-
120 ance of the evidence that the person when so driving did an act
121 forbidden by law or failed to perform a duty imposed by law,
122 which act or failure proximately caused the death of a person
123 and was committed in reckless disregard of the safety of others,
124 and if the commissioner further finds that the influence of
125 alcohol, controlled substances or drugs or the alcohol concen-
126 tration in the blood was a contributing cause to the death, the
127 commissioner shall revoke the person's license for a period of
128 ten years: *Provided*, That if the commissioner has previously
129 suspended or revoked the person's license under the provisions
130 of this section or section one of this article within the ten years
131 immediately preceding the date of arrest, the period of revoca-
132 tion shall be for the life of the person.

133 (g) If, in addition to a finding that the person did drive a
134 motor vehicle while under the influence of alcohol, controlled
135 substances or drugs, or did drive a motor vehicle while having
136 an alcohol concentration in the person's blood of ten hun-
137 dredths of one percent or more, by weight, the commissioner
138 also finds by a preponderance of the evidence that the person
139 when so driving did an act forbidden by law or failed to
140 perform a duty imposed by law, which act or failure proxi-
141 mately caused the death of a person, the commissioner shall
142 revoke the person's license for a period of five years: *Provided*,
143 That if the commissioner has previously suspended or revoked
144 the person's license under the provisions of this section or
145 section one of this article within the ten years immediately
146 preceding the date of arrest, the period of revocation shall be for
147 the life of the person.

148 (h) If, in addition to a finding that the person did drive a
149 motor vehicle while under the influence of alcohol, controlled
150 substances or drugs, or did drive a motor vehicle while having
151 an alcohol concentration in the person's blood of ten hun-

152 dredths of one percent or more, by weight, the commissioner
153 also finds by a preponderance of the evidence that the person
154 when so driving did an act forbidden by law or failed to
155 perform a duty imposed by law, which act or failure proxi-
156 mately caused bodily injury to a person other than himself or
157 herself, the commissioner shall revoke the person's license for
158 a period of two years: *Provided*, That if the commissioner has
159 previously suspended or revoked the person's license under the
160 provisions of this section or section one of this article within the
161 ten years immediately preceding the date of arrest, the period of
162 revocation shall be ten years: *Provided, however*, That if the
163 commissioner has previously suspended or revoked the per-
164 son's license more than once under the provisions of this
165 section or section one of this article within the ten years
166 immediately preceding the date of arrest, the period of revoca-
167 tion shall be for the life of the person.

168 (i) If the commissioner finds by a preponderance of the
169 evidence that the person did drive a motor vehicle while under
170 the influence of alcohol, controlled substances or drugs, or did
171 drive a motor vehicle while having an alcohol concentration in
172 the person's blood of ten hundredths of one percent or more, by
173 weight, or finds that the person, being an habitual user of
174 narcotic drugs or amphetamine or any derivative thereof, did
175 drive a motor vehicle, or finds that the person knowingly
176 permitted the person's vehicle to be driven by another person
177 who was under the influence of alcohol, controlled substances
178 or drugs, or knowingly permitted the person's vehicle to be
179 driven by another person who had an alcohol concentration in
180 his or her blood of ten hundredths of one percent or more, by
181 weight, the commissioner shall revoke the person's license for
182 a period of six months: *Provided*, That if the commissioner has
183 previously suspended or revoked the person's license under the
184 provisions of this section or section one of this article within the
185 ten years immediately preceding the date of arrest, the period of
186 revocation shall be ten years: *Provided, however*, That if the
187 commissioner has previously suspended or revoked the per-

188 son's license more than once under the provisions of this
189 section or section one of this article within the ten years
190 immediately preceding the date of arrest, the period of revoca-
191 tion shall be for the life of the person.

192 (j) If, in addition to a finding that the person did drive a
193 motor vehicle while under the age of twenty-one years with an
194 alcohol concentration in his or her blood of two hundredths of
195 one percent or more, by weight, but less than ten hundredths of
196 one percent, by weight, the commissioner also finds by a
197 preponderance of the evidence that the person when so driving
198 did an act forbidden by law or failed to perform a duty imposed
199 by law, which act or failure proximately caused the death of a
200 person, and if the commissioner further finds that the alcohol
201 concentration in the blood was a contributing cause to the
202 death, the commissioner shall revoke the person's license for a
203 period of five years: *Provided*, That if the commissioner has
204 previously suspended or revoked the person's license under the
205 provisions of this section or section one of this article within the
206 ten years immediately preceding the date of arrest, the period of
207 revocation shall be for the life of the person.

208 (k) If, in addition to a finding that the person did drive a
209 motor vehicle while under the age of twenty-one years with an
210 alcohol concentration in his blood of two hundredths of one
211 percent or more, by weight, but less than ten hundredths of one
212 percent, by weight, the commissioner also finds by a preponder-
213 ance of the evidence that the person when so driving did an act
214 forbidden by law or failed to perform a duty imposed by law,
215 which act or failure proximately caused bodily injury to a
216 person other than himself or herself, and if the commissioner
217 further finds that the alcohol concentration in the blood was a
218 contributing cause to the bodily injury, the commissioner shall
219 revoke the person's license for a period of two years: *Provided*,
220 That if the commissioner has previously suspended or revoked
221 the person's license under the provisions of this section or
222 section one of this article within the ten years immediately
223 preceding the date of arrest, the period of revocation shall be
224 ten years: *Provided, however*, That if the commissioner has

225 previously suspended or revoked the person's license more than
226 once under the provisions of this section or section one of this
227 article within the ten years immediately preceding the date of
228 arrest, the period of revocation shall be for the life of the
229 person.

230 (l) If the commissioner finds by a preponderance of the
231 evidence that the person did drive a motor vehicle while under
232 the age of twenty-one years with an alcohol concentration in his
233 or her blood of two hundredths of one percent or more, by
234 weight, but less than ten hundredths of one percent, by weight,
235 the commissioner shall suspend the person's license for a
236 period of sixty days: *Provided*, That if the commissioner has
237 previously suspended or revoked the person's license under the
238 provisions of this section or section one of this article, the
239 period of revocation shall be for one year, or until the person's
240 twenty-first birthday, whichever period is longer.

241 (m) If, in addition to a finding that the person did drive a
242 motor vehicle while under the influence of alcohol, controlled
243 substances or drugs, or did drive a motor vehicle while having
244 an alcohol concentration in the person's blood of ten hun-
245 dredths of one percent or more, by weight, the commissioner
246 also finds by a preponderance of the evidence that the person
247 when so driving did have on or within the motor vehicle another
248 person who has not reached his or her sixteenth birthday, the
249 commissioner shall revoke the person's license for a period of
250 one year: *Provided*, That if the commissioner has previously
251 suspended or revoked the person's license under the provisions
252 of this section or section one of this article within the ten years
253 immediately preceding the date of arrest, the period of revoca-
254 tion shall be ten years: *Provided, however*, That if the commis-
255 sioner has previously suspended or revoked the person's license
256 more than once under the provisions of this section or section
257 one of this article within the ten years immediately preceding
258 the date of arrest, the period of revocation shall be for the life
259 of the person.

260 (n) For purposes of this section, where reference is made to
261 previous suspensions or revocations under this section, the
262 following types of criminal convictions or administrative
263 suspensions or revocations shall also be regarded as suspen-
264 sions or revocations under this section or section one of this
265 article:

266 (1) Any administrative revocation under the provisions of
267 the prior enactment of this section for conduct which occurred
268 within the ten years immediately preceding the date of arrest.

269 (2) Any suspension or revocation on the basis of a convic-
270 tion under a municipal ordinance of another state or a statute of
271 the United States or of any other state of an offense which has
272 the same elements as an offense described in section two,
273 article five of this chapter, for conduct which occurred within
274 the ten years immediately preceding the date of arrest.

275 (3) Any revocation under the provisions of section seven,
276 article five of this chapter, for conduct which occurred within
277 the ten years immediately preceding the date of arrest.

278 (o) In the case of a hearing wherein a person is accused of
279 refusing to submit to a designated secondary test, the commis-
280 sioner shall make specific findings as to: (1) Whether the
281 arresting law-enforcement officer had reasonable grounds to
282 believe the person had been driving a motor vehicle in this state
283 while under the influence of alcohol, controlled substances or
284 drugs; (2) whether the person was lawfully placed under arrest
285 for an offense relating to driving a motor vehicle in this state
286 while under the influence of alcohol, controlled substances or
287 drugs; (3) whether the person refused to submit to the second-
288 ary test finally designated in the manner provided in section
289 four, article five of this chapter; and (4) whether the person had
290 been given a written statement advising the person that the
291 person's license to operate a motor vehicle in this state would
292 be revoked for at least one year and up to life if the person
293 refused to submit to the test finally designated in the manner
294 provided in section four, article five of this chapter.

295 (p) If the commissioner finds by a preponderance of the
296 evidence that: (1) The arresting law-enforcement officer had
297 reasonable grounds to believe the person had been driving a
298 motor vehicle in this state while under the influence of alcohol,
299 controlled substances or drugs; (2) the person was lawfully
300 placed under arrest for an offense relating to driving a motor
301 vehicle in this state while under the influence of alcohol,
302 controlled substances or drugs; (3) the person refused to submit
303 to the secondary chemical test finally designated; and (4) the
304 person had been given a written statement advising the person
305 that the person's license to operate a motor vehicle in this state
306 would be revoked for a period of at least one year and up to life
307 if the person refused to submit to the test finally designated, the
308 commissioner shall revoke the person's license to operate a
309 motor vehicle in this state for the periods specified in section
310 seven, article five of this chapter. The revocation period
311 prescribed in this subsection shall run concurrently with any
312 other revocation period ordered under this section or section
313 one of this article arising out of the same occurrence.

314 (q) If the commissioner finds to the contrary with respect to
315 the above issues, the commissioner shall rescind his or her
316 earlier order of revocation or shall reduce the order of revoca-
317 tion to the appropriate period of revocation under this section,
318 or section seven, article five of this chapter.

319 A copy of the commissioner's order made and entered
320 following the hearing shall be served upon the person by
321 registered or certified mail, return receipt requested. During the
322 pendency of any such hearing, the revocation of the person's
323 license to operate a motor vehicle in this state shall be stayed.

324 If the commissioner shall after hearing make and enter an
325 order affirming the commissioner's earlier order of revocation,
326 the person shall be entitled to judicial review as set forth in
327 chapter twenty-nine-a of this code. The commissioner may not
328 stay enforcement of the order. The court may grant a stay or
329 supersedeas of the order only upon motion and hearing, and a
330 finding by the court upon the evidence presented, that there is

331 a substantial probability that the appellant shall prevail upon the
332 merits, and the appellant will suffer irreparable harm if the
333 order is not stayed: *Provided*, That in no event shall the stay or
334 supersedeas of the order exceed one hundred fifty days.
335 Notwithstanding the provisions of section four, article five,
336 chapter twenty-nine-a of this code, the commissioner may not
337 be compelled to transmit a certified copy of the transcript of the
338 hearing to the circuit court in less than sixty days.

339 (r) In any revocation or suspension pursuant to this section,
340 if the driver whose license is revoked or suspended had not
341 reached the driver's eighteenth birthday at the time of the
342 conduct for which the license is revoked or suspended, the
343 driver's license shall be revoked or suspended until the driver's
344 eighteenth birthday, or the applicable statutory period of
345 revocation or suspension prescribed by this section, whichever
346 is longer.

347 (s) Funds for this section's hearing and appeal process may
348 be provided from the drunk driving prevention fund, as created
349 by section forty-one, article two, chapter fifteen of this code,
350 upon application for such funds to the commission on drunk
351 driving prevention.

CHAPTER 99

(Com. Sub. for H. B. 4426 — By Delegates Modesitt, L. Smith,
Stemple, Willison, Angotti, Manchin and Ashley)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article nineteen, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the sale of drug paraphernalia; and prohibiting the sale of drug paraphernalia outdoors.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 19. DRUG PARAPHERNALIA.

§47-19-8. Sale of drug paraphernalia at certain events or outdoors prohibited.

1 (a) Any person who attempts to sell or offer for sale drug
2 paraphernalia as such is defined in section three of this article
3 at any fair, festival, musical or theatrical production or at any
4 event performed or conducted outdoors is guilty of a misde-
5 meanor and, upon conviction, shall be fined not less than ten
6 dollars nor more than five hundred dollars.

7 (b) Any person who attempts to sell or offer for sale items
8 as described in section three of this article at any temporary
9 roadside booth or table along any municipal street or highway
10 is guilty of a misdemeanor and, upon conviction, shall be fined
11 not less than ten dollars nor more than five hundred dollars.

CHAPTER 100

(S. B. 653 — Originating in the Committee on Education)

[Passed March 19, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-eight, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section eleven, article three, chapter twelve of said code; to amend and

reenact sections one-a, one-d, two, three and six, article one, chapter eighteen-b of said code; to amend said chapter by adding thereto five new articles, designated articles one-a, one-b, one-c, two-a, and three-f; to amend and reenact section one, article two of said chapter; to amend and reenact section one, article three of said chapter; to amend and reenact articles three-a and three-c of said chapter; to amend and reenact section two, article four of said chapter; to amend said article by adding thereto a new section, designated section eight; to amend and reenact sections three and four, article five of said chapter; to amend and reenact section one, article six of said chapter; to amend said article by adding thereto four new sections, designated sections one-a, two-a, three-a and four-a; to amend and reenact section one, article seven of said chapter; to amend and reenact section two, article nine of said chapter; to amend and reenact sections one, two and eight, article ten of said chapter; and to amend article fourteen of said chapter by adding thereto two new sections, designated sections eight and nine, all relating to education; public education; post-secondary education; colleges, universities and community and technical colleges; rules; motor vehicle and travel rules; governance; administration; goals for post-secondary education; purposes; intents; findings; retirement and separation incentives; transfers; eliminating the pilot flexibility initiative; defined terms; compact with higher education; institutional compacts; peer institutions; legislative financing goals; financing; allocations, appropriations and expenditures; institutional operating budget; graduate education; contrary provisions; repealing inconsistent and obsolete sections; higher education policy commission; public policy agenda; appointments; composition of commission and boards; terms and qualifications of commission and board members; vacancies; eligibility for reappointment; oath of office; removal from office; meetings, expenses and compensation; powers and duties; chancellor for higher education; vice chancellors; institutional presidents and provosts; compensation; evaluation; transition year; accountability; report cards; statewide master plan; transition oversight and implementation; legislative

oversight commission on education accountability; higher education interim governing board; board of trustees; board of directors; institutional boards of governors; supervision; capital investments and projects; joint commission for vocational-technical-occupational education; duties and responsibilities of the joint commission; essential conditions for community and technical colleges; responsibility districts and areas; programs; district consortia committees; process for achieving independently accredited community and technical colleges; increasing flexibility for community and technical colleges; shared facilities and resources; relationship between administratively linked community and technical colleges and sponsoring institutions; community and technical college services in the responsibility areas of Marshall university, West Virginia state college and West Virginia university institute of technology; implementation board; continuing services; West Virginia anatomical board; purchase and acquisition; institutional boards of advisors; state advisory council of faculty; state advisory council of students; state advisory council of classified employees; personnel and faculty; classified and nonclassified employees; seniority; classified employee salary schedule and classification systems; maximum percentage of nonclassified employees; enrollment; tuition and fees; higher education resource fee; revenue bonds; statewide task force on teacher quality; and statewide task force on student financial aid.

Be it enacted by the Legislature of West Virginia:

That section forty-eight, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section eleven, article three, chapter twelve of said code be amended and reenacted; that sections one-a, one-d, two, three and six, article one, chapter eighteen-b of said code be amended and reenacted; that said chapter be further amended by adding thereto five new articles, designated articles one-a, one-b, one-c, two-a, and three-f; that section one, article two of said chapter be

amended and reenacted; that section one, article three of said chapter be amended and reenacted; that articles three-a and three-c of said chapter be amended and reenacted; that section two, article four of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section eight; that sections three and four, article five of said chapter be amended and reenacted; that section one, article six of said chapter be amended and reenacted; that said article be further amended by adding thereto four new sections, designated sections one-a, two-a, three-a and four-a; that section one, article seven of said chapter be amended and reenacted; that section two, article nine of said chapter be amended and reenacted; that sections one, two and eight, article ten of said chapter be amended and reenacted; and that article fourteen of said chapter be amended by adding thereto two new sections, designated sections eight and nine, all to read as follows:

Chapter

5A. Department of Administration.

12. Public Moneys and Securities.

18B. Higher Education.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

***§5A-3-48. Travel rules; exceptions.**

1 (a) The secretary of administration shall promulgate rules
2 relating to the ownership, purchase, use, storage, maintenance
3 and repair of all motor vehicles and aircraft owned by the state
4 of West Virginia and in the possession of any department,
5 institution or agency thereof: *Provided*, That the provisions of
6 sections forty-eight through fifty-three, inclusive, of this article
7 do not apply to the division of highways of the department of
8 transportation, the West Virginia state police of the department
9 of military affairs and public safety, the division of natural
10 resources, the division of forestry, the department of agricul-
11 ture, the higher education policy commission and the higher

***Clerk's Note:** This section was also amended by H. B. 4568 (Chapter 123), which passed prior to this act.

12 education governing boards and their institutions: *Provided,*
13 *however,* That the higher education governing boards and their
14 institutions shall report annually to the chancellor for higher
15 education and the legislative oversight commission on educa-
16 tion accountability in a form and manner as required by the
17 chancellor for higher education. Such report shall include at
18 least the following: The number of vehicles purchased and the
19 purchase price, the number of donated vehicles and the cost of
20 lease agreements on leased vehicles.

21 (b) If, in the judgment of the secretary of administration,
22 economy or convenience indicate the expediency thereof, the
23 secretary may require all vehicles and the aircraft subject to
24 regulation by this article, or those he or she may designate, to
25 be kept in garages and other places of storage and to be made
26 available in a manner and under the terms necessary for the
27 official use of any departments, institutions, agencies, officers,
28 agents and employees of the state as designated by the secretary
29 in rules promulgated pursuant to this section. The secretary may
30 administer the travel regulations promulgated by the governor
31 in accordance with section eleven, article three, chapter twelve
32 of this code, unless otherwise determined by the governor.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-11. Travel expenses; rules to be promulgated concerning same; dues to voluntary organizations; recruitment expenses for higher education policy commission and West Virginia higher education governing boards; moving expenses of employees of higher education policy commission and West Virginia higher education governing boards.

1 The governor shall promulgate rules concerning out-of-
2 state travel by state officials and employees, except those in the
3 legislative and judicial branches of the state government and

4 except for the attorney general, auditor, secretary of state,
5 treasurer, board of investments, commissioner of agriculture
6 and their employees, the higher education policy commission
7 and the higher education governing boards and institutions
8 under their jurisdiction. The Legislature, the supreme court of
9 appeals and the attorney general, auditor, secretary of state,
10 treasurer, board of investments, commissioner of agriculture,
11 the higher education policy commission and the higher educa-
12 tion governing boards shall promulgate rules concerning out-of-
13 state travel for their respective branches and departments of
14 state government. Copies of such rules shall be filed with the
15 auditor and the secretary of state. It shall be unlawful for the
16 auditor to issue a warrant in payment of any claim for out-of-
17 state travel expenses incurred by a state officer or employee
18 unless such claim meets all the requirements of the rules so
19 filed.

20 Payment for dues or membership in annual or other
21 voluntary organizations shall be made from the proper item or
22 appropriation after an itemized schedule of such organizations,
23 together with the amount of such dues or membership, has been
24 submitted to the budget director and approved by the governor.

25 It shall be lawful for the higher education policy commis-
26 sion or a higher education governing board to authorize the
27 payment of traveling expenses incurred by any person invited
28 to visit the campus of any state institution of higher education
29 or any other facility under control of the board to be inter-
30 viewed concerning his or her possible employment by the board
31 or agent thereof.

32 It shall be lawful for the higher education policy commis-
33 sion or a higher education governing board to authorize
34 payment of: (1) All or part of the reasonable expense incurred
35 by a person newly employed by the board in moving his or her
36 household furniture, effects and immediate family to his or her
37 place of employment; and (2) all or part of the reasonable

38 expense incurred by an employee of the board in moving his or
 39 her household furniture, effects and immediate family as a
 40 result of a reassignment of the employee which is considered
 41 desirable, advantageous to and in the best interest of the state:
 42 *Provided*, That no part of the moving expenses of any one such
 43 employee shall be paid more frequently than once in twelve
 44 months.

CHAPTER 18B. HIGHER EDUCATION.

Article

1. Governance.

1A. Compact with Higher Education for the Future of West Virginia.

1B. Higher Education Policy Commission.

1C. Transition Implementation.

2. University of West Virginia Board of Trustees.

2A. Institutional Boards of Governors.

3. Board of Directors of the State College System.

3A. West Virginia Joint Commission for Vocational Technical- Occupational Education.

3C. Community and Technical College System.

3F. Community and Technical College Services in the Responsibility Areas of Marshall University, West Virginia State College and West Virginia University Institute of Technology.

4. General Administration.

5. Higher Education Budgets and Expenditures.

6. Advisory Boards.

7. Personnel Generally.

9. Classified Employee Salary Schedule and Classification System.

10. Fees and Other Money Collected at State Institutions of Higher Education.

14. Miscellaneous.

ARTICLE 1. GOVERNANCE.

§18B-1-1a. Goals for post-secondary education.

§18B-1-1d. Retirement and separation incentives.

§18B-1-2. Definitions.

§18B-1-3. Transfer of powers, duties, property, obligations, etc., of prior governing boards to the higher education interim governing board.

§18B-1-6. Rulemaking.

§18B-1-1a. Goals for post-secondary education.

1 (a) *Findings.* — The Legislature finds that post-secondary
2 education is vital to the future of West Virginia. For the state to
3 realize its considerable potential in the twenty-first century, it
4 must have a system for the delivery of post-secondary educa-
5 tion which is competitive in the changing national and global
6 environment, is affordable within the fiscal constraints of the
7 state and for the state's residents to participate and has the
8 capacity to deliver the programs and services necessary to meet
9 regional and statewide needs.

10 (1) West Virginia leads a national trend toward an aging
11 population wherein a declining percentage of working-age
12 adults will be expected to support a growing percentage of
13 retirees. Public school enrollments statewide have declined and
14 will continue to do so for the foreseeable future with a few
15 notable exceptions in growing areas of the state. As the state
16 works to expand and diversify its economy, it is vitally impor-
17 tant that young people entering the workforce from our educa-
18 tion systems have the knowledge and skills to succeed in the
19 economy of the twenty-first century. It is equally important,
20 however, that working-age adults who are the large majority of
21 the current and potential workforce also possess the requisite
22 knowledge and skills and the ability to continue learning
23 throughout their lifetimes. The reality for West Virginia is that
24 its future rests not only on how well its youth are educated, but
25 also on how well it educates its entire population of any age.

26 (2) Post-secondary education is changing throughout the
27 nation. Place-bound adults, employers and communities are
28 demanding education and student services that are accessible at
29 any time, at any place and at any pace. Institutions are seizing
30 the opportunity to provide academic content and support
31 services on a global scale by designing new courseware,
32 increasing information technology-based delivery, increasing
33 access to library and other information resources and develop-

34 ing new methods to assess student competency rather than “seat
35 time” as the basis for recognizing learning, allocating resources
36 and ensuring accountability. In this changing environment, the
37 state must take into account the continuing decline in the public
38 school-age population, the limits of its fiscal resources and the
39 imperative need to serve the educational needs of working-age
40 adults. West Virginia cannot afford to finance quality higher
41 education systems that aspire to offer a full array of programs
42 while competing among themselves for a dwindling pool of
43 traditional applicants. The competitive position of the state and
44 its institutions will depend fundamentally on its capacity to
45 reinforce the quality and differentiation of its institutions
46 through policies that encourage focus and collaboration.

47 (3) The current accountability system is exceptionally
48 complicated and largely defines accountability in terms of
49 institutional procedures. It also is not well equipped to address
50 cross-cutting issues such as regional economic and workforce
51 development, community and technical college services,
52 collaboration with the public schools to improve quality and
53 student participation rates, access to graduate education and
54 other broad issues of state interest. Severe fiscal constraints
55 require West Virginia to make maximum use of existing assets
56 to meet new demands. New investments must be targeted to
57 those initiatives designed to enhance and reorient existing
58 capacity, provide incentives for collaboration and focus on the
59 new demands. It must have a single accountability point for
60 developing, building consensus around and sustaining attention
61 to the public policy agenda and for allocating resources
62 consistent with this policy agenda.

63 (4) The state should make the best use of the expertise that
64 private institutions of higher education can offer and recognize
65 the importance of their contributions to the economic, social
66 and cultural well-being of their communities.

67 (5) The system of public higher education should be open
68 and accessible to all persons, including persons with disabilities
69 and other persons with special needs.

70 (b) *Compact with higher education.* — In pursuance of
71 these findings, it is the intent of the Legislature to engage
72 higher education in a statewide compact for the future of West
73 Virginia, as provided in article one-a of this chapter, that
74 focuses on a public policy agenda that includes, but is not
75 limited to, the following:

76 (1) Diversifying and expanding the economy of the state;

77 (2) Increasing the competitiveness of the state's workforce
78 and the availability of professional expertise by increasing the
79 number of college degrees produced to the level of the national
80 average and significantly improving the level of adult func-
81 tional literacy; and

82 (3) Creating a system of higher education that is equipped
83 to succeed at producing these results.

84 (c) *Elements of the compact with higher education.* — It is
85 the intent of the Legislature that the compact with higher
86 education include the following elements:

87 (1) A step-by-step process, as provided in articles one-b and
88 three-c of this chapter, which will enable the state to achieve its
89 public policy agenda through a system of higher education
90 equipped to assist in producing the needed results. This process
91 includes, but is not limited to, separate institutional compacts
92 , with state institutions of higher education that describe changes
93 in institutional missions in the areas of research, graduate
94 education, admission standards, community and technical
95 college education and geographical areas of responsibility to
96 accomplish the following:

97 (A) A capacity within higher education to conduct research
98 to enhance West Virginia in the eyes of the larger economic and
99 educational community and to provide a basis for West
100 Virginia's improved capacity to compete in the new economy
101 through research oriented to state needs;

102 (B) Access to stable and continuing graduate level pro-
103 grams in every region of the state, particularly in teacher
104 education related to teaching within a subject area to improve
105 teacher quality;

106 (C) Universities and colleges that have focused missions,
107 their own points of distinction and quality and strong links with
108 the educational, economic and social revitalization of their
109 regions and the state of West Virginia;

110 (D) Greater access and capacity to deliver technical
111 education, workforce development and other higher education
112 services to place-bound adults thus improving the general levels
113 of post-secondary educational attainment and literacy;

114 (E) Independently accredited community and technical
115 colleges in every region of the state, to the extent possible, that:
116 (i) Assess regional needs; (ii) ensure access to comprehensive
117 community and technical college and workforce development
118 services within each of their respective regions; (iii) convene
119 and act as a catalyst for local action in collaboration with
120 regional leaders, employers and other educational institutions;
121 (iv) provide and, as necessary, broker educational services; (v)
122 provide necessary student services; (vi) fulfill such other
123 aspects of the community and technical college mission and
124 general provisions for community and technical colleges as
125 provided for in article three-c of this chapter; and (vii) make
126 maximum use of existing infrastructure and resources within
127 their regions to increase access, including, but not limited to,
128 vocational technical centers, schools, libraries, industrial parks
129 and work sites.

130 (2) Providing additional resources, subject to availability
131 and appropriation by the Legislature, as provided in article one-
132 a of this chapter, to make the state institutions of higher
133 education more competitive with their peers, assist them in
134 accomplishing the elements of the public policy agenda and
135 ensure the continuity of academic programs and services to
136 students.

137 (3) Establishing a process for the allocation of additional
138 resources which focuses on achieving the elements of the public
139 policy agenda and streamlines accountability for the step-by-
140 step progress toward achieving these elements within a reason-
141 able time frame as provided in article one-a of this chapter.

142 (4) Providing additional flexibility to the state institutions
143 of higher education by making permanent the exceptions
144 granted to higher education relating to travel rules and vehicles
145 pursuant to sections forty-eight through fifty-three, inclusive,
146 article three, chapter five-a of this code and section eleven,
147 article three, chapter twelve of this code.

148 (5) Revising the higher education governance structure to
149 make it more responsive to state and regional needs.

150 (d) *General goals for post-secondary education.* — In
151 pursuance of the findings and the development of institutional
152 compacts with higher education for the future of West Virginia
153 pursuant to article one-a of this chapter, it is the intent of the
154 Legislature to establish general goals for post-secondary
155 education and to have the commission report the progress
156 toward achieving these goals in the higher education report card
157 required pursuant to section eight, article one-b of this chapter
158 and, where applicable, made a part of the institutional com-
159 pacts. The Legislature establishes the general goals as follows:

160 (1) The overall focus of education is on a lifelong process
161 which is to be as seamless as possible at all levels and is to

162 encourage citizens of all ages to increase their knowledge and
163 skills. Efforts in pursuit of this goal include, but are not limited
164 to, the following:

165 (A) Collaboration, coordination and interaction between
166 public and post-secondary education to: (i) Improve the quality
167 of public education, particularly with respect to ensuring that
168 the needs of public schools for teachers and administrators is
169 met; (ii) inform public school students, their parents and
170 teachers of the academic preparation that students need to be
171 prepared adequately to succeed in their selected fields of study
172 and career plans; and (iii) improve instructional programs in the
173 public schools so that the students enrolling in post-secondary
174 education are adequately prepared;

175 (B) Collaboration, coordination and interaction between
176 public and post-secondary education, the governor's council on
177 literacy and the governor's workforce investment office to
178 promote the effective and efficient utilization of workforce
179 investment and other funds to: (i) Provide greatly improved
180 access to information and services for individuals and employ-
181 ers on education and training programs, financial assistance,
182 labor markets and job placement; (ii) increase awareness among
183 the state's citizens of the opportunities available to them to
184 improve their basic literacy, workforce and post-secondary
185 skills and credentials; and (iii) help improve their motivation to
186 take advantage of available opportunities by making the system
187 more seamless and user friendly;

188 (C) Collaboration, coordination and interaction between
189 public and post-secondary education on the development of
190 seamless curriculum in technical preparation programs of study
191 between the secondary and post-secondary levels; and

192 (D) Opportunities for advanced high school students to
193 obtain college credit prior to high school graduation.

194 (2) The number of degrees produced per capita by West
195 Virginia institutions of higher education is at the national
196 average. Efforts in pursuit of this goal include, but are not
197 limited to, the following:

198 (A) Collaboration, coordination and interaction between
199 public and post-secondary education, the governor's council on
200 literacy and the governor's workforce investment office to
201 promote to individuals of all ages the benefits of increased post-
202 secondary educational attainment;

203 (B) Assistance in overcoming the financial barriers to post-
204 secondary education for both traditional and nontraditional
205 students;

206 (C) An environment within post-secondary education that
207 is student-friendly and that encourages and assists students in
208 the completion of degree requirements within a reasonable time
209 frame. The environment also should expand participation for
210 the increasingly diverse student population;

211 (D) A spirit of entrepreneurship and flexibility within post-
212 secondary education that is responsive to the needs of the
213 current workforce and other nontraditional students for upgrad-
214 ing and retraining college-level skills; and

215 (E) The expanded use of technology for instructional
216 delivery and distance learning.

217 (3) All West Virginians, whether traditional or nontradi-
218 tional students, displaced workers or those currently employed,
219 have access to post-secondary educational opportunities
220 through their community and technical colleges, colleges and
221 universities which: (i) Are relevant and affordable; (ii) allow
222 them to gain transferrable credits and associate or higher level
223 degrees; (iii) provide quality technical education and skill
224 training; and (iv) are responsive to business, industry, labor and
225 community needs.

226 (4) State institutions of higher education prepare students
227 to practice good citizenship and to compete in a global econ-
228 omy in which good jobs require an advanced level of education
229 and skills which far surpasses former requirements. Efforts in
230 pursuit of this goal include, but are not limited to, the follow-
231 ing:

232 (A) The development of entrepreneurial skills through
233 programs such as the rural entrepreneurship through action
234 learning (REAL) program which include practical experience
235 in market analysis, business plan development and operations;

236 (B) Elements of citizenship development are included
237 across the curriculum in core areas, including practical applica-
238 tions such as community service, civic involvement and
239 participation in charitable organizations and in the many
240 opportunities for the responsible exercise of citizenship that
241 higher education institutions provide;

242 (C) Students are provided opportunities for internships,
243 externships, work study and other methods to increase their
244 knowledge and skills through practical application in a work
245 environment;

246 (D) College graduates meet or exceed national and interna-
247 tional standards for skill levels in reading, oral and written
248 communications, mathematics, critical thinking, science and
249 technology, research and human relations;

250 (E) College graduates meet or exceed national and interna-
251 tional standards for performance in their fields through national
252 accreditation of programs and through outcomes assessment of
253 graduates; and

254 (F) Admission and exit standards for students, professional
255 staff development, program assessment and evaluation and
256 other incentives are used to improve teaching and learning.

257 (5) State institutions of higher education exceed peer
258 institutions in other states in measures of institutional produc-
259 tivity and administrative efficiency. Efforts in pursuit of this
260 goal include, but are not limited to:

261 (A) The establishment of systematic ongoing mechanisms
262 for each state institution of higher education to set goals, to
263 measure the extent to which those goals are met and to use the
264 results of quantitative evaluation processes to improve institu-
265 tional effectiveness;

266 (B) The combination and use of resources, technology and
267 faculty to their maximum potential in a way that makes West
268 Virginia higher education more productive than its peer
269 institutions in other states while maintaining educational
270 quality; and

271 (C) The use of systemic program review to determine how
272 much duplication is necessary to maintain geographic access
273 and to eliminate unnecessary duplication.

274 (6) Post-secondary education enhances state efforts to
275 diversify and expand the economy of the state. Efforts in
276 pursuit of this goal include, but are not limited to, the follow-
277 ing:

278 (A) The focus of resources on programs and courses which
279 offer the greatest opportunities for students and the greatest
280 opportunity for job creation and retention in the state;

281 (B) The focus of resources on programs supportive of West
282 Virginia employment opportunities and the emerging high-
283 technology industries;

284 (C) Closer linkages among higher education and business,
285 labor, government and community and economic development
286 organizations; and

287 (D) Clarification of institutional missions and shifting of
288 resources to programs which meet the current and future
289 workforce needs of the state.

290 (7) Faculty, staff and administrators are compensated on a
291 competitive level with peer institutions to attract and keep
292 quality personnel at state institutions of higher education.

293 (8) The tuition and fee levels for in-state students are
294 competitive with those of peer institutions and the tuition and
295 fee levels for out-of-state students are set at a level which at the
296 least covers the full cost of instruction.

§18B-1-1d. Retirement and separation incentives.

1 (a) Notwithstanding any other provisions of this code to the
2 contrary, each state institution of higher education may include
3 in its strategic plan, pursuant to section one-c of this article,
4 policies that offer various incentives for voluntary, early or
5 phased retirement of employees or voluntary separation from
6 employment when necessary to implement programmatic
7 changes effectively pursuant to the findings, directives, goals
8 and objectives of this article: *Provided*, That such incentives for
9 voluntary, early or phased retirement of employees or voluntary
10 separation from employment must be submitted by the govern-
11 ing board to the legislative joint committee on pensions and
12 retirement and approved before such policies are adopted as
13 part of the institution's strategic plan.

14 (b) Effective the first day of July, two thousand one, each
15 state institution of higher education may implement, under its
16 institutional compact, created pursuant to section two, article
17 one-a of this chapter, policies that offer various incentives for
18 voluntary, early or phased retirement of employees, or volun-
19 tary separation from employment, when necessary to implement
20 programmatic changes effectively: *Provided*, That the institu-

21 tion shall meet all the requirements, including the requirement
22 for obtaining legislative approval, set forth in this section.

23 (c) The policies may include the following provisions:

24 (1) Payment of a lump sum to an employee to resign or
25 retire;

26 (2) Continuation of full salary to an employee for a
27 predetermined period of time prior to the employee's resigna-
28 tion or retirement and a reduction in the employee's hours of
29 employment during the predetermined period of time;

30 (3) Continuation of insurance coverage pursuant to the
31 provisions of article sixteen, chapter five of this code for a
32 predetermined period;

33 (4) Continuation of full employer contributions to an
34 employee's retirement plan during a phased retirement period;
35 and

36 (5) That an employee retiring pursuant to an early or phased
37 retirement plan may begin collecting an annuity from the
38 employee's retirement plan prior to the statutorily designated
39 retirement date without terminating his or her service with the
40 institution.

41 (d) No incentive provided for in this section shall be
42 granted except in furtherance of programmatic changes
43 undertaken pursuant to the findings, directives, goals and
44 objectives set forth in this article.

45 (e) No incentive proposed by an institution pursuant to this
46 section shall become a part of the institution's approved
47 strategic plan or institutional compact or be implemented
48 without approval of the legislative joint committee on pensions
49 and retirement.

50 Any costs associated with any incentive adopted or imple-
51 mented in accordance with this section shall be borne entirely
52 by the institutions and no incentive shall be granted that
53 imposes costs on the retirement systems of the state or the
54 public employees insurance agency unless those costs are paid
55 entirely by the institutions.

56 (f) The Legislature further finds and declares that there is
57 a compelling state interest in restricting the availability and
58 application of these incentives to individual employees deter-
59 mined by the institutions to be in furtherance of the aims of this
60 section and nothing herein shall be interpreted as granting a
61 right or entitlement of any such incentive to any individual or
62 group of individuals. Any employee granted incentives shall be
63 ineligible for reemployment by the institutions during or after
64 the negotiated period of his or her incentive concludes, includ-
65 ing contract employment in excess of five thousand dollars per
66 fiscal year.

67 (g) The West Virginia network for educational
68 telecomputing may utilize the incentives contained in any
69 policy approved by the legislative joint committee on pensions
70 and retirement pursuant to this section.

§18B-1-2. Definitions.

1 The following words when used in this chapter and chapter
2 eighteen-c of this code have the meaning hereinafter ascribed
3 to them unless the context clearly indicates a different meaning:

4 (a) For the transition year beginning on the first day of July,
5 two thousand, and ending on the thirtieth day of June, two
6 thousand one, only, "governing board" or "board" means the
7 higher education interim governing board created pursuant to
8 article one-c of this chapter; and, beginning on the first day of
9 July, two thousand one, "governing board" or "board" means
10 the institutional board of governors of West Virginia university,

11 Marshall university, the West Virginia school of osteopathic
12 medicine, Bluefield state college, Concord college, eastern
13 West Virginia community and technical college, Fairmont state
14 college, Glenville state college, Shepherd college, southern
15 West Virginia community and technical college, West Liberty
16 state college, West Virginia northern community and technical
17 college and West Virginia state college, whichever is applicable
18 within the context of the institution or institutions referred to in
19 this chapter or in other provisions of law;

20 (b) Beginning on the first day of July, two thousand one,
21 "governing boards" or "boards" means the institutional boards
22 of governors created pursuant to subsection (b), section one,
23 article two-a of this chapter;

24 (c) "Freestanding community and technical colleges" means
25 southern West Virginia community and technical college, West
26 Virginia northern community and technical college and eastern
27 West Virginia community and technical college, which shall
28 not be operated as branches or off-campus locations of any
29 other state institution of higher education;

30 (d) "Community college" or "community colleges" means
31 community and technical college or colleges as those terms are
32 defined in this section;

33 (e) "Community and technical college", in the singular or
34 plural, means the freestanding community and technical
35 colleges and other state institutions of higher education which
36 have defined community and technical college responsibility
37 districts and programs in accordance with the provisions of
38 sections four and six, article three-c of this chapter;

39 (f) "Community and technical college education" means the
40 programs, faculty, administration and funding associated with
41 the mission of community and technical colleges as provided in
42 article three-c of this chapter.

43 (g) "Essential conditions" means those conditions which
44 shall be met by community and technical colleges as provided
45 in section three, article three-c of this chapter;

46 (h) "Higher education institution" means any institution as
47 defined by Sections 401(f), (g) and (h) of the federal Higher
48 Education Facilities Act of 1963, as amended;

49 (i) "Higher education policy commission" or "commission"
50 means the commission created pursuant to section one, article
51 one-b of this chapter;

52 (j) "chancellor" means the chief executive officer of the
53 higher education policy commission employed pursuant to
54 section five, article one-b of this chapter;

55 (k) "Institutional operating budget" or "operating budget"
56 for any fiscal year means an institution's total unrestricted
57 education and general funding from all sources in a prior fiscal
58 year, including, but not limited to, tuition and fees and legisla-
59 tive appropriation, and any adjustments to that funding as
60 approved by the commission based on comparisons with peer
61 institutions or to reflect consistent components of peer operat-
62 ing budgets;

63 (l) "Post-secondary vocational education programs" means
64 any college-level course or program beyond the high school
65 level provided through an institution of higher education under
66 the jurisdiction of a governing board which results in or may
67 result in the awarding of a two-year associate degree.

68 (m) "Rule" or "rules" means a regulation, standard, policy
69 or interpretation of general application and future effect;

70 (n) For the purposes of this chapter and chapter eighteen-c
71 of this code, "senior administrator" means the vice chancellor
72 for administration employed by the chancellor in accordance
73 with section two, article four of this chapter. The vice chancel-

74 lor for administration shall assume all the powers and duties
75 that are assigned by law to the senior administrator;

76 (o) "State college" means Bluefield state college, Concord
77 college, Fairmont state college, Glenville state college, Shep-
78 herd college, West Liberty state college or West Virginia state
79 college;

80 (p) "State institution of higher education" means any
81 university, college or community and technical college under
82 the direct or indirect jurisdiction of a governing board as that
83 term is defined in this section;

84 (q) "Regional campus" means West Virginia university at
85 Parkersburg, Potomac state college of West Virginia university,
86 and West Virginia university institute of technology. Each
87 regional campus shall adopt separate strategic plans required by
88 section one-c of this article;

89 (r) The advisory board previously appointed for the West
90 Virginia graduate college shall be known as the "board of
91 visitors" and shall provide guidance to the Marshall university
92 graduate college;

93 (s) "Institutional compact" means a compact between a
94 state institution of higher education and the commission, as
95 described in section two, article one-a of this chapter.

96 (t) "Peer institutions", "peer group" or "peers" means
97 public institutions of higher education used for comparison
98 purposes and selected by the commission pursuant to section
99 three, article one-a of this chapter;

100 (u) "Administratively linked community and technical
101 college" means a community and technical college created
102 pursuant to section eight, article three-c of this chapter;

103 (v) "Sponsoring institution" means the state institution of
104 higher education that maintains an administrative link to a
105 community and technical college pursuant to section eight,
106 article three-c of this chapter;

107 (w) "Collaboration" means entering into an agreement with
108 one or more providers of education services in order to enhance
109 the scope, quality, or efficiency of education services;

110 (x) "Broker" or the act of "brokering" means serving as an
111 agent on behalf of students, employers, communities or
112 responsibility areas to obtain education services not offered by
113 a sponsoring institution. These services include courses, degree
114 programs or other services contracted through an agreement
115 with a provider of education services either in-state or out-of-
116 state; and

117 (y) "Joint commission for vocational-technical-occupa-
118 tional education" or "joint commission" means the commission
119 established pursuant to article three-a of this chapter.

**§18B-1-3. Transfer of powers, duties, property, obligations, etc.,
of prior governing boards to the higher education
interim governing board.**

1 (a) All powers, duties and authorities transferred to the
2 board of regents pursuant to former provisions of chapter
3 eighteen of this code and transferred to the board of trustees and
4 board of directors which were created as the governing boards
5 pursuant to the former provisions of this chapter and all powers,
6 duties and authorities of the board of trustees and board of
7 directors, to the extent they are in effect on the effective date of
8 this section, are hereby transferred to the interim governing
9 board created in article one-c of this chapter and shall be
10 exercised and performed by the interim governing board as
11 such powers, duties and authorities may apply to the institutions
12 under its jurisdiction.

13 (b) Title to all property previously transferred to or vested
14 in the board of trustees and the board of directors and property
15 vested in either of the boards separately, formerly existing
16 under the provisions of chapter eighteen-b of this code, are
17 hereby transferred to the interim governing board created in
18 article one-c of this chapter. Property transferred to or vested in
19 the board of trustees and board of directors shall include: (1)
20 All property vested in the board of governors of West Virginia
21 university and transferred to and vested in the West Virginia
22 board of regents; (2) all property acquired in the name of the
23 state board of control or the West Virginia board of education
24 and used by or for the state colleges and universities and
25 transferred to and vested in the West Virginia board of regents;
26 (3) all property acquired in the name of the state commission on
27 higher education and transferred to and vested in the West
28 Virginia board of regents; and (4) all property acquired in the
29 name of the board of regents and transferred to and vested in
30 the respective board of trustees and board of directors.

31 (c) Each valid agreement and obligation previously
32 transferred to or vested in the board of trustees and board of
33 directors formerly existing under the provisions of chapter
34 eighteen-b of this code is hereby transferred to the interim
35 governing board as those agreements and obligations may apply
36 to the institutions under its jurisdiction. Valid agreements and
37 obligations transferred to the board of trustees and board of
38 directors shall include: (1) Each valid agreement and obligation
39 of the board of governors of West Virginia university trans-
40 ferred to and deemed the agreement and obligation of the West
41 Virginia board of regents; (2) each valid agreement and
42 obligation of the state board of education with respect to the
43 state colleges and universities transferred to and deemed the
44 agreement and obligation of the West Virginia board of regents;
45 (3) each valid agreement and obligation of the state commission
46 on higher education transferred to and deemed the agreement
47 and obligation of the West Virginia board of regents; and (4)

48 each valid agreement and obligation of the board of regents
49 transferred to and deemed the agreement and obligation of the
50 respective board of trustees and board of directors.

51 (d) All orders, resolutions and rules adopted or promulgated
52 by the respective board of trustees and board of directors and in
53 effect immediately prior to the first day of July, two thousand,
54 are hereby transferred to the interim governing board and shall
55 continue in effect and shall be deemed the orders, resolutions
56 and rules of the interim governing board until rescinded,
57 revised, altered or amended by the commission in the manner
58 and to the extent authorized and permitted by law. Such orders,
59 resolutions and rules shall include: (1) Those adopted or
60 promulgated by the board of governors of West Virginia
61 university and in effect immediately prior to the first day of
62 July, one thousand nine hundred sixty-nine, unless and until
63 rescinded, revised, altered or amended by the board of regents
64 in the manner and to the extent authorized and permitted by
65 law; (2) those respecting state colleges and universities adopted
66 or promulgated by the West Virginia board of education and in
67 effect immediately prior to the first day of July, one thousand
68 nine hundred sixty-nine, unless and until rescinded, revised,
69 altered or amended by the board of regents in the manner and
70 to the extent authorized and permitted by law; (3) those adopted
71 or promulgated by the state commission on higher education
72 and in effect immediately prior to the first day of July, one
73 thousand nine hundred sixty-nine, unless and until rescinded,
74 revised, altered or amended by the board of regents in the
75 manner and to the extent authorized and permitted by law; and
76 (4) those adopted or promulgated by the board of regents prior
77 to the first day of July, one thousand nine hundred eighty-nine,
78 unless and until rescinded, revised, altered or amended by the
79 respective board of trustees or board of directors in the manner
80 and to the extent authorized and permitted by law.

81 (e) As to any title, agreement, obligation, order, resolution,
82 rule or any other matter about which there is some uncertainty,
83 misunderstanding or question, the matter shall be summarized
84 in writing and sent to the commission which shall make a
85 determination regarding such matter within thirty days of
86 receipt thereof.

87 (f) Rules or provisions of law which refer to other provi-
88 sions of law which were repealed, rendered inoperative or
89 superseded by the provisions of this section shall remain in full
90 force and effect to such extent as may still be applicable to
91 higher education and may be so interpreted. Such references
92 include, but are not limited to, references to sections and prior
93 enactments of article twenty-six, chapter eighteen of this code
94 and code provisions relating to retirement, health insurance,
95 grievance procedures, purchasing, student loans and savings
96 plans. Any determination which needs to be made regarding
97 applicability of any provision of law shall first be made by the
98 commission.

§18B-1-6. Rulemaking.

1 Effective the first day of July, two thousand one, the
2 chancellor for higher education is hereby empowered to
3 promulgate, adopt, amend or repeal rules, subject to the
4 approval of the education policy commission, in accordance
5 with the provisions of article three-a, chapter twenty-nine-a of
6 this code, as he or she may deem necessary and convenient to
7 ensure the full implementation of his or her powers and duties.
8 The chancellor shall file a copy of any rule he or she proposes
9 to promulgate, adopt, amend or repeal under the authority of
10 this article with the legislative oversight commission on
11 education accountability created in said article three-a, chapter
12 twenty-nine-a of this code.

13 Nothing in this section may be construed to apply to any
 14 rule promulgated or adopted by a state institution of higher
 15 education.

ARTICLE 1A. COMPACT WITH HIGHER EDUCATION FOR THE FUTURE OF WEST VIRGINIA.

§18B-1A-1. Purpose of article; legislative findings and intent.

§18B-1A-2. Institutional compacts with state institutions of higher education; establishment and review process.

§18B-1A-3. Peer institutions.

§18B-1A-4. Legislative financing goals.

§18B-1A-5. Financing; institutional operating budgets; additional funding.

§18B-1A-6. Graduate education.

§18B-1A-7. Contrary provisions.

§18B-1A-8. Sections repealed.

§18B-1A-1. Purpose of article; legislative findings and intent.

1 *Purpose.* — The purpose of this article is to establish a
 2 compact with higher education for the future of West Virginia.
 3 The Legislature recognizes both the progress achieved thus far
 4 through the higher education strategic planning process
 5 established pursuant to section one-c, article one of this chapter,
 6 and the shortfalls. West Virginia long has recognized the value
 7 of education and, on a per capita income basis, invests more to
 8 support education than most other states. Based on its findings,
 9 the Legislature recognizes that because of a combination of
 10 state and national demographic and economic factors and
 11 emerging changes in higher education delivery systems, it is in
 12 the best interests of both the state and the state's higher
 13 education system to begin a process that will strengthen their
 14 capacity, over the long term, to provide the services of higher
 15 education so valued by the citizens of the state and so essential
 16 to the state's economic vitality. The compact with higher
 17 education for the future of West Virginia is intended to encour-
 18 age continued progress toward achieving the state's goals for
 19 higher education and to provide incentives for change. The
 20 changes include strengthening the capacity of the higher

21 education system and institutions to serve regional and state
22 needs and responding to the challenges of growing national and
23 global competition in higher education delivery systems. It is
24 the intent of the Legislature that legislative appropriations for
25 higher education for fiscal year two thousand two and thereafter
26 will be made in accordance with this article and the strategies,
27 policies, timelines and benchmarks for accomplishing the goals
28 of the compact over a six-year period: *Provided*, That nothing
29 in this article requires any specific level of appropriation by the
30 Legislature.

**§18B-1A-2. Institutional compacts with state institutions of
higher education; establishment and review
process.**

1 (a) Each institution of higher education shall prepare an
2 institutional compact for submission to the commission. When
3 the process herein provided is completed, the institutional
4 compacts shall form the agreement between the institutions of
5 higher education and the commission and, ultimately, between
6 the institutions of higher education and the people of West
7 Virginia on how the institutions will use their resources to
8 address the intent of the Legislature and the goals set forth in
9 section one-a, article one of this chapter. The compacts shall
10 contain the following:

11 (1) A step-by-step process to accomplish the intent of the
12 Legislature and the goals set forth in section one-a, article one
13 of this chapter as organized by the commission. The step-by-
14 step process shall be delineated by objectives and shall set forth
15 a timeline for achieving the objectives which shall, where
16 applicable, include benchmarks to measure institutional
17 progress as defined in subsection (e) of this section.

18 (2) A determination of the mission of the institution which
19 specifically addresses changes, as applicable, in the areas of
20 research, graduate education, baccalaureate education, revised

21 admission requirements, community and technical colleges and
22 such other areas as the commission determines appropriate. In
23 the determination of mission, the institutions and the commis-
24 sion shall consider the report completed by the national center
25 for higher education management systems pursuant to the
26 legislative study as provided in section seven, article three of
27 this chapter;

28 (3) A plan which is calculated to make any changes in
29 institutional mission and structure within a six-year period;

30 (4) A statement of the geographic areas of responsibility,
31 where applicable, for each goal to be accomplished as provided
32 in subsection (d) of this section;

33 (5) A detailed statement of how the compact is aligned with
34 and will be implemented in conjunction with the master plan of
35 the institution;

36 (6) Such other items, requirements or initiatives, required
37 by the commission, designed to accomplish the intent of the
38 Legislature and the goals set forth in section one-a, article one
39 of this chapter or other public policy goals established by the
40 commission.

41 (b) Each institutional compact shall be updated annually
42 and shall follow the same general guidelines contained in
43 subsection (a) of this section.

44 (c) Development and updating of the institutional compacts
45 shall be subject to the following:

46 (1) The ultimate responsibility for developing and updating
47 the institutional compacts at the institutional level resides with
48 the institutional board of advisors or the institutional board of
49 governors, as appropriate;

50 (2) The ultimate responsibility for developing and adopting
51 the final version of the institutional compacts resides with the
52 commission;

53 (3) The initial institutional compacts shall be submitted to
54 the commission by the institutions on or before the first day of
55 February, two thousand one, and the annual updates shall be
56 submitted on or before the first day of February of each
57 succeeding year;

58 (4) The commission shall review the initial institutional
59 compacts and the annual updates and either shall adopt the
60 institutional compact or return it with specific comments for
61 change or improvement. The commission shall continue this
62 process as long as it considers advisable;

63 (5) By the first day of May of each year, if the institutional
64 compact of any institution as presented by that institution is not
65 adopted by the commission, then the commission is empowered
66 and directed to develop and adopt the institutional compact for
67 the institution and the institution shall be bound by the compact
68 so adopted; and

69 (6) The commission shall, as far as practicable, establish
70 uniform processes and forms for the development and submis-
71 sion of the institutional compacts. As a part of this function, the
72 commission shall organize the statements of legislative intent
73 and goals contained in section one-a, article one of this chapter
74 in a manner that facilitates the purposes of this subdivision and
75 the purposes of this section.

76 (d) The commission shall assign geographic areas of
77 responsibility to the state institutions of higher education as a
78 part of their institutional compacts to ensure that all areas of the
79 state are provided necessary programs and services to achieve
80 the public policy agenda. The benchmarks established in the
81 institutional compacts shall include measures of programs and

82 services by geographic area throughout the assigned geographic
83 area of responsibility.

84 (e) The compacts shall contain benchmarks used to deter-
85 mine progress toward meeting the goals established in the
86 compacts. The benchmarks shall meet the following criteria:

87 (1) They shall be as objective as possible;

88 (2) They shall be directly linked to the goals in the com-
89 pacts;

90 (3) They shall be measured by the indicators described in
91 subsection (f) of this section; and

92 (4) Where applicable, they shall be used to measure
93 progress in geographic areas of responsibility.

94 (f) The commission shall establish indicators which
95 measure the degree to which the goals and objectives set forth
96 in section one-a, article one of this chapter, are being addressed
97 and met. The benchmarks established in subsection (e) of this
98 section shall be measured by the indicators. The commission
99 shall, on or before the first day of January, two thousand one,
100 file with the legislative oversight commission on education
101 accountability, legislative rules pursuant to article three-a,
102 chapter twenty-nine-a of this code, that set forth at the least the
103 following:

104 (1) The indicators to be used to measure the degree to
105 which the goals and objectives are being met.

106 (2) Uniform definitions for the various data elements to be
107 used in establishing the indicators; and

108 (3) Guidelines for the collection and reporting of data.

109 (g) The commission shall approve the master plans devel-
110 oped by the institutional boards of governors and the institu-

111 tional boards of advisors pursuant to subsection (b), section
112 four, article two-a of this chapter and subsection (k), section
113 one, article six of this chapter.

§18B-1A-3. Peer institutions.

1 (a) The commission shall select not fewer than ten peer
2 institutions for each state institution of higher education in West
3 Virginia, including, but not limited to, independently accredited
4 community and technical colleges.

5 (b) The peer institutions shall be selected from among institu-
6 tions throughout the United States and not solely from the states that
7 are members of the southern regional education board.

8 (c) The peer institutions, as selected by the commission,
9 shall be used as benchmarks for comparison purposes only and
10 are not intended to reflect funding goals for West Virginia
11 institutions of higher education. Such a use is inappropriate
12 since institutions selected as peers for a state institution may be
13 located in an area of high per capita income or have their
14 funding subject to other factors that make its use unrealistic for
15 setting funding goals in West Virginia. The peer institutions
16 shall be used for comparison in the following areas:

17 (1) To determine adjustments to base operating budgets as
18 described in section five of this article;

19 (2) To determine comparable levels of tuition;

20 (3) To determine comparable faculty and staff teaching
21 requirements and other workloads; and

22 (4) For such other purposes as the law may require or the
23 commission may find useful or necessary.

24 (d) The commission shall contract with a national, inde-
25 pendent education consulting firm to assist in the unbiased
26 selection of peer institutions for each West Virginia institution.

27 The commission shall select peer institutions for each institu-
28 tion through an open, deliberative, objective process and in
29 consultation with the institutional boards of governors, intended
30 to achieve broad understanding of the basis for this selection in
31 the higher education community and the Legislature. Final peer
32 selection is subject to the review of the legislative oversight
33 commission on education accountability. In selecting peer
34 institutions, the commission shall use criteria such as, but not
35 limited to:

36 (1) Institutional mission;

37 (2) Institutional size related to full-time equivalent students;

38 (3) The proportions of full-time and part-time students;

39 (4) The level of academic programs, including, but not
40 limited to, number of degrees granted at the associate, baccalau-
41 reate, masters, doctoral and first-professional level;

42 (5) The characteristics of academic programs such as health
43 sciences, professional, technical or liberal arts and sciences; and

44 (6) The level of research funding from federal competitive
45 funding sources.

46 (e) Subject to the review of the legislative oversight
47 commission on education accountability, the commission shall
48 review and make necessary adjustments to peer institutions at
49 least every six years or as necessary based on changes in
50 institutional missions as approved in institutional compacts or
51 in changes at peer institutions.

52 (f) Nothing herein shall be construed to prevent the
53 commission from using the same peers or peer groups for more
54 than one institution of higher education.

§18B-1A-4. Legislative financing goals.

1 (a) The Legislature recognizes that the higher education
2 goals set forth in section one-a, article one of this chapter are of
3 utmost importance. The Legislature further recognizes that
4 meeting the goals may require the appropriation of funds above
5 the current operating budgets of the institutions.

6 (b) It is, therefore, the desire of the Legislature to increase
7 funding annually for higher education at a rate not less than the
8 annual percentage increase in the overall general revenue
9 budget.

10 (c) If the commission determines that appropriations are
11 insufficient to fund the requirements of the institutional
12 compacts, the commission first shall consider extending the
13 length of the compacts or otherwise modifying the compacts to
14 allow the institutions to achieve the benchmarks in the com-
15 pacts. If modifications to the institutional compacts are not
16 sufficient to allow the institutions to meet their benchmarks, the
17 commission shall recommend to the Legislature methods of
18 making the higher education system more efficient. The
19 methods may include, but are not limited to, the following:

- 20 (1) Administrative efficiencies;
- 21 (2) Consolidation of services;
- 22 (3) Elimination of programs;
- 23 (4) Consolidating institutions; and
- 24 (5) Closing institutions.

**§18B-1A-5. Financing; institutional operating budgets, additional
funding.**

1 (a) *Budget request and appropriations.* — The commission
2 has the responsibility to develop a budget for the state system
3 of higher education and submit a budget request to the governor
4 before the first day of September, beginning in two thousand,

5 and for each fiscal year thereafter. The budget request specifi-
6 cally shall include the amount of the institutional operating
7 budgets, as defined in section two, article one of this chapter,
8 required for all state institutions of higher education. The
9 budget appropriation for the state system of higher education
10 under this chapter and other provisions of the law shall consist
11 of separate control accounts or institutional control accounts, or
12 some combination of such accounts, for appropriation of
13 institutional operating budgets and other funds. The commis-
14 sion is responsible for allocating state appropriations to
15 supplement institutional operating budgets in accordance with
16 this section. In addition to the institutional operating budget and
17 incentive funding, however, the commission also is responsible
18 for allocating funds that are appropriated to it for other pur-
19 poses: *Provided, That*, in order to determine institutional
20 allocations, it is the responsibility of the institutions and their
21 respective institutional boards of governors or advisors, as
22 appropriate, to provide to the commission documentation on
23 institutional progress toward mission enhancement, preliminary
24 peer comparison calculations, performance of increased
25 productivity and academic quality and measurable attainment
26 in fulfilling state priorities as set forth in this article. The
27 documentation shall be provided to the commission no later
28 than the first day of October each year for commission review
29 and verification.

30 (b) *Legislative funding priorities.* –

31 (1) The Legislature recognizes the current resource alloca-
32 tion model has not moved all state institutions equitably
33 towards comparable peer funding levels. This formula has left
34 West Virginia institutions at a competitive disadvantage to their
35 national peers.

36 (2) The Legislature acknowledges that the resource
37 allocation model used to comply with Senate Bill 547, passed
38 during the legislative session of one thousand nine hundred

39 ninety-five, alleviated some of the disparity that exists among
40 state institutions' operating budgets, but left significant
41 differences between the institutions and their national peers.

42 (3) The Legislature recognizes that a system of
43 independently-accredited community and technical colleges is
44 essential to the economic vitality of the state.

45 (4) The Legislature places great importance on achieving
46 the priority goals outlined in the public policy agenda and
47 believes the state institutions of higher education should play a
48 vital role in facilitating the attainment of these goals.

49 (5) The Legislature also believes it is imperative that the
50 state make progress on narrowing the peer inequity while
51 balancing the need for sustaining the quality of our institutions.

52 (6) It is the charge of the commission to allocate all funds
53 appropriated in excess of the fiscal year two thousand one
54 general revenue appropriations in alignment with the legislative
55 funding priorities listed below. The commission shall consider
56 the priorities and assign a percentage of the total appropriation
57 of new funds to each priority.

58 (A) *Peer equity.* — Funds appropriated for this purpose
59 increase the level of the institutional operating budget for state
60 institutions of higher education comparable to their peer
61 institutions. The allocation shall provide, subject to the avail-
62 ability of funds and legislative appropriations, for a systematic
63 adjustment of the institutional operating budgets to move all
64 institutions' funding in the direction of levels comparable with
65 their peers. Institutional allocations shall be calculated as
66 follows:

67 (i) A calculation shall be made of the deficiency in per
68 student funding of each institution in comparison with the mean
69 per student funding of the peer institutions as defined by the
70 commission pursuant to section three of this article;

71 (ii) For all institutions that are deficient in comparison with
72 peer institutions, the amounts of the deficiencies shall be
73 totaled;

74 (iii) A ratio of the amount of the deficiency for an institu-
75 tion divided by the total amounts of deficiency for all West
76 Virginia institutions shall be established for each institution;
77 and

78 (iv) The allocation to each institution shall be calculated by
79 multiplying the ratio by the total amount of money in the
80 account.

81 (B) *Independently accredited community and technical*
82 *colleges development.* — Funds appropriated for this purpose
83 will ensure a smooth transition, where required, from "compo-
84 nent" community and technical colleges to independently
85 accredited community and technical colleges as defined in
86 section two, article one of this chapter. Appropriations for this
87 purpose are only to be allocated to those institutions having
88 approved compacts with the commission that expressly include
89 the transition of their component community colleges to
90 independently accredited status and have demonstrated measur-
91 able progress towards this goal. By the first day of July, two
92 thousand seven, or when all required community and technical
93 colleges are independently accredited, whichever first occurs,
94 funds for this purpose shall be allocated to the incentives for
95 institutional contributions to state priorities: *Provided*, That if
96 the commission determines that payments from the account to
97 the institutions should continue beyond the first day of July,
98 two thousand seven, it shall request an extension from the
99 Legislature;

100 (C) *Research challenge.* — Funds appropriated for this
101 purpose shall assist public colleges and universities in West
102 Virginia to compete on a national and international basis by
103 providing incentives to increase their capacity to compete

104 successfully for research funding. The Legislature intends for
105 institutions to collaborate in the development and execution of
106 research projects to the extent practicable and to target research
107 to the needs of the state as established in the public policy
108 agenda and linked to the future competitiveness of this state.

109 (i) The commission shall develop criteria for awarding
110 grants to institutions under this account, which may include, but
111 are not limited to, the following:

112 (I) Grants to be used to match externally funded, peer-
113 reviewed research;

114 (II) Grants to be used to match funds for strategic institu-
115 tional investments in faculty and other resources to increase
116 research capacity;

117 (ii) The grants shall be distributed as follows:

118 (I) Forty percent of the moneys shall be distributed at the
119 discretion of the commission, but with particular emphasis on
120 start-up money for new research efforts; and

121 (II) The balance of the moneys shall be distributed to each
122 public college and university in the same percentage that the
123 research funds received by that public college or university
124 bears to the total research funds received by all public colleges
125 and universities in the state for the previous year.

126 (iii) The commission may establish an advisory council
127 consisting of nationally prominent researchers and scientists,
128 including representatives from outside the state, to assist in
129 developing the criteria for awarding grants under this account.

130 (iv) For the purposes of making the distributions from this
131 account, the commission shall establish the definition for
132 research, research funds and any other terms as may be neces-
133 sary to implement this subdivision; and

134 (D) *Incentives for institutional contributions to state*
135 *priorities.* — Funds appropriated for this purpose provide
136 incentives to institutions which demonstrate success toward
137 advancing the goals of the public policy agenda as set forth in
138 section one-a, article one of this chapter and to provide incen-
139 tives for mission enhancement as set forth in section two of this
140 article.

141 (E) *Sustained quality support.* — The commission shall
142 provide additional operating funds to institutions with approved
143 compacts. The commission shall allocate these funds on an
144 equal percentage basis to all institutions: *Provided,* That the
145 commission may delay distribution of these funds to any
146 institution which does not demonstrate measurable progress
147 towards the goals provided in its compact with the commission.

148 (c) *Allocations to institutional operating budgets.* — For
149 the purposes of this subsection, the commission shall establish
150 by rule pursuant to subsection (f), section two of this article the
151 method for measuring the progress of each institution towards
152 meeting the benchmarks of its institutional compact.

153 (d) *Allocation of appropriations to the institutions.* —
154 Appropriations in this section shall be allocated to the state
155 institutions of higher education in the following manner:

156 (1) For the fiscal year two thousand two, appropriations
157 above the fiscal year two thousand two institutional operating
158 budget shall be allocated only to institutions with approved
159 compacts, pursuant to this article;

160 (2) For the fiscal year two thousand three, and each fiscal
161 year thereafter, appropriations from the funds shall be allocated
162 only to institutions with approved compacts, pursuant to section
163 two of this article and which also have achieved their annual
164 benchmarks for accomplishing the goals of their compacts, as
165 approved by the commission: *Provided,* That if an institution

166 has not achieved all of its annual benchmarks, the commission
167 may distribute a portion of the funds to the institution based on
168 its progress as the commission determines appropriate: *Pro-*
169 *vided, however,* That the commission shall establish by rule
170 pursuant to subsection (f), section two, of this article the
171 method for measuring the progress of each institution toward
172 meeting the benchmarks of its institutional compact;

173 (e) Nothing in this section shall be construed in a manner
174 that limits the appropriation or collection of fees necessary to
175 effectuate the operation and purpose of the commission.

§18B-1A-6. Graduate education.

1 (a) *Intent.* — It is the intent of the Legislature to address the
2 need for high quality graduate education programs to be
3 available throughout the state.

4 (b) *Findings.* — The Legislature makes the following
5 findings:

6 (1) Since West Virginia ranks below its competitor states
7 in graduate degree production, particularly in the areas that are
8 important to the state's competitive position in the new econ-
9 omy of the twenty-first century, there is a considerable need for
10 greater access to graduate education, especially at the master's
11 degree level;

12 (2) There is a significant disparity in access to part-time
13 graduate degree programs among the different regions of the
14 state and part-time graduate enrollments are heavily concen-
15 trated in the counties immediately surrounding Marshall
16 university and West Virginia university;

17 (3) There is a particular need for increased access to
18 graduate programs linked directly to the revitalization of the
19 regional economies of the state; and

20 (4) There is a particular need for improved quality and
21 accessibility of pre-service and in-service programs for teachers
22 in subject matter fields.

23 (c) In order to meet the need for graduate education, the
24 commission shall be responsible for accomplishing the follow-
25 ing:

26 (1) Ensuring that West Virginia university and Marshall
27 university expand access to master's degree programs through-
28 out West Virginia, with a strong emphasis on collaboration with
29 the baccalaureate colleges and community and technical
30 colleges in each region;

31 (2) Ensuring that any institution providing a master's
32 degree program under the provisions of this section provides a
33 meaningful, coherent program by offering courses in such a
34 way that students, including place-bound adults, have ample
35 opportunity to complete a degree in a reasonable period of time;

36 (3) Focusing on providing courses that enhance the profes-
37 sional skills of teachers in their subject areas; and

38 (4) Ensuring that programs are offered in the most cost-
39 effective manner to expand access throughout the region and
40 the state.

41 (d) Concord college, Fairmont state college, Shepherd
42 college, West Liberty state college and West Virginia state
43 college shall meet the need for graduate education in their
44 regions by following the procedures outlined below with each
45 step building upon the foundation of the step before it:

46 (1) The institutions shall develop as graduate centers for
47 their regions to broker access to graduate programs by contract-
48 ing with accredited colleges and universities in and out of the
49 state. These programs shall be related directly to each region's
50 education and economic needs.

51 (2) If the graduate education needs of the region have not
52 been met through brokering, then the institutions may begin
53 collaborative programs with other institutions leading to the
54 granting of master's degrees in selected areas that are demon-
55 strated to be related directly to the needs of their regions and
56 that draw on faculty strengths. An institution may continue to
57 offer collaborative programs aimed at meeting the documented
58 needs with the approval of the commission or, if a sustained
59 need still exists, the institution may move to the next level.

60 (3) If the graduate education needs of the region have not
61 been met through brokering and collaborative programs, the
62 institution may explore the option of beginning its own
63 graduate-level program leading to the granting of a master's
64 degree. The institution may begin its own master's degree
65 program only if it can meet the following conditions as deter-
66 mined by the commission:

67 (A) Demonstrate that the institution has successfully
68 completed each of the steps required before exploring develop-
69 ment of its own master's degree program;

70 (B) Provide evidence based on experience gained in the
71 brokering and collaborative arrangements that a sustained
72 demand exists for the program;

73 (C) Demonstrate that the baccalaureate institution has the
74 capacity to provide the program;

75 (D) Demonstrate that the core mission of the baccalaureate
76 institution will not be impaired by offering the graduate
77 program;

78 (E) Provide evidence that the graduate program has a
79 reasonable expectation of being accredited;

80 (F) Demonstrate that the need documented in subdivision
81 (B) of this subsection is not currently being met by any other
82 state institution of higher education; and

83 (G) Such other conditions as the commission may deter-
84 mine.

85 (e) There is an urgent need for master's degree programs
86 for teachers in disciplines or subject areas, such as mathematics,
87 science, history, literature, foreign languages and the arts.
88 Currently, master's-level courses in education that are offered
89 in the regions served by the state universities are primarily in
90 areas such as guidance and counseling, administration, special
91 education and other disciplines unrelated to teaching in subject
92 areas. If the commission determines that this need is not being
93 met or can not be met in a region through the procedure
94 established in subsection (d) of this section, then the graduate
95 center in that region may plan one master's degree program in
96 education focused on teaching in subject area fields. No
97 institution may begin a graduate program under the provisions
98 of this section until the program has been reviewed and
99 approved by the commission. The commission shall approve
100 only those programs, as authorized by this subsection, that
101 emphasize serving the needs of teachers and schools in the
102 colleges' immediate regions. In determining whether a program
103 should be approved, the commission also shall rely upon the
104 recommendations of the statewide task force on teacher quality
105 provided for in section eight, article fourteen of this chapter.

106 (f) The commission shall review all graduate programs
107 being offered under the provisions of this section and, using the
108 criteria established for program startup in subsection (d) of this
109 section, determine which programs should be discontinued.

110 (g) At least annually, the governing boards shall evaluate
111 graduate programs developed pursuant to the provisions of this
112 section and report to the commission on the following:

113 (1) The number of programs being offered and the courses
114 offered within each program;

115 (2) The disciplines in which programs are being offered;

116 (3) The locations and times at which courses are offered;

117 (4) The number of students enrolled in the program; and

118 (5) The number of students who have obtained master's
119 degrees through each program.

120 The governing boards shall provide the commission with
121 any additional information the commission requests in order to
122 make a determination on the viability of a program.

123 (h) In developing any graduate program under the provi-
124 sions of this section, institutions shall consider delivering
125 courses at times and places convenient to adult students who are
126 employed full time. Institutions shall place an emphasis on
127 extended degree programs, distance learning and off-campus
128 centers which utilize the cost-effective nature of extending
129 existing university capacity to serve the state rather than
130 duplicating the core university capacity and incurring the
131 increased cost of developing master's degree programs at other
132 institutions throughout the state.

133 (i) Brokering institutions shall invite proposals from other
134 public institutions of higher education for service provision
135 prior to contracting with other institutions: *Provided*, That if
136 institutions propose providing graduate programs in service
137 areas other than in their responsibility district, the institution
138 seeking to establish a program shall work through the district's
139 lead institution in providing those services.

140 (j) In addition to the approval required by the commission,
141 authorization for any institution to offer a master's degree
142 program under the provisions of this section is subject to the
143 formal approval processes established by the governing boards.

§18B-1A-7. Contrary provisions.

1 Effective the first day of July, two thousand, the provisions
2 of this article shall supersede any provision of this code to the
3 contrary.

§18B-1A-8. Sections repealed.

1 (a) On the effective date of this section, sections three-a and
2 four, article three of this chapter relating to community and
3 technical colleges are repealed.

4 (b) Effective the first day of July, two thousand, section
5 two-b, article five of this chapter, relating to resource allocation
6 policy relief, is repealed.

7 (c) Effective the first day of July, two thousand, section
8 two-c, article five of this chapter, relating to a review of
9 resource allocation model and policies, is repealed.

10 (d) Effective the first day of July, two thousand, section
11 five, article six of this chapter, relating to the creation of
12 advisory council on federal resources, is repealed.

13 (e) Effective the thirtieth day of June, two thousand one,
14 section eight, article one of this chapter, relating to the powers
15 and duties of the governing boards generally, is repealed.

16 (f) Effective the thirtieth day of June, two thousand one,
17 section eight-a, article one of this chapter, relating to higher
18 education accountability, is repealed.

19 (g) Effective the first day of July, two thousand, section six,
20 article three of this chapter, relating to increasing flexibility for
21 freestanding community and technical colleges, is repealed.

22 (h) Effective the thirtieth day of June, two thousand one,
23 section one-b, article one of this chapter, relating to implemen-
24 tation of findings, directives, goals and objectives, is repealed.

25 (i) Effective the thirtieth day of June, two thousand one,
26 section one-c, article one of this chapter, relating to strategically
27 focusing resources to maximize opportunity, is repealed.

28 (j) Effective the first day of July, two thousand, section
29 five, article one of this chapter, relating to placing governing
30 boards under the department of education and the arts, is
31 repealed.

32 (k) Effective the first day of July, two thousand, section six,
33 article six of this chapter, relating to the university of West
34 Virginia anatomical board, is repealed.

35 (l) Effective the thirtieth day of June, two thousand one,
36 section one, article five of this chapter, relating to appropria-
37 tions, is repealed.

38 (m) Effective the thirtieth day of June, two thousand one,
39 section two, article five of this chapter, relating to resource
40 allocation model and policies, is repealed.

41 (n) Effective the thirtieth day of June, two thousand, section
42 two, article six of this chapter, relating to advisory councils of
43 faculty, is repealed.

44 (o) Effective the thirtieth day of June, two thousand, section
45 three, article six of this chapter, relating to advisory councils of
46 students, is repealed.

47 (p) Effective the thirtieth day of June, two thousand, section
48 four, article six of this chapter, relating to advisory councils of
49 classified employees, is repealed.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-1. Higher education policy commission established; development of public policy agenda.

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§18B-1B-1. Higher education policy commission established; development of public policy agenda.

1 There is hereby created the “higher education policy
2 commission”, hereinafter referred to as the “commission”,
3 which is responsible for developing, gaining consensus around
4 and overseeing the implementation of a public policy agenda.
5 It is the intent of the Legislature that the commission be
6 responsible for development and articulation of the public
7 policy agenda for higher education and other statewide issues
8 pursuant to section one-a, article one of this chapter. All matters
9 of governance not specifically assigned to the commission by
10 law are the duty and responsibility of the governing board or
11 boards.

§18B-1B-2. Composition of commission; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

1 (a) The commission is comprised of nine members, all of
2 whom are entitled to vote. One is the secretary of education and
3 the arts, ex officio. One is the state superintendent of schools:
4 *Provided*, That if the state superintendent of schools desires not
5 to serve, the state board of education shall submit to the
6 governor the names of three nominees, which may include
7 members of the state board of education. The governor shall
8 select from the nominees a member to serve on the commission.
9 The three nominees shall be persons who are knowledgeable in
10 the area of public education policy, are able to represent the

11 state board of education and who understand and are committed
12 to achieving the goals and objectives as set forth in the institu-
13 tional compacts and in section one-a, article one of this chapter.

14 (b) The other seven members of the commission shall be
15 citizens of the state, appointed by the governor, by and with the
16 advice and consent of the Senate: *Provided*, That prior to
17 appointment, the governor shall interview each candidate to
18 assure that the person selected understands and is committed to
19 achieving the goals and objectives as set forth in the institu-
20 tional compacts and in section one-a, article one of this chapter.
21 The governor shall invite the president of the Senate, the
22 speaker of the House of Delegates, the chairs of the Senate and
23 House of Delegates committees on finance and education and
24 such other legislative leaders as the governor may determine to
25 participate in interviewing potential candidates. Each member
26 appointed to the commission by the governor shall represent the
27 public interest and shall be committed to the legislative intent
28 and goals set forth in section one-a, article one of this chapter.

29 (c) The governor may not appoint any person to be a
30 member of the commission who is an officer, employee or
31 member of an advisory board of any state college or university,
32 an officer or member of any political party executive commit-
33 tee, the holder of any other public office or public employment
34 under the government of this state or any of its political
35 subdivisions or an appointee or employee of any governing
36 board or an immediate family member of any employee under
37 the jurisdiction of the commission or any governing board. Of
38 the members appointed by the governor from the public at
39 large, no more than four thereof shall belong to the same
40 political party and at least two shall be appointed from each
41 congressional district.

42 (d) The governor shall appoint seven members to the
43 commission on the first day of July, two thousand, or as soon

44 thereafter as is practicable and the original terms of all mem-
45 bers shall commence on the first day of July, two thousand.

46 (e) The terms of the members appointed by the governor
47 shall be for overlapping terms of four years, except, of the
48 original appointments, one shall be appointed to a term of one
49 year, two shall be appointed to a term of two years, two shall be
50 appointed to a term of three years and two shall be appointed to
51 a term of four years. Each subsequent appointment which is not
52 for the purpose of filling a vacancy in an unexpired term shall
53 be for a term of four years.

54 (f) The governor shall appoint a member to fill any vacancy
55 among the seven members of the commission appointed by the
56 governor, by and with the advice and consent of the Senate,
57 which member appointed to fill such vacancy shall serve for the
58 unexpired term of the vacating member. The governor shall fill
59 the vacancy within thirty days of the occurrence of the vacancy.

60 (g) No member appointed by the governor shall be eligible
61 to serve more than two consecutive terms.

62 (h) Before exercising any authority or performing any
63 duties as a member of the commission, each member shall
64 qualify as such by taking and subscribing to the oath of office
65 prescribed by section five, article IV of the constitution of West
66 Virginia and the certificate thereof shall be filed with the
67 secretary of state.

68 (i) No member of the commission appointed by the
69 governor may be removed from office by the governor except
70 for official misconduct, incompetence, neglect of duty or gross
71 immorality, and then only in the manner prescribed by law for
72 the removal of the state elective officers by the governor.

§18B-1B-3. Meetings and compensation.

1 (a) The secretary of education and the arts shall call the
2 initial meeting of the commission and preside until a chairper-
3 son is selected. Thereafter, the commission shall meet as
4 needed at the time and place specified by the call of the
5 chairperson.

6 (b) The commission shall hold an annual meeting each June
7 for the purpose of electing officers for the next fiscal year. At
8 the annual meeting, the commission shall elect from its
9 members appointed by the governor a chairperson and other
10 officers as it may consider necessary or desirable: *Provided,*
11 That the initial meeting for the purpose of selecting the first
12 chairperson and other officers shall be held during July, two
13 thousand, or as soon thereafter as practicable. All officers shall
14 be elected from the citizen appointees. The chairperson and
15 other officers shall be elected for a one-year term commencing
16 on the first day of July following the annual meeting and ending
17 on the thirtieth day of June of the following year: *Provided,*
18 *however,* That the terms of officers elected in July, two thou-
19 sand, begin upon election and end on the thirtieth day of June,
20 two thousand one. The chairperson of the board may serve no
21 more than two consecutive terms as chair.

22 (c) Members of the commission shall be reimbursed for
23 actual and necessary expenses incident to the performance of
24 their duties upon presentation of an itemized sworn statement
25 thereof. The foregoing reimbursement for actual and necessary
26 expenses shall be paid from appropriations made by the
27 Legislature to the commission.

28 (d) A majority of the members constitutes a quorum for
29 conducting the business of the commission.

**§18B-1B-4. Powers and duties of higher education policy commis-
sion.**

1 (a) The primary responsibility of the commission is to
2 develop, establish and implement policy that will achieve the
3 goals and objectives found in section one-a, article one of this
4 chapter. To that end, the commission has the following powers
5 and duties:

6 (1) Develop, oversee and advance the public policy agenda
7 to address major challenges facing the state, including, but not
8 limited to, the goals and objectives found in section one-a,
9 article one of this chapter and including specifically those goals
10 and objectives pertaining to the compacts created pursuant to
11 section two, article one-a of this chapter and to develop and
12 implement the master plan described in section ten of this
13 article for the purpose of accomplishing the mandates of this
14 section;

15 (2) Develop, oversee and advance the implementation of a
16 financing policy for higher education in West Virginia. The
17 policy shall meet the following criteria:

18 (A) Provide an adequate level of education and general
19 funding for institutions pursuant to section five, article one-a of
20 this chapter;

21 (B) Serve to maintain institutional assets, including, but not
22 limited to, human and physical resources and deferred mainte-
23 nance; and

24 (C) Invest and provide incentives for achieving the priority
25 goals in the public policy agenda, including, but not limited to,
26 those found in section one-a, article one of this chapter;

27 (3) Create a policy leadership structure capable of the
28 following actions:

29 (A) Developing, building public consensus around and
30 sustaining attention to a long-range public policy agenda. In
31 developing the agenda, the commission shall seek input from

32 the Legislature and the governor and specifically from the state
33 board of education and local school districts in order to create
34 the necessary linkages to assure smooth, effective and seamless
35 movement of students through the public education and post-
36 secondary education systems and to ensure that the needs of
37 public school courses and programs can be fulfilled by the
38 graduates produced and the programs offered;

39 (B) Ensuring that the governing boards carry out their duty
40 effectively to govern the individual institutions of higher
41 education; and

42 (C) Holding the higher education institutions and the higher
43 education system as a whole accountable for accomplishing
44 their missions and implementing the provisions of the com-
45 pacts;

46 (4) Develop and adopt each institutional compact;

47 (5) Review and adopt the annual updates of the institutional
48 compacts;

49 (6) Review the progress of community and technical
50 colleges in every region of West Virginia; such review includes,
51 but is not limited to, evaluating and reporting annually to the
52 legislative oversight commission on education accountability
53 on the step-by-step implementation required in article three-c
54 of this chapter;

55 (7) Serve as the accountability point for the governor for
56 implementation of the public policy agenda and for the Legisla-
57 ture by maintaining a close working relationship with the
58 legislative leadership and the legislative oversight commission
59 on education accountability;

60 (8) Promulgate legislative rules pursuant to article three-a,
61 chapter twenty-nine-a to fulfill the purposes of section five,
62 article one-a of this chapter;

63 (9) Establish and implement a peer group for each public
64 institution of higher education in the state as described in
65 section three, article one-a of this chapter;

66 (10) Establish and implement the benchmarks and perfor-
67 mance indicators necessary to measure institutional achieve-
68 ment towards state policy priorities and institutional missions;

69 (11) In January, two thousand one, and annually thereafter,
70 report to the Legislature and to the legislative oversight
71 commission on education accountability during the January
72 interim meetings, on a date and at a time and location to be
73 determined by the president of the Senate and the speaker of the
74 House of Delegates. The report shall address at least the
75 following:

76 (A) The performance of the system of higher education
77 during the previous fiscal year, including, but not limited to,
78 progress in meeting goals stated in the compacts and progress
79 of the institutions and the higher education system as a whole
80 in meeting the goals and objectives set forth in section one-a,
81 article one of this chapter;

82 (B) An analysis of enrollment data collected pursuant to
83 subsection (i), section one, article ten of this chapter and
84 recommendations for any changes necessary to assure access to
85 high-quality, high-demand education programs for West
86 Virginia residents;

87 (C) The priorities established for capital investment needs
88 pursuant to subdivision (12) of this subsection and the justifica-
89 tion for such priority; and

90 (D) Recommendations of the commission for statutory
91 changes needed to further the goals and objectives set forth in
92 section one-a, article one of this chapter;

93 (12) Establish a formal process for identifying needs for
94 capital investments and for determining priorities for these
95 investments;

96 (13) On or before the first day of October, two thousand,
97 develop, establish and implement guidelines for institutions to
98 follow concerning extensive capital projects. The guidelines
99 shall provide a process for developing capital projects, includ-
100 ing, but not limited to, the notification by an institution to the
101 commission of any proposed capital project which has the
102 potential to exceed one million dollars in cost. No such project
103 may be pursued by an institution without the approval of the
104 commission;

105 (14) Draw upon the expertise available within the gover-
106 nor's workforce investment office and the West Virginia
107 development office as a resource in the area of workforce
108 development and training;

109 (15) Acquire legal services as are considered necessary,
110 including representation of the commission, its institutions,
111 employees and officers before any court or administrative body,
112 notwithstanding any other provision of this code to the contrary.
113 The counsel may be employed either on a salaried basis or on
114 a reasonable fee basis. In addition, the commission may, but is
115 not required to, call upon the attorney general for legal assis-
116 tance and representation as provided by law;

117 (16) Employ a chancellor for higher education pursuant to
118 section five of this article;

119 (17) Employ other staff as necessary and appropriate to
120 carry out the duties and responsibilities of the commission;

121 (18) Provide suitable offices in Charleston for the chancel-
122 lor, vice chancellors and other staff;

123 (19) Conduct a study of the faculty tenure system as
124 administered by the governing boards with specific attention to
125 the role of community service and other criteria for achieving
126 tenured status. The commission shall make a report of its
127 findings and recommendations to the legislative oversight
128 commission on education accountability by the first day of July,
129 two thousand one;

130 (20) Advise and consent in the appointment of the presi-
131 dents of the institutions of higher education pursuant to section
132 six of this article. The role of the commission in approving an
133 institutional president is to assure through personal interview
134 that the person selected understands and is committed to
135 achieving the goals and objectives as set forth in the institu-
136 tional compact and in section one-a, article one of this chapter;

137 (21) Approve the total compensation package from all
138 sources for institutional presidents, as proposed by the govern-
139 ing boards. The governing boards must obtain approval from
140 the commission of the total compensation package both when
141 institutional presidents are employed initially and afterward
142 when any change is made in the amount of the total compensa-
143 tion package;

144 (22) Establish and implement the policy of the state to
145 assure that parents and students have sufficient information at
146 the earliest possible age on which to base academic decisions
147 about what is required for students to be successful in college,
148 other post-secondary education and careers related, as far as
149 possible, to results from current assessment tools in use in West
150 Virginia;

151 (23) Approve and implement a uniform standard, as
152 developed by the chancellor, to determine which students shall
153 be placed in remedial or developmental courses. The standard
154 shall be aligned with college admission tests and assessment
155 tools used in West Virginia and shall be applied uniformly by

156 the governing boards throughout the public higher education
157 system. The chancellor shall develop a clear, concise explana-
158 tion of the standard which the governing boards shall communi-
159 cate to the state board of education and the state superintendent
160 of schools;

161 (24) Review and approve or disapprove capital projects as
162 described in subdivision (12), subsection (a) of this section;

163 (25) Develop and implement an oversight plan to manage
164 system-wide technology such as the following:

165 (A) Expanding distance learning and technology networks
166 to enhance teaching and learning, promote access to quality
167 educational offerings with minimum duplication of effort,
168 increase the delivery of instruction to nontraditional students,
169 provide services to business and industry and increase the
170 management capabilities of the higher education system; and

171 (B) Reviewing courses and programs offered within the
172 state by nonstate public or private institutions of higher
173 education;

174 (26) Establish and implement policies and procedures to
175 ensure that students may transfer and apply toward the require-
176 ments for a bachelor's degree the maximum number of credits
177 earned at any regionally accredited in-state or out-of-state
178 community and technical college with as few requirements to
179 repeat courses or to incur additional costs as is consistent with
180 sound academic policy;

181 (27) Establish and implement policies and procedures to
182 ensure that students may transfer and apply toward the require-
183 ments for a degree the maximum number of credits earned at
184 any regionally accredited in-state or out-of-state higher educa-
185 tion institution with as few requirements to repeat courses or to
186 incur additional costs as is consistent with sound academic
187 policy;

188 (28) Establish and implement policies and procedures to
189 ensure that students may transfer and apply toward the require-
190 ments for a master's degree the maximum number of credits
191 earned at any regionally accredited in-state or out-of-state
192 higher education institution with as few requirements to repeat
193 courses or to incur additional costs as is consistent with sound
194 academic policy;

195 (29) Establish and implement policies and programs, in
196 cooperation with the institutions of higher education, through
197 which students who have gained knowledge and skills through
198 employment, participation in education and training at voca-
199 tional schools or other education institutions, or internet-based
200 education programs, may demonstrate by competency-based
201 assessment that they have the necessary knowledge and skills
202 to be granted academic credit or advanced placement standing
203 toward the requirements of an associate degree or a bachelor's
204 degree at a state institution of higher education;

205 (30) Seek out and attend regional, national and international
206 meetings and forums on education and workforce development
207 related topics, as in the commission's discretion is critical for
208 the performance of their duties as members, for the purpose of
209 keeping abreast of education trends and policies to aid it in
210 developing the policies for this state to meet the established
211 education goals and objectives pursuant to section one-a, article
212 one of this chapter;

213 (31) Develop, establish and implement guidelines for
214 higher education governing boards and institutions to follow
215 when considering capital projects. The guidelines shall include,
216 but not be limited to, the following:

217 (A) That the governing boards and institutions not approve
218 or promote projects that give competitive advantage to new
219 private sector projects over existing West Virginia businesses,
220 unless the commission determines such private sector projects

221 are in the best interest of the students, the institution and the
222 community to be served; and

223 (B) That the governing boards and institutions not approve
224 or promote projects involving private sector businesses which
225 would have the effect of reducing property taxes on existing
226 properties or avoiding, in whole or in part, the full amount of
227 taxes which would be due on newly developed or future
228 properties.

229 The commission shall determine whether the guidelines
230 developed pursuant to this subdivision should apply to any
231 project which a governing board and institution alleges to have
232 been planned on or before the effective date of this section. In
233 making the determination, the commission shall be guided by
234 the best interests of the students, the institution and the commu-
235 nity to be served.

236 (32) Certify to the Legislature, on or before the first day of
237 February, two thousand one, the priority funding percentages
238 and other information needed to complete the allocation of
239 funds in section five, article one-a of this chapter;

240 (33) Consider and submit to the appropriate agencies of the
241 executive and legislative branches of state government, a single
242 budget for higher education that reflects recommended appro-
243 priations: *Provided*, That on the first day of January, two
244 thousand one, and annually thereafter, the commission shall
245 submit the proposed institutional allocations based on each
246 institution's progress toward meeting the goals of its institu-
247 tional compact;

248 (34) Initiate a full review and analysis of all student fees
249 charged by state institutions of higher education and make
250 recommendations to the legislative oversight commission on
251 education accountability no later than the second day of
252 January, two thousand two. The final report shall contain

253 findings of fact and recommendations for proposed legislation
254 to condense, simplify and streamline the fee schedule and the
255 use of fees or other money collected by state institutions of
256 higher education;

257 (35) The commission has the authority to assess institutions
258 for the payment of expenses of the commission or for the
259 funding of statewide higher education services, obligations or
260 initiatives; and

261 (36) Promulgate rules allocating reimbursement of appro-
262 priations, if made available by the Legislature, to institutions of
263 higher education for qualifying noncapital expenditures
264 incurred in the provision of services to students with physical,
265 learning or severe sensory disabilities.

266 (b) In addition to the powers and duties listed in subsection
267 (a) of this section, the commission has the following general
268 powers and duties related to its role in developing, articulating
269 and overseeing the implementation of the public policy agenda:

270 (1) Planning and policy leadership including a distinct and
271 visible role in setting the state's policy agenda and in serving as
272 an agent of change;

273 (2) Policy analysis and research focused on issues affecting
274 the system as a whole or a geographical region thereof;

275 (3) Development and implementation of institutional
276 mission definitions including use of incentive money to
277 influence institutional behavior in ways that are consistent with
278 public priorities;

279 (4) Academic program review and approval including the
280 use of institutional missions as a template to judge the appropri-
281 ateness of both new and existing programs and the authority to
282 implement needed changes;

283 (5) Development of budget and allocation of resources,
284 including reviewing and approving institutional operating and
285 capital budgets and distributing incentive and performance-
286 based funding;

287 (6) Administration of state and federal student aid pro-
288 grams;

289 (7) Acting as the agent to receive and disburse public funds
290 when a governmental entity requires designation of a statewide
291 higher education agency for this purpose;

292 (8) Development, establishment and implementation of
293 information, assessment and accountability systems including
294 maintenance of statewide data systems that facilitate long-term
295 planning and accurate measurement of strategic outcomes and
296 performance indicators;

297 (9) Developing, establishing and implementing policies for
298 licensing and oversight for both public and private degree-
299 granting and nondegree-granting institutions that provide post-
300 secondary education courses or programs in the state;

301 (10) Development, implementation and oversight of
302 statewide and regionwide projects and initiatives such as those
303 using funds from federal categorical programs or those using
304 incentive and performance-based funding from any source; and

305 (11) Quality assurance that intersects with all other duties
306 of the commission particularly in the areas of planning, policy
307 analysis, program review and approval, budgeting and informa-
308 tion and accountability systems.

309 (c) In addition to the powers and duties provided for in
310 subsections (a) and (b) of this section and any other powers and
311 duties as may be assigned to it by law, the commission has such
312 other powers and duties as may be necessary or expedient to
313 accomplish the purposes of this article.

314 (d) The commission is authorized to withdraw specific
315 powers of any institutional governing board for a period not to
316 exceed two years if the commission makes a determination that:

317 (1) The governing board has failed for two consecutive
318 years to develop an institutional compact as required in article
319 one of this chapter;

320 (2) The commission has received information, substantiated
321 by independent audit, of significant mismanagement or failure
322 to carry out the powers and duties of the institutional board of
323 governors according to state law; or

324 (3) Other circumstances which, in the view of the commis-
325 sion, severely limit the capacity of the institutional board of
326 governors to carry out its duties and responsibilities.

327 (4) The period of withdrawal of specific powers may not
328 exceed two years during which time the commission is autho-
329 rized to take steps necessary to reestablish the conditions for
330 restoration of sound, stable and responsible institutional
331 governance.

332 (e) Notwithstanding the provisions of section six, article
333 one-a of this chapter, the commission shall undertake a study of
334 the most effective and efficient strategies and policies to
335 address the findings and intent of that section.

336 (1) The issues addressed by this study shall include, but not
337 be limited to:

338 (A) Strategies to ensure access to graduate education;

339 (B) The development of state colleges as regional graduate
340 centers with authority to broker access to graduate programs in
341 their responsibility areas;

342 (C) The process by which state colleges obtain authoriza-
343 tion to grant graduate degrees;

344 (D) The relationship of regional graduate centers at state
345 colleges to graduate programs offered within those regions by
346 state universities; and

347 (E) Other issues related to initiatives to meet each region's
348 need and enhance the quality and competitiveness of graduate
349 programs offered and/or brokered by West Virginia state
350 colleges and universities.

351 (2) The commission shall report the findings of this study
352 along with the recommendations for legislative actions, if any,
353 to address these findings and the intent of this section, to the
354 legislative oversight commission on education accountability
355 by the first day of January, two thousand one.

**§18B-1B-5. Employment of chancellor for higher education;
office; powers and duties generally; employment
of vice chancellors.**

1 (a) The commission, created pursuant to section one of this
2 article, shall employ a chancellor for higher education who shall
3 be the chief executive officer of the commission and who shall
4 serve at its will and pleasure. The vice chancellor for adminis-
5 tration shall serve as the interim chancellor until a chancellor is
6 employed.

7 (b) The commission shall set the qualifications for the
8 position of chancellor and shall conduct a thorough nationwide
9 search for qualified candidates. A qualified candidate is one
10 who meets at least the following criteria:

11 (1) Possesses an excellent academic and administrative
12 background;

13 (2) Demonstrates strong communication skills;

14 (3) Has significant experience and an established national
15 reputation as a professional in the field of higher education;

16 (4) Is free of institutional or regional biases; and

17 (5) Holds or retains no other administrative position within
18 the system of higher education while employed as chancellor.

19 (c) The chancellor shall be compensated on a basis in
20 excess of, but not to exceed twenty percent greater than, the
21 base salary of any president of a state institution of higher
22 education or the administrative head of a governing board.

23 (d) With the approval of the commission, the chancellor
24 may employ a vice chancellor for health sciences who shall
25 serve at the will and pleasure of the chancellor. The vice
26 chancellor for health sciences shall coordinate the West
27 Virginia university school of medicine, the Marshall university
28 school of medicine, and the West Virginia school of osteopathic
29 medicine and also shall provide assistance to the governing
30 boards on matters related to medical education and health
31 sciences. The vice chancellor for health sciences shall perform
32 all duties assigned by the chancellor, the commission and state
33 law. In the case of a vacancy in the office of vice chancellor of
34 health sciences, the duties assigned to this office by law are the
35 responsibility of the chancellor or a designee;

36 (e) With the approval of the commission, the chancellor
37 shall employ a vice chancellor for community and technical
38 college education and workforce development who serves at the
39 will and pleasure of the chancellor. The duties of this position
40 include the general supervision of the joint commission for
41 vocational-technical-occupational education, as provided in
42 article three-a of this chapter, and such other duties as assigned.
43 Any reference in this code to the vice chancellor for community
44 and technical colleges means the vice chancellor for community
45 and technical college education and workforce development,
46 which vice chancellor for community and technical colleges
47 shall become the vice chancellor for community and technical
48 college education and workforce development. It is the duty and

49 responsibility of the vice chancellor for community and
50 technical college education and workforce development to:

51 (1) Provide assistance to the commission, the chancellor
52 and the governing boards on matters related to community and
53 technical college education;

54 (2) Advise, assist and consult regularly with the institu-
55 tional presidents; institutional boards of governors or boards of
56 advisors, as appropriate; and district consortia committees of
57 the state institutions of higher education involved in community
58 and technical college education; and

59 (3) Perform all duties assigned by the chancellor, the
60 commission and state law.

61 (f) With the approval of the commission, the chancellor
62 shall employ a vice chancellor for administration pursuant to
63 section two, article four of this chapter;

64 (g) With the approval of the commission, the chancellor
65 shall employ a vice chancellor for state colleges who shall serve
66 at the will and pleasure of the chancellor. It is the duty and
67 responsibility of the vice chancellor for state colleges to:

68 (1) Provide assistance to the commission, the chancellor
69 and the state colleges and freestanding community and techni-
70 cal colleges on matters related to or of interest and concern to
71 these institutions;

72 (2) Advise, assist and consult regularly with the institu-
73 tional presidents and institutional boards of governors of each
74 state college or freestanding community and technical college;

75 (3) Serve as an advocate and spokesperson for the state
76 colleges and community and technical colleges to represent
77 them and to make their interests, views and issues known to the
78 chancellor, the commission and governmental agencies;

79 (4) Perform all duties assigned by the chancellor, the
80 commission and state law; and

81 (5) Establish such guidelines as believed appropriate to
82 restrict the use of public funds by the state colleges and
83 freestanding community and technical colleges for influencing
84 public policy development.

85 In addition, the vice chancellor for state colleges has the
86 responsibility and the duty to provide staff assistance to the
87 institutional presidents and governing boards to the extent
88 practicable;

89 (h) Apart from the offices of the vice chancellors as set
90 forth in this section and section two, article four of this chapter,
91 the chancellor shall determine the organization and staffing
92 positions within the office that are necessary to carry out his or
93 her powers and duties and may employ necessary staff;

94 (i) The chancellor may enter into agreements with any state
95 agency or political subdivision of the state, any state higher
96 education institution or any other person or entity to enlist staff
97 assistance to implement the powers and duties assigned by the
98 commission or by state law;

99 (j) The chancellor shall be responsible for the day-to-day
100 operations of the commission and shall have the following
101 responsibilities:

102 (1) To carry out policy and program directives of the
103 commission;

104 (2) To develop and submit annual reports on the implemen-
105 tation plan to achieve the goals and objectives set forth in
106 section one-a, article one of this chapter and in the institutional
107 compacts;

108 (3) To prepare and submit to the commission for its
109 approval the proposed budget of the commission including the
110 offices of the chancellor and the vice chancellors;

111 (4) Effective the first day of July, two thousand one, and
112 under the direction of the commission, to promulgate rules for
113 higher education, as set forth in article three-a, chapter twenty-
114 nine-a of this code;

115 (5) Effective the first day of July, two thousand one, and
116 under the direction of the commission, to:

117 (A) Provide technical assistance, when requested, to the
118 governing boards in the development of rules;

119 (B) Review rules and approve rules of the governing boards
120 for filing with the office of the vice chancellor for administra-
121 tion;

122 (C) Determine when a joint rule among the governing
123 boards is necessary or required by law and, in those instances
124 and in consultation with the governing boards, promulgate the
125 joint rule;

126 (D) Ensure that all the requirements are met for promulgat-
127 ing rules as set forth in article three-a, chapter twenty-nine-a of
128 this code: *Provided*, That nothing in said chapter shall be
129 construed to require the approval and filing of institution rules
130 except for approval by the chancellor and filing in the office of
131 the vice chancellor as provided herein; and

132 (E) Establish a process for the transition from the rules
133 promulgated by the previous board of trustees, board of
134 directors and the interim governing board to new rules filed by
135 the chancellor, subject to approval of the policy commission.
136 Until new rules are filed, the existing rules of said boards shall
137 remain in effect and applicable to the respective state institu-
138 tions of higher education. The chancellor shall review all new

139 rules filed to replace the existing rules of the said boards and
140 determine their proper classification as legislative, procedural
141 or interpretive, notwithstanding the classification of the existing
142 rule or a classification established for a specific rule by this
143 code prior to the effective date of this section. The chancellor
144 shall strictly and uniformly apply the definitions of rule,
145 legislative rule, interpretive rule and procedural rule set forth in
146 section two, article one, chapter twenty-nine-a of this code and
147 unless specifically mandated by an act of the Legislature
148 following the effective date of this section, may not require the
149 filing, as rules, of regulations relating solely to the internal
150 management of the commission, governing boards and institu-
151 tions under their jurisdiction. The chancellor shall be responsi-
152 ble for ensuring that any policy which is required to be uniform
153 across the institutions is applied in a uniform manner;

154 (6) To perform all other duties and responsibilities assigned
155 by the commission or by state law.

156 (k) The chancellor shall be reimbursed for all actual and
157 necessary expenses incurred in the performance of all assigned
158 duties and responsibilities;

159 (l) The chancellor is the primary advocate for higher
160 education and, with the commission, advises the Legislature on
161 matters of higher education in West Virginia. As the primary
162 advocate for higher education, the chancellor shall work closely
163 with the legislative oversight commission on education ac-
164 countability and with the elected leadership of the state to
165 ensure that they are fully informed about higher education
166 issues and that the commission fully understands the goals for
167 higher education that the Legislature has established by law;

168 (m) The chancellor may design and develop for consider-
169 ation by the commission new statewide or regional initiatives
170 in accordance with the goals set forth in section one-a, article

171 one of this chapter and the public policy agenda articulated by
172 the commission.

173 (n) The chancellor shall work closely with members of the
174 state board of education and with the state superintendent of
175 schools to assure that the following goals are met:

176 (1) Development and implementation of a seamless
177 kindergarten-through-college system of education; and

178 (2) Appropriate coordination of missions and programs. To
179 further the goals of cooperation and coordination between the
180 commission and the state board of education, the chancellor
181 shall serve as an ex officio, nonvoting member of the state
182 board of education.

§18B-1B-6. Appointment of institutional presidents; evaluation.

1 (a) *Appointment of institutional presidents.* — Effective on
2 the first day of July, two thousand, appointment of presidents
3 of the public institutions of higher education shall be made as
4 follows:

5 (1) Subject to the approval of the commission, the appropri-
6 ate governing board of the institution shall appoint a president
7 for Bluefield state college, Concord college, eastern West
8 Virginia community and technical college, Fairmont state
9 college, Glenville state college, Marshall university, Shepherd
10 college, southern West Virginia community and technical
11 college, West Liberty state college, West Virginia northern
12 community and technical college, West Virginia school of
13 osteopathic medicine, West Virginia state college and West
14 Virginia university;

15 (2) Subject to the approval of the appropriate governing
16 board and to the provisions of article three-c of this chapter, the
17 president of the appropriate institution shall appoint the
18 president of the regional campuses of West Virginia university

19 and of the community and technical colleges which remain
20 linked administratively to a sponsoring institution. The
21 presidents of such regional campuses and community and
22 technical colleges shall serve at the will and pleasure of the
23 institutional president. The president of the sponsoring institu-
24 tion shall appoint a president for the administratively linked
25 community and technical college at the appropriate time as
26 outlined in the institutional compact and approved by the
27 commission.

28 (3) Subject to the approval of the commission and to the
29 provisions of articles three-c and three-f of this chapter, the
30 president of the appropriate institution shall appoint the provost
31 in those cases where the community and technical college
32 remains as a component of another institution. The provost shall
33 serve at the will and pleasure of the president of the employing
34 institution.

35 (b) *Incumbent heads of institutions.* — Any president of a
36 public institution of higher education in office on the first day
37 of July, two thousand, shall continue in office subject to state
38 law: *Provided*, That the provost of an administratively linked
39 community and technical college in office on the thirtieth day
40 of June, two thousand one, may become the president of that
41 community and technical college on the first day of July, two
42 thousand one, with the approval of the governing board of the
43 institution and subject to the consent of the commission. The
44 presidents shall continue in office subject to state law and
45 subject to the will and pleasure of the appropriate governing
46 board or employing institution.

47 (c) *Evaluation of institutional presidents.* — The governing
48 boards shall conduct written performance evaluations of each
49 institution's president: *Provided*, That the presidents of regional
50 campuses shall be evaluated by the president of West Virginia
51 university and the presidents of administratively linked commu-

52 nity and technical colleges shall be evaluated by the president
53 of the employing institution. Evaluations shall be done in every
54 fourth year of employment as president, recognizing unique
55 characteristics of the institution and utilizing institutional
56 personnel, institutional boards of advisors as appropriate, staff
57 of the appropriate governing board and persons knowledgeable
58 in higher education matters who are not otherwise employed by
59 a governing board. A part of the evaluation shall be a determi-
60 nation of the success of the institution in meeting the require-
61 ments of its institutional compact.

§18B-1B-7. Duties of higher education policy commission during transition year.

1 During the transition year beginning on the first day of July,
2 two thousand, and ending on the thirtieth day of June, two
3 thousand one, the following is the intent of the Legislature:

4 (a) The higher education interim governing board, estab-
5 lished in article one-c of this chapter, is the governing agency
6 for public higher education in West Virginia;

7 (b) The chancellor for higher education shall provide to the
8 governing board adequate and appropriate staff assistance to
9 carry out its duties and responsibilities as assigned by law;

10 (c) The commission has the power and authority to require
11 the interim governing board to transfer from accounts under the
12 control of the interim governing board such sums as the
13 commission believes appropriate for the proper performance of
14 its duties and responsibilities;

15 (d) The commission shall focus its attention first on
16 organizing itself to carry out its duties and responsibilities,
17 including, but not limited to, establishing a search and screen-
18 ing process to identify candidates and to employ a chancellor;

19 (e) The commission shall focus its attention second on the
20 following policy areas, but may consider others as appropriate:

21 (1) Developing legislative rules as required by law;

22 (2) Researching and developing the elements of the finance
23 plan required by section five, article one-a of this chapter;

24 (3) Developing guidelines to be used by institutional boards
25 of governors in employing institutional presidents;

26 (4) Developing a statewide master plan pursuant to section
27 nine of this article;

28 (5) Developing and approving the institutional compacts as
29 provided in section two, article one-a of this chapter;

30 (6) Developing a plan to provide on-going education and
31 training opportunities to members of institutional boards of
32 governors and institutional boards of advisors, including, but
33 not limited to, exploring the possibility of obtaining private
34 funds to bring members together for orientation, education and
35 leadership training prior to the first day of July, two thousand
36 one;

37 (7) Establishing a peer group for each public institution of
38 higher education in the state as provided in section three, article
39 one-a of this chapter; and

40 (8) Developing the elements of the higher education report
41 card to be used to report institutional and system progress on
42 meeting the goals and objectives of the institutional compacts
43 and of section one-a, article one of this chapter; and

44 (f) On or before the first day of January, two thousand one,
45 the commission shall certify to the governor, the president of
46 the Senate and the speaker of the House of Delegates draft
47 legislation which will accomplish the transfer on the first day
48 of July, two thousand one, of all powers, duties, property,

49 obligations, contracts, rules, orders, resolutions or any other
50 matters which should be transferred or vested in the commis-
51 sion, the governing boards or any other agency. In the event the
52 Legislature does not enact legislation which accomplishes the
53 recommended transfers or vesting, effective the first day of
54 July, two thousand one, all such matters are transferred to and
55 vested in the commission and the commission is hereby
56 authorized and directed to delegate such matters as is consistent
57 with assigned powers and duties in section four of this article
58 and section four, article two-a of this chapter. In the event of a
59 dispute between or among the commission and the governing
60 boards as to the proper delegation of these matters, the decision
61 of the commission shall control.

**§18B-1B-8. Higher education accountability; institutional and
statewide report cards.**

1 Effective on the first day of July, two thousand one:

2 (a) The commission is directed to make information
3 available to parents, students, faculty, staff, state policymakers
4 and the general public on the quality and performance of public
5 higher education. This information shall be consistent and
6 comparable between and among the state institutions of higher
7 education and, if applicable, comparable with information from
8 peer institutions in the region and the nation.

9 (b) On or before the first day of July, two thousand one, the
10 chancellor shall review policy series sixteen, related to the
11 higher education report card, of the rules of the board of
12 trustees and board of directors and determine whether a new
13 rule should be adopted providing for the collection, analysis and
14 dissemination of data and information on the performance of
15 the state institutions of higher education, including health
16 sciences education, in relation to the findings, directives, goals
17 and objectives set forth in section one-a, article one of this
18 chapter, the institutional compacts and in comparison to their

19 peers. The rules shall provide the legislative oversight commis-
20 sion on education accountability with full and accurate informa-
21 tion while minimizing the institutional burden of recordkeeping
22 and reporting. The rules shall include uniform definitions for
23 the various indicators of student and institutional performance
24 and guidelines for the collection and reporting of data and the
25 preparation, printing and distribution of report cards under this
26 section. The report card forms shall provide for brief, concise
27 reporting in nontechnical language of required information.
28 Any technical or explanatory material which a governing board
29 wishes to include shall be contained in a separate appendix
30 available for a reasonable fee to the general public upon
31 request.

32 (c) The president or chief executive officer of each public
33 college, university or community and technical college shall
34 prepare and submit annually all requested data to the commis-
35 sion at the time established by the commission.

36 The commission shall prepare report cards for institutions
37 under their jurisdiction and in accordance with the guidelines
38 set forth in this section and rules promulgated under this
39 section.

40 (d) The higher education central office staff under the
41 direction of the vice chancellor for administration shall provide
42 technical assistance to each institution and governing board in
43 data collection and reporting and is responsible for assembling
44 the statewide report card from information submitted by each
45 governing board. The statewide report card shall include the
46 data for each institution for each separately listed, applicable
47 indicator and the aggregate of the data for all public institutions
48 of higher education. The statewide report card shall be prepared
49 using actual institutional, state, regional and national data, as
50 applicable and available, indicating the present performance of
51 the individual institutions, the governing boards and the state
52 system of higher education. The report card also shall include

53 goals and trends for the institutions and the higher education
54 system and shall include all the information required either by
55 statute or by rule as authorized in subsection (b) of this section.
56 Statewide report cards shall be based upon information for the
57 current school year or for the most recent school year for which
58 the information is available, in which case such year shall be
59 clearly footnoted.

60 (e) The statewide report card shall be completed and
61 disseminated with copies to the legislative oversight commis-
62 sion on education accountability prior to the first day of January
63 of each year.

64 (f) For a reasonable fee, the chancellor shall make copies of
65 the report cards available to any individual requesting them.

§18B-1B-9. Statewide master plan.

1 (a) The commission shall develop a master plan for higher
2 education for the state.

3 (b) The plan shall be developed on or before the first day of
4 July, two thousand one, and shall be communicated to the
5 legislative oversight commission on education accountability.

6 (c) The master plan shall include, but not be limited to, the
7 following:

8 (1) A detailed demonstration of how the master plan will be
9 used to meet the goals and objectives outlined in section one-a,
10 article one of this chapter;

11 (2) A well-developed set of goals, as set forth in section
12 one-a, article one of this chapter, outlining missions, degree
13 offerings, resource requirements, physical plant needs, person-
14 nel needs, enrollment levels and other planning determinants
15 and projections for public higher education and other matters

16 necessary in such a plan to assure that the needs of the state for
17 a quality system of higher education are addressed; and

18 (3) A plan for involving and collaborating with the state
19 board of education, the public and private institutions of higher
20 education and other education providers to assure that a
21 comprehensive system of education is developed for West
22 Virginia.

23 (d) The master plan for higher education for the state shall
24 be established for periods of not less than three nor more than
25 six years and shall be revised periodically as necessary.

ARTICLE 1C. TRANSITION IMPLEMENTATION.

§18B-1C-1. Transition oversight.

§18B-1C-2. Higher education interim governing board.

§18B-1C-1. Transition oversight.

1 (a) The legislative oversight commission on education
2 accountability is charged with responsibility to monitor and
3 oversee implementation of the policy changes required by this
4 act.

5 (b) The responsibilities of the commission include, but are
6 not limited to, the following:

7 (1) Reviewing the overall progress of the commission and
8 institutions in implementing the provisions of this act;

9 (2) Reviewing the implementation of financing policy
10 including:

11 (A) Monitoring the process for selecting peer institutions as
12 provided for in section three, article one-a of this chapter;

13 (B) Monitoring the process for determining the institutional
14 operating budgets pursuant to section five, article one-a of this
15 chapter;

16 (3) Monitoring the development of indicators and
17 benchmarks as provided for in section two, article one-a of this
18 chapter;

19 (4) Monitoring the development of the institutional com-
20 pacts pursuant to section two, article one-a of this chapter and
21 the statewide master plan required in section nine, article one-b
22 of this chapter; and

23 (5) Subject to the provisions of section eight, article three-c
24 of this chapter, evaluating the existing community and technical
25 college programs and services at each of the community and
26 technical colleges and determining the effectiveness of the
27 indicated manner to accomplish the essential conditions at each
28 institution. Notwithstanding the provisions of section eight,
29 article three-c of this chapter, the team shall determine if the
30 goals of section one-a, article one of this chapter are being met
31 under the current structure;

32 (c) The provisions of this section expire the thirtieth day of
33 June, two thousand one.

§18B-1C-2. Higher education interim governing board.

1 (a) For the transition year beginning on the first day of July,
2 two thousand, and ending on the thirtieth day of June, two
3 thousand one, there is hereby established the higher education
4 interim governing board, hereinafter referred to as the “interim
5 governing board”, to serve as the governing board for public
6 higher education in West Virginia. The interim governing board
7 shall have such powers and duties pursuant to section eight,
8 article one of this chapter, as may be necessary to carry out
9 their responsibilities under this section.

10 (b) The interim governing board is comprised of nine
11 persons, appointed by the governor, with the advice and consent
12 of the Senate. Nothing herein shall prohibit a person from

13 serving concurrently on the interim governing board and an
14 institutional board of advisors.

15 (c) The interim governing board shall be appointed as soon
16 as possible after the passage of this act and shall continue its
17 duties until the thirtieth day of June, two thousand one. Ap-
18 pointments to the board shall be made so that members may
19 begin their work no later than the first day of July, two thou-
20 sand.

21 (d) Any person appointed to a position on the board shall
22 have governing experience in higher education, be knowledge-
23 able on education matters and represent the public interest.

24 (e) The members shall elect a chairman.

25 (f) The board shall meet as needed at the time and place
26 specified by the call of the chairperson or a majority of the
27 members.

28 (g) The intent and purposes of the interim governing board
29 are:

30 (1) To serve and act as the governing board for state
31 institutions of higher education and to ensure a smooth,
32 efficient transition to a new governing structure to be effective
33 the first day of July, two thousand one;

34 (2) To initiate the implementation of this act and to inform
35 the governor and the Legislature of the implementation status
36 and of any areas in which further executive or legislative action
37 may be necessary;

38 (3) To advise and assist the commission on implementation
39 of the act in a manner which achieves the intent, purposes and
40 goals of the act;

41 (4) To resolve, or seek appropriate remedy of, errors,
42 omissions, oversights or conflicts relative to implementation of
43 the act; and

44 (5) To take such other action within their scope of authority
45 as may be necessary to provide for the smooth transition in the
46 governance of the higher education system.

47 (h) Members of the board shall be reimbursed for actual
48 and necessary expenses incident to the performance of their
49 duties upon presentation of an itemized sworn statement
50 thereof. The reimbursement shall be paid from legislative
51 appropriations and other funds available to the board.

52 (i) A majority of the members constitutes a quorum for
53 conducting the business of the board.

54 (j) On the first day of July, two thousand, there is trans-
55 ferred to the interim governing board, all powers, duties,
56 property, obligations, contracts, rules, orders, resolutions or any
57 other matters which were vested in the prior boards of trustees,
58 directors or both.

59 (k) The provisions of this section expire on the thirtieth day
60 of June, two thousand one.

ARTICLE 2. UNIVERSITY OF WEST VIRGINIA BOARD OF TRUSTEES.

§18B-2-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

1 (a) The board of trustees shall consist of seventeen persons,
2 of whom one shall be the chancellor of the board of directors of
3 the state college system, ex officio, who shall not be entitled to
4 vote; one shall be the state superintendent of schools, ex officio,
5 who shall not be entitled to vote; one shall be the chairman of
6 the advisory council of students, ex officio, who shall be
7 entitled to vote; one shall be the chairman of the advisory

8 council of faculty, ex officio, who shall be entitled to vote; and
9 one shall be the chairman of the advisory council of classified
10 employees, ex officio, who shall be entitled to vote. The other
11 twelve trustees shall be citizens of the state, appointed by the
12 governor, by and with the advice and consent of the Senate.

13 Each of the trustees appointed to the board by the governor
14 shall represent the public interest and shall be especially
15 qualified in the field of higher education by virtue of the
16 person's knowledge, learning, experience or interest in the
17 field.

18 Except for the ex officio trustees, no person shall be eligible
19 for appointment to membership on the board of trustees who is
20 an officer, employee or member of an advisory board of any
21 state college or university, an officer or member of any political
22 party executive committee, the holder of any other public office
23 or public employment under the government of this state or any
24 of its political subdivisions or an appointee or employee of the
25 board of trustees or the board of directors: *Provided*, That if
26 there are no ethical restrictions under state or federal law, a
27 federal employee may serve as a member of the board of
28 trustees. Of the twelve trustees appointed by the governor from
29 the public at large, not more than six thereof shall belong to the
30 same political party and at least two trustees shall be appointed
31 from each congressional district.

32 Except as provided in this section, no other person may be
33 appointed to the board.

34 (b) The governor shall appoint twelve trustees as soon after
35 the first day of July, one thousand nine hundred eighty-nine, as
36 is practicable and the original terms of all trustees shall
37 commence on that date.

38 The terms of the trustees appointed by the governor shall be
39 for overlapping terms of six years, except, of the original

40 appointments, four shall be appointed to terms of two years,
41 four shall be appointed to terms of four years and four shall be
42 appointed to terms of six years. Each subsequent appointment
43 which is not for the purpose of filling a vacancy in an unexpired
44 term shall be for a term of six years.

45 The governor shall appoint a trustee to fill any vacancy
46 among the twelve trustees appointed by the governor, by and
47 with the advice and consent of the Senate, which trustee
48 appointed to fill such vacancy shall serve for the unexpired term
49 of the vacating trustee. The governor shall fill the vacancy
50 within sixty days of the occurrence of the vacancy.

51 All trustees appointed by the governor shall be eligible for
52 reappointment: *Provided*, That a person who has served as a
53 trustee or director during all or any part of two consecutive
54 terms shall be ineligible to serve as a trustee or director for a
55 period of three years immediately following the second of the
56 two consecutive terms.

57 The chairman of the advisory council of students, ex
58 officio; the chairman of the advisory council of faculty, ex
59 officio; and the chairman of the advisory council of classified
60 employees, ex officio, shall serve the terms for which they were
61 elected by their respective advisory councils. These members
62 shall be eligible to succeed themselves.

63 (c) Before exercising any authority or performing any
64 duties as a trustee, each trustee shall qualify as such by taking
65 and subscribing to the oath of office prescribed by section five,
66 article IV of the constitution of West Virginia and the certifi-
67 cate thereof shall be filed with the secretary of state.

68 (d) No trustee appointed by the governor shall be removed
69 from office by the governor except for official misconduct,
70 incompetence, neglect of duty or gross immorality and then

71 only in the manner prescribed by law for the removal of the
72 state elective officers by the governor.

73 (e) The board of trustees is abolished the thirtieth day of
74 June, two thousand.

75 (f) On the first day of July, two thousand, there is trans-
76 ferred to the interim governing board, all powers, duties,
77 property, obligations, contracts, rules, orders, resolutions or any
78 other matters which were vested in the prior boards of trustees,
79 directors or both.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-1. Composition of boards; terms and qualifications of members; vacan-
cies; eligibility for reappointment.

§18B-2A-2. Meetings.

§18B-2A-3. Supervision of governing boards; promulgation of rules.

§18B-2A-4. Powers and duties of governing boards generally.

§18B-2A-1. Composition of boards; terms and qualifications of members; vacancies; eligibility for reappoint- ment.

1 (a) Effective the thirtieth day of June, two thousand one, the
2 institutional boards of advisors at Bluefield state college,
3 Concord college, eastern West Virginia community and
4 technical college, Fairmont state college, Glenville state
5 college, Marshall university, Shepherd college, southern West
6 Virginia community and technical college, West Liberty state
7 college, West Virginia northern community and technical
8 college, the West Virginia school of osteopathic medicine, West
9 Virginia state college and West Virginia university are abol-
10 ished.

11 (b) Effective the first day of July, two thousand one, an
12 institutional board of governors is established at each of the
13 following institutions: Bluefield state college, Concord college,
14 eastern West Virginia community and technical college,
15 Fairmont state college, Glenville state college, Marshall
16 university, Shepherd college, southern West Virginia commu-

17 nity and technical college, West Liberty state college, West
18 Virginia northern community and technical college, the West
19 Virginia school of osteopathic medicine, West Virginia state
20 college and West Virginia university. Each institutional board
21 of governors shall consist of twelve persons: *Provided*, That the
22 institutional boards of governors for Marshall university and
23 West Virginia university shall consist of fifteen persons. Each
24 institutional board of governors shall include:

25 (1) A full-time member of the faculty with the rank of
26 instructor or above duly elected by the faculty;

27 (2) A member of the student body in good academic
28 standing, enrolled for college credit work and duly elected by
29 the student body;

30 (3) A member of the institutional classified staff duly
31 elected by the classified staff; and

32 (4) Nine lay members appointed by the governor by and
33 with the advice and consent of the Senate pursuant to section
34 one-a, article six of this chapter: *Provided*, That for the institu-
35 tional boards of governors at Marshall university and West
36 Virginia university, twelve lay members shall be appointed by
37 the governor by and with the advice and consent of the Senate
38 pursuant to section one-a, article six of this chapter: *Provided*,
39 *however*, That, of the appointed lay members, the governor
40 shall appoint one superintendent of a county board of education
41 from the area served by the institution: *Provided further*, That
42 in making the initial appointments to the institutional boards of
43 governors, the governor shall appoint, except in the case of
44 death, resignation or failure to be confirmed by the Senate,
45 those persons who are lay members of the institutional boards
46 of advisors for those institutions named in subsection (a) on the
47 thirtieth day of June, two thousand one, and appointed pursuant
48 to section one-a, article six of this chapter.

49 (c) Of the nine members appointed by the governor, no
50 more than five may be of the same political party: *Provided,*
51 That of the twelve members appointed by the governor to the
52 governing boards of Marshall university and West Virginia
53 university, no more than seven may be of the same political
54 party. At least six of the members shall be residents of the state:
55 *Provided, however,* That of the twelve members appointed by
56 the governor to the governing boards of Marshall university and
57 West Virginia university, at least eight of the members shall be
58 residents of the state. The student member shall serve for a term
59 of one year. The term beginning in July, two thousand, shall
60 end on the thirtieth day of June, two thousand one. The term
61 beginning in July, two thousand one, shall end on the thirtieth
62 day of June, two thousand two. Thereafter, the term shall begin
63 on the first day of July. The faculty member and the classified
64 staff member shall serve for a term of two years. The term
65 beginning in July, two thousand, shall end on the thirtieth day
66 of June, two thousand one, and the term beginning in July, two
67 thousand one, shall end on the thirtieth day of June, two
68 thousand three. Thereafter, the term shall begin on the first day
69 of July. The appointed lay citizen members shall serve terms of
70 four years each. All members shall be eligible to succeed
71 themselves for no more than one additional term. A vacancy in
72 an unexpired term of a member shall be filled for the unexpired
73 term within thirty days of the occurrence of the vacancy in the
74 same manner as the original appointment or election. Except in
75 the case of a vacancy, all elections shall be held and all appoint-
76 ments shall be made no later than the thirtieth day of June
77 preceding the commencement of the term, except the election
78 of officers for the term beginning in July, two thousand one
79 shall be made that July. Each institutional board of governors
80 shall elect one of its appointed lay members to be chairperson
81 in June of each year. No member may serve as chairperson for
82 more than two consecutive years.

83 (d) The appointed members of the institutional boards of
84 governors shall serve staggered terms. Of the initial appoint-
85 ments by the governor to each of the institutional boards of
86 governors, two shall be appointed for terms of one year, two
87 shall be appointed for terms of two years, two shall be ap-
88 pointed for terms of three years and three shall be appointed for
89 terms of four years: *Provided*, That for the initial appointments
90 to the governing boards of Marshall university and West
91 Virginia university, three shall be appointed for terms of one
92 year, three shall be appointed for terms of two years, three shall
93 be appointed for terms of three years and three shall be ap-
94 pointed for terms of four years. After the initial appointments,
95 all appointees shall serve for terms of four years.

96 (e) No person shall be eligible for appointment to member-
97 ship on an institutional board of governors who is an officer,
98 employee or member of any other institutional board of
99 governors, a member of an institutional board of advisors of
100 any public institution of higher education, an employee of any
101 institution of higher education, an officer or member of any
102 political party executive committee, the holder of any other
103 public office or public employment under the government of
104 this state or any of its political subdivisions or a member of the
105 commission: *Provided*, That this subsection shall not be
106 construed to prevent the faculty, classified staff, student
107 representative or superintendent of a county board of education
108 from being members of the governing boards.

109 (f) Before exercising any authority or performing any duties
110 as a member of a governing board, each member shall qualify
111 as such by taking and subscribing to the oath of office pre-
112 scribed by section five, article IV of the constitution of West
113 Virginia and the certificate thereof shall be filed with the
114 secretary of state.

115 (g) No member of a governing board appointed by the
116 governor may be removed from office by the governor except

117 for official misconduct, incompetence, neglect of duty or gross
118 immorality and then only in the manner prescribed by law for
119 the removal of the state elective officers by the governor.

120 (h) The president of the institution shall make available
121 resources of the institution for conducting the business of its
122 institutional board of governors. The members of the institu-
123 tional board of governors shall serve without compensation, but
124 shall be reimbursed for all reasonable and necessary expenses
125 actually incurred in the performance of their official duties
126 under this article upon presentation of an itemized sworn
127 statement of their expenses. All expenses incurred by the
128 institutional board of governors and the institution under this
129 section shall be paid from funds allocated to the institution for
130 that purpose.

§18B-2A-2. Meetings.

1 (a) The boards of governors shall hold at least six meetings
2 in every fiscal year, including an annual meeting each June:
3 *Provided*, That an annual meeting for the purpose of selecting
4 the first chairperson and other officers shall be held during July,
5 two thousand one. The president of the appropriate institution
6 shall call the first meeting of the institutional board of gover-
7 nors in July, two thousand one, or as soon thereafter as practica-
8 ble and preside until officers are elected. Officers elected in
9 July, two thousand one, shall begin their terms upon election
10 and shall serve until the thirtieth day of June the following year.
11 Of the twelve voting members of the boards of governors, seven
12 shall constitute a quorum: *Provided, however*, That of the
13 fifteen voting members of each of the boards of governors for
14 the state universities, eight shall constitute a quorum. A
15 majority vote of the quorum shall be necessary to pass upon
16 matters before the institutional board of governors.

17 (b) The boards of governors may set aside time as they
18 consider appropriate to afford administrators, faculty, students

19 and classified staff an opportunity to discuss issues affecting
20 these groups.

§18B-2A-3. Supervision of governing boards; promulgation of rules.

1 (a) For the transition year beginning on the first day of July,
2 two thousand and ending on the thirtieth day of June, two
3 thousand one, the interim governing board is subject to the
4 supervision of the secretary of education and the arts. Rules
5 adopted by the governing board are subject to approval by the
6 secretary of education and the arts.

7 (b) Effective the first day of July, two thousand one, and
8 thereafter, the governing boards are subject to the supervision
9 of the chancellor. The chancellor is responsible for the coordi-
10 nation of policies and purposes of the governing boards and
11 shall provide for and facilitate sufficient interaction among the
12 governing boards and between the governing boards and the
13 state board of education to meet the goals and objectives
14 provided for in the compacts and in section one-a, article one of
15 this chapter.

16 (c) The governing boards and the state board of education
17 shall provide any and all information requested by the chancel-
18 lor in a timely manner.

§18B-2A-4. Powers and duties of governing boards generally.

1 Effective the first day of July, two thousand one, each
2 governing board shall separately have the following powers and
3 duties:

4 (a) Determine, control, supervise and manage the financial,
5 business and education policies and affairs of the state institu-
6 tions of higher education under its jurisdiction;

7 (b) Develop a master plan for the institutions under its
8 jurisdiction; except the administratively linked community and
9 technical colleges shall develop their master plans subject to the
10 provisions of section one, article six of this chapter. The
11 ultimate responsibility for developing and updating the master
12 plans at the institutional level resides with the institutional
13 board of governors or board of advisors, as applicable, but the
14 ultimate responsibility for approving the final version of the
15 institutional master plans, including periodic updates, resides
16 with the commission. Each master plan shall include, but not be
17 limited to, the following:

18 (1) A detailed demonstration of how the master plan will be
19 used to meet the goals and objectives of the institutional
20 compact;

21 (2) A well-developed set of goals outlining missions,
22 degree offerings, resource requirements, physical plant needs,
23 personnel needs, enrollment levels and other planning
24 determinates and projections necessary in such a plan to assure
25 that the needs of the institution's area of responsibility for a
26 quality system of higher education are addressed;

27 (3) Documentation of the involvement of the commission,
28 institutional constituency groups, clientele of the institution and
29 the general public in the development of all segments of the
30 institutional master plan.

31 The plan shall be established for periods of not less than
32 three nor more than six years and shall be revised periodically
33 as necessary, including the addition or deletion of degree
34 programs as, in the discretion of the appropriate governing
35 board, may be necessary.

36 (c) Prescribe for the state institutions of higher education
37 under its jurisdiction, in accordance with its master plan and the
38 compact for each institution, specific functions and responsibil-

39 ities to meet the higher education needs of its area of responsi-
40 bility and to avoid unnecessary duplication;

41 (d) Direct the preparation of a budget request for the state
42 institutions of higher education under its jurisdiction, such
43 request to relate directly to missions, goals and projections as
44 found in the institutional master plans and the institutional
45 compacts;

46 (e) Consider, revise and submit to the commission a budget
47 request on behalf of the state institutions of higher education
48 under its jurisdiction;

49 (f) Review, at least every five years, all academic programs
50 offered at the state institutions of higher education under its
51 jurisdiction. The review shall address the viability, adequacy
52 and necessity of the programs in relation to its institutional
53 master plan, the institutional compact and the education and
54 workforce needs of its responsibility district. As a part of the
55 review, each governing board shall require the institutions
56 under its jurisdiction to conduct periodic studies of its graduates
57 and their employers to determine placement patterns and the
58 effectiveness of the education experience. Where appropriate,
59 these studies should coincide with the studies required of many
60 academic disciplines by their accrediting bodies.

61 (g) The governing boards also shall ensure that the se-
62 quence and availability of academic programs and courses
63 offered by the institutions under their jurisdiction is such that
64 students have the maximum opportunity to complete programs
65 in the time frame normally associated with program comple-
66 tion. Each governing board also is responsible to see that the
67 needs of nontraditional college-age students are appropriately
68 addressed and, to the extent it is possible for the individual
69 governing board to control, to assure core coursework com-
70 pleted at state institutions of higher education under its jurisdic-

71 tion is transferable to any other state institution of higher
72 education for credit with the grade earned.

73 (h) Subject to the provisions of article one-b of this chapter,
74 the appropriate governing board has the exclusive authority to
75 approve the teacher education programs offered in the institu-
76 tion under its control. In order to permit graduates of teacher
77 education programs to receive a degree from a nationally
78 accredited program and in order to prevent expensive duplica-
79 tion of program accreditation, the chancellor may select and
80 utilize one nationally recognized teacher education program
81 accreditation standard as the appropriate standard for program
82 evaluation.

83 (i) Utilize faculty, students and classified staff in
84 institutional-level planning and decision making when those
85 groups are affected.

86 (j) Administer a system for the management of personnel
87 matters, including, but not limited to, personnel classification,
88 compensation, and discipline for employees of the institutions
89 under their jurisdiction, subject to the provisions of state and
90 federal law: *Provided*, That the chancellor may promulgate a
91 new uniform rule for the purpose of standardizing, as much as
92 possible, the administration of personnel matters among the
93 institutions of higher education;

94 (k) Administer a system for the hearing of employee
95 grievances and appeals therefrom as prescribed by article
96 twenty-nine, chapter eighteen of this code so that aggrieved
97 parties may be assured of timely and objective review: *Pro-*
98 *vided*, That after the first day of July, two thousand, the
99 procedure established in article twenty-nine, chapter eighteen
100 of this code shall be the exclusive mechanism for hearing
101 employee grievances and appeals.

102 (l) Solicit and utilize or expend voluntary support, including
103 financial contributions and support services, for the state
104 institutions of higher education under its jurisdiction;

105 (m) Appoint a president or other administrative head for the
106 institutions of higher education under its jurisdiction subject to
107 the provisions of section six, article one-b of this chapter.

108 (n) Conduct written performance evaluations of each
109 institution's president pursuant to section six, article one-b of
110 this chapter;

111 (o) Submit to the commission no later than the first day of
112 November of each year an annual report of the performance of
113 the institutions of higher education under its jurisdiction during
114 the previous fiscal year as compared to stated goals in its master
115 plan and institutional compact.

116 (p) Enter into contracts or consortium agreements with the
117 public schools, private schools or private industry to provide
118 technical, vocational, college preparatory, remedial and
119 customized training courses at locations either on campuses of
120 the public institution of higher education or at off-campus
121 locations in the institution's responsibility district. To accom-
122 plish this goal, the boards are permitted to share resources
123 among the various groups in the community.

124 (q) Delegate, with prescribed standards and limitations, the
125 part of its power and control over the business affairs of a
126 particular state institution of higher education under its jurisdic-
127 tion to the president or other administrative head of the state
128 institution of higher education in any case where it considers
129 the delegation necessary and prudent in order to enable the
130 institution to function in a proper and expeditious manner and
131 to meet the requirements of its institutional compact. If a
132 governing board elects to delegate any of its power and control
133 under the provisions of this subsection, it shall notify the

134 chancellor. Any such delegation of power and control may be
135 rescinded by the appropriate governing board or the chancellor
136 at any time, in whole or in part.

137 (r) Unless changed by the interim governing board or the
138 chancellor, the governing boards shall continue to abide by
139 existing rules setting forth standards for acceptance of advanced
140 placement credit for their respective institutions. Individual
141 departments at institutions of higher education may, upon
142 approval of the institutional faculty senate, require higher
143 scores on the advanced placement test than scores designated
144 by the appropriate governing board when the credit is to be used
145 toward meeting a requirement of the core curriculum for a
146 major in that department.

147 (s) Each governing board, or its designee, shall consult,
148 cooperate and work with the state treasurer and the state auditor
149 to update as necessary and maintain an efficient and
150 cost-effective system for the financial management and
151 expenditure of special revenue and appropriated state funds at
152 the institutions under its jurisdiction that ensures that properly
153 submitted requests for payment be paid on or before due date,
154 but in any event, within fifteen days of receipt in the state
155 auditor's office.

156 (t) The governing boards in consultation with the chancellor
157 and the secretary of the department of administration shall
158 develop, update as necessary and maintain a plan to administer
159 a consistent method of conducting personnel transactions,
160 including, but not limited to, hiring, dismissal, promotions and
161 transfers at the institutions under their jurisdiction. Each such
162 personnel transaction shall be accompanied by the appropriate
163 standardized system or forms which will be submitted to the
164 respective governing board and the department of finance and
165 administration.

166 (u) Notwithstanding any other provision of this code to the
167 contrary, the governing boards shall have the authority to
168 transfer funds from any account specifically appropriated for
169 their use to any corresponding line item in a general revenue
170 account at any agency or institution under their jurisdiction as
171 long as such transferred funds are used for the purposes
172 appropriated. The governing boards also shall have the author-
173 ity to transfer funds from appropriated special revenue accounts
174 for capital improvements under their jurisdiction to special
175 revenue accounts at agencies or institutions under their jurisdic-
176 tion as long as such transferred funds are used for the purposes
177 appropriated; and

178 (v) Notwithstanding any other provision of this code to the
179 contrary, the governing boards may acquire legal services as are
180 considered necessary, including representation of the governing
181 boards, their institutions, employees and officers before any
182 court or administrative body. The counsel may be employed
183 either on a salaried basis or on a reasonable fee basis. In
184 addition, the governing boards may, but are not required to, call
185 upon the attorney general for legal assistance and representation
186 as provided by law.

ARTICLE 3. BOARD OF DIRECTORS OF THE STATE COLLEGE SYSTEM.

§18B-3-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

1 (a) The board of directors of the state college system shall
2 consist of sixteen persons, of whom one shall be the chancellor
3 of the university of West Virginia board of trustees, ex officio,
4 who shall not be entitled to vote; one shall be the state superin-
5 tendent of schools, ex officio, who shall not be entitled to vote;
6 one shall be the chair of the joint commission for vocational-
7 technical-occupational education, ex officio, who shall not be

8 entitled to vote; one shall be the chairman of the advisory
9 council of students, ex officio, who shall be entitled to vote; one
10 shall be the chairman of the advisory council of faculty, ex
11 officio, who shall be entitled to vote; and one shall be the
12 chairman of the advisory council of classified employees, ex
13 officio, who shall be entitled to vote. The other ten directors
14 shall be citizens of the state, appointed by the governor, by and
15 with the advice and consent of the Senate. On or after the tenth
16 day of March, one thousand nine hundred ninety-six, the board
17 shall be reconstituted and all terms of members appointed by
18 the governor prior to the tenth day of March, one thousand nine
19 hundred ninety-six, shall expire upon the appointment by the
20 governor of all the directors required to be appointed by this
21 section. The governor shall make appointments required by this
22 section no later than the fifteenth day of March, one thousand
23 nine hundred ninety-six.

24 Each of the directors appointed to the board by the governor
25 shall represent the public interest and shall be especially
26 qualified in the field of higher education by virtue of the
27 person's knowledge, learning, experience or interest in the
28 field. The relative enrollments of baccalaureate and community
29 and technical students in the state college system shall be
30 considered by the governor when making such appointments
31 and the governor shall use his or her best efforts to achieve a
32 balance among the members who reflect the various interests,
33 goals and concerns reflected by the relative enrollments.

34 Except for the ex officio directors, no person shall be
35 eligible for appointment to membership on the board of
36 directors who is an officer, employee or member of an advisory
37 board of any state college or university, an officer or member
38 of any political party executive committee, the holder of any
39 other public office or public employment under the government
40 of this state or any of its political subdivisions, or an appointee
41 or employee of the board of trustees or board of directors:

42 *Provided*, That if there are no ethical restrictions under state or
43 federal law, a federal employee may serve as a member of the
44 board of directors. Of the ten directors appointed by the
45 governor from the public at large, not more than five thereof
46 shall belong to the same political party and at least three
47 directors of the board shall be appointed from each congressio-
48 nal district.

49 Except as provided in this section, no other person may be
50 appointed to the board.

51 (b) The governor shall appoint ten directors as soon after
52 the tenth day of March, one thousand nine hundred ninety-six,
53 as is practicable and the original terms of all directors shall
54 commence on that date. The terms of the directors appointed by
55 the governor shall be for overlapping terms of six years, except,
56 of the original appointments, three shall be appointed to terms
57 of two years, three shall be appointed to terms of four years and
58 four shall be appointed to terms of six years. Each subsequent
59 appointment which is not for the purpose of filling a vacancy in
60 an unexpired term shall be appointed to a term of six years.

61 The governor shall appoint a director to fill any vacancy
62 among the ten directors appointed by the governor, by and with
63 the advice and consent of the Senate, which director appointed
64 to fill such vacancy shall serve for the unexpired term of the
65 vacating director. The governor shall fill the vacancy within
66 sixty days of the occurrence of the vacancy.

67 All directors appointed by the governor shall be eligible for
68 reappointment: *Provided*, That a person who serves as a
69 director or trustee during all or any part of two consecutive
70 terms beginning after the first day of March, one thousand nine
71 hundred ninety-six, shall be ineligible to serve as a director for
72 a period of three years immediately following the second of the
73 two consecutive terms.

74 The chairman of the advisory council of students, ex
75 officio; the chairman of the advisory council of faculty, ex
76 officio; and the chairman of the advisory council of classified
77 employees, ex officio, shall serve the terms for which they were
78 elected by their respective advisory councils. These members
79 shall be eligible to succeed themselves.

80 (c) Before exercising any authority or performing any
81 duties as a director, each director shall qualify as such by taking
82 and subscribing to the oath of office prescribed by section five,
83 article IV of the constitution of West Virginia and the certifi-
84 cate thereof shall be filed with the secretary of state.

85 (d) No director appointed by the governor shall be removed
86 from office by the governor except for official misconduct,
87 incompetence, neglect of duty or gross immorality and then
88 only in the manner prescribed by law for the removal by the
89 governor of the state elective officers.

90 (e) The board of directors is abolished the thirtieth day of
91 June, two thousand.

92 (f) On the first day of July, two thousand, there is trans-
93 ferred to the interim governing board all powers, duties,
94 property, obligations, contracts, rules, orders, resolutions or any
95 other matters which were vested in the prior boards of trustees,
96 directors or both.

**ARTICLE 3A. WEST VIRGINIA JOINT COMMISSION FOR VOCA-
TIONAL-TECHNICAL-OCCUPATIONAL EDUCATION.**

§18B-3A-1. Joint commission continued; jurisdiction of higher education policy
commission.

§18B-3A-2. Legislative findings and intent.

§18B-3A-3. Appointment, composition and terms of joint commission; meetings;
expenses.

§18B-3A-4. Definitions.

§18B-3A-5. Duties and responsibilities.

§18B-3A-1. Joint commission continued; jurisdiction of higher education policy commission.

1 The West Virginia joint commission for vocational-
2 technical-occupational education, hereinafter referred to in this
3 article as the joint commission, is hereby continued. The joint
4 commission is subject to the jurisdiction of the commission
5 established in article one-b of this chapter and is subject to the
6 supervision of the chancellor and the vice chancellor for
7 community and technical college education and workforce
8 development.

§18B-3A-2. Legislative findings and intent.

1 The Legislature finds that the goals for post-secondary
2 education set forth in section one-a, article one of this chapter
3 include a finding that West Virginia's future rests not only on
4 how well its youth are educated, but also on how well it
5 educates its entire population at any age and that the state must
6 take into account the imperative need to serve the education
7 needs of working-age adults. These findings further note that
8 the state should make the best use of the expertise that private
9 institutions of higher education, vocational and technical
10 programs and private proprietary schools can offer and recog-
11 nize the importance of their contributions to the economic,
12 social and cultural well-being of their communities.

13 The Legislature further finds that certain goals focus on the
14 need to serve better both traditional and nontraditional students
15 and adults. Among these goals is one which states that the
16 overall focus of education is on a lifelong process which is to
17 be as seamless as possible at all levels and is to encourage
18 citizens of all ages to increase their knowledge and skills. These
19 goals also emphasize the need for cooperation and collaboration
20 at all levels in education, training and workforce development
21 to achieve the state's public policy agenda.

22 The Legislature further finds that certain acts to streamline
23 accountability, to make maximum use of existing assets to meet
24 new demands and target new funding to initiatives designed to
25 enhance and reorient existing capacity, to provide incentives for
26 brokering and collaboration and to focus on new demands now
27 require that many of the responsibilities originally charged to
28 the joint commission be reexamined.

29 Therefore, the intent of the Legislature in amending and
30 reenacting this article is to reorient the mission, role and
31 responsibilities of the joint commission consistent with and
32 supportive of the mission, role and responsibilities of the
33 commission, the goals for post-secondary education and
34 accountability for achieving the state's public policy agenda.

§18B-3A-3. Appointment, composition and terms of joint commission; meetings; expenses.

1 (a) The joint commission is comprised of nine persons,
2 seven of whom are appointed by the governor, with the advice
3 and consent of the Senate. The vice chancellor for community
4 and technical college education and workforce development and
5 the assistant superintendent for technical and adult education of
6 the state department of education shall serve as ex officio,
7 nonvoting members of the joint commission. On or after the
8 effective date of this section, the joint commission shall be
9 reconstituted and all terms of members appointed by the
10 governor prior to the effective date of this section shall expire
11 upon the appointment by the governor of all the members
12 required to be appointed by this section.

13 The seven members appointed by the governor shall
14 represent the interests of the business, labor and employer
15 communities and demonstrate knowledge of the workforce
16 needs of the various areas of the state. No person who is
17 employed by an institution of higher education and no person
18 who is engaged in providing, or employed by a person or

19 company whose primary function is to provide workforce
20 development services and activities, is eligible to serve on the
21 joint commission. No provider of education services, workforce
22 development services or related activities may serve on the joint
23 commission. The governor shall appoint three members from
24 each congressional district. Not more than four of the members
25 may be from the same political party.

26 (b) Members of the joint commission shall serve for terms
27 of four years, except that of the original appointments, one
28 member shall be appointed for one year; two members shall be
29 appointed for two years; two members shall be appointed for
30 three years; and two members shall be appointed for four years.
31 No member may serve more than two consecutive full terms
32 nor may any member be appointed to a term which results in
33 the member serving more than eight consecutive years.

34 (c) The vice chancellor for community and technical
35 college education and workforce development shall call the
36 initial meeting of the commission and preside until a chairper-
37 son is selected. The members shall elect a chairperson from
38 among the persons appointed by the governor. The joint
39 commission shall meet at least quarterly and may meet more
40 often at the call of the chairperson. One such meeting shall be
41 a public forum for the discussion of the goals and standards for
42 vocational education in the state. Members of the joint commis-
43 sion shall serve without compensation, but shall be reimbursed
44 for all reasonable and necessary expenses actually incurred in
45 the performance of their official duties under this article upon
46 presentation of an itemized sworn statement of their expenses,
47 except that members of the commission who are employees of
48 the state shall be reimbursed by their employing agency.

§18B-3A-4. Definitions.

1 As used in this article:

2 (a) "Secondary vocational-technical-occupational educa-
3 tion" means any course or program at the high school level that
4 results in, or may result in, a high school diploma or its equiva-
5 lent, under the jurisdiction of the state board of education.

6 (b) "Post-secondary vocational-technical-occupational
7 education" means any course or program beyond the high
8 school level that results in, or may result in, the awarding of a
9 two-year associate degree, certificate or other credential from
10 an institution under the jurisdiction of a governing board or
11 other public or private education provider.

12 (c) "Adult basic education" means adult basic skills
13 education designed to improve the basic literacy needs of
14 adults, including information processing skills, communication
15 skills and computational skills, leading to a high school
16 equivalency diploma, under the jurisdiction of the state board
17 of education.

§18B-3A-5. Duties and responsibilities.

1 The joint commission has the duties and responsibilities set
2 forth in the provisions of section two, article two-b, chapter
3 eighteen of this code and in addition shall:

4 (a) Advise and assist the state board of education and the
5 commission on state plans for secondary and post-secondary
6 vocational-technical-occupational and adult basic education,
7 including, but not limited to:

8 (1) Policies to strengthen vocational-technical-occupational
9 and adult basic education;

10 (2) Programs and methods to assist in the improvement,
11 modernization and expanded delivery of vocational-technical-
12 occupational and adult basic education programs;

13 (3) The distribution of federal vocational education funding
14 provided under the Carl D. Perkins Vocational and Technical
15 Education Act of 1998, PL 105-332, with an emphasis on the
16 distribution of financial assistance among secondary and
17 post-secondary vocational-technical-occupational and adult
18 basic education programs to help meet the public policy
19 agenda;

20 (4) Collaboration, cooperation and interaction among all
21 secondary and post-secondary vocational-technical-occupa-
22 tional and adult basic education programs in the state, including
23 the programs assisted under the federal Carl D. Perkins Voca-
24 tional and Technical Education Act of 1998, PL 105-332 and
25 the Workforce Investment Act, to promote the development of
26 seamless curriculum and the elimination of duplicative pro-
27 grams;

28 (5) Coordination of the delivery of vocational-technical-
29 occupational and adult basic education in a manner designed to
30 make the most effective use of available public funds to
31 increase accessibility for students; and

32 (6) Encouraging through articulation the most efficient
33 utilization of available resources, both public and private, to
34 meet the needs of vocational-technical-occupational and adult
35 basic education students.

36 (b) Analyze and report to the commission on the distribu-
37 tion of spending for vocational-technical-occupational and adult
38 basic education in the state and on the availability of
39 vocational-technical-occupational and adult basic education
40 activities and services within the state.

41 (c) Promote the delivery of vocational-technical-occupa-
42 tional and adult basic education programs in the state which
43 emphasize the involvement of business and labor organizations.

44 (d) Promote public participation in the provision of
45 vocational-technical-occupational and adult basic education at
46 the local level, with an emphasis on programs which involve
47 the participation of local employers and labor organizations.

48 (e) Promote equal access to quality vocational-technical-
49 occupational and adult basic education programs to handi-
50 capped and disadvantaged individuals, adults who are in need
51 of training and retraining, individuals who are single parents or
52 homemakers, individuals participating in programs designed to
53 eliminate sexual bias and stereotyping in vocational-technical-
54 occupational education, and criminal offenders serving in
55 correctional institutions.

56 (f) Assist the commission, the chancellor, the vice chancel-
57 lor for community and technical college education and
58 workforce development and those institutions delivering
59 community and technical college education, as defined in
60 section two, article one, of this chapter in the successful and
61 efficient development, coordination and delivery of community
62 and technical college programs and services in the state.

63 (g) Under the supervision of the chancellor and the vice
64 chancellor for community and technical college education and
65 workforce development, the joint commission has the following
66 additional powers and duties:

67 (1) To oversee the step-by-step implementation of the
68 comprehensive community and technical college system of
69 education provided in article three-c of this chapter;

70 (2) To interview nominees for appointment as community
71 and technical college presidents or provosts and make recom-
72 mendations to the chancellor, or in the case of a provost, to the
73 institutional president;

74 (3) To review and make recommendations to the commis-
75 sion for the approval of the institutional compacts for the
76 community and technical colleges;

77 (4) To make recommendations to the commission for
78 approval of the administration and distribution of the
79 independently-accredited community and technical college
80 development account;

81 (5) To ensure coordination among the community and
82 technical colleges and other state-level, regional and local
83 workforce entities, including, but not limited to, the human
84 resource investment council and the West Virginia literacy
85 council;

86 (6) To assist the community and technical colleges in
87 establishing and promoting links with employers and labor in
88 the geographic areas for which each of the community and
89 technical colleges is responsible;

90 (7) To develop alliances among the community and
91 technical colleges for resource sharing, joint development of
92 courses and courseware, sharing of expertise and staff develop-
93 ment;

94 (8) To provide a point for resolving issues relating to
95 transfer and articulation between and among community and
96 technical colleges, state colleges and universities and to advise
97 the commission on these issues;

98 (9) To assist the commission in developing a statewide
99 system of community and technical college programs and
100 services to place-bound adults and employers in every region of
101 West Virginia for competency-based certification of knowledge
102 and skills, including a statewide competency-based associate
103 degree program; and

104 (10) To review and make recommendations to the commis-
 105 sion for the approval of the institutional master plans for the
 106 community and technical colleges.

ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.

- §18B-3C-1. Legislative findings.
- §18B-3C-2. Purposes of article.
- §18B-3C-3. Essential conditions for community and technical college programs and services.
- §18B-3C-4. Responsibility districts.
- §18B-3C-5. Appointment of community and technical college presidents.
- §18B-3C-6. Community and technical college programs.
- §18B-3C-7. District consortia committees.
- §18B-3C-8. Process for achieving independently-accredited community and technical colleges.
- §18B-3C-9. Increasing flexibility for community and technical colleges.
- §18B-3C-10. Free-standing community and technical colleges; tuition and fees.
- §18B-3C-11. Shared facilities and resources, memoranda of agreements; and joint administrative boards.
- §18B-3C-12. Relationship between administratively linked community and technical colleges and sponsoring institutions.

§18B-3C-1. Legislative findings.

1 (a) *Findings.* — The Legislature hereby finds:

2 (1) That community and technical colleges in every region
 3 of West Virginia are essential elements of a statewide strategy
 4 to prepare students for further post-secondary education, life
 5 long learning and development of the workforce necessary to
 6 diversity and grow the state's economy.

7 (2) That, despite progress in the past decade, West Virginia
 8 continues to lag behind neighboring states and the nation in the
 9 competitiveness of its workforce for the new economy. Specifi-
 10 cally, West Virginia:

11 (A) Ranks fiftieth among the states in the preparation of its
 12 workforce for the new economy;

13 (B) Continues to have low rates of participation among high
14 school graduates in post-secondary education and ranks last
15 among competitor states in the proportion of high school
16 graduates who attend a community college;

17 (C) Ranks forty-seventh in the nation in the proportion of
18 its adult population at the lowest levels of literacy; and

19 (D) Ranks tenth among eleven competitor states in the
20 number of certificates and associate degrees granted.

21 (3) That, despite progress made in developing community
22 and technical colleges pursuant to Senate Bill No. 547, most of
23 these colleges remain subordinated to colleges and universities
24 with four-year and graduate missions.

25 (4) That, while the number of high school graduates is
26 declining and the needs of adults for further education and
27 training is increasing, less than twenty-five percent of the
28 students enrolled in West Virginia institutions are over age
29 twenty-five.

30 (5) That only half the enrollment in community and
31 technical colleges is in institutions independently accredited to
32 carry out that mission.

33 (6) That in most of the component community and technical
34 colleges the majority of faculty are appointed and rewarded
35 according to the policies of the four-year institution, not the
36 community and technical college.

37 (7) That West Virginia is one of only five states in which
38 most of the enrollment in associate degree programs is in
39 institutions that are not independently accredited as two-year
40 institutions.

41 (8) That the community and technical college mission in
42 West Virginia continues to be seen by many as narrowly

43 defined and offering primarily associate degree programs and
44 rather than the critical functions of workforce development,
45 developmental education, community outreach and regional
46 economic development as defined in Senate Bill No. 547.

47 (9) That half the community and technical college students
48 in West Virginia pay the higher tuition and fees of the sponsor-
49 ing four-year institution and not the lower rate of free-standing
50 community and technical colleges.

51 (10) That, despite the needs of place-bound adults, adults in
52 the workplace and employers, current higher education financ-
53 ing policy provides strong disincentives for both free-standing
54 and component community and technical colleges to provide
55 off-campus programs and services.

56 (11) That Senate Bill No. 547 set forth a definition of the
57 kinds of community and technical college programs or service
58 that should be available and accessible in every region of West
59 Virginia.

60 (12) That over the past forty years, West Virginia has
61 debated forming a distinct system of community and technical
62 colleges with a focused mission in each region of the state.
63 However, the state already had a network of public colleges in
64 each region and, because of severe resource limitation and low
65 population density, West Virginia evolved a system of commu-
66 nity and technical colleges that depends in large part on the
67 existing four-year colleges to offer associate degrees and other
68 community and technical college services. West Virginia has
69 established only a limited number of freestanding community
70 and technical colleges.

71 (13) That Senate Bill No. 547 sought to strengthen the
72 state's community and technical colleges in a number of ways.

73 (14) That the implementation of specific structural and
74 procedural provisions of Senate Bill No. 547 was decidedly
75 mixed.

76 (15) That Senate Bill No. 547 had widely varying impact on
77 the availability of community and technical college services
78 throughout West Virginia. The scope of services in several
79 regions of the state, especially those with component colleges,
80 has fallen far short of the kind of comprehensive, dynamic
81 services envisioned in Senate Bill No. 547.

82 (16) That since the enactment of Senate Bill No. 547
83 increasing attention has been given to the related priority of
84 workforce development.

85 (17) That since the enactment of Senate Bill No. 547
86 changes have accelerated dramatically in post-secondary
87 education demand and delivery systems.

88 (18) That the substantive goal of Senate Bill No. 547 to
89 ensure access to community and technical college programs and
90 services remains valid and is even more important today than
91 five years ago; and

92 (19) That there are essential conditions which must be met
93 by each community and technical college in West Virginia in
94 order to address the needs of the people of the state.

95 (b) *Legislative Intent.* — It is the intent of the Legislature,
96 that the process for achieving independently accredited commu-
97 nity and technical colleges be carried out using the most
98 effective and most efficient method available. In implementing
99 this process the governing boards and institutions of higher
100 education should utilize facilities that already are available.
101 These include, but are not limited to, the facilities of public
102 high schools and vocational education centers. It is further the
103 intent of the Legislature that this article not be implemented in
104 such a manner as to require an extensive building program.

105 Prior to pursuing any capital project, an institution shall follow
106 the guidelines for developing capital projects provided for in
107 subdivision thirteen, subsection (a), section four, article one-b
108 of this chapter.

§18B-3C-2. Purposes of article.

1 The general purposes of this article are the following:

2 (a) To establish community and technical college education
3 that is well articulated with the public schools and four-year
4 colleges; that makes maximum use of shared facilities, faculty,
5 staff, equipment and other resources; that encourages traditional
6 and nontraditional students and adult learners to pursue a life-
7 time of learning; that serves as an instrument of economic
8 development; and that has the independence and flexibility to
9 respond quickly to changing needs;

10 (b) To charge the respective governing boards with provid-
11 ing community and technical college education at state institu-
12 tions of higher education under their jurisdiction that has the
13 administrative, programmatic and budgetary control necessary
14 to allow maximum flexibility and responsiveness to district and
15 community needs. Education services shall be provided
16 consistent with the goal of sharing facilities, faculty, staff,
17 equipment and other resources within and among the districts,
18 the other systems of public and higher education and other
19 education and training programs;

20 (c) To establish the essential conditions for community and
21 technical college programs and services, as defined in section
22 three of this article, necessary to ensure that each region of
23 West Virginia is served by a community and technical college
24 meeting the needs of the people of the region;

25 (d) To establish a mechanism for assuring that, where
26 applicable, a transition plan for meeting the essential conditions
27 is developed by each relevant community and technical college;

28 (e) To establish responsibility districts for each of the
29 community and technical colleges to ensure accountability that
30 the full range of community and technical education programs
31 and services is provided in all areas of the state;

32 (f) To define the full range of programs and services that
33 every community and technical college has the responsibility to
34 provide; and

35 (g) To establish such other policies and procedures neces-
36 sary to ensure that the needs of West Virginia, its people and its
37 businesses are met for the programs and services that can be
38 provided through a comprehensive system of community and
39 technical colleges.

**§18B-3C-3. Essential conditions for community and technical
college programs and services.**

1 The Legislature hereby establishes the following essential
2 conditions for community and technical college programs and
3 services:

4 (a) Independent accreditation by the commission on
5 institutions of higher education of the north central association
6 of colleges and schools (NCA) reflecting external validation
7 that academic programs, services, faculty, governance, financ-
8 ing and other policies are aligned with the community and
9 technical college mission of the institution;

10 (b) A full range of community and technical college
11 services offered as specified in section six of this article;

12 (c) Programmatic approval consistent with the provisions
13 of section nine of this article;

14 (d) A fee structure competitive with its peer institutions;

15 (e) Basic services, some of which may be obtained under
16 contract with existing institutions in the region. These basic
17 services shall include, but are not limited to, the following:

18 (1) Student services, including, but not limited to, advising,
19 academic counseling, financial aid and provision of the first
20 line of academic mentoring and mediation;

21 (2) Instructional support services;

22 (3) Access to information and library services;

23 (4) Physical space in which courses can be offered;

24 (5) Access to necessary technology for students, faculty and
25 mentors;

26 (6) Monitoring and assessment; and

27 (7) Administrative services, including, but not limited to,
28 registration, fee collection and bookstore and other services for
29 the distribution of learning materials;

30 (f) A president who is the chief academic and administra-
31 tive officer of the community and technical college appointed
32 and serving pursuant to the terms of section six, article one-b of
33 this chapter;

34 (g) An institutional board of governors or an institutional
35 board of advisors appointed and serving as required by law;

36 (h) A full-time core faculty, complemented by persons
37 engaged through contract or other arrangements, including
38 college and university faculty, to teach community college
39 courses and qualified business, industry and labor persons
40 engaged as adjunct faculty in technical areas;

41 (i) A faculty personnel policy, formally established to be
42 separate and distinct from that of other institutions, which
43 includes, but is not limited to, appointment, promotion, work-

44 load and, if appropriate, tenure pursuant to section nine of this
45 article. These policies shall be appropriate for the community
46 and technical college mission and may not be linked to the
47 policies of any other institution;

48 (j) Community and technical colleges designed and
49 operating as open-provider centers with the authority and
50 flexibility to draw on the resources of the best and most
51 appropriate provider to ensure that community and technical
52 college services are available and delivered in the region in a
53 highly responsive manner. A community and technical college
54 may contract with other institutions and providers as necessary
55 to obtain the academic programs and resources to complement
56 those available through a sponsoring college, where applicable,
57 in order to meet the region's needs.

58 (k) Separately identified state funding allocations for each
59 of the community and technical colleges. The president of the
60 community and technical college has full budgetary authority
61 for the entity, subject to accountability to its governing board,
62 including authority to retain all tuition and fees generated by
63 the community and technical college for use to carry out its
64 mission.

§18B-3C-4. Responsibility districts.

1 (a) Each community and technical college is hereby
2 assigned a responsibility district within which it is responsible
3 for providing the full array of community and technical college
4 programs and services as defined in section six of this article.
5 The programs and services shall address the public policy
6 agenda, compact elements and goals for post-secondary
7 education established in section one-a, article one of this
8 chapter as they relate to community and technical colleges, and
9 other goals which may be established by the commission. The
10 responsibility districts shall be comprised of contiguous areas
11 of the state which have similar economic, industrial, educa-

12 tional, community and employment characteristics to facilitate
13 specialization in mission and programming. For the purposes of
14 initial implementation and organization, the districts shall be
15 comprised as follows and assigned to the designated community
16 and technical colleges:

17 (1) West Virginia northern community and technical
18 college - Ohio, Brooke, Hancock, Marshall, Tyler and Wetzel
19 counties;

20 (2) West Virginia university at Parkersburg - Wood,
21 Jackson, Pleasants, Ritchie, Roane, Tyler and Wirt counties;

22 (3) Southern West Virginia community and technical
23 college - Logan, Boone, Lincoln, McDowell, Mingo, Raleigh
24 and Wyoming counties;

25 (4) Bluefield state community and technical college -
26 Mercer, Greenbrier, McDowell, Monroe, Pocahontas, Raleigh
27 and Summers counties;

28 (5) Glenville state community and technical college -
29 Gilmer, Barbour, Braxton, Calhoun, Clay, Lewis, Nicholas,
30 Roane, Upshur and Webster counties;

31 (6) Fairmont state community and technical college -
32 Marion, Doddridge, Harrison, Monongalia, Preston, Randolph,
33 Taylor and Barbour counties;

34 (7) Shepherd community and technical college - Jefferson,
35 Berkeley, Grant and Morgan counties;

36 (8) Eastern West Virginia community and technical college -
37 Mineral, Grant, Hampshire, Hardy, Tucker and Pendleton counties;

38 (9) *West Virginia state community and technical college* -
39 Kanawha, Putnam and Clay counties;

40 (10) *West Virginia university institute of technology*
41 *community and technical college* - Fayette, Clay, Kanawha,
42 Raleigh and Nicholas counties; and

43 (11) *Marshall university community and technical college-*
44 Cabell, Mason, Putnam and Wayne counties.

45 (b) It is the intent of the Legislature that, where counties are
46 listed in more than one district, the county shall be the joint
47 responsibility of each community and technical college
48 assigned that county or shall be divided as determined by the
49 commission. The boundaries of the districts may be modified
50 from time to time by the commission to serve better the needs
51 within the districts. Such modifications are not required to
52 follow county boundaries.

§18B-3C-5. Appointment of community and technical college presidents.

1 The administrative head of a community and technical
2 college shall be the president or the provost, who shall be
3 chosen pursuant to the terms of section six, article one-b of this
4 chapter.

§18B-3C-6. Community and technical college programs.

1 (a) The mission of each community and technical college
2 includes the following programs which may be offered on or off
3 campus, at the work site, in the public schools and at other
4 locations and at times that are convenient for the intended
5 population:

6 (1) Career and technical education certificate, associate of
7 applied science and selected associate of science degree
8 programs for students seeking immediate employment, individ-
9 ual entrepreneurship skills, occupational development, skill
10 enhancement and career mobility;

11 (2) Transfer education associate of arts and associate of
12 science degree programs for students whose education goal is
13 to transfer into a baccalaureate degree program;

14 (3) Developmental/remedial education courses, literacy
15 education, tutorials, skills development labs and other services
16 for students who need to improve their skills in mathematics,
17 English, reading, study skills, computers and other basic skill
18 areas;

19 (4) Workforce training and retraining and contract educa-
20 tion with business and industry to train or retrain employees;

21 (5) Continuing development assistance and education credit
22 and noncredit courses for professional and self-development,
23 certification and licensure and literacy training;

24 (6) Community service workshops, lectures, seminars,
25 clinics, concerts, theatrical performances and other noncredit
26 activities to meet the cultural, civic and personal interests and
27 needs of the community; and

28 (7) Cooperative arrangements with the public school system
29 for the seamless progression of students through programs of
30 study which are calculated to begin at the secondary level and
31 conclude at the community and technical college level.

32 (b) All administrative, programmatic and budgetary control
33 over community and technical education within the district
34 shall be vested in the president or provost, subject to rules
35 adopted by the interim governing board or the chancellor. The
36 president and the provost with the institutional board of
37 governors or institutional board of advisors, as appropriate,
38 shall be responsible for the regular review, revision, elimination
39 and establishment of programs within the district to assure that
40 the needs of the district for community and technical college
41 programs are met. It is the intent of the Legislature that the
42 program review and approval process for community and

43 technical education be separate and distinct from baccalaureate
44 education and subject to the provisions of section nine of this
45 article. The president and institutional board of advisors shall
46 seek assistance from and utilize a district consortium committee
47 in fulfilling this responsibility.

48 (c) Independently accredited community and technical
49 colleges will serve as higher education centers for their regions
50 by brokering with colleges, universities and other providers, in
51 state and out of state to ensure the coordinated access of
52 students, employers, and other clients to needed programs and
53 services.

§18B-3C-7. District consortia committees.

1 (a) The president or provost of each community and
2 technical college shall form a district consortium committee
3 which shall include representatives, distributed geographically
4 to the extent practicable, of the major community and technical
5 college branches, vocational-technical centers, comprehensive
6 high schools, four-year colleges and universities, community
7 service or cultural organizations, economic development
8 organizations, business, industry, labor, elected public officials
9 and employment and training programs and offices within the
10 district. The consortium committee shall be chaired by the
11 president or provost, or his or her designee, and shall advise and
12 assist the president or provost with the following:

13 (1) Completing a comprehensive assessment of the district
14 to determine what education and training programs are neces-
15 sary to meet the short and long-term workforce development
16 needs of the district;

17 (2) Coordinating efforts with regional labor market infor-
18 mation systems to identify the ongoing needs of business and
19 industry, both current and projected, and to provide information

20 to assist in an informed program of planning and decision
21 making;

22 (3) Planning and development of a unified effort to meet
23 the documented workforce development needs of the district
24 through individual and cooperative programs, shared facilities,
25 faculty, staff, equipment and other resources and the develop-
26 ment and use of distance learning and other education technolo-
27 gies;

28 (4) Regularly reviewing and revising curricula to ensure
29 that the workforce needs are met, developing new programs and
30 phasing out or modifying existing programs as appropriate to
31 meet such needs, streamlining procedures for designing and
32 implementing customized training programs and accomplishing
33 such other complements of a quality comprehensive community
34 and technical college;

35 (5) Increasing the integration of secondary and post-
36 secondary curriculum and programs that are targeted to meet
37 regional labor market needs, including implementation of a
38 comprehensive school-to-work transition system that accom-
39 plishes the following:

40 (A) Helps students focus on career objectives;

41 (B) Establishes cooperative programs and student intern-
42 ships with business and industry;

43 (C) Builds upon current programs such as high schools that
44 work, tech prep associate degree programs, registered appren-
45 ticeships and rural entrepreneurship through action learning;
46 and

47 (D) Addresses the needs of at-risk students and school
48 dropouts;

49 (6) Planning and implementation of integrated professional
50 development activities for secondary and post-secondary
51 faculty, staff and administrators and other consortium partners
52 throughout the district;

53 (7) Ensuring that program graduates have attained the
54 competencies required for successful employment through the
55 involvement of business, industry and labor in establishing
56 student credentialing;

57 (8) Performance assessment of student knowledge and
58 skills which may be gained from multiple sources so that
59 students gain credit toward program completion and advance
60 more rapidly without repeating coursework in which they
61 already possess competency;

62 (9) Cooperating with workforce development investment
63 councils in establishing one-stop-shop career centers with
64 integrated employment and training and labor market informa-
65 tion systems that enable job seekers to assess their skills,
66 identify and secure needed education training and secure
67 employment and employers to locate available workers;

68 (10) Increasing the integration of adult literacy, adult basic
69 education, federal workforce investment act and community
70 and technical college programs and services to expedite the
71 transition of adults from welfare to gainful employment; and

72 (11) Establishing a single point of contact for employers
73 and potential employers to access education and training
74 programs throughout the district.

**§18B-3C-8. Process for achieving independently-accredited
community and technical colleges.**

1 (a) Over a six-year period beginning the first day of July,
2 two thousand one, West Virginia shall move from having
3 “component” community and technical colleges to having a

4 statewide network of independently-accredited community and
5 technical colleges serving every region of the state. This section
6 does not apply to the freestanding community and technical
7 colleges, West Virginia university at Parkersburg and Potomac
8 state college of West Virginia university.

9 (b) To be eligible for funds appropriated to develop
10 independently accredited community and technical colleges, a
11 state institution of higher education shall demonstrate the
12 following:

13 (1) That it has as a part of its institutional compact ap-
14 proved by the commission a step-by-step plan with measurable
15 benchmarks for developing an independently accredited
16 community and technical college that meets the essential
17 conditions set forth in section three of this article, except as
18 limited in subdivisions (1), (2) and (4), subsection (c) of this
19 section;

20 (2) That it is able to offer evidence annually to the satisfac-
21 tion of the commission that it is making progress toward
22 accomplishing the benchmarks established in its institutional
23 compact for developing an independently accredited commu-
24 nity and technical college; and

25 (3) That it has submitted an expenditure schedule approved
26 by the commission which sets forth a proposed plan of expendi-
27 tures for funds allocated to it from the fund.

28 (c) The following are recommended strategies for moving
29 from the current arrangement of “component” community and
30 technical colleges to the legislatively mandated statewide
31 network of independently accredited community and technical
32 colleges serving every region of the state. The Legislature
33 recognizes that there may be other means to achieve this
34 ultimate objective; however, it is the intent of the Legislature
35 that the move from the current arrangement of “component”

36 community and technical colleges to the legislatively mandated
37 statewide network of independently accredited community and
38 technical colleges serving every region of the state shall be
39 accomplished. The following recommendations are designed to
40 reflect significant variations among regions and the potential
41 impacts on the sponsoring institutions.

42 (1) *Marshall university community and technical college,*
43 *West Virginia state community and technical college and West*
44 *Virginia university institute of technology.* — The status of
45 these institutions shall be determined pursuant to the provisions
46 of article three-f of this chapter.

47 (2) *Bluefield state community and technical college.* —
48 Bluefield state community and technical college, including the
49 Lewisburg center, should retain its relationship as a component
50 of Bluefield state college. The president and the institutional
51 board of governors of Bluefield state college are accountable to
52 the commission for ensuring that the full range of community
53 and technical college services is available throughout the region
54 and that the community and technical college adheres, as nearly
55 as possible, to the essential conditions pursuant to section three
56 of this article with the possible exception of independent
57 accreditation.

58 (3) *Center for higher education and workforce development*
59 *at Beckley.* — The president of Bluefield state college and the
60 institutional board of advisors are responsible, according to a
61 plan approved by the commission, for the step-by-step imple-
62 mentation of a new independently accredited community and
63 technical college administratively linked to Bluefield state
64 college, known as the center for higher education and
65 workforce development, which adheres to the essential condi-
66 tions pursuant to section three of this article. As an independ-
67 ently accredited community and technical college, the center
68 also shall serve as higher education center for its region by
69 brokering with other colleges, universities and other providers,

70 in-state and out-of-state, both public and private, to ensure the
71 coordinated access of students, employers, and other clients to
72 needed programs and services. The new community and
73 technical college shall serve Raleigh, Summers and Fayette
74 counties and be headquartered in Beckley. The commission
75 shall appoint an institutional board of advisors for the center at
76 Beckley which is separate from the institutional board of
77 advisors of Bluefield state college but may have some overlap
78 in membership to facilitate coordination. In addition, the
79 president of the center shall appoint a district consortium
80 committee to advise the president on a comprehensive assess-
81 ment of the needs in the region, on coordinating efforts with
82 regional labor market information systems, and on other areas
83 as provided for in section seven of this article relating to the
84 duties of district consortia committees. The center shall
85 facilitate the planning and development of a unified effort
86 involving multiple providers and facilities, including, but not
87 limited to, Concord college, the college of West Virginia,
88 Marshall university, West Virginia university, West Virginia
89 university institute of technology and other entities to meet the
90 documented workforce development needs in the region:
91 *Provided,* That nothing in this subdivision prohibits or limits
92 any existing, or the continuation of any existing affiliation
93 between the college of West Virginia, West Virginia university
94 institute of technology and West Virginia university. The center
95 for higher education and workforce development at Beckley
96 shall also provide the facilities and support services for other
97 public and private institutions delivering courses, programs and
98 services in Beckley. The objective would be to assure students
99 and employers in the area that there would be coordination and
100 efficient use of resources among the separate programs and
101 facilities, existing and planned, in the Beckley area. If, at a
102 future time, the commission believes it appropriate, it may
103 recommend to the Legislature that the Beckley institution be
104 created as a freestanding institution.

105 (4) *Glennville state community and technical college.* —
106 Glennville state community and technical college, including the
107 centers in Nicholas, Lewis and Roane counties, should retain its
108 relationship as a component of Glennville state college. The
109 president of Glennville state college and the governing board are
110 accountable to the commission for ensuring that the full range
111 of community and technical college services is available
112 throughout the region and that the community and technical
113 college adheres as nearly as possible to the essential conditions
114 pursuant to section three of this article, with the possible
115 exception of independent accreditation.

116 (5) *Fairmont state community and technical college.* —
117 Fairmont state community and technical college should be an
118 independently accredited community and technical college
119 serving Marion, Doddridge, Barbour, Harrison, Monongalia,
120 Preston, Randolph and Taylor counties. The community and
121 technical college is developed on the base of the existing
122 component community and technical college of Fairmont state
123 college. Subject to the provisions of section eight of this article,
124 the president and the governing board of Fairmont state college
125 are responsible, according to a plan approved by the commis-
126 sion, for step-by-step implementation of the independently
127 accredited community and technical college which adheres to
128 the essential conditions pursuant to section three of this article.
129 Subject to the provisions of section eight of this article, the
130 community and technical college will remain administratively
131 linked to Fairmont state college. Nothing herein shall be
132 construed to require Fairmont state college to discontinue any
133 associate degree program in areas of particular institutional
134 strength which are closely articulated to their baccalaureate
135 programs and missions or which are of a high-cost nature and
136 can best be provided in direct coordination with a baccalaureate
137 institution.

138 (6) *Shepherd community and technical college.* - Shepherd
139 community and technical college should become an independ-
140 ently accredited community and technical college. It should
141 serve Jefferson, Berkeley and Morgan counties. The new
142 community and technical college is developed on the base of
143 the existing component community and technical college of
144 Shepherd college. Subject to the provisions of section eight of
145 this article, the president and the governing board of Shepherd
146 college are responsible, according to a plan approved by the
147 commission, for step-by-step implementation of the new
148 independently accredited community and technical college
149 which adheres to the essential conditions pursuant to section
150 three of this article. Subject to the provisions of section eight of
151 this article, the community and technical college will remain
152 administratively linked to Shepherd college. Nothing herein
153 shall be construed to require Shepherd college to discontinue
154 any associate degree program in areas of particular institutional
155 strength which are closely articulated to their baccalaureate
156 programs and missions or which are of a high-cost nature and
157 can best be provided in direct coordination with a baccalaureate
158 institution.

§18B-3C-9. Increasing flexibility for community and technical colleges.

1 (a) Notwithstanding any rules or procedures of the govern-
2 ing boards to the contrary, the community and technical
3 colleges have the authority and the duty to:

4 (1) Incorporate the most effective and efficient use of
5 technology in accessing and delivering courses and programs in
6 order to make the best use of available resources and to control
7 costs;

8 (2) Incorporate a model to offer occupational program
9 curricula in smaller modules to accommodate specific student

10 and employer needs and to gain sufficient flexibility in format-
11 ting courses;

12 (3) Serve as a facilitator for education programs from
13 outside delivery sources to meet the needs of the residents and
14 employers of the district; and

15 (4) Employ faculty in the most effective manner to serve
16 the core mission of the community and technical college.

17 (A) To that end, the freestanding community and technical
18 colleges may employ faculty for an indefinite period without a
19 grant of tenure and shall work toward a staffing goal of no more
20 than twenty percent of the faculty holding tenure or being
21 tenure-track employees: *Provided*, That tenured faculty
22 employed by the freestanding community and technical
23 colleges before the first day of July, one thousand nine hundred
24 ninety-nine, shall not be affected by this provision.

25 (B) All community and technical colleges, other than those
26 set forth in paragraph (A) of this subdivision, may employ
27 faculty for an indefinite period without a grant of tenure. The
28 immediate goal is to use this provision as a tool to assist the
29 community and technical colleges in meeting the essential
30 conditions provided for in section three of this article and in
31 gaining independent accreditation status. The ultimate goal is
32 to provide the flexibility community and technical colleges
33 need to meet the needs of the state by working toward having
34 no more than twenty percent of the core faculty holding tenure
35 or being tenure-track employees: *Provided*, That tenured faculty
36 employed by community and technical colleges other than
37 freestanding community and technical colleges on the effective
38 date of this section may not be affected by this provision:
39 *Provided, however*, That tenure shall not be denied to a faculty
40 member solely as a result of change in employing institution
41 necessitated by the change to independently accredited commu-
42 nity and technical colleges.

43 (b) The governing boards shall adopt a model of program
44 approval for the community and technical colleges that permits
45 occupational programs to be customized to meet needs without
46 requiring approval by any governing board or other agency of
47 government and, furthermore, that incorporates a post-audit
48 review of such programs on a three-year cycle to determine the
49 effectiveness of such programs in meeting district needs.

50 (c) The interim governing board or the chancellor shall
51 promulgate rules to implement the provisions of this section
52 and shall file these rules for review and approval with the
53 chancellor no later than the first day of December, two thou-
54 sand.

**§18B-3C-10. Free-standing community and technical colleges;
tuition and fees.**

1 (a) During the transition year, beginning the first day of
2 July, two thousand, and ending the thirtieth day of June, two
3 thousand one, the appropriate governing board may fix tuition
4 and establish and set such other fees to be charged students at
5 community and technical colleges as it considers appropriate
6 and shall pay such tuition and fees collected into a revolving
7 fund for the partial or full support, including the making of
8 capital improvements, of any community and technical college.
9 Funds collected at any such community and technical college
10 may be used only for the benefit of that community and
11 technical college. The appropriate governing board also may
12 establish special fees for such purposes as, including, but not
13 limited to, health services, student activities, student recreation,
14 athletics or any other extracurricular purposes. Such special
15 fees shall be paid into special funds in the state treasury and
16 used only for the purposes for which collected.

17 (b) Beginning on the first day of July, two thousand one,
18 the appropriate governing board may fix tuition and establish
19 and set such other fees to be charged students at community and

20 technical colleges as it considers appropriate, subject to the
21 provisions of subdivision (2) of this subsection.

22 (1) As used in this subsection, “appropriate governing
23 board” means:

24 (A) The governing board of the institution, in the case of a
25 free-standing community and technical college;

26 (B) The governing boards of Glenville state college and
27 Bluefield state college, respectively, in the cases of Glenville
28 community and technical college and Bluefield community and
29 technical college; and

30 (C) The institutional board of advisors in all other cases.

31 (2) The appropriate governing board, in consultation with
32 the joint commission, also may establish special fees for such
33 purposes as, including, but not limited to, health services,
34 student activities, student recreation, athletics or any other
35 extracurricular purposes: *Provided*, That the joint commission
36 shall determine which fees, if any, do not apply to the entire
37 student population and to which students such fees do not
38 apply. Such special fees may be used only for the purposes for
39 which collected.

40 (3) A community and technical college may contract with
41 any other state institution of higher education for the participa-
42 tion of its students in programs, activities or services of the
43 other institution and for the use of such fees collected.

44 (c) All tuition and fee charges in the total aggregate shall
45 comply with the terms of the institutions compact approved by
46 the commission based on peer comparisons or cost of instruc-
47 tion as set forth in the goals for post-secondary education
48 pursuant to section one-a, article one of this chapter.

§18B-3C-11. Shared facilities and resources; memoranda of agreements; and joint administrative boards.

1 (a) To the maximum extent feasible, community and
2 technical colleges shall be developed as multisite institutions
3 utilizing existing facilities, including cooperative use of
4 existing vocational education institutes and centers, offering
5 services on the campuses of existing baccalaureate and graduate
6 institutions, at work sites in collaboration with employers and
7 other appropriate venues. Subject to the limitation of subdivi-
8 sion (13), subsection (a), section four, article one-b of this
9 chapter, new public capital investment in physical facilities
10 shall be kept to a minimum. All community and technical
11 colleges shall have missions encompassing the full range of
12 services and programs.

13 (b) The governing boards may accept federal grants and
14 funds from county boards of education, other local governmen-
15 tal bodies, corporations or persons. The governing boards may
16 enter into memoranda of understanding agreements with such
17 governmental bodies, corporations or persons for the use or
18 acceptance of local facilities and for the acceptance of grants or
19 contributions toward the cost of the acquisition or construction
20 of such facilities. Such local governmental bodies may convey
21 capital improvements, or lease the same without monetary
22 consideration, to the governing boards for the use by the
23 community and technical college and the governing boards may
24 accept such facilities, or the use or lease thereof, and grants or
25 contributions for such purposes from such governmental bodies,
26 the federal government or any corporation or person. In
27 addition, the various education agencies shall establish coopera-
28 tive relationships to utilize existing community and technical
29 colleges and programs, public school vocational centers and
30 other existing facilities to serve the identified needs within the
31 community and technical college district.

32 (c) To facilitate the administration, operation and financing
33 of programs in shared facilities of any institution of public
34 higher education and a county board or boards of education, the
35 affected president and county board or boards of education may
36 appoint a joint administrative board consisting of such member-
37 ship and possessing such delegated authorities as the respective
38 boards consider necessary and prudent for the operation of such
39 shared facilities. Such joint administrative boards, as an
40 example, may consist of five members appointed as follows:
41 The county board of education appoints two members; the
42 president appoints two members; and one at-large member, who
43 shall chair the joint administrative board, is appointed by
44 mutual agreement of the board and the president. When two or
45 more county boards of education are participating in such
46 shared program, such county board appointments would be
47 made by mutual agreement of each of the participating county
48 boards. Members would serve for staggered terms of three
49 years. With respect to initial appointments, one member
50 appointed by the county board or boards of education and one
51 member appointed by the governing board would serve for one
52 year, one member appointed by the county board or boards of
53 education and one member appointed by the governing board
54 would serve for two years and the at-large member would serve
55 for three years. Subsequent appointments should be for three
56 years. A member would not serve more than two consecutive
57 terms. Members would be reimbursed for reasonable and
58 necessary expenses actually incurred in the performance of their
59 duties as board members from funds allocated to the shared
60 facility, except that members who are employed by a board of
61 education, governing board or state institution of higher
62 education would be reimbursed by their employer.

§18B-3C-12. Relationship between administratively linked community and technical colleges and sponsoring institutions.

1 (a) *Intent and purposes.* --

2 (1) It is the intent of the Legislature to establish community
3 and technical colleges in every region of the state of West
4 Virginia that, as far as possible, meet the essential conditions of
5 section three of this article.

6 (2) The Legislature finds that, in order to increase effi-
7 ciency, reduce costs and, generally, to facilitate the effective
8 transition from community and technical colleges which are
9 components of existing institutions of higher education to
10 community and technical colleges which meet, as far as
11 possible, the essential conditions, it is appropriate to maintain
12 an administrative link between the community and technical
13 colleges and the sponsoring institution.

14 (3) This section defines the relationship between the
15 community and technical colleges and its sponsoring institu-
16 tion.

17 (b) Where independently accredited community and
18 technical colleges are linked administratively to a sponsoring
19 state college or university in order to ensure efficient use of
20 limited resources, the following conditions shall apply:

21 (1) The community and technical college shall be accred-
22 ited separately from the sponsoring institution;

23 (2) All state funding allocations for the community and
24 technical college shall be transferred directly to the community
25 and technical college. The sponsoring institution may charge
26 fees for administrative overhead costs subject to a schedule
27 approved by the commission;

28 (3) Policies shall be formally established to ensure the
29 separation of academic and faculty personnel policies of the
30 community and technical college from those of the sponsoring

31 institution. These policies include, but are not limited to,
32 appointment, promotion, workload and, if appropriate, tenure.

33 (c) The sponsoring institution which is administratively
34 linked to a community and technical college shall provide the
35 following services:

36 (1) Personnel management;

37 (2) Recordkeeping;

38 (3) Payroll;

39 (4) Accounting;

40 (5) Legal services;

41 (6) Registration;

42 (7) Student aid;

43 (8) Student records; and

44 (9) Such other services as determined to be necessary and
45 appropriate by the commission.

46 (d) Subject to the approval of the appropriate governing
47 board, the president of the sponsoring institution, pursuant to
48 the terms of section six, article one-b of this chapter, shall
49 appoint the presidents of the community and technical college,
50 who shall serve at the will and pleasure of the institutional
51 president. Subject to the provisions of section six, article one-b
52 of this chapter, the appropriate governing board shall appoint
53 the president of the sponsoring institution.

54 (e) The governing board and the president of the sponsoring
55 institution shall be responsible for the step-by-step development
56 of the community and technical college and for compliance
57 with the essential conditions, all as required by this article.

58 (f) The president of the sponsoring institution shall have
59 such responsibilities, powers and duties in the development of
60 the community and technical college and in compliance with
61 the essential conditions, as directed by the governing board or
62 as are necessary for the proper implementation of the provisions
63 of this act.

64 (g) Notwithstanding any other provision of the code to the
65 contrary, the commission shall take necessary steps to ensure
66 that institutional bonded indebtedness is secure and that
67 administratively linked community and technical colleges
68 assume their fair share of any institutional debt acquired while
69 they were part of the baccalaureate institution.

70 (h) The community and technical college is encouraged to
71 secure academic services from the sponsoring institution when
72 it is in the best interests of the students to be served, the
73 community and technical college and the sponsoring institution.
74 In determining whether or not to secure services from the
75 sponsoring institution, the community and technical college
76 shall consider the following:

77 (1) The cost of the academic services;

78 (2) The quality of the academic services;

79 (3) The availability, both as to time and place, of the
80 academic services; and

81 (4) Such other considerations as the community and
82 technical college finds appropriate taking into account the best
83 interests of the students to be served, the community and
84 technical college, and the sponsoring institution: *Provided*, That
85 nothing in this article shall be construed to prohibit any state
86 institution of higher education from purchasing or brokering
87 remedial and/or developmental courses from a community and
88 technical college.

**ARTICLE 3F. COMMUNITY AND TECHNICAL COLLEGE SERVICES IN
THE RESPONSIBILITY AREAS OF MARSHALL UNI-
VERSITY, WEST VIRGINIA STATE COLLEGE AND
WEST VIRGINIA UNIVERSITY INSTITUTE OF TECH-
NOLOGY.**

§18B-3F-1. Legislative intent and findings.

§18B-3F-2. Implementation board established.

§18B-3F-3. Continuing community and technical services of existing institutions.

§18B-3F-1. Legislative intent and findings.

1 (a) *Legislative intent.* — It is the intent of the Legislature to
2 enhance community and technical college services in the
3 responsibility areas of Marshall university, West Virginia state
4 college and West Virginia university institute of technology
5 through the delivery of community and technical college
6 services that meet the goals of section six, article three-c of this
7 chapter and are delivered pursuant to the essential conditions of
8 section three, article three-c of this chapter. It is further the
9 intent of the Legislature to make maximum use of existing
10 institutions in the region and to focus on the benefits available
11 to the Kanawha valley and to the state of providing quality
12 community and technical college education.

13 (b) *Findings.* — The Legislature finds the following:

14 (1) That the Kanawha valley is an area of the state that is
15 underserved for community and technical college education and
16 that deserves more convenient access to higher education
17 opportunities, including access to workforce development
18 programs; and

19 (2) That, in order to satisfy the growing needs of the
20 Kanawha valley region for access to quality higher education
21 programs, the delivery of community and technical college
22 services in the Kanawha valley must meet the goals for compre-
23 hensive community and technical college education described
24 in section two, article three-c of this chapter and must meet the

25 essential conditions for a comprehensive community and
26 technical college education as described in section three, article
27 three-c of this chapter.

§18B-3F-2. Implementation board established.

1 (a) There is established an implementation board appointed
2 by the commission to ensure the step-by-step implementation
3 of the legislative intent contained in section one of this article.

4 (b) The implementation board shall be comprised of nine
5 members, including the president of Marshall university, or a
6 designee; the president of West Virginia state college, or a
7 designee; the president of West Virginia university institute of
8 technology, or a designee; and six lay persons, three from the
9 responsibility area of Marshall university and three from the
10 responsibility areas of West Virginia state college and West
11 Virginia university institute of technology.

12 (c) The implementation board shall develop a plan, to be
13 recommended to the commission, for the most effective and
14 efficient method to deliver comprehensive community and
15 technical college education to the citizens and employers of the
16 responsibility areas of Marshall university, West Virginia state
17 college and West Virginia university institute of technology.
18 The plan shall include, but not be limited to:

19 (1) A determination of the most appropriate manner to
20 achieve the goals set forth in section one-a, article one of this
21 chapter;

22 (2) The relative strengths of the existing institutions of
23 higher education in the responsibility areas;

24 (3) The impact of the status of West Virginia state college
25 as an historically black institution of higher education and as an
26 eighteen hundred and ninety land grant institution; and

27 (4) A determination of the appropriate relationship among
28 the existing public institutions of higher education in the
29 responsibility areas.

30 (d) The commission shall be responsible for, and shall have
31 the authority to implement, an appropriate system, based upon
32 the recommendations of the implementation board or such other
33 plan as the commission determines to be appropriate to meet
34 the essential conditions for effective community and technical
35 college education as provided for in section three, article three-
36 c of this chapter.

37 (e) If, in the opinion of the commission, implementation of
38 an appropriate plan can not be accomplished without statutory
39 change, then, on or before the fifteenth day of January, two
40 thousand one, the commission shall certify to the governor, the
41 president of the Senate and the speaker of the House of Dele-
42 gates draft legislation to accomplish the goals of this section
43 and section one-a, article one of this chapter.

44 (f) The commission is responsible for promoting the
45 effective delivery of community and technical college educa-
46 tion programs and services in the responsibility areas of
47 Marshall university community and technical college, West
48 Virginia state community and technical college and West
49 Virginia university institute of technology community and
50 technical college.

**§18B-3F-3. Continuing community and technical services of
existing institutions.**

1 Subject to change by the commission through the process
2 for the establishment of institutional compacts defined in
3 section two, article one-a of this chapter, nothing in this article
4 may be construed to require Marshall university, West Virginia
5 state college or West Virginia institute of technology to
6 discontinue any associate degree program in areas of particular

7 institutional strength which are closely articulated to their
8 baccalaureate programs and missions or which are of a high
9 cost nature and can best be provided in direct coordination with
10 a baccalaureate institution.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-2. Employment of vice chancellor for administration; office; powers and duties generally.

§18B-4-8. West Virginia anatomical board; powers and duties relating to anatomical gifts; requisition of bodies; autopsies; transportation of bodies; expenses of preservation; bond required; offenses and penalties.

§18B-4-2. Employment of vice chancellor for administration; office; powers and duties generally.

1 (a) With the approval of the commission, the chancellor for
2 higher education shall employ the vice chancellor for adminis-
3 tration who shall serve at the will and pleasure of the chancel-
4 lor. Any reference in this chapter or chapter eighteen-c of this
5 code to the senior administrator means the vice chancellor of
6 administration, which senior administrator shall become the
7 vice chancellor of administration and also shall serve as interim
8 chancellor for higher education until a chancellor is employed
9 pursuant to section five, article one-b of this chapter.

10 (b) The vice chancellor for administration has a ministerial
11 duty, in consultation with and under direction of the chancellor,
12 to perform such functions, tasks and duties as may be necessary
13 to carry out the policy directives of the commission and such
14 other duties as may be prescribed by law.

15 (c) The vice chancellor for administration may employ and
16 discharge, and shall supervise, such professional, administra-
17 tive, clerical and other employees as may be necessary to these
18 duties and shall delineate staff responsibilities as considered
19 desirable and appropriate. The vice chancellor for administra-
20 tion shall fix the compensation and emoluments of such
21 employees: *Provided*, That those employees whose job duties

22 meet criteria listed in the system of job classifications as stated
23 in article nine of this chapter shall be accorded the job title,
24 compensation and rights established in the article as well as all
25 other rights and privileges accorded classified employees by the
26 provisions of this code.

27 (d) Effective on the first day of July, two thousand, the
28 office of the senior administrator and all personnel employed on
29 the thirtieth day of June, two thousand, within the higher
30 education central office, the West Virginia network for educa-
31 tional telecomputing, and the offices of the chancellor of the
32 board of trustees and the chancellor of the board of directors,
33 shall be transferred to the jurisdiction of the chancellor for
34 higher education: *Provided*, That prior to the first day of
35 October, two thousand, no employee shall be terminated or
36 have his or her salary and benefit levels reduced as the sole
37 result of the governance reorganization that becomes effective
38 on the first day of July, two thousand.

39 (e) The vice chancellor for administration shall follow state
40 and national education trends and gather data on higher
41 education needs.

42 (f) The vice chancellor for administration, in accordance
43 with established guidelines and in consultation with and under
44 the direction of the chancellor, shall administer, oversee or
45 monitor all state and federal student assistance and support
46 programs administered on the state level, including those
47 provided for in chapter eighteen-c of this code.

48 (g) The vice chancellor for administration has a fiduciary
49 responsibility to administer the tuition and registration fee
50 capital improvement revenue bond accounts of the governing
51 boards.

52 (h) The vice chancellor for administration shall administer
53 the purchasing system or systems of the commission, the office

54 of the chancellor, and the governing boards: *Provided*, That the
55 chancellor may delegate authority for the purchasing systems
56 or portions thereof to the institution presidents.

57 (i) The vice chancellor for administration is responsible for
58 the management of the West Virginia network for educational
59 telecomputing (WVNET). The vice chancellor for administra-
60 tion shall establish a computer advisory board, which shall be
61 representative of higher education and other users of the West
62 Virginia network for educational telecomputing as the chancel-
63 lor for higher education determines appropriate. It is the
64 responsibility of the computer advisory board to recommend to
65 the chancellor policies for a statewide shared computer system.

66 (j) The central office, under the direction of the vice
67 chancellor for administration, shall provide necessary staff
68 support to the commission and the office of the chancellor.

69 (k) Effective on the first day of July, two thousand, the vice
70 chancellor for administration may administer any program or
71 service authorized or required to be performed by the board of
72 trustees or the board of directors on the thirtieth day of June,
73 two thousand, and not specifically assigned to another agency.
74 In addition, the vice chancellor for administration may adminis-
75 ter any program or service authorized or required to be per-
76 formed by the commission or the chancellor for higher educa-
77 tion, but not assigned specifically to the commission or the
78 chancellor. Such program or service may include, but shall not
79 be limited to, telecommunications activities and other programs
80 and services provided for under grants and contracts from
81 federal and other external funding sources.

§18B-4-8. West Virginia anatomical board; powers and duties relating to anatomical gifts; requisition of bodies; autopsies; transportation of bodies; expenses of preservation; bond required; offenses and penalties.

1 (a) There is hereby established the "West Virginia anatomical board" which consists of the following four members: (1)
2 cal board" which consists of the following four members: (1)
3 The dean of the school of dentistry, West Virginia university;
4 (2) the chairperson of the department of anatomy, West
5 Virginia university; (3) the chairperson of the department of
6 anatomy, school of medicine, Marshall university; and (4) the
7 dean of the school of medicine, West Virginia school of
8 osteopathic medicine.

9 (b) The board shall have authority to appoint such officers,
10 employees and agents as may be necessary to carry out the
11 purposes for which the board is organized. It shall keep a full
12 and complete record of its transactions, showing, among other
13 things, every dead human body coming under its authority,
14 giving name, sex, age, date of death, place from which received
15 and when and from whom received, which record shall be open
16 at all times to the inspection of the attorney general and any
17 prosecuting attorney in the state.

18 (c) The board shall be responsible for making requisition
19 for, receiving and making disposition of the dead human bodies
20 for the scientific uses and purposes of reputable education
21 institutions, within the state and elsewhere, having medical,
22 osteopathy, dentistry or nursing schools. The board shall have
23 full power to establish rules for its own government and for the
24 requisition, use, disposition and control of such bodies as may
25 come under its authority by way of gift, pursuant to this section
26 or pursuant to section four, article nineteen, chapter sixteen of
27 this code.

28 (d) All dead human bodies which may come under the
29 charge or control of any mortician, any officer or agent of the
30 department of welfare or of any county commission or municipi-
31 pality, or any superintendent, officer or agent having the
32 supervision of any prison, morgue, hospital or other public
33 institution in this state and which may be required to be buried
34 at public expense, shall be subject to the requisition of the board

35 as provided in this section. No such body shall be delivered to
36 the board if any person related to the deceased by blood or
37 marriage shall make a statement in writing to that effect and
38 shall claim such body for burial or shall make affidavit that the
39 relative is unable to bear the expense of burial and desires that
40 the deceased be buried at public expense. This statement and
41 affidavit may be filed by any such relative with the person
42 having charge and control of the body of the person so claimed,
43 either before or after the death of such person.

44 (e) No autopsy shall be performed on any unclaimed body
45 without the written permission of the board, except upon the
46 proper order of a duly authorized law-enforcement officer.

47 (f) It shall be the duty of any person who has charge or
48 control of any unclaimed body, subject to requisition by the
49 board, to give notice to the board of that fact by telephone or
50 telegraph within twenty-four hours after such body comes under
51 that person's control. Thereafter, such person shall hold the
52 body subject to the order of the board for at least twenty-four
53 hours after the sending of such notice. If the board makes
54 requisition for the body within the twenty-four hour period, it
55 shall be delivered, pursuant to the order of the board, to the
56 board or its authorized agent for transportation to any education
57 institution which the board considers to be in bona fide need of
58 the body and able to adequately control, use and dispose of the
59 body. The board shall make suitable arrangements for the
60 transportation of any body, or part or parts of any body, which
61 may come under its authority to the education institution. All
62 expenses incurred in connection with the preservation, delivery
63 and transportation of any body delivered pursuant to the order
64 of the board shall be paid by the education institution receiving
65 the body.

66 (g) No dead body shall be received or requisitioned by the
67 board until the members of the board have filed a bond with the
68 clerk of the circuit court of Kanawha County in a penalty of one

69 thousand dollars, with good security, signed by a responsible
70 person or persons, or by some surety company authorized to do
71 business in this state, or have proved to the clerk that they are
72 covered by a suitable bond in at least that amount, conditioned
73 for the faithful performance of their duties.

74 (h) Any person who shall neglect, refuse or fail to perform
75 any duty required by this section relating to the board shall be
76 guilty of a misdemeanor and, upon conviction thereof, shall be
77 punished by a fine of not more than one hundred dollars or by
78 imprisonment in the county or regional jail for not more than
79 ten days or by both such fine and imprisonment. Any person
80 who fails to give the required notice that that person has charge
81 of an unclaimed body subject to requisition by the board shall
82 also be personally liable for all burial expenses, if such body
83 was buried at public expense, to the public agency that paid for
84 the burial.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-3. Authority to contract for programs, services and facilities.

§18B-5-4. Purchase or acquisition of materials, supplies, equipment and printing.

§18B-5-3. Authority to contract for programs, services and facilities.

1 The governing boards and the commission are authorized
2 and empowered to enter into contracts and expend funds for
3 programs, services and facilities provided by public and private
4 education institutions, associations, boards, agencies, consortia,
5 corporations, partnerships, individuals and local, state and
6 federal governmental bodies within and outside of West
7 Virginia in order that maximum higher education opportunities
8 of high quality may be provided to the citizens of the state in
9 the most economical manner: *Provided*, That in no event may
10 a contract for such services and facilities be entered into unless
11 the commission or the governing boards have determined that

12 such services and facilities are necessary and that such services
13 and facilities would be at a savings to the state.

14 Notwithstanding the provisions of this section, nothing
15 herein contained shall supersede the responsibility and respec-
16 tive duties of the secretary of administration and the director of
17 the purchasing division of such department for the execution
18 and approval of the contracts entered into under this article and
19 such contracts shall be in complete conformity with the
20 provisions of articles three and five, chapter five-a of this code.

**§18B-5-4. Purchase or acquisition of materials, supplies,
equipment and printing.**

1 (a) The commission and each governing board, through the
2 vice chancellor for administration shall purchase or acquire all
3 materials, supplies, equipment and printing required for that
4 governing board or the commission, as appropriate, and the
5 state institutions of higher education under their jurisdiction.
6 The commission shall adopt rules governing and controlling
7 acquisitions and purchases in accordance with the provisions of
8 this section. Such rules shall assure that the governing boards:
9 (1) Do not preclude any person from participating and making
10 sales thereof to the governing board or to the higher education
11 commission except as otherwise provided in section five of this
12 article: *Provided*, That the providing of consultant services such
13 as strategic planning services will not preclude or inhibit the
14 governing boards or the commission from considering any
15 qualified bid or response for delivery of a product or a com-
16 modity because of the rendering of those consultant services;
17 (2) shall establish and prescribe specifications, in all proper
18 cases, for materials, supplies, equipment and printing to be
19 purchased; (3) shall adopt and prescribe such purchase order,
20 requisition or other forms as may be required; (4) shall negoti-
21 ate for and make purchases and acquisitions in such quantities,
22 at such times and under contract, in the open market or through
23 other accepted methods of governmental purchasing as may be
24 practicable in accordance with general law; (5) shall advertise
25 for bids on all purchases exceeding fifteen thousand dollars, to

26 purchase by means of sealed bids and competitive bidding or to
27 effect advantageous purchases through other accepted govern-
28 mental methods and practices: *Provided, however,* That for
29 printing services, bids shall be advertised by written notification
30 of such bids to any print shop, affiliated with an institution of
31 higher education and operated by classified employees, on all
32 purchases exceeding five thousand dollars; (6) shall post notices
33 of all acquisitions and purchases for which competitive bids are
34 being solicited in the purchasing office of the specified institu-
35 tion involved in the purchase, at least two weeks prior to
36 making such purchases and ensure that the notice is available
37 to the public during business hours; (7) shall provide for
38 purchasing in the open market; (8) shall make provision for
39 vendor notification of bid solicitation and emergency purchas-
40 ing; and (9) provide that competitive bids are not required for
41 purchases of one thousand dollars or less.

42 (b) The commission or each governing board, through the
43 vice chancellor for administration may issue a check in advance
44 to a company supplying postage meters for postage used by that
45 board, the commission and by the state institutions of higher
46 education under their jurisdiction.

47 (c) When a purchase is to be made by bid, any or all bids
48 may be rejected. However, all purchases based on advertised
49 bid requests shall be awarded to the lowest responsible bidder
50 taking into consideration the qualities of the articles to be
51 supplied, their conformity with specifications, their suitability
52 to the requirements of the governing boards, the commission
53 and delivery terms: *Provided,* That the preference for resident
54 vendors as provided in section thirty-seven, article three,
55 chapter five-a of this code shall apply to the competitive bids
56 made pursuant to this section.

57 (d) The governing boards and the commission shall
58 maintain a purchase file, which shall be a public record and
59 open for public inspection. After the award of the order or
60 contract, the governing boards and the commission shall
61 indicate upon the successful bid that it was the successful bid

62 and shall further indicate why bids are rejected and, if the
63 mathematical low vendor is not awarded the order or contract,
64 the reason therefor. No records in the purchase file shall be
65 destroyed without the written consent of the legislative auditor.
66 Those files in which the original documentation has been held
67 for at least one year and in which the original documents have
68 been reproduced and archived on microfilm or other equivalent
69 method of duplication may be destroyed without the written
70 consent of the legislative auditor. All files, no matter the
71 storage method, shall be open for inspection by the legislative
72 auditor upon request.

73 (e) The commission also shall adopt rules to prescribe
74 qualifications to be met by any person who is to be employed
75 as a buyer pursuant to this section. These rules shall require that
76 no person may be employed as a buyer unless that person, at the
77 time of employment, either is: (1) A graduate of an accredited
78 college or university; or (2) has at least four years' experience
79 in purchasing for any unit of government or for any business,
80 commercial or industrial enterprise. Any person making
81 purchases and acquisitions pursuant to this section shall execute
82 a bond in the penalty of fifty thousand dollars, payable to the
83 state of West Virginia, with a corporate bonding or surety
84 company authorized to do business in this state as surety
85 thereon, in form prescribed by the attorney general and condi-
86 tioned upon the faithful performance of all duties in accordance
87 with sections four through eight of this article and the rules of
88 the interim governing board and the commission. In lieu of
89 separate bonds for such buyers, a blanket surety bond may be
90 obtained. Any such bond or bonds shall be filed with the
91 secretary of state. The cost of any such bond or bonds shall be
92 paid from funds appropriated to the applicable governing board
93 or commission.

94 (f) All purchases and acquisitions shall be made in consid-
95 eration and within limits of available appropriations and funds
96 and in accordance with applicable provisions of article two,
97 chapter five-a of this code, relating to expenditure schedules
98 and quarterly allotments of funds.

99 (g) The governing boards and the commission may make
100 requisitions upon the auditor for a sum to be known as an
101 advance allowance account, in no case to exceed five percent of
102 the total of the appropriations for the governing board or the
103 commission, and the auditor shall draw a warrant upon the
104 treasurer for such accounts; and all such advance allowance
105 accounts shall be accounted for by the applicable governing
106 board or commission once every thirty days or more often if
107 required by the state auditor.

108 (h) Contracts entered into pursuant to this section shall be
109 signed by the applicable governing board or the commission in
110 the name of the state and shall be approved as to form by the
111 attorney general: *Provided*, That a contract in which the total
112 does not exceed five thousand dollars and for which the
113 attorney general has not responded within fifteen days of
114 presentation of the contract, the contract shall be deemed
115 approved: *Provided, however*, That a contract or a change order
116 for that contract which in total does not exceed fifteen thousand
117 dollars and which uses terms and conditions or standardized
118 forms previously approved by the attorney general and does not
119 make substantive changes in the terms and conditions of the
120 contract does not require approval by the attorney general:
121 *Provided further*, That the attorney general shall make a list of
122 those changes which he or she deems to be substantive and the
123 list, and any changes thereto, shall be published in the state
124 register. A contract that exceeds fifteen thousand dollars shall
125 be filed with the state auditor: *And provided further*, That upon
126 request, the governing boards or the commission shall make all
127 contracts available for inspection by the state auditor. The
128 governing board or the commission, as appropriate, shall
129 prescribe the amount of deposit or bond to be submitted with a
130 bid or contract, if any, and the amount of deposit or bond to be
131 given for the faithful performance of a contract. If the govern-
132 ing board or the commission purchases or contracts for materi-
133 als, supplies, equipment and printing contrary to the provisions
134 of sections four through seven of this article or the rules
135 pursuant thereto, such purchase or contract shall be void and of
136 no effect.

137 (i) Any governing board or the commission, as appropriate,
138 may request the director of purchases to make available, from
139 time to time, the facilities and services of that department to the
140 governing boards or the commission in the purchase and
141 acquisition of materials, supplies, equipment and printing and
142 the director of purchases shall cooperate with that governing
143 board or the commission, as appropriate, in all such purchases
144 and acquisitions upon such request.

145 (j) Each governing board or the commission, as appropriate,
146 shall permit private institutions of higher education to join as
147 purchasers on purchase contracts for materials, supplies and
148 equipment entered into by that governing board or the commis-
149 sion. Any private school desiring to join as purchasers on such
150 purchase contracts shall file with that governing board or the
151 commission an affidavit signed by the president of the institu-
152 tion of higher education or a designee requesting that it be
153 authorized to join as purchaser on purchase contracts of that
154 governing board or the commission, as appropriate, and
155 agreeing that it will be bound by such terms and conditions as
156 that governing board or the commission may prescribe and that
157 it will be responsible for payment directly to the vendor under
158 each purchase contract.

159 (k) Notwithstanding any other provision of this code to the
160 contrary, the governing boards and the commission, as appro-
161 priate, may make purchases from the federal government or
162 from federal government contracts if the materials, supplies,
163 equipment or printing to be purchased is available from the
164 federal government or from a federal contract and purchasing
165 from the federal government or from a federal government
166 contract would be the most financially advantageous manner of
167 making the purchase.

168 (l) An independent performance audit of all purchasing
169 functions and duties which are performed at any institution of
170 higher education shall be performed each fiscal year. The joint
171 committee on government and finance shall conduct the
172 performance audit and the governing boards and the commis-

173 sion, as appropriate, shall be responsible for paying the cost of
174 the audit from funds appropriated to the governing boards or the
175 commission.

176 (m) The governing boards shall require each institution
177 under their respective jurisdictions to notify and inform every
178 vendor doing business with that institution of the provisions of
179 section fifty-four, article three, chapter five-a of this code, also
180 known as the "prompt pay act of 1990".

181 (n) Consultant services, such as strategic planning services,
182 may not preclude or inhibit the governing boards or the
183 commission from considering any qualified bid or response for
184 delivery of a product or a commodity because of the rendering
185 of those consultant services.

ARTICLE 6. ADVISORY BOARDS.

§18B-6-1. Institutional boards of advisors for regional campuses and administra-
tively linked community and technical colleges.

§18B-6-1a. Institutional boards of advisors for universities, state colleges and free-
standing community and technical colleges.

§18B-6-2a. State advisory council of faculty.

§18B-6-3a. State advisory council of students.

§18B-6-4a. State advisory council of classified employees.

§18B-6-1. Institutional boards of advisors for regional campuses and administratively linked community and techni- cal colleges.

1 (a) Effective the first day of July, two thousand, there is
2 established at each regional campus and administratively-linked
3 community and technical college, excluding centers and
4 branches thereof, an institutional board of advisors: *Provided,*
5 That the institutional board of advisors shall not be appointed
6 for administratively linked community and technical colleges
7 until provided for in their compact.

8 (1) For the transition year beginning on the first day of July,
9 two thousand, through the thirtieth day of June, two thousand
10 one, only, the lay members of the institutional board of advisors

11 established for each of the regional campuses of West Virginia
12 university are appointed by the president of the respective
13 institution. Effective the first day of July, two thousand one, the
14 lay members of the institutional boards of advisors for the
15 regional campuses are appointed by the institutional board of
16 governors.

17 (2) The lay members of the institutional board of advisors
18 established for the administratively linked community and
19 technical colleges are appointed by the joint commission.

20 (b) The board of advisors consists of fifteen members,
21 including a full-time member of the faculty with the rank of
22 instructor or above duly elected by the faculty; a member of the
23 student body in good academic standing, enrolled for college
24 credit work and duly elected by the student body; a member of
25 the institutional classified staff duly elected by the classified
26 staff; and twelve lay persons appointed pursuant to subsection
27 (a) of this section who have demonstrated a sincere interest in
28 and concern for the welfare of that institution and who are
29 representative of the population of its responsibility district and
30 fields of study. At least eight of the twelve lay persons ap-
31 pointed shall be residents of the state. Of the lay members who
32 are residents of the state, at least two shall be alumni of the
33 institution and no more than a simple majority may be of the
34 same political party.

35 (c) The student member shall serve for a term of one year
36 beginning upon appointment in July, two thousand, and ending
37 on the thirtieth day of April, two thousand one. Thereafter the
38 term shall begin on the first day of May. The faculty member
39 and the classified staff member shall serve for a term of two
40 years beginning upon appointment in July, two thousand, and
41 ending on the thirtieth day of April, two thousand two. Thereaf-
42 ter the term shall begin on the first day of May; and the twelve
43 lay members shall serve terms of four years each beginning
44 upon appointment in July, two thousand. Thereafter the term
45 shall begin on the first day of May. All members are eligible to
46 succeed themselves for no more than one additional term. A

47 vacancy in an unexpired term of a member shall be filled for the
48 remainder of the unexpired term within thirty days of the
49 occurrence thereof in the same manner as the original appoint-
50 ment or election. Except in the case of a vacancy, all elections
51 shall be held and all appointments shall be made no later than
52 the thirtieth day of April preceding the commencement of the
53 term.

54 (d) Each board of advisors shall hold a regular meeting at
55 least quarterly, commencing in May of each year. Additional
56 meetings may be held upon the call of the chairperson, presi-
57 dent of the institution or upon the written request of at least five
58 members. A majority of the members constitutes a quorum for
59 conducting the business of the board of advisors.

60 (e) One of the twelve lay members shall be elected as
61 chairperson by the board of advisors in May of each year:
62 *Provided*, That the chairperson elected in two thousand shall be
63 elected in July. No member may serve as chairperson for more
64 than two consecutive years.

65 (f) The president of the institution shall make available
66 resources of the institution for conducting the business of the
67 board of advisors. The members of the board of advisors shall
68 be reimbursed for all reasonable and necessary expenses
69 actually incurred in the performance of their official duties
70 under this section upon presentation of an itemized sworn
71 statement thereof. All expenses incurred by the boards of
72 advisors and the institutions under this section shall be paid
73 from funds allocated to the institutions for that purpose.

74 (g) The board of advisors shall review, prior to the submis-
75 sion by the president to its governing board, all proposals of the
76 institution in the areas of mission, academic programs, budget,
77 capital facilities and such other matters as requested by the
78 president of the institution or its governing board or otherwise
79 assigned to it by law. The board of advisors shall comment on
80 each such proposal in writing, with such recommendations for
81 concurrence therein or revision or rejection thereof as it

82 considers proper. The written comments and recommendations
83 shall accompany the proposal to the governing board and the
84 governing board shall include the comments and recommenda-
85 tions in its consideration of and action on the proposal. The
86 governing board shall promptly acknowledge receipt of the
87 comments and recommendations and shall notify the board of
88 advisors in writing of any action taken thereon.

89 (h) The board of advisors shall review, prior to their
90 implementation by the president, all proposals regarding
91 institution-wide personnel policies. The board of advisors may
92 comment on the proposals in writing.

93 (i) The board of advisors shall provide advice and assis-
94 tance to the president in establishing closer connections
95 between higher education and business, labor, government,
96 community and economic development organizations to give
97 students greater opportunities to experience the world of work,
98 such as business and community service internships, appren-
99 ticeships and cooperative programs; to communicate better and
100 serve the current workforce and workforce development needs
101 of their service area, including the needs of nontraditional
102 students for college-level skills upgrading and retraining and
103 the needs of employers for specific programs of limited
104 duration; and to assess the performance of the institution's
105 graduates and assist in job placement.

106 (j) Upon the occurrence of a vacancy in the office of
107 president of the institution, the board of advisors shall serve as
108 a search and screening committee for candidates to fill the
109 vacancy under guidelines established by the commission
110 pursuant to the provisions of section six, article one-b of this
111 chapter. When serving as a search and screening committee, the
112 board of advisors and its governing board are each authorized
113 to appoint up to three additional persons to serve on the
114 committee as long as the search and screening process is in
115 effect. The three additional appointees of the board of advisors
116 shall be faculty members of the institution. Only for the
117 purposes of the search and screening process, the additional

118 members shall possess the same powers and rights as the
119 regular members of the board of advisors, including reimburse-
120 ment for all reasonable and necessary expenses actually
121 incurred. Following the search and screening process, the
122 committee shall submit the names of at least three candidates to
123 the president of the sponsoring institution for consideration and
124 appointment. If the president rejects all candidates submitted,
125 the committee shall submit the names of at least three addi-
126 tional candidates and this process shall be repeated until the
127 president appoints one of the candidates submitted. The
128 governing board shall provide all necessary staff assistance to
129 the board of advisors in its role as a search and screening
130 committee.

131 (k) The boards of advisors shall develop a master plan for
132 each administratively linked community and technical college.
133 The ultimate responsibility for developing and updating the
134 master plans at the institutional level resides with the institu-
135 tional board of advisors, but the ultimate responsibility for
136 approving the final version of the institutional master plans,
137 including periodic updates, resides with the commission. The
138 plan shall include, but not be limited to, the following:

139 (1) A detailed demonstration of how the master plan will be
140 used to meet the goals and objectives of the institutional
141 compact;

142 (2) A well-developed set of goals outlining missions,
143 degree offerings, resource requirements, physical plant needs,
144 personnel needs, enrollment levels and other planning
145 determinates and projections necessary in such a plan to assure
146 that the needs of the institution's area of responsibility for a
147 quality system of higher education are addressed;

148 (3) Documentation of the involvement of the commission,
149 institutional constituency groups, clientele of the institution,
150 and the general public in the development of all segments of the
151 institutional master plan.

152 The plan shall be established for periods of not less than
153 three nor more than six years and shall be revised periodically
154 as necessary, including recommendations on the addition or
155 deletion of degree programs as, in the discretion of the board of
156 advisors, may be necessary.

**§18B-6-1a. Institutional boards of advisors for universities, state
colleges and free-standing community and techni-
cal colleges.**

1 (a) For the transition year beginning on the first day of July,
2 two thousand, through the thirtieth day of June, two thousand
3 one, only, there is established at the following state institutions
4 of higher education, excluding centers and branches thereof, an
5 institutional board of advisors: Bluefield state college, Concord
6 college, eastern West Virginia community and technical
7 college, Fairmont state college, Glenville state college, Mar-
8 shall university, Shepherd college, southern West Virginia
9 community and technical college, West Liberty state college,
10 West Virginia northern community and technical college, the
11 West Virginia school of osteopathic medicine, West Virginia
12 state college and West Virginia university.

13 (b) The boards of advisors are established as follows:

14 (1) Each institutional board of advisors shall consist of
15 twelve persons: *Provided*, That the institutional boards of
16 advisors for Marshall university and West Virginia university
17 shall consist of fifteen persons. Each board of advisors shall
18 include:

19 (A) A full-time member of the faculty with the rank of
20 instructor or above duly elected by the faculty;

21 (B) A member of the student body in good academic
22 standing, enrolled for college credit work and duly elected by
23 the student body;

24 (C) A member of the institutional classified staff duly
25 elected by the classified staff; and

26 (D) Nine lay members appointed by the governor, by and
27 with the advice and consent of the Senate: *Provided*, That for
28 the institutional boards of advisors at Marshall university and
29 West Virginia university, the governor shall appoint twelve
30 members, by and with the advice and consent of the Senate:
31 *Provided, however*, That, of the appointed lay members, the
32 governor shall appoint one superintendent of a county board of
33 education from the area served by the institution: *Provided*
34 *further*, That in making the initial appointments only, the
35 governor shall endeavor to make appointments from a pool of
36 those persons who, on the thirtieth day of June, two thousand,
37 are members of the board of trustees and the board of directors.

38 (2) Of the nine members appointed by the governor, no
39 more than five may be of the same political party: *Provided*,
40 That for the appointed members of the institutional boards of
41 advisors of Marshall university and West Virginia university,
42 no more than seven may be of the same political party. At least
43 six of the members shall be residents of the state: *Provided*,
44 *however*, That for the appointed members of the institutional
45 boards of advisors of Marshall university and West Virginia
46 university, at least eight of the members shall be residents of
47 the state. All members shall serve for a term of one year. A
48 vacancy in an unexpired term of a member shall be filled for the
49 unexpired term within thirty days of the occurrence of the
50 vacancy in the same manner as the original appointment or
51 election. Except in the case of a vacancy, all elections shall be
52 held and all appointments shall be made no later than the
53 thirtieth day of June preceding the commencement of the term:
54 *Provided further*, That election of officers for the term begin-
55 ning in July, two thousand, shall be made in July. Each board
56 of advisors shall elect one of its appointed lay members to be
57 chairperson.

58 (3) Each board of advisors shall hold a regular meeting at
59 least quarterly, commencing in July, two thousand. Additional

60 meetings may be held upon the call of the chairperson or upon
61 the written request of at least four members: *Provided*, That for
62 the institutional boards of advisors of Marshall university and
63 West Virginia university, additional meetings may be held upon
64 the call of the chairperson or upon the written request of at least
65 five members. A majority of the members constitutes a quorum
66 for conducting the business of the board of advisors.

67 (4) The president of the institution shall make available
68 resources of the institution for conducting the business of the
69 board of advisors. The members of the board of advisors shall
70 serve without compensation, but shall be reimbursed for all
71 reasonable and necessary expenses actually incurred in the
72 performance of their official duties under this section upon
73 presentation of an itemized sworn statement thereof. All
74 expenses incurred by the board of advisors and the institution
75 under this section shall be paid from funds allocated to the
76 institution for that purpose.

77 (5) The board of advisors shall review, prior to the submis-
78 sion by the president to its governing board, all proposals of the
79 institution in the areas of mission, academic programs, budget,
80 capital facilities and such other matters as requested by the
81 president of the institution or its governing board or otherwise
82 assigned to it by law. The board of advisors shall comment on
83 each such proposal in writing, with such recommendations for
84 concurrence therein or revision or rejection thereof as it
85 considers proper. The written comments and recommendations
86 shall accompany the proposal to the governing board and the
87 governing board shall include the comments and recommenda-
88 tions in its consideration of and action on the proposal. The
89 governing board shall promptly acknowledge receipt of the
90 comments and recommendations and shall notify the board of
91 advisors in writing of any action taken thereon.

92 (6) The board of advisors shall review, prior to their
93 implementation by the president, all proposals regarding
94 institution-wide personnel policies. The board of advisors may
95 comment on the proposals in writing.

96 (7) The board of advisors shall provide advice and assis-
97 tance to the president in establishing closer connections
98 between higher education and business, labor, government,
99 community and economic development organizations to give
100 students greater opportunities to experience the world of work,
101 such as business and community service internships, appren-
102 ticeships and cooperative programs; to communicate better and
103 serve the current workforce and workforce development needs
104 of their service area, including the needs of nontraditional
105 students for college-level skills upgrading and retraining and
106 the needs of employers for specific programs of limited
107 duration; and to assess the performance of the institution's
108 graduates and assist in job placement.

109 (8) Upon the occurrence of a vacancy in the office of
110 president of the institution, the board of advisors serves as a
111 search and screening committee for candidates to fill the
112 vacancy under guidelines established by its governing board.
113 When serving as a search and screening committee, the board
114 of advisors and its governing board are each authorized to
115 appoint up to three additional persons to serve on the committee
116 as long as the search and screening process is in effect. The
117 three additional appointees of the board of advisors shall be
118 faculty members of the institution. Only for the purposes of the
119 search and screening process, the additional members shall
120 possess the same powers and rights as the regular members of
121 the board of advisors, including reimbursement for all reason-
122 able and necessary expenses actually incurred. Following the
123 search and screening process, the committee shall submit the
124 names of at least three candidates to the governing board for
125 consideration and appointment. If the governing board rejects
126 all candidates submitted, the committee shall submit the names
127 of at least three additional candidates and this process shall be
128 repeated until the governing board appoints one of the candi-
129 dates submitted. The governing board shall provide all neces-
130 sary staff assistance to the board of advisors in its role as a
131 search and screening committee.

132 (c) The institutional boards of advisors created under this
133 section have the following additional duties:

134 (1) The responsibility to develop the institutional compacts
135 for their respective institutions under the guidance and direction
136 of the commission pursuant to section two, article one-a of this
137 chapter.

138 (2) The authority to participate in any orientation or
139 leadership training or education opportunities provided or
140 arranged by the commission.

§18B-6-2a. State advisory council of faculty.

1 (a) Effective the first day of July, two thousand, there is
2 hereby established the state advisory council of faculty. For the
3 purposes of this section, the state advisory council of faculty
4 shall be referred to as the “council”.

5 (b) During the month of April of each odd-numbered year,
6 beginning in the year two thousand one, each president or other
7 administrative head of a state institution of higher education,
8 including, but not limited to, Potomac state college of West
9 Virginia university, West Virginia university at Parkersburg,
10 West Virginia university institute of technology, Robert C.
11 Byrd health sciences Charleston division of West Virginia
12 university and the Marshall university graduate college, at the
13 direction of the council and in accordance with procedures
14 established by the council, shall convene a meeting or otherwise
15 institute a balloting process to elect one faculty to serve on the
16 institutional board of governors or the institutional board of
17 advisors, as applicable. Terms of the members of the council
18 shall be for two years and shall begin on the first day of July of
19 each odd-numbered year. Members of the council shall be
20 eligible to succeed themselves. Each person so elected shall be
21 a member of the statewide advisory council of faculty.

22 (c) The council shall meet at least once each quarter. One
23 of the quarterly meetings shall be during the month of July, at

24 which meeting the council shall elect a chairperson: *Provided,*
25 That the chairperson shall serve no more than two consecutive
26 terms as chair. No member may vote by proxy at the election.
27 In the event of a tie in the last vote taken for such election, a
28 member authorized by the council shall select the chairperson
29 by lot from the names of those persons tied. Immediately
30 following the election of a chairperson, the council shall elect,
31 in the manner prescribed by this section for the election of a
32 chairperson, a member of the council to preside over meetings
33 of the council in the chairperson's absence. Should the chairper-
34 son vacate the position, the council shall meet and elect a new
35 chairperson to fill the unexpired term within thirty days
36 following the vacancy.

37 (d) The council, through its chairperson and in any appro-
38 priate manner, shall communicate to the commission, through
39 the chancellor, matters of higher education in which the faculty
40 members may have an interest.

41 (e) The commission shall meet annually between the
42 months of October and December with the council to discuss
43 matters of higher education in which the faculty members or the
44 commission may have an interest.

45 (f) Members of the council shall serve without compensa-
46 tion, but shall be entitled to reimbursement for actual and
47 necessary expenses incurred in the performance of their official
48 duties from funds allocated to the state institution of higher
49 education served.

50 (g) The council shall cause to be prepared minutes of its
51 meetings, which minutes shall be available, upon request, to
52 any faculty member of a state institution of higher education
53 represented on the council.

§18B-6-3a. State advisory council of students.

1 (a) Effective the first day of July, two thousand, there is
2 hereby established the state advisory council of students. For

3 the purposes of this section, the state advisory council of
4 students shall be referred to as the "council".

5 (b) During the month of April of each year, beginning in the
6 year two thousand one, each student government organization
7 at each state institution of higher education, including, but not
8 limited to, Potomac state college of West Virginia university,
9 West Virginia university at Parkersburg, West Virginia univer-
10 sity institute of technology, Robert C. Byrd health sciences
11 Charleston division of West Virginia university and the
12 Marshall university graduate college, at the direction of the
13 council and in accordance with procedures established by the
14 council, shall elect a student, who may be the elected head or
15 president of the organization, to serve on the institutional board
16 of governors or the institutional board of advisors, as applica-
17 ble. Terms of the members of the council shall be for one year
18 and shall begin on the first day of July of each year. Members
19 of the council shall be eligible to succeed themselves. Each
20 person so elected shall be a member of the statewide advisory
21 council of students.

22 (c) The council shall meet at least once each quarter. One
23 of the quarterly meetings shall be during the month of July, at
24 which meeting the council shall elect a chairperson. No member
25 may vote by proxy at the election. In the event of a tie in the
26 last vote taken for such election, a member authorized by the
27 council shall select the chairperson by lot from the names of
28 those persons tied. Immediately following the election of a
29 chairperson, the council shall elect, in the manner prescribed by
30 this section for the election of a chairperson, a member of the
31 council to preside over meetings of the council in the chairper-
32 son's absence. Should the chairperson vacate the position, the
33 council shall meet and elect a new chairperson to fill the
34 unexpired term within thirty days following the vacancy.

35 (d) The council, through its chairperson and in any appro-
36 priate manner, shall communicate to the commission, through
37 the chancellor, matters of higher education in which the student
38 members may have an interest.

39 (e) The commission shall meet annually, between the
40 months of October and December, with the council to discuss
41 matters of higher education in which the student members or
42 the commission may have an interest.

43 (f) Members of the council shall serve without compensa-
44 tion, but shall be entitled to reimbursement for actual and
45 necessary expenses incurred in the performance of their official
46 duties from funds allocated to the state institution of higher
47 education served.

48 (g) The council shall cause to be prepared minutes of its
49 meetings, which minutes shall be available, upon request, to
50 any student of a state institution of higher education represented
51 on the council.

§18B-6-4a. State advisory councils of classified employees.

1 (a) Effective the first day of July, two thousand, there is
2 hereby established the state advisory council of classified
3 employees. For the purposes of this section, the state advisory
4 council of classified employees shall be referred to as the
5 “council”.

6 (b) During the month of April of each odd-numbered year,
7 beginning in the year two thousand one, each president or other
8 administrative head of a state institution of higher education,
9 including, but not limited to, Potomac state college of West
10 Virginia university, West Virginia university at Parkersburg,
11 West Virginia university institute of technology, Robert C.
12 Byrd health sciences Charleston division of West Virginia
13 university and the Marshall university graduate college, at the
14 direction of the council and in accordance with procedures
15 established by the council, shall convene a meeting or otherwise
16 institute a balloting process to elect one classified employee to
17 serve on the institutional board of governors or the institutional
18 board of advisors. Terms of the members of each council shall
19 be for two years and shall begin on the first day of July of each
20 odd-numbered year and members of the council shall be

21 eligible to succeed themselves. Each person so elected shall be
22 a member of the statewide advisory council of classified
23 employees.

24 (c) The council of classified employees shall meet at least
25 once each quarter. One of the quarterly meetings shall be during
26 the month of July, at which meeting the council shall elect a
27 chairperson: *Provided*, That the chair shall serve no more than
28 two consecutive terms as chair. No member may vote by proxy
29 at the election. In the event of a tie in the last vote taken for
30 such election, a member authorized by the council shall select
31 the chairperson by lot from the names of those persons tied.
32 Immediately following the election of a chairperson, the council
33 shall elect, in the manner prescribed by this section for the
34 election of a chairperson, a member of the council to preside
35 over meetings of the council in the chairperson's absence.
36 Should the chairperson vacate the position, the council shall
37 meet and elect a new chairperson to fill the unexpired term
38 within thirty days following the vacancy.

39 (d) The council, through its chairperson and in any appro-
40 priate manner, shall communicate to the commission, through
41 the chancellor, matters of higher education in which the
42 classified employees may have an interest.

43 (e) The commission shall meet annually, between the
44 months of October and December, with the council to discuss
45 matters of higher education in which the classified employees
46 or the commission may have an interest.

47 (f) Members of the council shall serve without compensa-
48 tion, but shall be entitled to reimbursement for actual and
49 necessary expenses incurred in the performance of their official
50 duties from funds allocated to the state institution of higher
51 education served.

52 (g) The council shall cause to be prepared minutes of its
53 meetings, which minutes shall be available, upon request, to

54 any classified employee of a state institution of higher educa-
55 tion represented on the council.

ARTICLE 7. PERSONNEL GENERALLY.

§18B-7-1. Seniority for full-time classified personnel; seniority to be observed in reducing work force; preferred recall list; renewal of listing; notice of vacancies.

1 (a) Definitions for terms used in this section are in accor-
2 dance with those provided in section two, article nine of this
3 chapter except that the provisions of this section shall apply
4 only to classified employees whose employment, if continued,
5 accumulates to a minimum total of one thousand forty hours
6 during a calendar year and extends over at least nine months of
7 a calendar year: *Provided*, That this section also applies to any
8 classified employee who is involuntarily transferred to a
9 position in nonclassified status for which he or she did not
10 apply: *Provided, however*, That any classified employee
11 involuntarily transferred to a position in nonclassified status
12 may only exercise the rights set out in this section for positions
13 equivalent to or lower than the last job class the employee held.

14 (b) All decisions by the appropriate governing board, the
15 commission or its agents at state institutions of higher education
16 concerning reductions in work force of full-time classified
17 personnel, whether by temporary furlough or permanent
18 termination, shall be made in accordance with this section. For
19 layoffs by classification for reason of lack of funds or work, or
20 abolition of position or material changes in duties or organiza-
21 tion and for recall of employees laid off, consideration shall be
22 given to an employee's seniority as measured by permanent
23 employment in the service of the state system of higher
24 education. In the event that the institution wishes to lay off a
25 more senior employee, the institution shall demonstrate that the
26 senior employee cannot perform any other job duties held by
27 less senior employees of that institution in the same job class or
28 any other equivalent or lower job class for which the senior
29 employee is qualified: *Provided*, That if an employee refuses to

30 accept a position in a lower job class, the employee shall retain
31 all rights of recall provided in this section. If two or more
32 employees accumulate identical seniority, the priority shall be
33 determined by a random selection system established by the
34 employees and approved by the institution.

35 (c) Any employee laid off during a furlough or reduction in
36 work force shall be placed upon a preferred recall list and shall
37 be recalled to employment by the institution on the basis of
38 seniority. An employee's listing with an institution shall remain
39 active for a period of one calendar year from the date of
40 termination or furlough or from the date of the most recent
41 renewal. If an employee fails to renew the listing with the
42 institution, the employee's name may be removed from the list.
43 An employee placed upon the preferred list shall be recalled to
44 any position opening by the institution within the classifications
45 in which the employee had previously been employed or to any
46 lateral position for which the employee is qualified. An
47 employee on the preferred recall list shall not forfeit the right
48 to recall by the institution if compelling reasons require the
49 employee to refuse an offer of reemployment by the institution.

50 The institution shall notify all employees maintaining
51 active listings on the preferred recall list of all position open-
52 ings that from time to time exist. The notice shall be sent by
53 certified mail to the last known address of the employee. It is
54 the duty of each employee listed to notify the institution of any
55 change in address and to timely renew the listing with the
56 institution. No position openings shall be filled by the institu-
57 tion, whether temporary or permanent, until all employees on
58 the preferred recall list have been properly notified of existing
59 vacancies and have been given an opportunity to accept
60 reemployment.

61 (d) A nonexempt classified employee, including a nonex-
62 empt employee who has not accumulated a minimum total of
63 one thousand forty hours during the calendar year or whose
64 contract does not extend over at least nine months of a calendar
65 year, who meets the minimum qualifications for a nonexempt

66 job opening at the institution where the employee is currently
67 employed, whether the job is a lateral transfer or a promotion,
68 and applies for the job shall be transferred or promoted before
69 a new person is hired unless the hiring is affected by mandates
70 in affirmative action plans or the requirements of Public Law
71 101-336, the Americans With Disabilities Act. If more than one
72 qualified, nonexempt classified employee applies, the
73 best-qualified nonexempt classified employee shall be awarded
74 the position. In instances where the classified employees are
75 equally qualified, the nonexempt classified employee with the
76 greatest amount of continuous seniority at that state institution
77 of higher education shall be awarded the position. A nonexempt
78 classified employee is one to whom the provisions of the
79 federal Fair Labor Standards Act, as amended, apply.

80 (e) In addition to any other information required, any
81 application for personnel governed by the provisions of this
82 section shall include the applicant's social security number.

ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSIFICATION SYSTEM.

§18B-9-2. Definitions.

1 As used in this article:

2 (a) "Classified employee or employee" means any regular
3 full-time or regular part-time employee of a governing board or
4 the commission, including all employees of the West Virginia
5 network for educational telecomputing and employees at the
6 higher education central office of the commission, who hold a
7 position that is assigned a particular job title and pay grade in
8 accordance with the personnel classification system established
9 by this section or governing board policy and shall include all
10 employees of the West Virginia network for educational
11 telecomputing;

12 (b) "Nonclassified employee" means an individual who is
13 responsible for policy formation at the department or institu-
14 tional level, or reports directly to the president, or is in a

15 position considered critical to the institution by the president
16 pursuant to policies adopted by the governing board: *Provided,*
17 That the percentage of personnel placed in the category of
18 "nonclassified" at any given institution shall not exceed ten
19 percent of the total number of employees of that institution who
20 are eligible for membership in any state retirement system of
21 the state of West Virginia or other retirement plan authorized
22 by the state: *Provided, however,* That an additional ten percent
23 of the total number of employees of that institution as defined
24 in this subsection may be placed in the category of
25 "nonclassified" if they are in a position considered critical to
26 the institution by the president. Final approval of such place-
27 ment shall be with the appropriate governing board;

28 (c) "Job description" means the specific listing of duties and
29 responsibilities as determined by the appropriate governing
30 board and associated with a particular job title;

31 (d) "Job title" means the name of the position or job as
32 defined by the appropriate governing board;

33 (e) "Merit increases and salary adjustments" means the
34 amount of additional salary increase allowed on a merit basis or
35 to rectify salary inequities or accommodate competitive market
36 conditions in accordance with rules established by the interim
37 governing board or the commission;

38 (f) "Pay grade" means the number assigned by the appropri-
39 ate governing board to a particular job title and refers to the
40 vertical column heading of the salary schedule established in
41 section three of this article;

42 (g) "Personnel classification system" means the process of
43 job categorization adopted by the appropriate governing board
44 by which job title, job description, pay grade and placement on
45 the salary schedule are determined;

46 (h) "Salary" means the amount of compensation paid
47 through the state treasury per annum to a classified employee;

48 (i) "Schedule" or "salary schedule" means the grid of
49 annual salary figures established in section three of this article;
50 and

51 (j) "Years of experience" means the number of years a
52 person has been an employee of the state of West Virginia and
53 refers to the horizontal column heading of the salary schedule
54 established in section three of this article. For the purpose of
55 placement on the salary schedule pursuant to said section,
56 employment for nine months or more shall equal one year of
57 experience, but no classified employee may accrue more than
58 one year of experience during any given fiscal year. Employ-
59 ment for less than full time or less than nine months during any
60 fiscal year shall be prorated. For the purpose of determining the
61 amount of annual salary increase pursuant to subsection (b),
62 section five of this article, employment for less than twelve
63 months during any fiscal year shall be prorated. In accordance
64 with rules established by the interim governing board or the
65 commission, a classified employee may be granted additional
66 years of experience not to exceed the actual number of years of
67 prior, relevant work or experience at accredited institutions of
68 higher education other than state institutions of higher educa-
69 tion.

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-1. Enrollment, tuition and other fees at education institutions; refund of fees.

§18B-10-2. Higher education resource fee.

§18B-10-8. Collection; disposition and use of additional registration fee; creation of special capital improvements funds; revenue bonds.

§18B-10-1. Enrollment, tuition and other fees at education institutions; refund of fees.

1 (a) Each governing board shall fix tuition and other fees for
2 each school term for the different classes or categories of
3 students enrolling at each state institution of higher education
4 under its jurisdiction and may include among such fees any one

5 or more of the following: (1) Health service fees; (2) infirmary
6 fees; (3) student activities, recreational, athletic and extracurric-
7 ular fees, which fees may be used to finance a students'
8 attorney to perform legal services for students in civil matters
9 at such institutions: *Provided*, That such legal services shall be
10 limited to only those types of cases, programs or services
11 approved by the administrative head of such institution where
12 such legal services are to be performed; and (4) graduate center
13 fees and branch college fees, or either, if the establishment and
14 operations of graduate centers or branch colleges are otherwise
15 authorized by law. All fees collected at any graduate center or
16 at any branch college shall be paid into special funds and shall
17 be used solely for the maintenance and operation of the
18 graduate center or branch college at which they were collected:
19 *Provided, however*, That the governing boards shall use the
20 median of the average tuition and required fees at similarly
21 classified institutions in member states of the southern regional
22 education board as a goal in establishing tuition and required
23 fee levels for residents at state institutions of higher education
24 under their jurisdiction: *Provided further*, That the governing
25 boards shall use the actual instructional cost as the same shall
26 be determined in accordance with commission rule, in estab-
27 lishing nonresident undergraduate fees, with the goal of having
28 tuition and fees cover the actual cost by fiscal year one thou-
29 sand nine hundred ninety-six: *And provided further*, That
30 effective the first day of July, two thousand one, tuition and
31 fees for nonresident, undergraduate students shall, at a mini-
32 mum, cover actual instructional costs: *And provided further*,
33 That students enrolled in undergraduate courses offered at
34 off-campus locations shall pay an off-campus instruction fee
35 and shall not pay the athletic fee and the student activity fee.
36 The off-campus instruction fee shall be used solely for the
37 support of off-campus courses offered by the institution. Off-
38 campus locations for each institution shall be defined by the
39 appropriate governing board. The schedule of all fees, and any
40 changes therein, shall be entered in the minutes of the meeting
41 of the appropriate governing board, and the board shall file with
42 the legislative auditor a certified copy of such schedule and
43 changes.

44 (b) In addition to the fees mentioned in the preceding
45 paragraph, each governing board may impose and collect a
46 student union building fee. All such building fees collected at
47 an institution shall be paid into a special student union building
48 fund for such institution, which is hereby created in the state
49 treasury, and shall be used only for the construction, operation
50 and maintenance of a student union building or a combination
51 student union and dining hall building or for the payment of the
52 principal of and interest on any bond issued to finance part or
53 all of the construction of a student union building or a combina-
54 tion student union and dining hall building or the renovation of
55 an existing structure for use as a student union building or a
56 combination student union and dining hall building, all as more
57 fully provided in section ten of this article. Any moneys in such
58 funds not needed immediately for such purposes may be
59 invested in any such bonds or other securities as are now or
60 hereafter authorized as proper investments for state funds.

61 (c) The boards shall establish the rates to be charged full-
62 time students enrolled during a regular academic term. For fee
63 purposes, a full-time undergraduate student is one enrolled for
64 twelve or more credit hours in a regular term, and a full-time
65 graduate student is one enrolled for nine or more credit hours in
66 a regular term. Undergraduate students taking fewer than
67 twelve credit hours in a regular term shall have their fees
68 reduced pro rata based upon one twelfth of the full-time rate per
69 credit hour, and graduate students taking fewer than nine credit
70 hours in a regular term shall have their fees reduced pro rata
71 based upon one ninth of the full-time rate per credit hour.

72 Fees for students enrolled in summer terms or other
73 nontraditional time periods shall be prorated based upon the
74 number of credit hours for which the student enrolls in accor-
75 dance with the above provisions.

76 (d) All fees are due and payable by the student upon
77 enrollment and registration for classes except as provided for in
78 this subsection:

79 (1) The governing boards shall permit fee payments to be
80 made in up to three installments over the course of the aca-
81 demic term: *Provided*, That all fees must be paid prior to the
82 awarding of course credit at the end of the academic term.

83 (2) The governing boards also shall authorize the accep-
84 tance of credit cards or other payment methods which may be
85 generally available to students for the payment of fees: *Pro-*
86 *vided*, That the governing boards may charge the students for
87 the reasonable and customary charges incurred in accepting
88 credit cards and other methods of payment.

89 (3) If a governing board determines that any student was
90 adversely, financially affected by a legal work stoppage that
91 commenced on or after the first day of January, one thousand
92 nine hundred ninety-three, it may allow the student an addi-
93 tional six months to pay the fees for any academic term:
94 *Provided*, That the governing board shall determine if a student
95 was adversely, financially affected on a case-by-case basis.

96 (e) On or before the first day of July, two thousand one, the
97 chancellor for higher education shall review policy series
98 twenty-two of the governing boards, related to assessment,
99 payment and refund of fees and determine whether a new rule
100 should be adopted regarding the refund of any fees upon the
101 voluntary or involuntary withdrawal from classes of any
102 student. The rules shall comply with all applicable state and
103 federal laws and shall be uniformly applied throughout the
104 system.

105 (f) In addition to the fees mentioned in the preceding
106 subsections, each governing board may impose, collect and
107 distribute a fee to be used to finance a nonprofit, student-
108 controlled public interest research group: *Provided*, That the
109 students at such institution demonstrate support for the in-
110 creased fee in a manner and method established by that institu-
111 tion's elected student government: *Provided, however*, That
112 such fees shall not be used to finance litigation against the
113 institution.

114 (g) Any proposed fee increase which would become
115 effective during the transition year beginning on the first day of
116 July, two thousand, and ending on the thirtieth day of June, two
117 thousand one, and which has been approved by the governing
118 board, shall then be submitted by the governing board to the
119 secretary for education and the arts for approval. Such approval
120 shall be granted only upon the certification that such institution
121 requesting a fee increase is in compliance with the strategic
122 plans required to be submitted, pursuant to section one-b, article
123 one of this chapter. Notice, in the form of a report, shall be
124 provided by the chancellor to the legislative oversight commis-
125 sion on education accountability describing such fee increases
126 and showing how such increases compare with the average
127 tuition and fees charged at comparable peer institutions in
128 member states of the southern regional education board.
129 Effective the first day of July, two thousand one, tuition and
130 fees rates shall be determined in accordance with subsection
131 (h), subsection (i) and subsection (j) of this section.

132 (h) Effective the first day of July, two thousand one,
133 institutions shall retain tuition and fee revenues not pledged for
134 bonded indebtedness or other purposes in accordance with a
135 revised tuition policy adopted by the respective governing
136 boards and approved by the commission. The revised tuition
137 policy shall:

138 (1) Provide a basis for establishing nonresident tuition and
139 fees;

140 (2) Allow institutions to charge different tuition and fees for
141 different programs; and

142 (3) Establish methodology, where applicable, to ensure that,
143 within the appropriate time period under the compact, commu-
144 nity and technical college tuition rates for community and
145 technical college students in all independently accredited
146 community and technical colleges will be commensurate with
147 the tuition and fees charged by their peer institutions.

148 (i) No penalty shall be imposed by the commission upon
149 any institution based upon the number of nonresidents who
150 attend the institution unless the commission determines that
151 admission of nonresidents to any institution or program of study
152 within the institution is impeding unreasonably the ability of the
153 resident students to attend the institution or participate in the
154 programs of the institution. The institutions shall report
155 annually to the commission on the numbers of out-of-state
156 residents and such other enrollment information as the commis-
157 sion may request.

158 (j) No governing board may increase tuition and fees more
159 than four percent nor increase tuition and fees to more than one
160 hundred percent of the tuition and fees of peer institutions, as
161 determined by the commission, without the approval of the
162 commission.

§18B-10-2. Higher education resource fee.

1 In addition to the fees specifically provided for in section
2 one of this article, all students enrolled for credit at a state
3 institution of higher education shall pay a higher education
4 resource fee. The commission shall fix the fee rates for the
5 various institutions and classes of students under its jurisdiction
6 and may from time to time change these rates. The amount of
7 the fee charged at each institution shall be prorated for part-
8 time students. The fee imposed by this section is in addition to
9 the maximum fees allowed to be collected under the provision
10 of section one of this article and is not limited thereby. Refunds
11 of such fee may be made in the same manner as any other fee
12 collected at state institutions of higher education.

13 Ninety percent of the total fees collected at each institution
14 pursuant to this section shall be deposited in a special fund in
15 the state treasury for the institution at which the fees are
16 collected and may be used by the institution for libraries and
17 library supplies, including books, periodicals, subscriptions and
18 audiovisual materials, instructional equipment and materials;
19 and for the improvement in quality and scope of student

20 services. Up to ten percent of the fee collections shall be
21 deposited in a special fund and expended or allocated by the
22 commission to meet general operating expenses of the commis-
23 sion or to fund statewide programs: *Provided*, That the board
24 shall, to the maximum extent practicable, offset the impact, if
25 any, on financially needy students of any potential fee increases
26 under this section by allocating an appropriate amount of such
27 fee revenue to the state scholarship program to be expended in
28 accordance with the provisions of article five, chapter eighteen-
29 c of this code.

30 The commission shall, on or before the first day of July of
31 each year, provide the legislative auditor with a report of the
32 projected fee collections for the board and each of its institu-
33 tions and the expenditures proposed for such fee.

**§18B-10-8. Collection; disposition and use of additional registra-
tion fee; creation of special capital improvements
funds; revenue bonds.**

1 (a) In addition to all other fees imposed by the commission,
2 there is hereby imposed and the commission is hereby directed
3 to provide for the collection of an additional registration fee
4 from all students enrolled in any state institution of higher
5 education under its jurisdiction in the amounts hereinafter
6 provided.

7 For full-time students at each state institution of higher
8 education, the additional registration fee shall be fifty dollars
9 per semester. The commission has authority to increase such
10 additional registration fee at institutions of higher education
11 under its jurisdiction for students who are nonresidents of this
12 state. For all part-time students and for all summer school
13 students, the commission shall impose and collect such fee in
14 proportion to, but not exceeding, that paid by full-time students.

15 The fee imposed by this section is in addition to the
16 maximum fees allowed to be collected under the provision of
17 section one of this article and may not be limited thereby.

18 Refunds of such fee may be made in the same manner as any
19 other fee collected at state institutions of higher education.

20 (b) There is created in the state treasury a state system
21 special capital improvements fund into which shall be paid all
22 proceeds of the additional registration fees collected from
23 students at all state institutions of higher education pursuant to
24 this section to be expended by the commission for the payment
25 of the principal of or interest on any revenue bonds issued by
26 the board of regents or the succeeding governing boards for
27 which such registration fees were pledged prior to the enact-
28 ment of this section.

29 (c) The commission may make expenditures from any of
30 the special capital improvements funds established in this
31 section to finance, in whole or in part, together with any federal,
32 state or other grants or contributions, any one or more of the
33 following projects: (1) The acquisition of land or any rights or
34 interest therein; (2) the construction or acquisition of new
35 buildings; (3) the renovation or construction of additions to
36 existing buildings; (4) the acquisition of furnishings and
37 equipment for any such buildings; and (5) the construction or
38 acquisition of any other capital improvements or capital
39 educational facilities at such state institutions of higher educa-
40 tion, including any roads, utilities or other properties, real or
41 personal, or for other purposes necessary, appurtenant or
42 incidental to the construction, acquisition, financing and placing
43 in operation of such buildings, capital improvements or capital
44 educational facilities.

45 . The commission, in its discretion, may use the moneys in
46 such special capital improvements funds to finance the costs of
47 the above purposes on a cash basis, or may from time to time
48 issue revenue bonds of the state as provided in this section to
49 finance all or part of such purposes and pledge all or any part of
50 the moneys in such special funds for the payment of the
51 principal of and interest on such revenue bonds, and for
52 reserves therefor. Any pledge of such special funds for such
53 revenue bonds shall be a prior and superior charge on such

54 special funds over the use of any of the moneys in such funds
55 to pay for the cost of any of such purposes on a cash basis:
56 *Provided*, That any expenditures from such special funds, other
57 than for the retirement of revenue bonds, may only be made by
58 the commission to meet the cost of a predetermined capital
59 improvements program for one or more of the state institutions
60 of higher education, in such order of priority as was agreed
61 upon by the commission and presented to the governor for
62 inclusion in the annual budget bill, and only with the approval
63 of the Legislature as indicated by direct appropriation for the
64 purpose.

65 Such revenue bonds may be authorized and issued from
66 time to time by the commission to finance, in whole or in part,
67 the purposes provided in this section in an aggregate principal
68 amount not exceeding the amount which the commission
69 determines can be paid as to both principal and interest and
70 reasonable margins for a reserve therefor from the moneys in
71 such special funds.

72 The issuance of such revenue bonds shall be authorized by
73 a resolution adopted by the commission, and such revenue
74 bonds shall bear such date or dates, mature at such time or
75 times not exceeding forty years from their respective dates; be
76 in such form either coupon or registered, with such
77 exchangeability and interchangeability privileges; be payable
78 in such medium of payment and at such place or places, within
79 or without the state; be subject to such terms of prior redemp-
80 tion at such prices not exceeding one hundred five per centum
81 of the principal amount thereof; and shall have such other terms
82 and provisions as determined by the commission. Such revenue
83 bonds shall be signed by the governor and by the chancellor of
84 the commission authorizing the issuance thereof, under the
85 great seal of the state, attested by the secretary of state, and the
86 coupons attached thereto shall bear the facsimile signature of
87 the chancellor of the commission. Such revenue bonds shall be
88 sold in such manner as the commission determines is for the
89 best interests of the state.

90 The commission may enter into trust agreements with
91 banks or trust companies, within or without the state, and in
92 such trust agreements or the resolutions authorizing the
93 issuance of such bonds may enter into valid and legally binding
94 covenants with the holders of such revenue bonds as to the
95 custody, safeguarding and disposition of the proceeds of such
96 revenue bonds, the moneys in such special funds, sinking funds,
97 reserve funds, or any other moneys or funds; as to the rank and
98 priority, if any, of different issues of revenue bonds by the
99 commission under the provisions of this section; as to the
100 maintenance or revision of the amounts of such additional
101 registration fees, and the terms and conditions, if any, under
102 which such additional registration fees may be reduced; and as
103 to any other matters or provisions which are deemed necessary
104 and advisable by the commission in the best interests of the
105 state and to enhance the marketability of such revenue bonds.

106 After the issuance of any of such revenue bonds, the
107 additional registration fees at the state institutions of higher
108 education may not be reduced as long as any of such revenue
109 bonds are outstanding and unpaid except under such terms,
110 provisions and conditions as shall be contained in the resolu-
111 tion, trust agreement or other proceedings under which such
112 revenue bonds were issued.

113 Such revenue bonds shall be and constitute negotiable
114 instruments under the uniform commercial code of this state;
115 shall, together with the interest thereon, be exempt from all
116 taxation by the state of West Virginia, or by any county, school
117 district, municipality or political subdivision thereof; and such
118 revenue bonds may not be deemed to be obligations or debts of
119 the state, and the credit or taxing power of the state may not be
120 pledged therefor, but such revenue bonds shall be payable only
121 from the revenue pledged therefor as provided in this section.

122 Additional revenue bonds may be issued by the commission
123 pursuant to this section and financed by additional revenues or
124 funds dedicated from other sources. It is the intent of the
125 Legislature to authorize over a five-year period from the

126 effective date of this section additional sources of revenue and
127 funds to effect such funding for capital improvement.

128 Funding of system-wide and campus-specific revenue
129 bonds under any other section of this code is hereby continued
130 and authorized pursuant to the terms of this section. Revenues
131 of any state institution of higher education pledged to the
132 repayment of any bonds issued pursuant to this code shall
133 remain the responsibility of that institution.

ARTICLE 14. MISCELLANEOUS.

§18B-14-8. Statewide task force on teacher quality.

§18B-14-9. Statewide task force on student financial aid.

§18B-14-8. Statewide task force on teacher quality.

1 (a) There is hereby created a statewide task force on teacher
2 quality to address issues which shall include, but not be limited
3 to, the following:

4 (1) Need to strengthen teacher education in subject area
5 fields by addressing the quality and regional accessibility of
6 pre-service and in-service programs at both the baccalaureate
7 and graduate degree levels;

8 (2) Need to address teacher salaries;

9 (3) Need to determine the appropriate supply of teachers to
10 meet future demand;

11 (4) Need to determine the most effective method of staff
12 development for teachers; and

13 (5) Need to address methods to prepare teachers to integrate
14 technology effectively in the classroom, including the follow-
15 ing:

16 (i) The resources necessary for teacher education programs
17 to prepare teachers for the technology demands of the class-
18 room environment;

19 (ii) The opportunities and resources for professional
20 development experiences in technology; and

21 (6) Need to study methods to extend programs such as the
22 Benedum collaborative model of teacher education at West
23 Virginia university to other geographic areas of the state.

24 (b) The task force shall be chaired by the chancellor for
25 higher education or a designee and shall be comprised of
26 twenty-one members selected as follows: Eight members to be
27 appointed by the governor; five members to be appointed by the
28 state board of education; five members to be appointed by the
29 governing boards; one member to be selected by the West
30 Virginia professional teachers standards commission from
31 among their membership; one member representing private
32 institutions of higher education selected by the West Virginia
33 association of independent colleges, inc.; and the secretary of
34 education and the arts or a designee. Of the eight members to be
35 appointed by the governor, two shall be representatives of
36 statewide teacher organizations and of the six members to be
37 appointed by the state board of education, at least three shall be
38 classroom teachers and at least one shall be selected from
39 among the membership of the state board of education.

40 (c) Appointments to the task force shall be made so that
41 members may begin their work no later than the first day of
42 July, two thousand.

43 (d) The task force shall report on its progress to the
44 legislative oversight commission on education accountability
45 and the commission. The initial progress report shall be made
46 in October, two thousand, and, additionally, in each quarter
47 thereafter until the work of the task force is completed.

48 (e) The task force shall complete its work and make a final
49 report to the legislative oversight commission on education
50 accountability and the commission no later than the first day of
51 November, two thousand one. The final report shall contain
52 findings of fact, recommendations and strategies for imple-
53 menting recommended changes.

§18B-14-9. Statewide task force on student financial aid.

1 (a) There is hereby created a statewide task force on student
2 financial aid to address issues which shall include, but not be
3 limited to, the following:

4 (1) The impact of the full range of student aid and prepaid
5 admission programs including federal, state and institutional
6 programs;

7 (2) The interrelationships of the various programs;

8 (3) The feasibility and effectiveness of grants versus loans;
9 and

10 (4) A longitudinal study detailing the amount of money
11 spent for student aid in West Virginia over the past fifteen
12 years, or, if data for a full fifteen years is not available, for the
13 longest time period possible; the number of students served;
14 and the number of those students who have remained in the
15 state.

16 (b) The task force shall be chaired by the chancellor for
17 higher education or a designee and shall be comprised of
18 fourteen members selected as follows: Six members selected by
19 the governing boards; two members representing private
20 institutions of higher education selected by the West Virginia
21 association of independent colleges, inc.; four members
22 selected by the state board of education; the state treasurer or a
23 designee; and the secretary of education and the arts or a
24 designee.

25 (c) Appointments to the task force shall be made so that
26 members may begin their work no later than the first day of
27 July, two thousand.

28 (d) The task force shall make an initial progress report to
29 the legislative oversight commission on education accountabil-
30 ity and the commission by the first day of December, two
31 thousand, and shall report quarterly thereafter until the work of
32 the task force is completed.

33 (e) The task force shall complete its work and make a final
34 report to the legislative oversight commission on education
35 accountability and the commission no later than the first day of
36 October, two thousand one. The final report shall contain
37 findings of fact, recommendations and strategies for imple-
38 menting recommended changes.

CHAPTER 101

**(Com. Sub. for H. B. 4679 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed March 11, 2000; 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 and thirty-one, as amended, and to amend and reenact section seven, article thirty, chapter eighteen of said code, all relating to the prepaid tuition contract; authorizing reduction in federal adjusted gross income for purposes of the West Virginia personal income tax; and extending the modification for payments made for other college savings plans administered by the board of trustees of 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; and that section seven, article thirty, chapter eighteen of said code, be amended and reenacted, all to read as follows:

Chapter

11. Taxation.

18. Education.

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 from
2 federal adjusted gross income pursuant to subsection (c),
3 section twelve of this article, any payment made under a
4 prepaid tuition contract or other college savings plan adminis-
5 tered by the board, pursuant to article thirty, chapter eighteen of
6 this code, is also an authorized modification reducing federal
7 adjusted gross income, but only to the extent the amount is not
8 allowable as a deduction when arriving at the taxpayer's federal
9 adjusted gross income for the taxable year in which the pay-
10 ment is made. This modification is available regardless of the
11 type of return form filed. The taxpayer may also elect to carry
12 forward the modification over a period not to exceed five
13 taxable years, beginning in the taxable year in which the
14 payment was made.

CHAPTER 18. EDUCATION.

ARTICLE 30. WEST VIRGINIA PREPAID TUITION TRUST ACT.

§18-30-7. Income tax deduction for purchasers.

1 As provided in section twelve-a, article twenty-one, chapter
2 eleven of this code, a purchaser of a prepaid tuition contract or
3 other college savings plan administered by the board, under the
4 provisions of this article, is eligible for a tax deduction.

CHAPTER 102

(Com. Sub. for H. B. 4399 — By Delegates Cann, Angotti, Frederick,
Williams, Kominar, Coleman and Perdue)

[Passed March 11, 2000, in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one-b, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-four, relating to requiring the state board of education to provide certain information and other support to the Mountaineer Challenge Academy.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1B. NATIONAL GUARD.

§15-1B-24. Mountaineer Challenge Academy.

1 The Mountaineer Challenge Academy, operated by the
2 adjutant general at Camp Dawson, is hereby acknowledged to
3 be a program of great value in meeting the educational needs of
4 at-risk youth throughout the state. It is the sense of the Legisla-
5 ture that the Mountaineer Challenge Academy should enjoy the
6 full cooperation of the executive agencies of state government
7 in carrying out its program.

8 To that end, the state board of education shall, notwith-
9 standing any other provision in this code to the contrary:

10 (1) Include the Mountaineer Challenge Academy in the
11 child nutrition program on the same basis as other public
12 schools;

13 (2) Provide the names and mailing addresses of all high
14 school dropouts in the state to the director of the Mountaineer
15 Challenge Academy upon request; and

16 (3) Provide for Mountaineer Challenge Academy graduates
17 to participate in the adult basic education program.

18 Further cooperation with the Mountaineer Challenge
19 Academy is encouraged by the Legislature for the purpose of
20 assisting the Mountaineer Challenge Academy in achieving its
21 mission.

CHAPTER 103

(H. B. 4413 — By Delegates Mezzatesta, Williams,
Paxton, Davis, Fletcher, Houston and Calvert)

[Passed March 9, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-six, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing regional education service agencies; purposes; authority to implement regional services; and compensation.

Be it enacted by the Legislature of West Virginia:

That section twenty-six, article two, 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 2. STATE BOARD OF EDUCATION.

§18-2-26. Establishment of multicounty regional educational service agencies; purposes; authority to implement regional services.

1 (a) In order to consolidate and administer more effectively
2 existing educational programs and services so individual
3 districts will have more discretionary moneys for educational
4 improvement and in order to equalize and extend educational
5 opportunities, the state board of education shall establish
6 multicounty regional educational service agencies for the
7 purpose of providing high quality, cost effective educational
8 programs and services to the county school systems, and shall
9 make such rules as may be necessary for the effective adminis-
10 tration and operation of the agencies.

11 (b) In furtherance of these purposes, the board of directors
12 of each regional educational service agency shall continually
13 explore possibilities for the delivery of services on a regional
14 basis which will facilitate equality in the educational offerings
15 among counties in its service area, permit the delivery of high
16 quality educational programs at a lower per student cost,
17 strengthen the cost effectiveness of education funding re-
18 sources, reduce administrative and/or operational costs,
19 including the consolidation of administrative, coordinating and
20 other county level functions into region level functions, and
21 promote the efficient administration and operation of the public
22 school systems generally.

23 Technical, operational, programmatic or professional
24 services are among the types of services appropriate for
25 delivery on a regional basis.

26 (c) In addition to performing the services and functions
27 required by the provisions of this or any other section of this
28 code, a regional educational service agency may implement
29 regional programs and services by a majority vote of its board
30 of directors. When the vote is not unanimous, the board of
31 directors shall file a plan for the service or program delivery
32 with the state board describing the program or service, the
33 manner of delivery and the projected savings and/or the
34 improved quality of the program or service. The state board

35 shall promulgate rules requiring a county board that declines to
36 participate in the programs or services to show just cause for
37 not participating and the estimated savings accruing to the
38 county from the program or services. If a county board fails to
39 show that savings will accrue to the county or that the quality
40 of the program will be significantly and positively affected as
41 a result of its decision not to participate, the state board shall
42 withhold from the county's foundation allowance for adminis-
43 trative cost the lesser of the amount of the estimated savings or
44 the allocation for the county's foundation allowance for
45 administrative cost.

46 (d) The state board, in conjunction with the various regional
47 educational service agencies, shall develop an effective model
48 for the regional delivery of instruction in subjects where there
49 exists low student enrollment or a shortage of certified teachers
50 or where the delivery method substantially improves the quality
51 of an instructional program. The model shall incorporate an
52 interactive electronic classroom approach to instruction. To the
53 extent funds are appropriated or otherwise available, county
54 boards or regional educational service agencies may adopt and
55 utilize the model for the delivery of the instruction.

56 (e) Each county board of education shall use the uniform
57 integrated regional computer information system recommended
58 by the state board of education for data collection and reporting
59 to the state department of education. County boards of educa-
60 tion shall bear the cost of and fully participate in the implemen-
61 tation of the system by: (1) Acquiring necessary, compatible
62 equipment to participate in the regional computer information
63 system; or (2) following receipt of a waiver from the state
64 superintendent, operating a comparable management informa-
65 tion system at a lower cost which provides at least all uniform
66 integrated regional computer information system software
67 modules and allows on-line, interactive access for schools and
68 the county board of education office onto the statewide commu-

69 nications network. All data formats shall be the same as for the
70 uniform integrated regional information system and will reside
71 at the regional computer. Any county granted a waiver shall
72 receive periodic notification of any incompatibility or defi-
73 ciency in its system. No county shall expand any system either
74 through the purchase of additional software or hardware that
75 does not advance the goals and implementation of the uniform
76 integrated regional computer information system as recom-
77 mended by the state board.

78 (f) Each regional educational service agency shall submit
79 a report and evaluation of the services provided and utilized by
80 the schools within each respective region. Furthermore, each
81 school shall submit an evaluation of the services provided by
82 the regional educational service agency, which shall include an
83 evaluation of the regional educational service agency program,
84 suggestions as to how to improve utilization and the individual
85 school's plan as to development of new programs and enhance-
86 ment of existing programs. The report is due by the first day of
87 January of each year and shall be made available to the state
88 board of education, the standing committees on education of the
89 West Virginia Senate and House of Delegates and to the
90 secretary of education and the arts.

91 (g) A regional board may receive and disburse funds from
92 the state and federal governments, member counties, gifts and
93 grants.

94 (h) Notwithstanding any other provision of this code to the
95 contrary, employees of regional educational service agencies
96 shall be reimbursed for travel, meals and lodging at the same
97 rate as state employees under the travel management office of
98 the department of administration.

99 (i) Regional educational service agencies shall hold at least
100 one half of their regular meetings during hours other than those
101 of a regular school day.

102 (j) Regional educational service agencies shall serve as the
 103 lead agency for computer installation, maintenance and repair
 104 for the basic skills computer program. Each regional educa-
 105 tional service agency shall submit a quarterly status report on
 106 turn around time for computer installation, maintenance and
 107 repair to the state superintendent of schools who shall then
 108 submit a report to the legislative oversight commission on
 109 education accountability. The status report for turn around time
 110 for computer installation, maintenance and repair shall be based
 111 on the following suggested time schedules:

- 112 Network File Servers forty-eight hours
- 113 Local Area Networks forty-eight hours
- 114 West Virginia Education
 115 Information System twenty-four hours
- 116 Computer Workstations three to five days
- 117 Printers three to five days
- 118 Other Peripherals three to five days

119 Regional educational service agencies shall also submit an audit
 120 report to the legislative oversight commission on education
 121 accountability each year.

122 (k) Pursuant to the processes and provisions of section
 123 twenty-three-a, article two, chapter eighteen of this code, each
 124 regional educational service agency shall provide coordinated
 125 professional development programs within its region to meet
 126 the professional development goals established by the state
 127 board.

128 (l) Notwithstanding any other provision of the code to the
 129 contrary, county board members serving on regional educa-
 130 tional service agency boards may receive compensation at a rate
 131 not to exceed one hundred dollars per meeting attended, not to

132 exceed fifteen meetings per year. County board members
133 serving on regional educational service agency boards may be
134 reimbursed for travel at the same rate as state employees under
135 the rules of the travel management office of the department of
136 administration.

CHAPTER 104

(Com. Sub. for H. B. 4674 — By Delegates Armstead, Harrison,
Azinger, Evans, Williams and Capito)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two-e, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to high quality education programs and standards; efficiency standards and indicators; performance measures; process for improving education; education performance audits; office of education performance audits; on-site reviews; assessment and accountability; use of assessment information; accreditation and school system approval; impaired schools; intervention to correct impairments; legislative intent; capacity; state board of education rules; creating the exemplary school accreditation standard for individual schools; and review of accountability system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-5. Process for improving education; office of education performance audits; education standards; school accreditation and school system approval; intervention to correct impairments.

1 (a) *Legislative intent.* — The purpose of this section is to
2 establish a process for improving education that includes
3 standards, assessment, accountability and capacity building to
4 provide assurances that a thorough and efficient system of
5 schools is being provided for all West Virginia public school
6 students on an equal education opportunity basis and that the
7 high quality standards are, at a minimum, being met.

8 (b) *State board rules.* — The state board shall promulgate
9 rules in accordance with article three-b, chapter twenty-nine-a
10 of this code establishing a unified county improvement plan for
11 each county board and a unified school improvement plan for
12 each public school in this state. The state board is not required
13 to promulgate new rules if legislative rules meeting the require-
14 ments of article three-b, chapter twenty-nine-a of this code have
15 been filed with the office of the secretary of state before the
16 effective date of this section.

17 (c) *High quality education standards and efficiency*
18 *standards.* — The state board shall, in accordance with the
19 provisions of article three-b, chapter twenty-nine-a of this code,
20 adopt and periodically review and update high quality education
21 standards for student, school and school system performance
22 and processes in the following areas:

- 23 (1) Curriculum;
- 24 (2) Workplace readiness skills;
- 25 (3) Finance;
- 26 (4) Transportation;

- 27 (5) Special education;
- 28 (6) Facilities;
- 29 (7) Administrative practices;
- 30 (8) Training of county board members and administrators;
- 31 (9) Personnel qualifications;
- 32 (10) Professional development and evaluation;
- 33 (11) Student and school performance;
- 34 (12) A code of conduct for students and employees;
- 35 (13) Indicators of efficiency; and
- 36 (14) Any other such areas as determined by the state board.

37 (d) *Performance measures.* — The standards shall assure
38 that all graduates are prepared for gainful employment or for
39 continuing postsecondary education and training and that
40 schools and school districts are making progress in achieving
41 the education goals of the state.

42 The standards shall include measures of student perfor-
43 mance to indicate when a thorough and efficient system of
44 schools is being provided and of school and school system
45 performance and processes that enable student performance.
46 The measures of student performance and school and school
47 system performance and processes shall include, but are not
48 limited to, the following:

- 49 (1) The acquisition of student proficiencies as indicated by
50 student performance by grade level measured, where possible,
51 by a uniform statewide assessment program;
- 52 (2) School attendance rates;

- 53 (3) Student dropout rate;
- 54 (4) Percent of students promoted to next grade;
- 55 (5) Graduation rate;
- 56 (6) Average class size;
- 57 (7) Pupil-teacher ratio and number of exceptions to ratio
58 requested by county boards and number granted;
- 59 (8) Number of split-grade classrooms;
- 60 (9) Percentage of graduates who enrolled in college; the
61 percentage of graduates who enrolled in other postsecondary
62 education; and the percentage of graduates who become fully
63 employed within one year of high school graduation all as
64 reported by the graduates on the assessment form attached to
65 their individualized student transition plan, pursuant to section
66 eight of this article and the percentage of graduates reporting;
- 67 (10) Pupil-administrator ratio;
- 68 (11) Parent involvement;
- 69 (12) Parent, teacher and student satisfaction;
- 70 (13) Operating expenditures per pupil;
- 71 (14) Percentage of graduates who attain the minimum level
72 of performance in the basic skills recognized by the state board
73 as laying the foundation for further learning and skill develop-
74 ment for success in college, other postsecondary education and
75 gainful employment and the grade level distribution in which
76 the minimum level of performance was met;
- 77 (15) Percentage of graduates who received additional
78 certification of their skills, competence and readiness for
79 college, other postsecondary education or employment above
80 the minimum foundation level of basic skills;

81 (16) Percentage of students in secondary and middle
82 schools who are enrolled in advanced placement or honors
83 classes, respectively; and

84 (17) *Indicators of efficiency.* — The state board shall, in
85 accordance with the provisions of article three-b, chapter
86 twenty-nine-a of this code, adopt and periodically review and
87 update indicators of efficiency for student and school system
88 performance and processes in the following areas:

89 (A) Curriculum delivery including, but not limited to, the
90 use of distance learning;

91 (B) Transportation;

92 (C) Facilities;

93 (D) Administrative practices;

94 (E) Personnel;

95 (F) Utilization of regional educational service agency
96 programs and services, including programs and services that
97 may be established by their assigned regional educational
98 service agency, or other regional services that may be initiated
99 between and among participating county boards; and

100 (G) Any other indicators as determined by the state board.

101 (e) *Assessment and accountability of school and school*
102 *system performance and processes.* — The state board shall
103 establish by rule in accordance with the provisions of article
104 three-b, chapter twenty-nine-a of this code, a system of educa-
105 tion performance audits which measures the quality of educa-
106 tion and the preparation of students based on the standards and
107 measures of student, school and school system performance and
108 processes, including, but not limited to, the standards and
109 measures set forth in subsections (c) and (d) of this section. The
110 system of education performance audits shall assist the state

111 board in ensuring that the standards and measures established
112 pursuant to this section are, at a minimum, being met and that
113 a thorough and efficient system of schools is being provided.
114 The system of education performance audits shall include: (1)
115 The assessment of student, school and school system perfor-
116 mance and the processes in place in schools and school systems
117 which enable student performance; (2) the review of school and
118 school system unified improvement plans; and (3) the periodic,
119 random unannounced on-site review of school and school
120 system performance and compliance with the standards.

121 (f) *Uses of school and school system assessment informa-*
122 *tion.* — The state board shall use information from the system
123 of education performance audits to assist it in ensuring that a
124 thorough and efficient system of schools is being provided and
125 to improve student, school and school system performance,
126 including, but not limited to, the following: (1) Determining
127 school accreditation and school system approval status; (2)
128 holding schools and school systems accountable for the
129 efficient use of existing resources to meet or exceed the
130 standards; and (3) targeting additional resources when neces-
131 sary to improve performance. Primary emphasis in determining
132 school accreditation and school system approval status will be
133 based on student, school and school system performance on
134 measures selected by the state board. The state board shall
135 make accreditation information available to the Legislature; the
136 governor; and to the general public and any individuals who
137 request such information, subject to the provisions of any act,
138 rule or regulation restricting the release of information. Based
139 on the assessment of student, school and school system perfor-
140 mance, the state board shall establish early detection and
141 intervention programs to assist underachieving schools and
142 school systems in improving performance before conditions
143 become so grave as to warrant more substantive state interven-
144 tion, including, but not limited to, making additional technical

145 assistance, programmatic, monetary and staffing resources
146 available where appropriate.

147 (g) *Office of education performance audits.* — To assist the
148 state board in the operation of the system of education perfor-
149 mance audits and in making determinations regarding the
150 accreditation status of schools and the approval status of school
151 systems, the state board shall establish an office of education
152 performance audits which shall be operated under the direction
153 of the state board independently of the functions and supervi-
154 sion of the state department of education and state superinten-
155 dent. The office of education performance audits shall report
156 directly to and be responsible to the state board in carrying out
157 its duties under the provisions of this section. The office shall
158 be headed by a director who shall be appointed by the state
159 board and shall serve at the will and pleasure of the state board.
160 The salary of the director shall not exceed the salary of the state
161 superintendent of schools. The state board shall organize and
162 sufficiently staff the office to fulfill the duties assigned to it by
163 this section and the state board. Employees of the state depart-
164 ment of education who are transferred to the office of education
165 performance audits shall retain their benefit and seniority status
166 with the department of education. Under the direction of the
167 state board, the office of education performance audits shall
168 receive from the West Virginia education information system
169 staff research and analysis data on the performance of students,
170 schools and school systems, and shall receive assistance from
171 staff at the state department of education and the state school
172 building authority to carry out the duties assigned to the office.
173 In addition to other duties which may be assigned to it by the
174 state board or by statute, the office of education performance
175 audits also shall:

176 (1) Assure that all statewide assessments of student
177 performance are secure as required in section one-a, article two-
178 e of this chapter;

179 (2) Administer all accountability measures as assigned by
180 the state board, including, but not limited to, processes for the
181 accreditation of schools and the approval of school systems, and
182 recommend to the state board appropriate action, including, but
183 not limited to, accreditation and approval action;

184 (3) Determine, in conjunction with the assessment and
185 accountability processes, what capacity may be needed by
186 schools and school systems to meet the standards established by
187 the Legislature and the state board, and recommend to the
188 school, school system and state board, plans to establish those
189 needed capacities;

190 (4) Determine, in conjunction with the assessment and
191 accountability processes, whether statewide system deficiencies
192 exist in the capacity to establish and maintain a thorough and
193 efficient system of schools, including the identification of
194 trends and the need for continuing improvements in education,
195 and report those deficiencies and trends to the state board;

196 (5) Determine, in conjunction with the assessment and
197 accountability processes, staff development needs of schools
198 and school systems to meet the standards established by the
199 Legislature and the state board, and make recommendations to
200 the state board, the center for professional development,
201 regional educational service agencies, higher education
202 governing boards and county boards; and

203 (6) Identify, in conjunction with the assessment and
204 accountability processes, exemplary schools and school systems
205 and best practices that improve student, school and school
206 system performance, and make recommendations to the state
207 board for recognizing and rewarding exemplary schools and
208 school systems and promoting the use of best practices. The
209 state board shall provide information on best practices to county
210 school systems and shall use information identified through the

211 assessment and accountability processes to select schools of
212 excellence.

213 (h) *On-site reviews.* — At the direction of the state board or
214 by weighted, random selection by the office of education
215 performance audits, an unannounced on-site review shall be
216 conducted by the office of education performance audits of any
217 school or school system for purposes, including, but not limited
218 to, the following: (1) Verifying data reported by the school or
219 county board; (2) documenting compliance with policies and
220 laws; (3) evaluating the effectiveness and implementation status
221 of school and school system unified improvement plans; (4)
222 investigating official complaints submitted to the state board
223 that allege serious impairments in the quality of education in
224 schools or school systems; and (5) investigating official
225 complaints submitted to the state board that allege that a school
226 or county board is in violation of policies or laws under which
227 schools and county boards operate. The random selection of
228 schools and school systems for an on-site review shall use a
229 weighted random sample so that those with lower performance
230 indicators and those that have not had a recent on-site review
231 have a greater likelihood of being selected. Under the direction
232 of the state board, the office of education performance audits
233 shall appoint an education standards compliance review team
234 to assist it in conducting on-site reviews. The teams shall be
235 composed of an adequate number of persons who possess the
236 necessary knowledge, skills and experience to make an accurate
237 assessment of education programs and who are drawn from a
238 trained cadre established by the office of education performance
239 audits. The state board shall have discretion in determining the
240 number of persons to serve on a standards compliance review
241 team based on the size of the school or school system as
242 applicable. The teams shall be led by a member of the office of
243 education performance audits. County boards shall be reim-
244 bursed for the costs of substitutes required to replace county
245 board employees while they are serving on an education

246 standards compliance review team. The office of education
247 performance audits shall report the findings of the on-site
248 reviews to the state board for inclusion in the evaluation and
249 determination of a school's or county board's accreditation or
250 approval status as applicable.

251 (i) *School accreditation.* -- The state board annually shall
252 review the information from the system of education perfor-
253 mance audits submitted for each school and shall issue to every
254 school: Exemplary accreditation status, full accreditation status,
255 temporary accreditation status, conditional accreditation status,
256 or shall declare the education programs at the school to be
257 seriously impaired.

258 (1) Full accreditation status shall be given to a school when
259 the school's performance on the standards adopted by the state
260 board pursuant to subsections (c) and (d) of this section is at a
261 level which would be expected when all of the high quality
262 education standards are being met.

263 (2) Temporary accreditation status shall be given to a
264 school when the measure of the school's performance is below
265 the level required for full accreditation status. Whenever a
266 school is given temporary accreditation status, the county board
267 shall ensure that the school's unified improvement plan is
268 revised to increase the performance of the school to a full
269 accreditation status level. The revised unified school improve-
270 ment plan shall include objectives, a time line, a plan for
271 evaluation of the success of the improvements, cost estimates,
272 and a date certain for achieving full accreditation. The revised
273 plan shall be submitted to the state board for approval.

274 (3) Conditional accreditation status shall be given to a
275 school when the school's performance on the standards adopted
276 by the state board is below the level required for full accredita-
277 tion, but the school's unified improvement plan has been
278 revised to achieve full accreditation status by a date certain, the

279 plan has been approved by the state board and the school is
280 meeting the objectives and time line specified in the revised
281 plan.

282 (4) Exemplary accreditation status shall be given to a
283 school when the school's performance on the standards adopted
284 by the state board pursuant to subsections (c) and (d) of this
285 section substantially exceeds the minimal level which would be
286 expected when all of the high quality education standards are
287 being met. The state board shall propose legislative rules in
288 accordance with the provisions of article three-b, chapter
289 twenty-nine-a, designated to establish standards of performance
290 to identify exemplary schools.

291 (5) The state board shall establish and adopt standards of
292 performance to identify seriously impaired schools and the state
293 board may declare a school seriously impaired whenever
294 extraordinary circumstances exist as defined by the state board.
295 These circumstances shall include, but are not limited to, the
296 failure of a school on temporary accreditation status to obtain
297 approval of its revised unified school improvement plan within
298 a reasonable time period as defined by the state board and the
299 failure of a school on conditional accreditation status to meet
300 the objectives and time line of its revised unified school
301 improvement plan or to achieve full accreditation by the date
302 specified in the revised plan. Whenever the state board deter-
303 mines that the quality of education in a school is seriously
304 impaired, the state board shall appoint a team of improvement
305 consultants to make recommendations within sixty days of
306 appointment for correction of the impairment. Upon approval
307 of the recommendations by the state board, the recommenda-
308 tions shall be made to the county board. If progress in correct-
309 ing the impairment as determined by the state board is not made
310 within six months from the time the county board receives the
311 recommendations, the state board shall place the county board
312 on temporary approval status and provide consultation and

313 assistance to the county board to: (i) Improve personnel
314 management; (ii) establish more efficient financial management
315 practices; (iii) improve instructional programs and rules; or (iv)
316 make such other improvements as may be necessary to correct
317 the impairment. If the impairment is not corrected by a date
318 certain set by the state board, the county board shall be given
319 nonapproval status.

320 (j) *Transfers from seriously impaired schools.* — Whenever
321 a school is determined to be seriously impaired and fails to
322 improve its status within one year, any student attending such
323 school may transfer once to the nearest fully accredited school,
324 subject to approval of the fully accredited school and at the
325 expense of the school from which the student transferred.

326 (k) *School system approval.* — The state board annually
327 shall review the information submitted for each school system
328 from the system of education performance audits and issue one
329 of the following approval levels to each county board: Full
330 approval, temporary approval, conditional approval, or
331 nonapproval.

332 (1) Full approval shall be given to a county board whose
333 education system meets or exceeds all of the high quality
334 standards for student, school and school system performance
335 and processes adopted by the state board and whose schools
336 have all been given full, temporary or conditional accreditation
337 status.

338 (2) Temporary approval shall be given to a county board
339 whose education system is below the level required for full
340 approval. Whenever a county board is given temporary ap-
341 proval status, the county board shall revise its unified county
342 improvement plan to increase the performance of the school
343 system to a full approval status level. The revised plan shall
344 include objectives, a time line, a plan for evaluation of the
345 success of the improvements, a cost estimate, and a date certain

346 for achieving full approval. The revised plan shall be submitted
347 to the state board for approval.

348 (3) Conditional approval shall be given to a county board
349 whose education system is below the level required for full
350 approval, but whose unified county improvement plan meets
351 the following criteria: (i) The plan has been revised to achieve
352 full approval status by a date certain; (ii) the plan has been
353 approved by the state board; and (iii) the county board is
354 meeting the objectives and time line specified in the revised
355 plan.

356 (4) Nonapproval status shall be given to a county board
357 which fails to submit and gain approval for its unified county
358 improvement plan or revised unified county improvement plan
359 within a reasonable time period as defined by the state board or
360 fails to meet the objectives and time line of its revised unified
361 county improvement plan or fails to achieve full approval by
362 the date specified in the revised plan. The state board shall
363 establish and adopt additional standards to identify school
364 systems in which the program may be nonapproved and the
365 state board may issue nonapproval status whenever extraordi-
366 nary circumstances exist as defined by the state board. Further-
367 more, whenever a county board has more than a casual deficit,
368 as defined in section one, article one of this chapter, the county
369 board shall submit a plan to the state board specifying the
370 county board's strategy for eliminating the casual deficit. The
371 state board either shall approve or reject the plan. If the plan is
372 rejected, the state board shall communicate to the county board
373 the reason or reasons for the rejection of the plan. The county
374 board may resubmit the plan any number of times. However,
375 any county board that fails to submit a plan and gain approval
376 for the plan from the state board before the end of the fiscal
377 year after a deficit greater than a casual deficit occurred or any
378 county board which, in the opinion of the state board, fails to
379 comply with an approved plan may be designated as having

380 nonapproval status. Whenever nonapproval status is given to a
381 school system, the state board shall declare a state of emer-
382 gency in the school system and shall appoint a team of im-
383 provement consultants to make recommendations within sixty
384 days of appointment for correcting the emergency. Upon
385 approval of the recommendations by the state board, the
386 recommendations shall be made to the county board. If progress
387 in correcting the emergency, as determined by the state board,
388 is not made within six months from the time the county board
389 receives the recommendations, the state board shall intervene
390 in the operation of the school system to cause improvements to
391 be made that will provide assurances that a thorough and
392 efficient system of schools will be provided. This intervention
393 may include, but is not limited to, the following: (i) Limiting
394 the authority of the county superintendent and county board as
395 to the expenditure of funds, the employment and dismissal of
396 personnel, the establishment and operation of the school
397 calendar, the establishment of instructional programs and rules
398 and such other areas as may be designated by the state board by
399 rule; (ii) taking such direct action as may be necessary to
400 correct the emergency; and (iii) declaring that the office of the
401 county superintendent is vacant.

402 (1) Notwithstanding any other provision of this section, the
403 state board may intervene immediately in the operation of the
404 county school system with all the powers, duties and responsi-
405 bilities contained in subsection (k) of this section, if the state
406 board finds the following:

407 (1) That the conditions precedent to intervention exist as
408 provided in this section; and

409 (2) That delaying intervention for any period of time would
410 not be in the best interests of the students of the county school
411 system.

412 (m) *Capacity*. -- The process for improving education
413 includes a process for targeting resources strategically to
414 improve the teaching and learning process. Development of
415 unified school and school system improvement plans, pursuant
416 to subsection (b) of this section, is intended, in part, to provide
417 mechanisms to target resources strategically to the teaching and
418 learning process to improve student, school and school system
419 performance. When deficiencies are detected through the
420 assessment and accountability processes, the revision and
421 approval of school and school system unified improvement
422 plans shall ensure that schools and school systems are effi-
423 ciently using existing resources to correct the deficiencies.
424 When the state board determines that schools and school
425 systems do not have the capacity to correct deficiencies, the
426 state board shall work with the county board to develop or
427 secure the resources necessary to increase the capacity of
428 schools and school systems to meet the standards and, when
429 necessary, seek additional resources in consultation with the
430 Legislature and the governor.

431 The state board shall recommend to the appropriate body
432 including, but not limited to, the Legislature, county boards,
433 schools and communities, methods for targeting resources
434 strategically to eliminate deficiencies identified in the assess-
435 ment and accountability processes by:

436 (1) Examining reports and unified improvement plans
437 regarding the performance of students, schools and school
438 systems relative to the standards and identifying the areas in
439 which improvement is needed;

440 (2) Determining the areas of weakness and of ineffective-
441 ness that appear to have contributed to the substandard perfor-
442 mance of students or the deficiencies of the school or school
443 system;

444 (3) Determining the areas of strength that appear to have
445 contributed to exceptional student, school and school system
446 performance and promoting their emulation throughout the
447 system;

448 (4) Requesting technical assistance from the school
449 building authority in assessing or designing comprehensive
450 educational facilities plans;

451 (5) Recommending priority funding from the school
452 building authority based on identified needs;

453 (6) Requesting special staff development programs from the
454 center for professional development, higher education, regional
455 educational service agencies and county boards based on
456 identified needs;

457 (7) Submitting requests to the Legislature for appropriations
458 to meet the identified needs for improving education;

459 (8) Directing county boards to target their funds strategi-
460 cally toward alleviating deficiencies;

461 (9) Ensuring that the need for facilities in counties with
462 increased enrollment are appropriately reflected and recom-
463 mended for funding;

464 (10) Ensuring that the appropriate person or entity is held
465 accountable for eliminating deficiencies; and

466 (11) Ensuring that the needed capacity is available from the
467 state and local level to assist the school or school system in
468 achieving the standards and alleviating the deficiencies.

469 (n) *Review of accountability system.*

470 (1) The Legislature finds that the effective implementation
471 of a standards based accountability system is an important issue
472 for the state's public education system. In order for the state to

473 make improvements in its standards based accountability
474 system, it is essential to review the standards based accountabil-
475 ity system currently in place to identify areas of possible
476 improvements that may exist. It is the intent of the Legislature
477 that each area of the standards based accountability system be
478 reviewed in accordance with nationally recognized standards.

479 (2) The state board shall conduct a comprehensive review
480 of the current standards based accountability system and report
481 the findings to the legislative oversight commission on educa-
482 tion accountability with recommendations for improvements on
483 or before the first day of January, two thousand one. The review
484 shall include, but not be limited to, the following:

485 (A) The extent to which accountability goals and strategies
486 focus on academic performance, and the extent that other
487 purposes are clarified in terms of coherent, specific goals to be
488 achieved;

489 (B) The extent to which designated authorities are charged
490 with the efficient governance of the accountability system;

491 (C) The extent to which specific responsibilities for student
492 learning and performance are assigned to designated agents;

493 (D) The extent to which accountability is based on accurate
494 measures of performance as informed by assessments that are
495 administered equitably to all students;

496 (E) The extent to which those responsible for governing
497 accountability regularly report student and school performance
498 information in useful terms and on a timely basis to school
499 staff, students and their families, and local policymakers, and
500 the news media;

501 (F) The extent to which incentives are established that
502 effectively motivate agents to improve student learning, and the
503 extent that consequences, which could include rewards,

504 interventions or sanctions, are predictably applied in response
505 to performance results;

506 (G) The extent to which agents are provided sufficient
507 support and assistance to ensure they have the capacity neces-
508 sary to help students achieve high performance standards;

509 (H) The extent to which policy makers work to ensure that
510 education policies, mandated programs, financial resources, and
511 the accountability system are well aligned so that consistent
512 messages are communicated about education goals and priori-
513 ties;

514 (I) The extent to which the accountability system has
515 widespread support; and

516 (J) The extent to which various established partnerships
517 work together to support districts, schools and teachers in their
518 efforts to improve student achievement.

CHAPTER 105

**(Com. Sub. for S. B. 584 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed March 11, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend article two-e, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine, relating to the creation of the West Virginia virtual school within the department of education to offer high quality educational courses via internet technology to students who are not advantageously located with respect to schools; setting forth findings; providing

for appointment and powers and duties of director; and requiring report on progress to legislative oversight commission on education accountability by a certain date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-9. West Virginia virtual school.

1 (a) Findings: — The Legislature finds that:

2 (1) West Virginia schools have improved and expanded
3 internet access which enables schools to offer courses through
4 the internet and other new and developing technologies;

5 (2) Current technology is available to provide students with
6 more resources for learning and new and developing technolo-
7 gies offer even more promise for expanded learning opportuni-
8 ties;

9 (3) A number of states and other jurisdictions have devel-
10 oped internet-based instruction which is available currently and
11 which is being used by schools in this state;

12 (4) To educate better the students of West Virginia, more
13 course and class offerings can be made available through
14 technology, especially to students who are geographically
15 disadvantaged;

16 (5) Virtual learning enables students to learn from remote
17 sites, learn at times other than the normal school day and learn
18 at a different pace and gives students access to courses that
19 would not be available in their area;

20 (6) There is a need to assure that internet-based courses and
21 courses offered through new and developing technologies are
22 of high quality; and

23 (7) The state and county school systems can benefit from
24 the purchasing power the state can offer.

25 (b) The Legislature hereby creates the West Virginia virtual
26 school. The West Virginia virtual school shall be located within
27 the office of technology and information systems within the
28 West Virginia department of education.

29 (c) The state superintendent of schools shall appoint the
30 director of the West Virginia virtual school with the approval
31 of the state board.

32 (d) The director of the West Virginia virtual school has the
33 following powers and duties:

34 (1) To contract with providers for courses and other
35 services;

36 (2) To review courses and courseware and make determina-
37 tions and recommendations relative to the cost and quality of
38 the courses and the alignment with the instructional goals and
39 objectives of the state board;

40 (3) To develop policy recommendations for consideration
41 by the state board, which may include, but not be limited to, the
42 following:

43 (A) Hardware and software considerations for the offering
44 of courses on the internet or other developing technologies;

45 (B) Standards of teachers and other school employees who
46 are engaged in the activities surrounding the offering of courses
47 on the internet or other developing technologies;

48 (C) Sharing of resources with other agencies of govern-
49 ment, both within and outside West Virginia, to facilitate the
50 offering of courses on the internet or other developing technolo-
51 gies;

52 (D) Methods for including courses offered on the internet
53 or through other developing technologies in alternative educa-
54 tion programs;

55 (E) Methods for making courses offered on the internet or
56 through other developing technologies available for students
57 receiving home instruction;

58 (F) Methods for brokering the courses offered on the
59 internet or through other developing technologies;

60 (G) Methods for applying for grants;

61 (H) Methods for employing persons who are the most
62 familiar with the instructional goals and objectives to develop
63 the courses to be offered on the internet and through other
64 developing technologies; and

65 (I) Proper funding models that address all areas of funding
66 including, but not limited to, which county, if any, may include
67 a student receiving courses on the internet or through other
68 developing technologies in enrollment and who, if anyone, is
69 required to pay for the courses offered on the internet or
70 through other developing technologies; and

71 (4) Any other powers and duties necessary to address the
72 findings of the Legislature in subsection (a) of this section.

73 (e) The West Virginia department of education shall report
74 the progress of the West Virginia virtual school to the legisla-
75 tive oversight commission on education accountability on or
76 before the first day of September, two thousand.

CHAPTER 106

(H. B. 4038 — By Delegates Stemple, Mezzatesta, Williams,
Shelton, Ennis, Armstead and Anderson)

[Passed March 9, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to county board offices; and expanding the area within a county that a board office may be located.

Be it enacted by the Legislature of West Virginia:

That section seven, article four, 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 4. COUNTY SUPERINTENDENT OF SCHOOLS.

§18-4-7. Office.

- 1 The board shall provide a suitable office within the county for
- 2 use by the superintendent and the members of the board. The
- 3 board shall supply the office with janitorial service and with the
- 4 necessary equipment and supplies.

CHAPTER 107

(H. B. 4777 — By Delegates Mezzatesta, Williams, Stemple, Davis,
Ennis, Shelton and Romine)

[Passed March 11, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend and reenact section thirty-nine, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections eight, eight-a, eight-e, eight-g and fifteen, article four, chapter eighteen-a of said code, all relating to priority for service personnel working during the normal school year when selecting a substitute for summer school personnel; increasing the number of years that service personnel receive the salary increment; increasing the number of college hours or comparable credit for which service personnel receive additional pay; competency tests for service personnel; defining maintenance personnel; seniority of substitute service personnel; employment of service personnel substitutes; leaves of absence; suspension; and time off for sickness or injury.

Be it enacted by the Legislature of West Virginia:

That section thirty-nine, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections eight, eight-a, eight-e, eight-g and fifteen, article four, chapter eighteen-a of said code be amended and reenacted, all to read as follows:

Chapter

18. Education.

18A. School Personnel.

CHAPTER 18. EDUCATION.**ARTICLE 5. COUNTY BOARD OF EDUCATION.****§18-5-39. Establishment of summer school programs; tuition.**

1 (a) Inasmuch as the present county school facilities for the
2 most part lie dormant and unused during the summer months,
3 and inasmuch as there are many students who are in need of
4 remedial instruction and others who desire accelerated instruc-
5 tion, it is the purpose of this section to provide for the establish-
6 ment of a summer school program, which is to be separate and
7 apart from the full school term as established by each county.

8 (b) The board of any county has the authority to establish
9 a summer school program utilizing the public school facilities
10 and to charge tuition for students who attend the summer
11 school. The tuition may not exceed in any case the actual cost
12 of operation of the summer school program: *Provided*, That any
13 deserving pupil whose parents, in the judgment of the board, are
14 unable to pay the tuition, may attend the summer school
15 program at a reduced charge or without charge. The county
16 board may determine the term and curriculum of the summer
17 schools based upon the particular needs of the individual
18 county. The curriculum may include, but is not limited to,
19 remedial instruction, accelerated instruction and the teaching of
20 manual arts. The term of the summer school program may not
21 be established in such a manner as to interfere with the regular
22 school term.

23 (c) The county boards may employ any certified teacher as
24 teachers for this summer school program. Certified teachers
25 employed by the county board to teach in the summer school
26 program shall be paid an amount to be determined by the
27 county board and shall enter into a contract of employment in
28 such form as is prescribed by the county board: *Provided*, That
29 teachers who teach summer courses of instruction which are
30 offered for credit and which are taught during the regular school

31 year shall be paid at the same daily rate they would receive if
32 paid in accordance with the then current minimum monthly
33 salary in effect for teachers in that county.

34 (d) Any funds accruing from the tuitions shall be credited
35 to and expended within the existing framework of the general
36 current expense fund of the county board.

37 (e) Notwithstanding any other provision of this code to the
38 contrary, the board shall fill professional positions established
39 pursuant to the provisions of this section on the basis of
40 certification and length of time the professional has been
41 employed in the county's summer school program. In the event
42 that no employee who has been previously employed in the
43 summer school program holds a valid certification or licensure,
44 a board shall fill the position as a classroom teaching position
45 in accordance with section seven-a, article four, chapter
46 eighteen-a of this code.

47 (f) Notwithstanding any other provision of the code to the
48 contrary, the county board may employ school service person-
49 nel to perform any related duties outside the regular school term
50 as defined in section eight, article four, chapter eighteen-a of
51 this code. An employee who was employed in any service
52 personnel job or position during the previous summer shall
53 have the option of retaining the job or position if the job or
54 position exists during any succeeding summer. If the employee
55 is unavailable or if the position is newly created, the position
56 shall be filled pursuant to section eight-b, article four, chapter
57 eighteen-a of this code. When any summer employee is absent,
58 qualified regular employees within the same classification
59 category who are not working because their employment term
60 for the school year has ended or has not yet begun the succeed-
61 ing school employment term, shall be given first opportunity to
62 substitute for the absent summer employee on a rotating and
63 seniority basis. When any summer employee who is employed
64 in a summer position is granted a leave of absence for the

65 summer months, the board shall give regular employment status
66 to the employee for that summer position which shall be filled
67 under the procedure set forth in section eight-b, article four,
68 chapter eighteen-a of this code. The summer employee on leave
69 of absence has the option of returning to that summer position
70 if the position exists the succeeding summer or whenever the
71 position is reestablished if it were abolished. The salary of a
72 summer employee shall be in accordance with the salary
73 schedule of persons regularly employed in the same position in
74 the county where employed and persons employed in those
75 positions are entitled to all rights, privileges and benefits
76 provided in sections five-b, eight, eight-a, ten and fourteen,
77 article four, chapter eighteen-a of this code: *Provided*, That
78 those persons are not entitled to a minimum employment term
79 of two hundred days for their summer position.

80 (g) If a county board reduces in force the number of
81 employees to be employed in a particular summer program or
82 classification from the number employed in that position in
83 previous summers, the reductions in force and priority in
84 reemployment to that summer position shall be based upon the
85 length of service time in the particular summer program or
86 classification.

87 (h) For the purpose of this section, summer employment for
88 service personnel includes, but is not limited to, filling jobs and
89 positions as defined in section eight, article four, chapter
90 eighteen-a of this code and especially established for and which
91 are to be predominantly performed during the summer months
92 to meet the needs of a county board.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8. Employment term and class titles of service personnel;
definitions.

§18A-4-8a. Service personnel minimum monthly salaries.

§18A-4-8e. Competency testing for service personnel.

§18A-4-8g. Determination of seniority for service personnel.

§18A-4-15. Employment of service personnel substitutes.

§18A-4-8. Employment term and class titles of service personnel; definitions.

1 (a) The purpose of this section is to establish an employ-
2 ment term and class titles for service personnel. The employ-
3 ment term for service personnel may be no less than ten
4 months. A month is defined as twenty employment days:
5 *Provided*, That the county board may contract with all or part
6 of these service personnel for a longer term. The beginning and
7 closing dates of the ten-month employment term may not
8 exceed forty-three weeks.

9 (b) Service personnel employed on a yearly or twelve-
10 month basis may be employed by calendar months. Whenever
11 there is a change in job assignment during the school year, the
12 minimum pay scale and any county supplement are applicable.

13 (c) Service personnel employed in the same classification
14 for more than the two hundred day minimum employment term
15 shall be paid for additional employment at a daily rate of not
16 less than the daily rate paid for the two hundred day minimum
17 employment term.

18 (d) No service employee, without his or her agreement, may
19 be required to report for work more than five days per week and
20 no part of any working day may be accumulated by the em-
21 ployer for future work assignments, unless the employee agrees
22 thereto.

23 (e) If an employee whose regular work week is scheduled
24 from Monday through Friday agrees to perform any work
25 assignments on a Saturday or Sunday, the employee shall be
26 paid for at least one-half day of work for each day he or she
27 reports for work, and if the employee works more than three

28 and one-half hours on any Saturday or Sunday, he or she shall
29 be paid for at least a full day of work for each day.

30 (f) Custodians, aides, maintenance, office and school lunch
31 employees required to work a daily work schedule that is
32 interrupted, that is, who do not work a continuous period in one
33 day, shall be paid additional compensation equal to at least one
34 eighth of their total salary as provided by their state minimum
35 salary and any county pay supplement, and payable entirely
36 from county funds: *Provided*, That when engaged in duties of
37 transporting students exclusively, aides shall not be regarded as
38 working an interrupted schedule. Maintenance personnel are
39 defined as personnel who hold a classification title other than
40 in a custodial, aide, school lunch, office or transportation
41 category as provided in section one, article one of this chapter.

42 (g) Upon the change in classification or upon meeting the
43 requirements of an advanced classification of or by any
44 employee, the employee's salary shall be made to comply with
45 the requirements of this article, and to any county salary
46 schedule in excess of the minimum requirements of this article,
47 based upon the employee's advanced classification and allow-
48 able years of employment.

49 (h) An employee's contract as provided in section five,
50 article two of this chapter shall state the appropriate monthly
51 salary the employee is to be paid, based on the class title as
52 provided in this article and any county salary schedule in excess
53 of the minimum requirements of this article.

54 (i) The column heads of the state minimum pay scale and
55 class titles, set forth in section eight-a of this article, are defined
56 as follows:

57 (1) "Pay grade" means the monthly salary applicable to
58 class titles of service personnel;

59 (2) "Years of employment" means the number of years
60 which an employee classified as service personnel has been
61 employed by a board in any position prior to or subsequent to
62 the effective date of this section and including service in the
63 armed forces of the United States, if the employee were
64 employed at the time of his or her induction. For the purpose of
65 section eight-a of this article, years of employment shall be
66 limited to the number of years shown and allowed under the
67 state minimum pay scale as set forth in section eight-a of this
68 article;

69 (3) "Class title" means the name of the position or job held
70 by service personnel;

71 (4) "Accountant I" means personnel employed to maintain
72 payroll records and reports and perform one or more operations
73 relating to a phase of the total payroll;

74 (5) "Accountant II" means personnel employed to maintain
75 accounting records and to be responsible for the accounting
76 process associated with billing, budgets, purchasing and related
77 operations;

78 (6) "Accountant III" means personnel who are employed in
79 the county board office to manage and supervise accounts
80 payable and/or payroll procedures;

81 (7) "Aide I" means those personnel selected and trained for
82 teacher-aide classifications such as monitor aide, clerical aide,
83 classroom aide or general aide;

84 (8) "Aide II" means those personnel referred to in the "Aide
85 I" classification who have completed a training program
86 approved by the state board, or who hold a high school diploma
87 or have received a general educational development certificate.
88 Only personnel classified in an Aide II class title may be
89 employed as an aide in any special education program;

90 (9) "Aide III" means those personnel referred to in the
91 "Aide I" classification who hold a high school diploma or a
92 general educational development certificate and have completed
93 six semester hours of college credit at an institution of higher
94 education or are employed as an aide in a special education
95 program and have one year's experience as an aide in special
96 education;

97 (10) "Aide IV" means personnel referred to in the "Aide I"
98 classification who hold a high school diploma or a general
99 educational development certificate and who have completed
100 eighteen hours of state board-approved college credit at a
101 regionally accredited institution of higher education, or who
102 have completed fifteen hours of state board-approved college
103 credit at a regionally accredited institution of higher education
104 and successfully completed an in-service training program
105 determined by the state board to be the equivalent of three
106 hours of college credit;

107 (11) "Audiovisual technician" means personnel employed
108 to perform minor maintenance on audiovisual equipment, films,
109 supplies and the filling of requests for equipment;

110 (12) "Auditor" means personnel employed to examine and
111 verify accounts of individual schools and to assist schools and
112 school personnel in maintaining complete and accurate records
113 of their accounts;

114 (13) "Autism mentor" means personnel who work with
115 autistic students and who meet standards and experience to be
116 determined by the state board: *Provided*, That if any employee
117 has held or holds an aide title and becomes employed as an
118 autism mentor, the employee shall hold a multiclassification
119 status that includes aide and autism mentor titles, in accordance
120 with section eight-b of this article;

121 (14) “Braille or sign language specialist” means personnel
122 employed to provide braille and/or sign language assistance to
123 students: *Provided*, That if any employee has held or holds an
124 aide title and becomes employed as a braille or sign language
125 specialist, the employee shall hold a multiclassification status
126 that includes aide and braille or sign language specialist title, in
127 accordance with section eight-b of this article;

128 (15) “Bus operator” means personnel employed to operate
129 school buses and other school transportation vehicles as
130 provided by the state board;

131 (16) “Buyer” means personnel employed to review and
132 write specifications, negotiate purchase bids and recommend
133 purchase agreements for materials and services that meet
134 predetermined specifications at the lowest available costs;

135 (17) “Cabinetmaker” means personnel employed to
136 construct cabinets, tables, bookcases and other furniture;

137 (18) “Cafeteria manager” means personnel employed to
138 direct the operation of a food services program in a school,
139 including assigning duties to employees, approving requisitions
140 for supplies and repairs, keeping inventories, inspecting areas
141 to maintain high standards of sanitation, preparing financial
142 reports and keeping records pertinent to food services of a
143 school;

144 (19) “Carpenter I” means personnel classified as a carpen-
145 ter’s helper;

146 (20) “Carpenter II” means personnel classified as a journey-
147 man carpenter;

148 (21) “Chief mechanic” means personnel employed to be
149 responsible for directing activities which ensure that student
150 transportation or other board-owned vehicles are properly and
151 safely maintained;

152 (22) "Clerk I" means personnel employed to perform
153 clerical tasks;

154 (23) "Clerk II" means personnel employed to perform
155 general clerical tasks, prepare reports and tabulations and
156 operate office machines;

157 (24) "Computer operator" means qualified personnel
158 employed to operate computers;

159 (25) "Cook I" means personnel employed as a cook's
160 helper;

161 (26) "Cook II" means personnel employed to interpret
162 menus, to prepare and serve meals in a food service program of
163 a school and shall include personnel who have been employed
164 as a "Cook I" for a period of four years, if the personnel have
165 not been elevated to this classification within that period of
166 time;

167 (27) "Cook III" means personnel employed to prepare and
168 serve meals, make reports, prepare requisitions for supplies,
169 order equipment and repairs for a food service program of a
170 school system;

171 (28) "Crew leader" means personnel employed to organize
172 the work for a crew of maintenance employees to carry out
173 assigned projects;

174 (29) "Custodian I" means personnel employed to keep
175 buildings clean and free of refuse;

176 (30) "Custodian II" means personnel employed as a
177 watchman or groundsman;

178 (31) "Custodian III" means personnel employed to keep
179 buildings clean and free of refuse, to operate the heating or
180 cooling systems and to make minor repairs;

181 (32) “Custodian IV” means personnel employed as head
182 custodians. In addition to providing services as defined in
183 “custodian III”, their duties may include supervising other
184 custodian personnel;

185 (33) “Director or coordinator of services” means personnel
186 who are assigned to direct a department or division. Nothing in
187 this subdivision may prohibit professional personnel or profes-
188 sional educators as defined in section one, article one of this
189 chapter, from holding this class title, but professional personnel
190 may not be defined or classified as service personnel unless the
191 professional personnel held a service personnel title under this
192 section prior to holding class title of “director or coordinator of
193 services”. Directors or coordinators of service positions shall be
194 classified as either a professional personnel or service personnel
195 position for state aid formula funding purposes and funding for
196 directors or coordinators of service positions shall be based
197 upon the employment status of the director or coordinator either
198 as a professional personnel or service personnel;

199 (34) “Draftsman” means personnel employed to plan,
200 design and produce detailed architectural/engineering drawings;

201 (35) “Electrician I” means personnel employed as an
202 apprentice electrician helper or who holds an electrician helper
203 license issued by the state fire marshal;

204 (36) “Electrician II” means personnel employed as an
205 electrician journeyman or who holds a journeyman electrician
206 license issued by the state fire marshal;

207 (37) “Electronic technician I” means personnel employed
208 at the apprentice level to repair and maintain electronic equip-
209 ment;

210 (38) “Electronic technician II” means personnel employed
211 at the journeyman level to repair and maintain electronic
212 equipment;

213 (39) “Executive secretary” means personnel employed as
214 the county school superintendent’s secretary or as a secretary
215 who is assigned to a position characterized by significant
216 administrative duties;

217 (40) “Food services supervisor” means qualified personnel
218 not defined as professional personnel or professional educators
219 in section one, article one of this chapter, employed to manage
220 and supervise a county school system’s food service program.
221 The duties would include preparing in-service training pro-
222 grams for cooks and food service employees, instructing
223 personnel in the areas of quantity cooking with economy and
224 efficiency and keeping aggregate records and reports;

225 (41) “Foremen” means skilled persons employed for
226 supervision of personnel who work in the areas of repair and
227 maintenance of school property and equipment;

228 (42) “General maintenance” means personnel employed as
229 helpers to skilled maintenance employees and to perform minor
230 repairs to equipment and buildings of a county school system;

231 (43) “Glazier” means personnel employed to replace glass
232 or other materials in windows and doors and to do minor
233 carpentry tasks;

234 (44) “Graphic artist” means personnel employed to prepare
235 graphic illustrations;

236 (45) “Groundsmen” means personnel employed to perform
237 duties that relate to the appearance, repair and general care of
238 school grounds in a county school system. Additional assign-
239 ments may include the operation of a small heating plant and
240 routine cleaning duties in buildings;

241 (46) “Handyman” means personnel employed to perform
242 routine manual tasks in any operation of the county school
243 system;

244 (47) "Heating and air conditioning mechanic I" means
245 personnel employed at the apprentice level to install, repair and
246 maintain heating and air conditioning plants and related
247 electrical equipment;

248 (48) "Heating and air conditioning mechanic II" means
249 personnel employed at the journeyman level to install, repair
250 and maintain heating and air conditioning plants and related
251 electrical equipment;

252 (49) "Heavy equipment operator" means personnel em-
253 ployed to operate heavy equipment;

254 (50) "Inventory supervisor" means personnel who are
255 employed to supervise or maintain operations in the receipt,
256 storage, inventory and issuance of materials and supplies;

257 (51) "Key punch operator" means qualified personnel
258 employed to operate key punch machines or verifying ma-
259 chines;

260 (52) "Locksmith" means personnel employed to repair and
261 maintain locks and safes;

262 (53) "Lubrication man" means personnel employed to
263 lubricate and service gasoline or diesel-powered equipment of
264 a county school system;

265 (54) "Machinist" means personnel employed to perform
266 machinist tasks which include the ability to operate a lathe,
267 planer, shaper, threading machine and wheel press. These
268 personnel should also have the ability to work from blueprints
269 and drawings;

270 (55) "Mail clerk" means personnel employed to receive,
271 sort, dispatch, deliver or otherwise handle letters, parcels and
272 other mail;

273 (56) "Maintenance clerk" means personnel employed to
274 maintain and control a stocking facility to keep adequate tools
275 and supplies on hand for daily withdrawal for all school
276 maintenance crafts;

277 (57) "Mason" means personnel employed to perform tasks
278 connected with brick and block laying and carpentry tasks
279 related to such laying;

280 (58) "Mechanic" means personnel employed who can
281 independently perform skilled duties in the maintenance and
282 repair of automobiles, school buses and other mechanical and
283 mobile equipment to use in a county school system;

284 (59) "Mechanic assistant" means personnel employed as a
285 mechanic apprentice and helper;

286 (60) "Multiclassification" means personnel employed to
287 perform tasks that involve the combination of two or more class
288 titles in this section. In these instances the minimum salary
289 scale shall be the higher pay grade of the class titles involved;

290 (61) "Office equipment repairman I" means personnel
291 employed as an office equipment repairman apprentice or
292 helper;

293 (62) "Office equipment repairman II" means personnel
294 responsible for servicing and repairing all office machines and
295 equipment. Personnel are responsible for parts being purchased
296 necessary for the proper operation of a program of continuous
297 maintenance and repair;

298 (63) "Painter" means personnel employed to perform duties
299 of painting, finishing and decorating of wood, metal and
300 concrete surfaces of buildings, other structures, equipment,
301 machinery and furnishings of a county school system;

302 (64) “Paraprofessional” means a person certified pursuant
303 to section two-a, article three of this chapter to perform duties
304 in a support capacity including, but not limited to, facilitating
305 in the instruction and direct or indirect supervision of pupils
306 under the direction of a principal, a teacher or another desig-
307 nated professional educator: *Provided*, That no person em-
308 ployed on the effective date of this section in the position of an
309 aide may be reduced in force or transferred to create a vacancy
310 for the employment of a paraprofessional: *Provided, however*,
311 That if any employee has held or holds an aide title and
312 becomes employed as a paraprofessional, the employee shall
313 hold a multiclassification status that includes aide and
314 paraprofessional titles in accordance with section eight-b of this
315 article: *Provided further*, That once an employee who holds an
316 aide title becomes certified as a paraprofessional and is required
317 to perform duties that may not be performed by an aide without
318 paraprofessional certification, he or she shall receive the
319 paraprofessional title pay grade;

320 (65) “Plumber I” means personnel employed as an appren-
321 tice plumber and helper;

322 (66) “Plumber II” means personnel employed as a journey-
323 man plumber;

324 (67) “Printing operator” means personnel employed to
325 operate duplication equipment, and as required, to cut, collate,
326 staple, bind and shelve materials;

327 (68) “Printing supervisor” means personnel employed to
328 supervise the operation of a print shop;

329 (69) “Programmer” means personnel employed to design
330 and prepare programs for computer operation;

331 (70) “Roofing/sheet metal mechanic” means personnel
332 employed to install, repair, fabricate and maintain roofs,
333 gutters, flashing and duct work for heating and ventilation;

334 (71) "Sanitation plant operator" means personnel employed
335 to operate and maintain a water or sewage treatment plant to
336 ensure the safety of the plant's effluent for human consumption
337 or environmental protection;

338 (72) "School bus supervisor" means qualified personnel
339 employed to assist in selecting school bus operators and routing
340 and scheduling of school buses, operate a bus when needed,
341 relay instructions to bus operators, plan emergency routing of
342 buses and promoting good relationships with parents, pupils,
343 bus operators and other employees;

344 (73) "Secretary I" means personnel employed to transcribe
345 from notes or mechanical equipment, receive callers, perform
346 clerical tasks, prepare reports and operate office machines;

347 (74) "Secretary II" means personnel employed in any
348 elementary, secondary, kindergarten, nursery, special education,
349 vocational or any other school as a secretary. The duties may
350 include performing general clerical tasks, transcribing from
351 notes or stenotype or mechanical equipment or a sound-
352 producing machine, preparing reports, receiving callers and
353 referring them to proper persons, operating office machines,
354 keeping records and handling routine correspondence. There is
355 nothing implied in this subdivision that would prevent the
356 employees from holding or being elevated to a higher classifi-
357 cation;

358 (75) "Secretary III" means personnel assigned to the county
359 board office administrators in charge of various instructional,
360 maintenance, transportation, food services, operations and
361 health departments, federal programs or departments with
362 particular responsibilities of purchasing and financial control or
363 any personnel who have served in a position which meets the
364 definition of "secretary II" or "secretary III" in this section for
365 eight years;

366 (76) “Supervisor of maintenance” means skilled personnel
367 not defined as professional personnel or professional educators
368 as in section one, article one of this chapter. The responsibilities
369 would include directing the upkeep of buildings and shops,
370 issuing instructions to subordinates relating to cleaning, repairs
371 and maintenance of all structures and mechanical and electrical
372 equipment of a board;

373 (77) “Supervisor of transportation” means qualified
374 personnel employed to direct school transportation activities,
375 properly and safely, and to supervise the maintenance and
376 repair of vehicles, buses and other mechanical and mobile
377 equipment used by the county school system;

378 (78) “Switchboard operator-receptionist” means personnel
379 employed to refer incoming calls, to assume contact with the
380 public, to direct and to give instructions as necessary, to operate
381 switchboard equipment and to provide clerical assistance;

382 (79) “Truck driver” means personnel employed to operate
383 light or heavy duty gasoline and diesel-powered vehicles;

384 (80) “Warehouse clerk” means personnel employed to be
385 responsible for receiving, storing, packing and shipping goods;

386 (81) “Watchman” means personnel employed to protect
387 school property against damage or theft. Additional assign-
388 ments may include operation of a small heating plant and
389 routine cleaning duties; and

390 (82) “Welder” means personnel employed to provide
391 acetylene or electric welding services for a school system.

392 (j) In addition to the compensation provided for in section
393 eight-a of this article, for service personnel, each service
394 employee is, notwithstanding any provisions in this code to the
395 contrary, entitled to all service personnel employee rights,
396 privileges and benefits provided under this or any other chapter

397 of this code without regard to the employee's hours of employ-
398 ment or the methods or sources of compensation.

399 (k) Service personnel whose years of employment exceed
400 the number of years shown and provided for under the state
401 minimum pay scale set forth in section eight-a of this article
402 may not be paid less than the amount shown for the maximum
403 years of employment shown and provided for in the classifica-
404 tion in which he or she is employed.

405 (l) The county boards shall review each service personnel
406 employee job classification annually and shall reclassify all
407 service employees as required by the job classifications. The
408 state superintendent of schools may withhold state funds
409 appropriated pursuant to this article for salaries for service
410 personnel who are improperly classified by the county boards.
411 Further, the state superintendent shall order county boards to
412 correct immediately any improper classification matter and with
413 the assistance of the attorney general shall take any legal action
414 necessary against any county board to enforce the order.

415 (m) No service employee, without his or her written
416 consent, may be reclassified by class title, nor may a service
417 employee, without his or her written consent, be relegated to
418 any condition of employment which would result in a reduction
419 of his or her salary, rate of pay, compensation or benefits
420 earned during the current fiscal year or which would result in a
421 reduction of his or her salary, rate of pay, compensation or
422 benefits for which he or she would qualify by continuing in the
423 same job position and classification held during that fiscal year
424 and subsequent years.

425 (n) Any board failing to comply with the provisions of this
426 article may be compelled to do so by mandamus, and is liable
427 to any party prevailing against the board for court costs and the
428 prevailing party's reasonable attorney fee, as determined and
429 established by the court.

430 (o) Notwithstanding any provisions in this code to the
 431 contrary, service personnel who hold a continuing contract in a
 432 specific job classification and who are physically unable to
 433 perform the job's duties as confirmed by a physician chosen by
 434 the employee shall be given priority status over any employee
 435 not holding a continuing contract in filling other service
 436 personnel job vacancies if qualified as provided in section
 437 eight-e of this article.

§18A-4-8a. Service personnel minimum monthly salaries.

1 (1) The minimum monthly pay for each service employee
 2 whose employment is for a period of more than three and
 3 one-half hours a day shall be at least the amounts indicated in
 4 the "state minimum pay scale pay grade I" and the minimum
 5 monthly pay for each service employee whose employment is
 6 for a period of three and one-half hours or less a day shall be at
 7 least one-half the amount indicated in the "state minimum pay
 8 scale pay grade I" set forth in this section.

9 **STATE MINIMUM PAY SCALE PAY GRADE I**

10		A	B	C	D	E	F	G	H
11	0	1,100	1,120	1,160	1,210	1,260	1,320	1,350	1,420
12	1	1,127	1,147	1,187	1,237	1,287	1,347	1,377	1,447
13	2	1,154	1,174	1,214	1,264	1,314	1,374	1,404	1,474
14	3	1,181	1,201	1,241	1,291	1,341	1,401	1,431	1,501
15	4	1,208	1,228	1,268	1,318	1,368	1,428	1,458	1,528
16	5	1,235	1,255	1,295	1,345	1,395	1,455	1,485	1,555
17	6	1,262	1,282	1,322	1,372	1,422	1,482	1,512	1,582
18	7	1,289	1,309	1,349	1,399	1,449	1,509	1,539	1,609
19	8	1,316	1,336	1,376	1,426	1,476	1,536	1,566	1,636
20	9	1,343	1,363	1,403	1,453	1,503	1,563	1,593	1,663
21	10	1,370	1,390	1,430	1,480	1,530	1,590	1,620	1,690
22	11	1,397	1,417	1,457	1,507	1,557	1,617	1,647	1,717
23	12	1,424	1,444	1,484	1,534	1,584	1,644	1,674	1,744
24	13	1,451	1,471	1,511	1,561	1,611	1,671	1,701	1,771
25	14	1,478	1,498	1,538	1,588	1,638	1,698	1,728	1,798
26	15	1,505	1,525	1,565	1,615	1,665	1,725	1,755	1,825
27	16	1,532	1,552	1,592	1,642	1,692	1,752	1,782	1,852
28	17	1,559	1,579	1,619	1,669	1,719	1,779	1,809	1,879

29	18	1,586	1,606	1,646	1,696	1,746	1,806	1,836	1,906
30	19	1,613	1,633	1,673	1,723	1,773	1,833	1,863	1,933
31	20	1,640	1,660	1,700	1,750	1,800	1,860	1,890	1,960
32	21	1,667	1,687	1,727	1,777	1,827	1,887	1,917	1,987
33	22	1,694	1,714	1,754	1,804	1,854	1,914	1,944	2,014
34	23	1,721	1,741	1,781	1,831	1,881	1,941	1,971	2,041
35	24	1,748	1,768	1,808	1,858	1,908	1,968	1,998	2,068
36	25	1,775	1,795	1,835	1,885	1,935	1,995	2,025	2,095
37	26	1,802	1,822	1,862	1,912	1,962	2,022	2,052	2,122
38	27	1,829	1,849	1,889	1,939	1,989	2,049	2,079	2,149
39	28	1,856	1,876	1,916	1,966	2,016	2,076	2,106	2,176
40	29	1,883	1,903	1,943	1,993	2,043	2,103	2,133	2,203
41	30	1,910	1,930	1,970	2,020	2,070	2,130	2,160	2,230
42	31	1,937	1,957	1,997	2,047	2,097	2,157	2,187	2,257
43	32	1,964	1,984	2,024	2,074	2,124	2,184	2,214	2,284
44	33	1,991	2,011	2,051	2,101	2,151	2,211	2,241	2,311
45	34	2,018	2,038	2,078	2,128	2,178	2,238	2,268	2,338
46	35	2,045	2,065	2,105	2,155	2,205	2,265	2,295	2,365
47	36	2,072	2,092	2,132	2,182	2,232	2,292	2,322	2,392

48 Subject to a recommendation by the governor for a pay
 49 raise through the delivery of an executive message to the
 50 Legislature and an appropriation by the Legislature for a pay
 51 raise, effective the first day of July, one thousand nine hundred
 52 ninety-nine and thereafter, the minimum monthly pay for each
 53 service employee whose employment is for a period of more
 54 than three and one-half hours a day shall be at least the amounts
 55 indicated in the "state minimum pay scale pay grade II" and the
 56 minimum monthly pay for each service employee whose
 57 employment is for a period of three and one-half hours or less
 58 a day shall be at least one-half the amount indicated in the
 59 "state minimum pay scale pay grade II" set forth in this section.

60 **STATE MINIMUM PAY SCALE PAY GRADE II**

61 **Years of**

62 **Employment**

Pay Grade

63		A	B	C	D	E	F	G	H
64	0	1,160	1,180	1,220	1,270	1,320	1,380	1,410	1,480
65	1	1,188	1,208	1,248	1,298	1,348	1,408	1,438	1,508
66	2	1,216	1,236	1,276	1,326	1,376	1,436	1,466	1,536

67	3	1,244	1,264	1,304	1,354	1,404	1,464	1,494	1,564
68	4	1,272	1,292	1,332	1,382	1,432	1,492	1,522	1,592
69	5	1,300	1,320	1,360	1,410	1,460	1,520	1,550	1,620
70	6	1,328	1,348	1,388	1,438	1,488	1,548	1,578	1,648
71	7	1,356	1,376	1,416	1,466	1,516	1,576	1,606	1,676
72	8	1,384	1,404	1,444	1,494	1,544	1,604	1,634	1,704
73	9	1,412	1,432	1,472	1,522	1,572	1,632	1,662	1,732
74	10	1,440	1,460	1,500	1,550	1,600	1,660	1,690	1,760
75	11	1,468	1,488	1,528	1,578	1,628	1,688	1,718	1,788
76	12	1,496	1,516	1,556	1,606	1,656	1,716	1,746	1,816
77	13	1,524	1,544	1,584	1,634	1,684	1,744	1,774	1,844
78	14	1,552	1,572	1,612	1,662	1,712	1,772	1,802	1,872
79	15	1,580	1,600	1,640	1,690	1,740	1,800	1,830	1,900
80	16	1,608	1,628	1,668	1,718	1,768	1,828	1,858	1,928
81	17	1,636	1,656	1,696	1,746	1,796	1,856	1,886	1,956
82	18	1,664	1,684	1,724	1,774	1,824	1,884	1,914	1,984
83	19	1,692	1,712	1,752	1,802	1,852	1,912	1,942	2,012
84	20	1,720	1,740	1,780	1,830	1,880	1,940	1,970	2,040
85	21	1,748	1,768	1,808	1,858	1,908	1,968	1,998	2,068
86	22	1,776	1,796	1,836	1,886	1,936	1,996	2,026	2,096
87	23	1,804	1,824	1,864	1,914	1,964	2,024	2,054	2,124
88	24	1,832	1,852	1,892	1,942	1,992	2,052	2,082	2,152
89	25	1,860	1,880	1,920	1,970	2,020	2,080	2,110	2,180
90	26	1,888	1,908	1,948	1,998	2,048	2,108	2,138	2,208
91	27	1,916	1,936	1,976	2,026	2,076	2,136	2,166	2,236
92	28	1,944	1,964	2,004	2,054	2,104	2,164	2,194	2,264
93	29	1,972	1,992	2,032	2,082	2,132	2,192	2,222	2,292
94	30	2,000	2,020	2,060	2,110	2,160	2,220	2,250	2,320
95	31	2,028	2,048	2,088	2,138	2,188	2,248	2,278	2,348
96	32	2,056	2,076	2,116	2,166	2,216	2,276	2,306	2,376
97	33	2,084	2,104	2,144	2,194	2,244	2,304	2,334	2,404
98	34	2,112	2,132	2,172	2,222	2,272	2,332	2,362	2,432
99	35	2,140	2,160	2,200	2,250	2,300	2,360	2,390	2,460
100	36	2,168	2,188	2,228	2,278	2,328	2,388	2,418	2,488

101 If “state minimum pay scale pay grade II” becomes
102 effective on the first day of July, one thousand nine hundred
103 ninety-nine, and the governor recommends a pay raise through
104 the delivery of an executive message to the Legislature and the
105 Legislature appropriates money for a pay raise, the minimum
106 monthly pay for each service employee whose employment is

107 for a period of more than three and one-half hours a day shall
 108 be at least the amounts indicated in the "state minimum pay
 109 scale pay grade III" and the minimum monthly pay for each
 110 service employee whose employment is for a period of three
 111 and one-half hours or less a day shall be at least one-half the
 112 amount indicated in the "state minimum pay scale pay grade
 113 III" set forth in this section.

114 **STATE MINIMUM PAY SCALE PAY GRADE III**

115 **Years of**

116 **Employment**

Pay Grade

117		A	B	C	D	E	F	G	H
118	0	1,220	1,240	1,280	1,330	1,380	1,440	1,470	1,540
119	1	1,249	1,269	1,309	1,359	1,409	1,469	1,499	1,569
120	2	1,278	1,298	1,338	1,388	1,438	1,498	1,528	1,598
121	3	1,307	1,327	1,367	1,417	1,467	1,527	1,557	1,627
122	4	1,336	1,356	1,396	1,446	1,496	1,556	1,586	1,656
123	5	1,365	1,385	1,425	1,475	1,525	1,585	1,615	1,685
124	6	1,394	1,414	1,454	1,504	1,554	1,614	1,644	1,714
125	7	1,423	1,443	1,483	1,533	1,583	1,643	1,673	1,743
126	8	1,452	1,472	1,512	1,562	1,612	1,672	1,702	1,772
127	9	1,481	1,501	1,541	1,591	1,641	1,701	1,731	1,801
128	10	1,510	1,530	1,570	1,620	1,670	1,730	1,760	1,830
129	11	1,539	1,559	1,599	1,649	1,699	1,759	1,789	1,859
130	12	1,568	1,588	1,628	1,678	1,728	1,788	1,818	1,888
131	13	1,597	1,617	1,657	1,707	1,757	1,817	1,847	1,917
132	14	1,626	1,646	1,686	1,736	1,786	1,846	1,876	1,946
133	15	1,655	1,675	1,715	1,765	1,815	1,875	1,905	1,975
134	16	1,684	1,704	1,744	1,794	1,844	1,904	1,934	2,004
135	17	1,713	1,733	1,773	1,823	1,873	1,933	1,963	2,033
136	18	1,742	1,762	1,802	1,852	1,902	1,962	1,992	2,062
137	19	1,771	1,791	1,831	1,881	1,931	1,991	2,021	2,091
138	20	1,800	1,820	1,860	1,910	1,960	2,020	2,050	2,120
139	21	1,829	1,849	1,889	1,939	1,989	2,049	2,079	2,149
140	22	1,858	1,878	1,918	1,968	2,018	2,078	2,108	2,178
141	23	1,887	1,907	1,947	1,997	2,047	2,107	2,137	2,207
142	24	1,916	1,936	1,976	2,026	2,076	2,136	2,166	2,236
143	25	1,945	1,965	2,005	2,055	2,105	2,165	2,195	2,265
144	26	1,974	1,994	2,034	2,084	2,134	2,194	2,224	2,294

145	27	2,003	2,023	2,063	2,113	2,163	2,223	2,253	2,323
146	28	2,032	2,052	2,092	2,142	2,192	2,252	2,282	2,352
147	29	2,061	2,081	2,121	2,171	2,221	2,281	2,311	2,381
148	30	2,090	2,110	2,150	2,200	2,250	2,310	2,340	2,410
149	31	2,119	2,139	2,179	2,229	2,279	2,339	2,369	2,439
150	32	2,148	2,168	2,208	2,258	2,308	2,368	2,398	2,468
151	33	2,177	2,197	2,237	2,287	2,337	2,397	2,427	2,497
152	34	2,206	2,226	2,266	2,316	2,366	2,426	2,456	2,526
153	35	2,235	2,255	2,295	2,345	2,395	2,455	2,485	2,555
154	36	2,264	2,284	2,324	2,374	2,424	2,484	2,514	2,584
155	37	2,293	2,313	2,353	2,403	2,453	2,513	2,543	2,613
156	38	2,322	2,342	2,382	2,432	2,482	2,542	2,572	2,642
157	39	2,351	2,371	2,411	2,461	2,511	2,571	2,601	2,671
158	40	2,380	2,400	2,440	2,490	2,540	2,600	2,630	2,700

159 **CLASS TITLE****PAY GRADE**

160	Accountant I	D
161	Accountant II	E
162	Accountant III	F
163	Aide I	A
164	Aide II	B
165	Aide III	C
166	Aide IV	D
167	Audiovisual Technician	C
168	Auditor	G
169	Autism Mentor	E
170	Braille or Sign Language Specialist	E
171	Bus Operator	D
172	Buyer	F
173	Cabinetmaker	G
174	Cafeteria Manager	D
175	Carpenter I	E
176	Carpenter II	F
177	Chief Mechanic	G
178	Clerk I	B
179	Clerk II	C
180	Computer Operator	E

181	Cook I	A
182	Cook II	B
183	Cook III	C
184	Crew Leader	F
185	Custodian I	A
186	Custodian II	B
187	Custodian III	C
188	Custodian IV	D
189	Director or Coordinator of Services	H
190	Draftsman	D
191	Electrician I	F
192	Electrician II	G
193	Electronic Technician I	F
194	Electronic Technician II	G
195	Executive Secretary	G
196	Food Services Supervisor	G
197	Foreman	G
198	General Maintenance	C
199	Glazier	D
200	Graphic Artist	D
201	Groundsman	B
202	Handyman	B
203	Heating and Air Conditioning Mechanic I	E
204	Heating and Air Conditioning Mechanic II	G
205	Heavy Equipment Operator	E
206	Inventory Supervisor	D
207	Key Punch Operator	B
208	Locksmith	G
209	Lubrication Man	C
210	Machinist	F
211	Mail Clerk	D
212	Maintenance Clerk	C
213	Mason	G
214	Mechanic	F
215	Mechanic Assistant	E

216	Office Equipment Repairman I	F
217	Office Equipment Repairman II	G
218	Painter	E
219	Paraprofessional	F
220	Plumber I	E
221	Plumber II	G
222	Printing Operator	B
223	Printing Supervisor	D
224	Programmer	H
225	Roofing/Sheet Metal Mechanic	F
226	Sanitation Plant Operator	F
227	School Bus Supervisor	E
228	Secretary I	D
229	Secretary II	E
230	Secretary III	F
231	Supervisor of Maintenance	H
232	Supervisor of Transportation	H
233	Switchboard Operator-Receptionist	D
234	Truck Driver	D
235	Warehouse Clerk	C
236	Watchman	B
237	Welder	F

238 (2) An additional ten dollars per month shall be added to
 239 the minimum monthly pay of each service employee who holds
 240 a high school diploma or its equivalent.

241 (3) An additional ten dollars per month also shall be added
 242 to the minimum monthly pay of each service employee for each
 243 of the following:

244 (A) A service employee who holds twelve college hours or
 245 comparable credit obtained in a trade or vocational school as
 246 approved by the state board;

247 (B) A service employee who holds twenty-four college
248 hours or comparable credit obtained in a trade or vocational
249 school as approved by the state board;

250 (C) A service employee who holds thirty-six college hours
251 or comparable credit obtained in a trade or vocational school as
252 approved by the state board;

253 (D) A service employee who holds forty-eight college hours
254 or comparable credit obtained in a trade or vocational school as
255 approved by the state board;

256 (E) A service employee who holds sixty college hours or
257 comparable credit obtained in a trade or vocational school as
258 approved by the state board; and

259 (F) A service employee who holds seventy-two college
260 hours or comparable credit obtained in a trade or vocational
261 school as approved by the state board.

262 (4) When any part of a school service employee's daily
263 shift of work is performed between the hours of six o'clock
264 p.m. and five o'clock a.m. the following day, the employee
265 shall be paid no less than an additional ten dollars per month
266 and one half of the pay shall be paid with local funds.

267 (5) Any service employee required to work on any legal
268 school holiday shall be paid at a rate one and one-half times the
269 employee's usual hourly rate.

270 (6) Any full-time service personnel required to work in
271 excess of their normal working day during any week which
272 contains a school holiday for which they are paid shall be paid
273 for the additional hours or fraction of the additional hours at a
274 rate of one and one-half times their usual hourly rate and paid
275 entirely from county board funds.

276 (7) No service employee may have his or her daily work
277 schedule changed during the school year without the em-
278 ployee's written consent and the employee's required daily
279 work hours may not be changed to prevent the payment of time
280 and one-half wages or the employment of another employee.

281 (8) The minimum hourly rate of pay for extra duty assign-
282 ments as defined in section eight-b of this article shall be no
283 less than one seventh of the employee's daily total salary for
284 each hour the employee is involved in performing the assign-
285 ment and paid entirely from local funds: *Provided*, That an
286 alternative minimum hourly rate of pay for performing extra
287 duty assignments within a particular category of employment
288 may be utilized if the alternate hourly rate of pay is approved
289 both by the county board and by the affirmative vote of a two-
290 thirds majority of the regular full-time employees within that
291 classification category of employment within that county:
292 *Provided, however*, That the vote shall be by secret ballot if
293 requested by a service personnel employee within that classifi-
294 cation category within that county. The salary for any fraction
295 of an hour the employee is involved in performing the assign-
296 ment shall be prorated accordingly. When performing extra
297 duty assignments, employees who are regularly employed on a
298 one-half day salary basis shall receive the same hourly extra
299 duty assignment pay computed as though the employee were
300 employed on a full-day salary basis.

301 (9) The minimum pay for any service personnel employees
302 engaged in the removal of asbestos material or related duties
303 required for asbestos removal shall be their regular total daily
304 rate of pay and no less than an additional three dollars per hour
305 or no less than five dollars per hour for service personnel
306 supervising asbestos removal responsibilities for each hour
307 these employees are involved in asbestos related duties. Related
308 duties required for asbestos removal include, but are not limited
309 to, travel, preparation of the work site, removal of asbestos

310 decontamination of the work site, placing and removal of
311 equipment and removal of structures from the site. If any
312 member of an asbestos crew is engaged in asbestos related
313 duties outside of the employee's regular employment county,
314 the daily rate of pay shall be no less than the minimum amount
315 as established in the employee's regular employment county for
316 asbestos removal and an additional thirty dollars per each day
317 the employee is engaged in asbestos removal and related duties.
318 The additional pay for asbestos removal and related duties shall
319 be payable entirely from county funds. Before service personnel
320 employees may be utilized in the removal of asbestos material
321 or related duties, they shall have completed a federal Environ-
322 mental Protection Act approved training program and be
323 licensed. The employer shall provide all necessary protective
324 equipment and maintain all records required by the Environ-
325 mental Protection Act.

326 (10) For the purpose of qualifying for additional pay as
327 provided in section eight, article five of this chapter, an aide
328 shall be considered to be exercising the authority of a supervi-
329 sory aide and control over pupils if the aide is required to
330 supervise, control, direct, monitor, escort or render service to a
331 child or children when not under the direct supervision of
332 certificated professional personnel within the classroom,
333 library, hallway, lunchroom, gymnasium, school building,
334 school grounds or wherever supervision is required. For
335 purposes of this section, "under the direct supervision of
336 certificated professional personnel" means that certificated
337 professional personnel is present, with and accompanying the
338 aide.

§18A-4-8e. Competency testing for service personnel.

1 (a) The state board of education shall develop and cause to
2 be made available competency tests for all of the classification
3 titles defined in section eight and listed in section eight-a of this
4 article for service personnel. Each classification title defined

5 and listed shall be considered a separate classification category
6 of employment for service personnel and shall have a separate
7 competency test, except for those class titles having Roman
8 numeral designations, which shall be considered a single
9 classification of employment and shall have a single compe-
10 tency test. The cafeteria manager class title shall be included in
11 the same classification category as cooks and shall have the
12 same competency test. The executive secretary class title shall
13 be included in the same classification category as secretaries
14 and shall have the same competency test. The classification
15 titles of chief mechanic, mechanic and assistant mechanic shall
16 be included in one classification title and shall have the same
17 competency test.

18 (b) The purpose of these tests shall be to provide county
19 boards of education a uniform means of determining whether
20 school service personnel employees who do not hold a classifi-
21 cation title in a particular category of employment can meet the
22 definition of the classification title in another category of
23 employment as defined in section eight of this article. Compe-
24 tency tests shall not be used to evaluate employees who hold
25 the classification title in the category of their employment.

26 (c) The competency test shall consist of an objective written
27 and/or performance test: *Provided*, That applicants shall have
28 the opportunity of taking the written test orally if requested.
29 Oral tests shall be recorded mechanically and kept on file.
30 Persons administering the oral test shall not know the applicant
31 personally. The performance test for all classifications and
32 categories other than bus operator shall be administered by a
33 vocational school which serves the county board of education.
34 A standard passing score shall be established by the state
35 department of education for each test and shall be used by
36 county boards of education. The subject matter of each compe-
37 tency test shall be commensurate with the requirements of the
38 definitions of the classification titles as provided in section

39 eight of this article. The subject matter of each competency test
40 shall be designed in such a manner that achieving a passing
41 grade will not require knowledge and skill in excess of the
42 requirements of the definitions of the classification titles.
43 Achieving a passing score shall conclusively demonstrate the
44 qualification of an applicant for a classification title. Once an
45 employee passes the competency test of a classification title,
46 the applicant shall be fully qualified to fill vacancies in that
47 classification category of employment as provided in section
48 eight-b of this article and shall not be required to take the
49 competency test again.

50 (d) An applicant who fails to achieve a passing score shall
51 be given other opportunities to pass the competency test when
52 making application for another vacancy within the classification
53 category.

54 (e) Competency tests shall be administered to applicants in
55 a uniform manner under uniform testing conditions. County
56 boards of education are responsible for scheduling competency
57 tests, notifying applicants of the date and time of the one day of
58 training prior to taking the test and the date and time of the test.
59 County boards of education shall not utilize a competency test
60 other than the test authorized by this section.

61 (f) When scheduling of the competency test conflicts with
62 the work schedule of a school employee who has applied for a
63 vacancy, the employee shall be excused from work to take the
64 competency test without loss of pay.

65 (g) A minimum of one day of appropriate inservice training
66 shall be provided employees to assist them in preparing to take
67 the competency tests.

68 (h) Competency tests shall be utilized to determine the
69 qualification of new applicants seeking initial employment in

70 a particular classification title as either a regular or substitute
71 employee.

72 (i) Notwithstanding any provisions in this code to the
73 contrary, once an employee holds or has held a classification
74 title in a category of employment, that employee shall be
75 considered qualified for the classification title even though that
76 employee no longer holds that classification.

77 (j) The requirements of this section shall not be construed
78 to alter the definitions of class titles as provided in section eight
79 of this article nor the procedure and requirements of section
80 eight-b of this article.

§18A-4-8g. Determination of seniority for service personnel.

1 (a) Seniority accumulation for a regular school service
2 employee begins on the date the employee enters upon regular
3 employment duties pursuant to a contract as provided in section
4 five, article two of this chapter and continues until the em-
5 ployee's employment as a regular employee is severed with the
6 county board. Seniority shall not cease to accumulate when an
7 employee is absent without pay as authorized by the county
8 board or the absence is due to illness or other reasons over
9 which the employee has no control as authorized by the county
10 board. Seniority accumulation for a substitute employee shall
11 begin upon the date the employee enters upon the duties of a
12 substitute as provided in section fifteen of this article, after
13 executing with the board a contract of employment as provided
14 in section five, article two of this chapter. The seniority of a
15 substitute employee, once established, shall continue until the
16 employee enters into the duties of a regular employment
17 contract as provided in section five, article two of this chapter
18 or employment as a substitute with the county board is severed.
19 Seniority of a regular or substitute employee shall continue to
20 accumulate except during the time when an employee is

21 willfully absent from employment duties because of a concerted
22 work stoppage or strike or is suspended without pay.

23 (b) For all purposes including the filling of vacancies and
24 reduction in force, seniority shall be accumulated within
25 particular classification categories of employment as those
26 classification categories are referred to in section eight-e of this
27 article: *Provided*, That when implementing a reduction in force,
28 an employee with the least seniority within a particular classifi-
29 cation category shall be properly released and placed on the
30 preferred recall list. The particular classification title held by an
31 employee within the classification category shall not be taken
32 into consideration when implementing a reduction in force.

33 (c) On or before the first day of September and the fifteenth
34 day of January of each school year, county boards shall post at
35 each county school or working station the current seniority list
36 or lists of each school service classification. Each list shall
37 contain the name of each regularly employed school service
38 personnel employed in each classification and the date that each
39 employee began performing his or her assigned duties in each
40 classification. Current seniority lists of substitute school service
41 personnel shall be available to employees upon request at the
42 county board office.

43 (d) The seniority of an employee who transfers out of a
44 class title or classification category of employment and
45 subsequently returns to that class title or classification category
46 of employment shall be calculated as follows:

47 The county board shall establish the number of calendar
48 days between the date the employee left the class title or
49 category of employment in question and the date of return to
50 the class title or classification category of employment. This
51 number of days shall be added to the employee's initial
52 seniority date to establish a new beginning seniority date within
53 the class title or classification category. The employee shall

54 then be considered as having held uninterrupted service within
55 the class title or classification category from the newly estab-
56 lished seniority date. The seniority of an employee who has had
57 a break in the accumulation of seniority as a result of being
58 willfully absent from employment duties because of a concerted
59 work stoppage or strike shall be calculated in the same manner.

60 (e) A substitute school service employee shall acquire
61 regular employment status and seniority if the employee
62 receives a position pursuant to subsections (2) and (5), section
63 fifteen of this article: *Provided*, That a substitute employee who
64 accumulates regular employee seniority while holding a
65 position acquired pursuant to said subsections shall simulta-
66 neously accumulate substitute seniority; *Provided, however*,
67 That upon termination of a leave of absence or a suspension, the
68 employee shall return to the status previously held. If the
69 employee returns to substitute status, the employee shall retain
70 any regular employee seniority accrued, however, this seniority
71 may not be used in the bidding process for regular positions
72 unless the employee again attains regular employee status or
73 has attained preferred recall status. County boards shall not be
74 prohibited from providing any benefits of regular employment
75 for substitute employees, but the benefits shall not include
76 regular employee status and seniority.

77 (f) If two or more employees accumulate identical seniority,
78 the priority shall be determined by a random selection system
79 established by the employees and approved by the county
80 board. A board shall conduct the random selection within thirty
81 days upon the employees establishing an identical seniority
82 date. All employees with an identical seniority date within the
83 same class title or classification category shall participate in the
84 random selection. As long as the affected employees hold
85 identical seniority within the same classification category, the
86 initial random selection conducted by the board shall be
87 permanent for the duration of the employment within the same

88 classification category of the employees by the board. This
89 random selection priority applies to the filling of vacancies and
90 to the reduction in force of school service personnel: *Provided*,
91 That if another employee or employees subsequently acquire
92 seniority identical to the employees involved in the original
93 random selection, a second random selection shall be held
94 within thirty days to determine the seniority ranking of the new
95 employee or employees within the group. The priority between
96 the employees who participated in the original random selection
97 shall remain the same. The second random selection shall be
98 performed by placing numbered pieces of paper equal to the
99 number of employees with identical seniority in a container.
100 The employees who were not involved in the original random
101 selection shall draw a number from the container which will
102 determine their seniority within the group as a whole. This
103 process will be repeated if additional employees subsequently
104 acquire identical seniority. The same process shall be utilized
105 if additional employees are subsequently discovered to have the
106 same seniority as the original group of employees but who did
107 not participate in the original random selection through over-
108 sight or mistake.

109 (g) Service personnel who are employed in a classification
110 category of employment at the time when a vacancy is posted
111 in the same classification category of employment shall be
112 given first opportunity to fill the vacancy.

113 (h) Seniority acquired as a substitute and as a regular
114 employee shall be calculated separately and shall not be
115 combined for any purpose. Seniority acquired within different
116 classification categories shall be calculated separately: *Pro-*
117 *vided*, That when a school service employee makes application
118 for a position outside of the classification category currently
119 held, if the vacancy is not filled by an applicant within the
120 classification category of the vacancy, the applicant shall

121 combine all regular employment seniority acquired for the
122 purposes of bidding on the position.

123 (i) School service personnel who hold multiclassification
124 titles shall accrue seniority in each classification category of
125 employment which the employee holds and shall be considered
126 an employee of each classification category contained within
127 his or her multiclassification title. Multiclassified employees
128 are subject to reduction in force in any category of employment
129 contained within their multiclassification title based upon the
130 seniority accumulated within that category of employment:
131 *Provided*, That if a multiclassified employee is reduced in force
132 in one classification category, the employee shall retain
133 employment in any of the other classification categories that he
134 or she holds within his multiclassification title. In that case, the
135 county board shall delete the appropriate classification title or
136 classification category from the contract of the multiclassified
137 employee.

138 (j) When applying to fill a vacancy outside the classifica-
139 tion categories held by the multiclassified employee, seniority
140 acquired simultaneously in different classification categories
141 shall be calculated as if accrued in one classification category
142 only.

143 (k) The seniority conferred in this section applies retroac-
144 tively to all affected school service personnel, but the rights
145 incidental to the seniority shall commence as of the effective
146 date of this section.

§18A-4-15. Employment of service personnel substitutes.

1 (a) The county board shall employ and the county superin-
2 tendent, subject to the approval of the county board, shall assign
3 substitute service personnel on the basis of seniority to perform
4 any of the following duties:

5 (1) To fill the temporary absence of another service
6 employee;

7 (2) To fill the position of a regular service employee who
8 requests a leave of absence from the county board in writing
9 and who is granted the leave in writing by the county board:
10 *Provided*, That if the leave of absence is to extend beyond thirty
11 days, the board, within twenty working days from the com-
12 mencement of the leave of absence, shall give regular employee
13 status to a person hired to fill the position. The person em-
14 ployed on a regular basis shall be selected under the procedure
15 set forth in section eight-b of this article. The substitute shall
16 hold the position and regular employee status only until the
17 regular employee returns to the position and the substitute shall
18 have and shall be accorded all rights, privileges and benefits
19 pertaining to the position: *Provided, however*, That if a regular
20 or substitute employee fills a vacancy that is related to a leave
21 of absence in any manner as provided in this section, upon
22 termination of the leave of absence the employee shall be
23 returned to his or her original position: *Provided further*, That
24 no service person may be required to request or to take a leave
25 of absence: *And provided further*, That no service person shall
26 be deprived of any right or privilege of regular employment
27 status for refusal to request or failure to take a leave of absence;

28 (3) To perform the service of a service employee who is
29 authorized to be absent from duties without loss of pay;

30 (4) To temporarily fill a vacancy in a permanent position
31 caused by severance of employment by the resignation, transfer,
32 retirement, permanent disability, dismissal pursuant to section
33 eight, article two of this chapter, or death of the regular service
34 employee who had been assigned to fill the position: *Provided*,
35 That within twenty working days from the commencement of
36 the vacancy, the board shall fill the vacancy under the proce-
37 dures set out in section eight-b of this article and section five,
38 article two of this chapter and the person hired to fill the

39 vacancy shall have and shall be accorded all rights, privileges
40 and benefits pertaining to the position;

41 (5) To fill the vacancy created by a regular employee's
42 suspension: *Provided*, That if the suspension is for more than
43 thirty working days the substitute service employee shall be
44 assigned to fill the vacancy on a regular basis and shall have
45 and be accorded all rights, privileges and benefits pertaining to
46 the position until the termination by the county board becomes
47 final. If the suspended employee is not returned to his or her
48 job, the board shall fill the vacancy under the procedures set out
49 in section eight-b of this article and section five, article two of
50 this chapter; and

51 (6) To temporarily fill a vacancy in a newly created
52 position prior to employment of a service personnel on a regular
53 basis under the procedure set forth in section eight-b of this
54 article.

55 (b) Substitutes shall be assigned in the following manner:
56 A substitute with the greatest length of service time, that is,
57 from the date he or she began his or her assigned duties as a
58 substitute in that particular category of employment, shall be
59 given priority in accepting the assignment throughout the period
60 of the regular employee's absence or until the vacancy is filled
61 on a regular basis under the procedures set out in section eight-
62 b of this article. All substitutes shall be employed on a rotating
63 basis according to the length of their service time until each
64 substitute has had an opportunity to perform similar assign-
65 ments: *Provided*, That if there are regular service employees
66 employed in the same building or working station as the absent
67 employee and who are employed in the same classification
68 category of employment, the regular employees shall be first
69 offered the opportunity to fill the position of the absent em-
70 ployee on a rotating and seniority basis with the substitute then
71 filling the regular employee's position. A regular employee
72 assigned to fill the position of an absent employee shall be

73 given the opportunity to hold that position throughout the
74 absence.

75 (c) Regular school service personnel shall be returned by
76 the county board of education to the same position held prior to
77 any approved leave of absence or period of recovery from
78 injury or illness. The school service personnel shall retain all
79 rights, privileges and benefits which had accrued at the time of
80 the absence or accrued under any other provision of law during
81 the absence and shall have all rights, privileges and benefits
82 generally accorded school service employees at the time of
83 return to work.

84 (d) The salary of a substitute service employee shall be
85 based upon his or her years of employment as defined in section
86 eight of this article and as provided in the state minimum pay
87 scale set forth in section eight-a of this article and shall be in
88 accordance with the salary schedule of persons regularly
89 employed in the same position in the county in which he or she
90 is employed.

91 (e) Before any substitute service employee enters upon his
92 or her duties, he or she shall execute with the county board a
93 written contract as provided in section five, article two of this
94 chapter.

95 (f) To establish a uniform system of providing a fair and
96 equitable opportunity for substitutes to enter upon their duties
97 for the first time, the following method shall be used: The
98 initial order of assigning newly employed substitutes shall be
99 determined by a random selection system established by the
100 affected substitute employees and approved by the county
101 board. This initial priority order shall be in effect only until the
102 substitute service personnel have entered upon their duties for
103 the first time.

104 (g) Substitute service employees who have worked thirty
105 days for a school system shall have all rights pertaining to
106 suspension, dismissal and contract renewal as is granted to
107 regular service personnel in sections six, seven, eight and eight-
108 a, article two of this chapter.

CHAPTER 108

(Com. Sub. for S. B. 189 — By Senators Mitchell, Hunter and Ball)

[Passed March 9, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requirements for home school instruction; study on home school instruction; and collecting data on home school instruction.

Be it enacted by the Legislature of West Virginia:

That section one, article eight, 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 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-1. Commencement and termination of compulsory school attendance; exemptions.

1 Compulsory school attendance shall begin with the school
2 year in which the sixth birthday is reached prior to the first day
3 of September of such year or upon enrolling in a publicly
4 supported kindergarten program and continue to the sixteenth
5 birthday.

6 Exemption from the foregoing requirements of compulsory
7 public school attendance shall be made on behalf of any child
8 for the following causes or conditions, each such cause or
9 condition being subject to confirmation by the attendance
10 authority of the county:

11 *Exemption A. Instruction in a private, parochial or other*
12 *approved school.* — Such instruction shall be in a school
13 approved by the county board of education and for a time equal
14 to the school term of the county for the year. In all such schools
15 it shall be the duty of the principal or other person in control,
16 upon the request of the county superintendent of schools, to
17 furnish to the county board of education such information and
18 records as may be required with respect to attendance, instruc-
19 tion and progress of pupils enrolled between the entrance age
20 and sixteen years;

21 *Exemption B. Instruction in home or other approved place.*
22 — (a) Such instruction shall be in the home of such child or
23 children or at some other place approved by the county board
24 of education and for a time equal to the school term of the
25 county. If such request for home instruction is denied by the
26 county board of education, good and reasonable justification for
27 such denial must be furnished in writing to the applicant by the
28 county board of education. The instruction in such cases shall
29 be conducted by a person or persons who, in the judgment of
30 the county superintendent and county board of education, are
31 qualified to give instruction in subjects required to be taught in
32 the free elementary schools of the state. It shall be the duty of
33 the person or persons providing the instruction, upon request of
34 the county superintendent, to furnish to the county board of
35 education such information and records as may be required
36 from time to time with respect to attendance, instruction and
37 progress of pupils enrolled between the entrance age and
38 sixteen years receiving such instruction. The state department
39 of education shall develop guidelines for the home schooling of
40 special education students including alternative assessment

41 measures to assure that satisfactory academic progress is
42 achieved.

43 (b) Notwithstanding the provisions of subsection (a) of this
44 Exemption B, the person or persons providing home instruction
45 meet the requirements for Exemption B when the conditions of
46 this subsection are met: *Provided*, That the county superinten-
47 dent shall have the right to seek from the circuit court of the
48 county an order denying the home instruction, which order may
49 be granted upon a showing of clear and convincing evidence
50 that the child will suffer educational neglect or that there are
51 other compelling reasons to deny home instruction.

52 (1) The person or persons providing home instruction
53 present to the county superintendent or county board of
54 education a notice of intent to provide home instruction and the
55 name and address of any child of compulsory school age to be
56 instructed: *Provided*, That if a child is enrolled in a public
57 school, notice of intent to provide home instruction shall be
58 given at least two weeks prior to withdrawing such child from
59 public school;

60 (2) The person or persons providing home instruction
61 submit satisfactory evidence of: (i) A high school diploma or
62 equivalent; and (ii) formal education at least four years higher
63 than the most academically advanced child for whom the
64 instruction will be provided: *Provided*, That during the school
65 year two thousand - two thousand one only, the requirement of
66 a formal education at least four years higher than the most
67 academically advanced child is waived;

68 (3) The person or persons providing home instruction
69 outline a plan of instruction for the ensuing school year; and

70 (4) The person or persons providing home instruction shall
71 annually obtain an academic assessment of the child for the
72 previous school year. This shall be satisfied in one of the
73 following ways:

74 (i) Any child receiving home instruction annually takes a
75 standardized test, to be administered at a public school in the
76 county where the child resides, or administered by a licensed
77 psychologist or other person authorized by the publisher of the
78 test, or administered by a person authorized by the county
79 superintendent or county board of education. The child shall be
80 administered a test which has been normed by the test publisher
81 on that child's age or grade group. In no event may the child's
82 parent or legal guardian administer the test. Where a test is
83 administered outside of a public school, the child's parent or
84 legal guardian shall pay the cost of administering the test. The
85 public school or other qualified person shall administer to
86 children of compulsory school age the comprehensive test of
87 basic skills, the California achievement test, the Stanford
88 achievement test or the Iowa tests of basic skills, achievement
89 and proficiency, or an individual standardized achievement test
90 that is nationally normed and provides statistical results which
91 test will be selected by the public school, or other person
92 administering the test, in the subjects of language, reading,
93 social studies, science and mathematics and shall be adminis-
94 tered under standardized conditions as set forth by the pub-
95 lished instructions of the selected test. No test shall be adminis-
96 tered if the publication date is more than ten years from the date
97 of the administration of the test. Each child's test results shall
98 be reported as a national percentile for each of the five subjects
99 tested. Each child's test results shall be made available on or
100 before the thirtieth day of June of the school year in which the
101 test is to be administered to the person or persons providing
102 home instruction, the child's parent or legal guardian and the
103 county superintendent. Upon request of a duly authorized
104 representative of the West Virginia department of education,
105 each child's test results shall be furnished by the person or
106 persons providing home instruction, or by the child's parent or
107 legal guardian, to the state superintendent of schools. Upon
108 notification that the mean of the child's test results for any
109 single year has fallen below the fortieth percentile, the county

110 board of education shall notify the parents or legal guardian of
111 said child, in writing, of the services available to assist in the
112 assessment of the child's eligibility for special education
113 services: *Provided*, That the identification of a disability shall
114 not preclude the continuation of home schooling.

115 If the mean of the child's test results for any single year for
116 language, reading, social studies, science and mathematics fall
117 below the fortieth percentile on the selected tests, then the
118 person or persons providing home instruction shall initiate a
119 remedial program to foster achievement above that level and
120 the student shall show improvement. If, after two calendar
121 years, the mean of the child's test results fall below the fortieth
122 percentile level, home instruction shall no longer satisfy the
123 compulsory school attendance requirement exemption; or

124 (ii) The county superintendent is provided with a written
125 narrative indicating that a portfolio of samples of the child's
126 work has been reviewed and that the child's academic progress
127 for the year is in accordance with the child's abilities. This
128 narrative shall be prepared by a certified teacher or other person
129 mutually agreed upon by the parent or legal guardian and the
130 county superintendent. It shall be submitted on or before the
131 thirtieth day of June of the school year covered by the portfolio.
132 The parent or legal guardian shall be responsible for payment
133 of fees charged for the narrative; or

134 (iii) Evidence of an alternative academic assessment of the
135 child's proficiency mutually agreed upon by the parent or legal
136 guardian and the county superintendent is submitted to the
137 county superintendent by the thirtieth day of June of the school
138 year being assessed. The parent or legal guardian shall be
139 responsible for payment of fees charged for the assessment.

140 (c) The superintendent or a designee shall offer such
141 assistance, including textbooks, other teaching materials and
142 available resources, as may assist the person or persons
143 providing home instruction subject to their availability. Any

144 child receiving home instruction may, upon approval of the
145 county board of education, exercise the option to attend any
146 class offered by the county board of education as the person or
147 persons providing home instruction may deem appropriate
148 subject to normal registration and attendance requirements.

149 (d) The legislative oversight commission on education
150 accountability shall conduct a study on the effects of the home
151 instruction exemption on the students being instructed in the
152 home. The study shall include, but is not limited to, the effects
153 that a home instructor's education attainment level has on the
154 academic abilities of the child instructed. As part of the study,
155 the legislative oversight commission on education accountabil-
156 ity shall collect data relating to students who are instructed
157 under the home school exemption, including, but not limited to,
158 assessment test scores or performance on other assessment
159 mechanisms, the number of students who are instructed under
160 the home school exemption, the grade level at which the
161 students are being instructed and the age of the students:
162 *Provided*, That the names of the students shall not be collected.
163 The legislative oversight commission shall collect the data and
164 complete the study on or before the first day of December, two
165 thousand.

166 *Exemption C. Physical or mental incapacity.* — Physical or
167 mental incapacity shall consist of incapacity for school atten-
168 dance and the performance of school work. In all cases of
169 prolonged absence from school due to incapacity of the child to
170 attend, the written statement of a licensed physician or autho-
171 rized school nurse shall be required under the provisions of this
172 article: *Provided*, That in all cases incapacity shall be narrowly
173 defined and in no case shall the provisions of this article allow
174 for the exclusion of the mentally, physically, emotionally or
175 behaviorally handicapped child otherwise entitled to a free
176 appropriate education;

177 *Exemption D. Residence more than two miles from school*
178 *or school bus route.* — The distance of residence from a school,
179 or school bus route providing free transportation, shall be
180 reckoned by the shortest practicable road or path, which
181 contemplates travel through fields by right of permission from
182 the landholders or their agents. It shall be the duty of the county
183 board of education, subject to written consent of landholders, or
184 their agents, to provide and maintain safe foot bridges across
185 streams off the public highways where such are required for the
186 safety and welfare of pupils whose mode of travel from home
187 to school or to school bus route must necessarily be other than
188 along the public highway in order for said road or path to be not
189 over two miles from home to school or to school bus providing
190 free transportation;

191 *Exemption E. Hazardous conditions.* — Conditions
192 rendering school attendance impossible or hazardous to the life,
193 health or safety of the child;

194 *Exemption F. High school graduation.* — Such exemption
195 shall consist of regular graduation from a standard senior high
196 school;

197 *Exemption G. Granting work permits.* — The county
198 superintendent may, after due investigation, grant work permits
199 to youths under sixteen years of age, subject to state and federal
200 labor laws and regulations: *Provided,* That a work permit may
201 not be granted on behalf of any youth who has not completed
202 the eighth grade of school;

203 *Exemption H. Serious illness or death in the immediate*
204 *family of the pupil.* — It is expected that the county attendance
205 director will ascertain the facts in all cases of such absences
206 about which information is inadequate and report same to the
207 county superintendent of schools;

208 *Exemption I. Destitution in the home.* — Exemption based
209 on a condition of extreme destitution in the home may be

210 granted only upon the written recommendation of the county
211 attendance director to the county superintendent following
212 careful investigation of the case. A copy of the report confirm-
213 ing such condition and school exemption shall be placed with
214 the county director of public assistance. This enactment
215 contemplates every reasonable effort that may properly be taken
216 on the part of both school and public assistance authorities for
217 the relief of home conditions officially recognized as being so
218 destitute as to deprive children of the privilege of school
219 attendance. Exemption for this cause shall not be allowed when
220 such destitution is relieved through public or private means;

221 *Exemption J. Church ordinances; observances of regular*
222 *church ordinances.* — The county board of education may
223 approve exemption for religious instruction upon written
224 request of the person having legal or actual charge of a child or
225 children: *Provided,* That such exemption shall be subject to the
226 rules prescribed by the county superintendent and approved by
227 the county board of education;

228 *Exemption K. Alternative private, parochial, church or*
229 *religious school instruction.* — In lieu of the provisions of
230 Exemption A herein above, exemption shall be made for any
231 child attending any private school, parochial school, church
232 school, school operated by a religious order or other nonpublic
233 school which elects to comply with the provisions of article
234 twenty-eight, chapter eighteen of the code of West Virginia.

235 The completion of the eighth grade shall not exempt any
236 child under sixteen years of age from the compulsory atten-
237 dance provision of this article: *Provided,* That there is a public
238 high school or other public school of advanced grades or a
239 school bus providing free transportation to any such school, the
240 route of which is within two miles of the child's home by the
241 shortest practicable route or path as hereinbefore specified
242 under Exemption D of this section.

CHAPTER 109

(H. B. 4787 — By Delegates Mezzatesta and Williams)

[Passed March 9, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article nine-e, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the school building authority; air quality; radon testing; mitigation; rules; heating, ventilating and air-conditioning; design and construction of new schools; investigation; and authorizing the use of any appropriate floor covering in public school buildings.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9E. AIR QUALITY IN NEW SCHOOLS ACT.

§18-9E-3. Air quality in new schools.

- 1 (a) In an effort to create well ventilated school environ-
- 2 ments, and notwithstanding any other provision of this code to
- 3 the contrary, any new school building designed and constructed
- 4 in the state by a county board, regardless of the funding source,
- 5 shall be designed and constructed in compliance with the
- 6 current standards of the American society of heating, refrigerat-
- 7 ing and air conditioning engineers handbook (ASHRAE), the
- 8 national fire protection association code (NFPA) and the code
- 9 of the building officials and code administrators (BOCA).

10 (b) Upon notice from the school building authority that a
11 new public school building is occupied, the division of health
12 shall perform radon testing in the school within the first year
13 after occupancy and at least every five years thereafter. The
14 county school board shall provide such reasonable assistance to
15 the division of health as may be necessary to perform the radon
16 testing. The radon testing shall include all major student
17 occupied areas at or below grade level. If it is determined that
18 radon is present in amounts greater than the amount determined
19 to be acceptable by the rules promulgated by the school
20 building authority, pursuant to subsection (d) of this section,
21 any industry accepted mitigation technique shall be utilized to
22 reduce the radon level to the level or below the level deter-
23 mined acceptable by the school building authority.

24 (c) If the school building authority determines that it is
25 feasible to test for radon prior to the construction of a school
26 building, the school building authority may cause preconstruction
27 site testing for radon to be performed.

28 (d) The school building authority shall promulgate rules
29 pursuant to article three-a, chapter twenty-nine-a of this code to
30 assure that any new school building designed after the effective
31 date of this article is designed and constructed in accordance
32 with the current ASHRAE, NFPA and BOCA standards. The
33 school building authority shall promulgate rules, pursuant to
34 article three-a, chapter twenty-nine-a of this code that establish
35 standards for safe levels of radon for public school buildings.
36 The rules shall include the requirement that county boards
37 submit all new school designs to the school building authority
38 for review and approval for compliance with current education
39 standards and design efficiencies prior to preparation of final
40 bid documents.

41 (e) The state board shall promulgate rules, pursuant to
42 article three-b, chapter twenty-nine-a of this code, in consulta-
43 tion with the division of health, that authorize the use of any

44 appropriate floor covering in public school buildings, based on
45 user needs and performance specifications. The state board
46 shall submit the rules to the legislative oversight commission on
47 education accountability on or before the first day of July, two
48 thousand.

CHAPTER 110

(H. B. 4785 — By Delegates Susman, Hubbard, Romine,
Pethtel, Yeager, Fletcher and Houston)

[Passed March 9, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article twenty-nine, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public education; grievance; procedure; compilation and dissemination of data; report; and specifications.

Be it enacted by the Legislature of West Virginia:

That section eleven, article twenty-nine, 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 29. GRIEVANCE PROCEDURE.

§18-29-11. Compilation and dissemination of data.

1 In addition to such other data as may be required under the
2 provisions of this article, the education employees grievance
3 board shall provide each governing board and employee
4 organization, within thirty days of the end of each quarter, a
5 statewide quarterly report summarizing matters decided by the
6 hearing examiners during the preceding quarter. Each report

7 shall set forth any information deemed to be helpful in provid-
8 ing an overview of grievance-related issues.

9 In addition to such other data as may be required under the
10 provisions of this article, the education employees grievance
11 board shall annually provide each county board of education,
12 within thirty days of the end of each school year, a report
13 specifying:

14 (1) The number of grievances against the county board
15 which, during the school year, were appealed to level four,
16 identifying each grievance by subject matter;

17 (2) The number of grievances against the county board
18 which, during the school year, were granted, identifying each
19 grievance by docket number, date of decision, and subject
20 matter;

21 (3) The number of grievances against the county board
22 which, during the school year, were denied, identifying each
23 grievance by docket number, date of decision, and subject
24 matter; and

25 (4) The number of grievances against the county board
26 which, during the school year, were otherwise disposed of,
27 identifying each grievance by disposition, docket number, date
28 of decision, and subject matter.

29 Nothing contained in either the quarterly or annual report
30 may breach the confidentiality of a grievant or other person, nor
31 may any matter be disclosed if the disclosure may violate any
32 provision of law. In each quarterly report, the grievance board
33 shall make an effort to provide information applicable to
34 particular counties, institutions or governing boards, as may be
35 appropriate.

36 Each quarterly and annual report sent by the grievance
37 board to a governing board shall then be distributed to each

38 member of the governing board so that the governing board
 39 may monitor the significant personnel-related matters which
 40 came before the grievance board and thereby ascertain whether
 41 any personnel policies need to be reviewed, revised or enforced.

42 Each quarterly report shall be incorporated into the annual
 43 report required by section five of this article, which shall also
 44 be distributed to each governing board and employee organiza-
 45 tion.

CHAPTER 111

(H. B. 4414 — By Delegates Mezzatesta, Williams, Paxton, Susman and Willis)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article two of said chapter, all relating to county boards of education; defined terms; employment of substitute teachers; and allowing the county superintendents to hire prospective employable professional personnel.

Be it enacted by the Legislature of West Virginia:

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

Article

1. **General Provisions.**
2. **School Personnel.**

ARTICLE 1. GENERAL PROVISIONS.

§18A-1-1. Definitions.

1 The definitions contained in section one, article one,
2 chapter eighteen of this code apply to this chapter. In addition,
3 the following words used in this chapter and in any proceedings
4 pursuant thereto shall, unless the context clearly indicates a
5 different meaning, be construed as follows:

6 (a) "School personnel" means all personnel employed by a
7 county board of education whether employed on a regular full-
8 time basis, an hourly basis or otherwise. School personnel shall
9 be comprised of two categories: Professional personnel and
10 service personnel.

11 (b) "Professional personnel" means persons who meet the
12 certification and/or licensing requirements of the state, and
13 includes the professional educator and other professional
14 employees.

15 (c) "Professional educator" is synonymous with and has the
16 same meaning as "teacher" as defined in section one, article
17 one, chapter eighteen of this code. Professional educators shall
18 be classified as:

19 (1) "Classroom teacher" — The professional educator who
20 has direct instructional or counseling relationship with pupils,
21 spending the majority of his or her time in this capacity.

22 (2) "Principal" — The professional educator who as agent
23 of the board has responsibility for the supervision, management
24 and control of a school or schools within the guidelines
25 established by said board. The major area of such responsibility
26 shall be the general supervision of all the schools and all school
27 activities involving pupils, teachers and other school personnel.

28 (3) "Supervisor" — The professional educator who,
29 whether by this or other appropriate title, is responsible for

30 working primarily in the field with professional and/or other
31 personnel in instructional and other school improvement.

32 (4) “Central office administrator” — The superintendent,
33 associate superintendent, assistant superintendent and other
34 professional educators, whether by these or other appropriate
35 titles, who are charged with the administering and supervising
36 of the whole or some assigned part of the total program of the
37 county-wide school system.

38 (d) “Other professional employee” means that person from
39 another profession who is properly licensed and is employed to
40 serve the public schools and includes a registered professional
41 nurse, licensed by the West Virginia board of examiners for
42 registered professional nurses and employed by a county board
43 of education, who has completed either a two-year (sixty-four
44 semester hours) or a three-year (ninety-six semester hours)
45 nursing program.

46 (e) “Service personnel” means those who serve the school
47 or schools as a whole, in a nonprofessional capacity, including
48 such areas as secretarial, custodial, maintenance, transportation,
49 school lunch and as aides.

50 (f) “Principals academy” or “academy” means the academy
51 created pursuant to section two-b, article three-a of this chapter.

52 (g) “Center for professional development” means the center
53 created pursuant to section one, article three-a of this chapter.

54 (h) “Job-sharing arrangement” means a formal, written
55 agreement voluntarily entered into by a county board with two
56 or more of its professional employees who wish to divide
57 between them the duties and responsibilities of one authorized
58 full-time position.

59 (i) “Prospective employable professional personnel” means
60 certified professional educators who:

- 61 (1) Have been recruited on a reserve list of a county board;
- 62 (2) Have been recruited at a job fair or as a result of contact
63 made at a job fair;
- 64 (3) Have not obtained regular employee status through the
65 job posting process provided for in section seven-a, article four
66 of this chapter; and
- 67 (4) Have obtained a baccalaureate degree from an accred-
68 ited institution of higher education within the past year.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-3. Employment of substitute teachers and prospective employable professional personnel.

1 (a) The county superintendent, subject to approval of the
2 county board, may employ and assign substitute teachers to any
3 of the following duties: (a) To fill the temporary absence of any
4 teacher or an unexpired school term made vacant by resigna-
5 tion, death, suspension or dismissal; (b) to fill a teaching
6 position of a regular teacher on leave of absence; and (c) to
7 perform the instructional services of any teacher who is
8 authorized by law to be absent from class without loss of pay,
9 providing the absence is approved by the board of education in
10 accordance with the law. The substitute shall be a duly certified
11 teacher.

12 (b) Prospective employable professional personnel may be
13 employed in accordance with this subsection.

14 (1) As an aid in recruiting teachers in the state, and notwith-
15 standing any other provision of this code to the contrary, a
16 superintendent of a county that meets the requirements in
17 subdivision (3) of this subsection or obtains approval from the
18 state board in accordance with subdivision (4) of this subsection
19 may employ up to twenty-five full-time prospective employable
20 professional personnel each year on a reserve list at the county

21 level. Regular employment status for such personnel may be
22 obtained only in accordance with the provision of section
23 seven-a, article four of this chapter.

24 (2) Prior to the employment of the full-time prospective
25 employable professional personnel on a reserve list, the
26 superintendent shall obtain from the county board:

27 (A) General approval to employ the personnel on the
28 reserve list;

29 (B) General approval as to the form of the contract to be
30 used in employing the personnel; and

31 (C) Approval of the number of personnel to be employed
32 from the reserve list.

33 (3) Unless a county is eligible under subdivision (4) of this
34 subsection, a county is eligible to hire professional personnel in
35 accordance with this subsection only if the county's net
36 enrollment during the year is more than one hundred students
37 greater than the fourth year prior to the current year.

38 (4) Unless a county is eligible under subdivision (3) of this
39 subsection, a county is eligible to hire professional personnel in
40 accordance with this subsection only if the county requests and
41 receives approval from the state board. The state board shall
42 determine the criteria for granting approval including, but not
43 limited to, vacancies in professional personnel positions and the
44 need to recruit teachers in specific subject matter areas. The
45 state board annually shall determine the number of prospective
46 employable professional personnel to be hired: *Provided*, That
47 the number may not exceed twenty-five.

48 (5) The state board annually shall review the status of
49 employing personnel under the provisions of this subsection,
50 and annually shall report to the legislative oversight commis-
51 sion on education accountability on or before the first day of

54 November of each year. The report shall include, but not be
55 limited to, the following:

- 56 (A) The counties that participated in the program;
- 57 (B) The number of personnel hired;
- 58 (C) The teaching fields in which personnel were hired;
- 59 (D) The venue from which personnel were employed;
- 60 (E) The place of residency of the individual hired; and
- 61 (F) The state board's recommendations on the prospective
62 employable professional personnel program.

CHAPTER 112

(H. B. 4314 — By Delegates Fletcher, Calvert, Trump,
Harrison, Armstead, Ennis and Davis)

[Passed February 17, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten-c, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to school personnel; personal leave banks for care givers; and defining "catastrophic illness or injury".

Be it enacted by the Legislature of West Virginia:

That section ten-c, article four, 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 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-10c. Personal leave banks for care givers.

1 (a) For the purposes of this section:

2 (1) "Care giver" means any employee of a county board
3 who:

4 (A) Is a spouse, child or parent of any employee who meets
5 the following qualifications:

6 (i) He or she is an employee of the same county board of
7 education as the care giver; and

8 (ii) He or she currently is eligible to receive benefits from
9 the personal leave bank established in section ten of this article;
10 or

11 (B) Is a parent of a dependent child who is suffering from
12 a catastrophic illness or injury;

13 (2) "Catastrophic illness or injury" means a medical or
14 physical condition that incapacitates a family member of the
15 care giver and results in the care giver being required to take
16 time off from work as defined by the rules of the board to care
17 for the family member.

18 (b) A county board of education may establish a personal
19 leave bank for care givers which is separate from any personal
20 leave bank as defined in section ten of this article. The personal
21 leave bank shall be operated pursuant to rules adopted by the
22 county board which shall include, but not be limited to, the
23 following:

24 (1) An employee may contribute no more than two days of
25 personal leave per school year;

26 (2) The bank shall be established either jointly or separately
27 for both professional personnel and school service personnel
28 and shall be available to all school personnel;

29 (3) The rules may limit the maximum number of days used
30 by a care giver;

31 (4) Where the care giver is caring for an absent employee
32 as defined in paragraph (A), subdivision (1), subsection (a) of
33 this section, the rules shall require that leave bank days be used
34 only by a care giver who is absent from work during the same
35 time period as the absent employee for whom care is being
36 provided; and

37 (5) The rules shall require that the care giver is an active
38 employee with less than five days accumulated personal leave.

39 (c) The use of these days by the care giver for the extension
40 of insurance coverage pursuant to section twelve, article
41 sixteen, chapter five of this code is prohibited.

42 (d) Contributions shall reduce, to the extent of the contribu-
43 tion, the number of personal leave days to which a contributing
44 employee is entitled by section ten of this article: *Provided,*
45 That the employee's contribution may not reduce the number of
46 entitled personal leave days without cause.

47 (e) No employee may be compelled to contribute to a
48 personal leave bank.

CHAPTER 113

(H. B. 4784 — By Delegates Armstead, Harrison, Anderson,
Romine, Calvert, Houston and Shelton)

[Passed March 11, 2000; 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 seven-b, relating to state institutions of higher education; tuition; fees; financial assistance; tuition waivers for high school graduates in foster care; and eligibility requirements and limitations.

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 seven-b, to read as follows:

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-7b. Tuition waivers for high school graduates in foster care.

1 The governing boards shall make provision for institutions
2 under their respective jurisdictions to award a tuition and fee
3 waiver for undergraduate courses at state institutions of higher
4 education for any student, beginning with incoming freshmen
5 in the fall, two thousand, semester or term, who graduate from
6 high school or pass the GED examination while in the legal
7 custody of the state department of health and human resources.
8 The student must be in foster care or other residential care for
9 at least one year prior to the waiver award. If the foster care or
10 other residential care is provided in another state, the student
11 must first be returned to this state for waiver award eligibility.

12 To be eligible for a waiver award, a student must first: (1)
13 Apply to and be accepted at the institution; and (2) apply for
14 other student financial assistance, other than student loans, in
15 compliance with federal financial aid rules, including the
16 federal Pell grant.

17 Waiver renewal is contingent upon the student continuing
18 to meet the academic progress standards established by the
19 institution.

20 The waiver provided by this section for each eligible
21 student may be used for no more than four years of undergradu-
22 ate study. An initial waiver must be granted within two years of
23 graduation from high school or passing the GED examination.

24 The waiver may only be used after other sources of
25 financial aid that are dedicated solely to tuition and fees are
26 exhausted.

27 Any award under this section is in addition to the number
28 of fee waivers permitted in sections five and six of this article
29 for undergraduate, graduate and professional schools.

30 No student who is enrolled in an institution of higher
31 education as of the effective date of this section is eligible for
32 a waiver award under the provisions of this section.

33 The governing boards may establish any limitations on the
34 provisions of this section as they consider proper.

CHAPTER 114

(S. B. 520 — By Senators Jackson, Plymale, Boley, Bailey,
Dawson, Mitchell, Ball, Minear, Hunter and Edgell)

[Passed March 9, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article seventeen, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to authorizing rules; board of trustees; board of directors; higher education adult part-time student grant program; engineering, science and technology scholarship program; and increased flexibility for free-standing community and technical colleges.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. LEGISLATIVE RULES.

§18B-17-2. Board of trustees.

§18B-17-3. Board of directors.

§18B-17-2. Board of trustees.

1 (a) The legislative rules filed in the state register on the
2 third day of December, one thousand nine hundred ninety-one,
3 modified by the board of trustees to meet the objections of the
4 legislative oversight commission on education accountability
5 and refiled in the state register on the twenty-first day of
6 January, one thousand nine hundred ninety-two, relating to the
7 board of trustees (report card), are authorized.

8 (b) The legislative rules filed in the state register on the
9 thirteenth day of July, one thousand nine hundred ninety-one,
10 relating to the board of trustees (equal opportunity and affirma-
11 tive action), are authorized.

12 (c) The legislative rules filed in the state register on the
13 eighth day of September, one thousand nine hundred ninety-
14 two, relating to the board of trustees (holidays), are authorized.

15 (d) The legislative rules filed in the state register on the
16 third day of April, one thousand nine hundred ninety-two,
17 relating to the board of trustees (alcoholic beverages on
18 campuses), are authorized.

19 (e) The legislative rules filed in the state register on the
20 fifteenth day of November, one thousand nine hundred ninety-
21 three, relating to the board of trustees (acceptance of advanced
22 placement credit), are authorized.

23 (f) The legislative rules filed in the state register on the
24 thirteenth day of December, one thousand nine hundred ninety-
25 three, modified by the board of trustees to meet the objections
26 of the legislative oversight commission on education account-
27 ability and refiled in the state register on the twenty-first day of
28 January, one thousand nine hundred ninety-four, relating to the
29 board of trustees (assessment, payment and refund of fees), are
30 authorized.

31 (g) The legislative rules filed in the state register on the first
32 day of November, one thousand nine hundred ninety-three,
33 modified by the board of trustees to meet the objections of the
34 legislative oversight commission on education accountability
35 and refiled in the state register on the twenty-first day of
36 December, one thousand nine hundred ninety-three, relating to
37 the board of trustees (personnel administration), are authorized.

38 (h) The legislative rules filed in the state register on the
39 twenty-seventh day of January, one thousand nine hundred
40 ninety-four, relating to the board of trustees (resource allocation
41 policy), are authorized.

42 (i) The legislative rules filed in the state register on the
43 fourth day of December, one thousand nine hundred ninety-
44 five, modified by the board of trustees to meet the objections of
45 the legislative oversight commission on education accountabil-
46 ity and refiled in the state register on the fifteenth day of
47 February, one thousand nine hundred ninety-six, relating to the
48 board of trustees (higher education report card), are authorized.

49 (j) The legislative rules filed in the state register on the
50 nineteenth day of December, one thousand nine hundred ninety-
51 seven, relating to the board of trustees (Underwood-Smith
52 Teacher Scholarship Program), are authorized.

53 (k) The legislative rules filed in the state register on the
54 third day of September, one thousand nine hundred ninety-nine,

55 modified by the board of trustees to meet the objections of the
56 legislative oversight commission on education accountability
57 and refiled in the state register on the fourth day of November,
58 one thousand nine hundred ninety-nine, relating to the board of
59 trustees (Higher Education Adult Part-time Student Grant
60 Program), are authorized.

61 (l) The legislative rules filed in the state register on the
62 fourth day of November, one thousand nine hundred ninety-
63 nine, modified by the board of trustees to meet the objections
64 of the legislative oversight commission on education account-
65 ability and refiled in the state register on the twenty-eighth day
66 of January, two thousand, relating to the board of trustees
67 (Engineering, Science and Technology Scholarship Program),
68 are authorized.

§18B-17-3. Board of directors.

1 (a) The legislative rules filed in the state register on the
2 sixteenth day of December, one thousand nine hundred ninety-
3 one, modified by the board of directors to meet the objections
4 of the legislative oversight commission on education account-
5 ability and refiled in the state register on the twenty-first day of
6 January, one thousand nine hundred ninety-two, relating to the
7 board of directors (report card), are authorized.

8 (b) The legislative rules filed in the state register on the
9 twenty-seventh day of September, one thousand nine hundred
10 ninety-one, relating to the board of directors (equal opportunity
11 and affirmative action), are authorized.

12 (c) The legislative rules filed in the state register on the
13 fourth day of December, one thousand nine hundred ninety-one,
14 relating to the board of directors (holiday policy), are autho-
15 rized.

16 (d) The legislative rules filed in the state register on the
17 nineteenth day of March, one thousand nine hundred ninety-

18 two, as modified and refiled in the state register on the tenth
19 day of July, one thousand nine hundred ninety-two, relating to
20 the board of directors (presidential appointments, responsibili-
21 ties and evaluations), are authorized.

22 (e) The legislative rules filed in the state register on the
23 twentieth day of September, one thousand nine hundred ninety-
24 three, relating to the board of directors (acceptance of advanced
25 placement credit), are authorized.

26 (f) The legislative rules filed in the state register on the
27 tenth day of December, one thousand nine hundred ninety-
28 three, relating to the board of directors (resource allocation
29 policy), are authorized.

30 (g) The legislative rules filed in the state register on the
31 eighth day of December, one thousand nine hundred ninety-
32 three, modified by the board of directors to meet the objections
33 of the legislative oversight commission on education account-
34 ability and refiled in the state register on the eleventh day of
35 January, one thousand nine hundred ninety-four, relating to the
36 board of directors (assessment, payment and refund of fees), are
37 authorized.

38 (h) The legislative rules filed in the state register on the first
39 day of November, one thousand nine hundred ninety-three,
40 modified by the board of directors to meet the objections of the
41 legislative oversight commission on education accountability
42 and refiled in the state register on the twenty-first day of
43 December, one thousand nine hundred ninety-three, relating to
44 the board of directors (personnel administration), are autho-
45 rized.

46 (i) The legislative rules filed in the state register on the
47 twenty-seventh day of October, one thousand nine hundred
48 ninety-four, modified by the board of directors to meet the
49 objections of the legislative oversight commission on education

50 accountability and refiled in the state register on the nineteenth
51 day of December, one thousand nine hundred ninety-four,
52 relating to the board of directors (proprietary, correspondence,
53 business, occupational and trade schools), are authorized.

54 (j) The legislative rules filed in the state register on the
55 eighteenth day of April, one thousand nine hundred ninety-five,
56 relating to the board of directors (contracts and consortium
57 agreements with public schools, private schools or private
58 industry), are authorized.

59 (k) The legislative rules filed in the state register on the
60 seventeenth day of November, one thousand nine hundred
61 ninety-five, modified by the board of directors to meet the
62 objections of the legislative oversight commission on education
63 accountability and refiled in the state register on the fourth day
64 of January, one thousand nine hundred ninety-six, relating to
65 the board of directors (higher education report cards), are
66 authorized.

67 (l) The legislative rules filed in the state register on the
68 nineteenth day of December, one thousand nine hundred ninety-
69 seven, relating to the board of directors (Underwood-Smith
70 Teacher Scholarship Program), are authorized.

71 (m) The legislative rules filed in the state register on the
72 ninth day of December, one thousand nine hundred ninety-nine,
73 relating to the board of directors (Increased Flexibility for
74 Freestanding Community & Technical Colleges), are autho-
75 rized.

76 (n) The legislative rules filed in the state register on the
77 third day of September, one thousand nine hundred ninety-nine,
78 modified by the board of directors to meet the objections of the
79 legislative oversight commission on education accountability
80 and refiled in the state register on the fourth day of November,
81 one thousand nine hundred ninety-nine, relating to the board of

82 directors (Higher Education Adult Part-Time Student Grant
83 Program), are authorized.

84 (o) The legislative rules filed in the state register on the
85 fourth day of November, one thousand nine hundred ninety-
86 nine, modified by the board of directors to meet the objections
87 of the legislative oversight commission on education account-
88 ability and refiled in the state register on the twenty-eighth day
89 of January, two thousand, relating to the board of directors
90 (Engineering, Science and Technology Scholarship Program),
91 are authorized.

CHAPTER 115

(H. B. 4353 — By Delegates Cann, Williams, Kominar,
Angotti, Stemple, Perdue and Thompson)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three, chapter eighteen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state aid for students of optometry; and eliminating the requirement that the students practice optometry in this state to avoid repaying the financial aid.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN PROGRAMS.

§18C-3-2. State aid for students of optometry.

1 The board of trustees is hereby authorized to enter into a
2 contract with an educational institution or institutions outside
3 the state that offer training in optometry, by the terms of which
4 the board of trustees may obligate itself to pay the institution,
5 within the limits of any appropriation made for the purpose, a
6 stated amount per year for each West Virginia student the
7 institution will agree to accept for training in optometry.

8 The board of trustees shall each year send to any such
9 institution a certified list of all persons applying to the trustees
10 for training in optometry who are bona fide citizens and
11 residents of this state prior to the filing of their applications,
12 and who have completed either within or without the state the
13 course of study required by the institution as a prerequisite to
14 the study of optometry.

CHAPTER 116

(Com. Sub. for H. B. 4429 — By Delegates Smirl, Stemple and Romine)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-four, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to assistance in elections; and setting forth conditions under which a handicap voter may vote from an automobile outside the polling place.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**§3-1-34. Voting procedures generally; assistance to voters; voting records; penalties.**

1 (a) Any person desiring to vote in an election shall, upon
2 entering the election room, clearly state his or her name and
3 residence to one of the poll clerks who shall thereupon an-
4 nounce the same in a clear and distinct tone of voice. If that
5 person is found to be duly registered as a voter at that precinct,
6 he or she shall be required to sign his or her name in the space
7 marked "signature of voter" on the pollbook prescribed and
8 provided for the precinct. If that person is physically or
9 otherwise unable to sign his or her name, his or her mark shall
10 be affixed by one of the poll clerks in the presence of the other
11 and the name of the poll clerk affixing the voter's mark shall be
12 indicated immediately under the affixation. No ballot may be
13 given to the person until he or she so signs his or her name on
14 the pollbook or his or her signature is so affixed thereon.

15 (b) The clerk of the county commission is authorized, upon
16 verification that the precinct at which a handicapped person is
17 registered to vote is not handicap accessible, to transfer that
18 person's registration to the nearest polling place in the county
19 which is handicap accessible. Requests by these persons for a
20 transfer of registration shall be received by the county clerk no
21 later than thirty days prior to the date of the election. Any
22 handicapped person who has not made a request for a transfer
23 of registration at least thirty days prior to the date of the
24 election may vote a challenged ballot, at a handicap accessible
25 polling place in the county of his or her registration, and, if
26 during the canvass the county commission determines that the
27 person had been registered in a precinct not handicap accessi-
28 ble, the voted ballot, if otherwise valid, shall be counted. The
29 handicapped person may vote in the precinct to which the
30 registration was transferred only as long as the disability exists

31 or the precinct from which the handicapped person was
32 transferred remains inaccessible to the handicapped. To ensure
33 confidentiality of the transferred ballot, the county clerk
34 processing the ballot shall provide the voter with an unmarked
35 envelope and an outer envelope designated "challenged
36 ballot/handicapped voter." After validation of the ballot at the
37 canvass, the outer envelope shall be destroyed and the handi-
38 capped voter's ballot shall be placed with other approved
39 challenged ballots prior to removal of the ballot from the
40 unmarked envelope.

41 (c) When the voter's signature is properly on the pollbook,
42 the two poll clerks shall sign their names in the places indicated
43 on the back of the official ballot and shall deliver the ballot to
44 the voter to be voted by him or her then without leaving the
45 election room. If he or she returns the ballot spoiled to the
46 clerks, they shall immediately mark the ballot "spoiled" and it
47 shall be preserved and placed in a spoiled ballot envelope
48 together with other spoiled ballots to be delivered to the board
49 of canvassers and deliver to the voter another official ballot,
50 signed by the clerks on the reverse side as before done. The
51 voter shall thereupon retire alone to the booth or compartment
52 prepared within the election room for voting purposes and there
53 prepare his or her ballot, using a ballpoint pen of not less than
54 five inches in length or other indelible marking device of not
55 less than five inches in length. In voting for candidates in
56 general and special elections, the voter shall comply with the
57 rules and procedures prescribed in section five, article six of
58 this chapter.

59 (d) It is the duty of a poll clerk, in the presence of the other
60 poll clerk, to indicate by a check mark inserted in the appropri-
61 ate place on the registration record of each voter the fact that
62 the voter voted in the election. In primary elections the clerk
63 shall also insert thereon a distinguishing initial or initials of the

64 political party for whose candidates the voter voted. If a person
65 is challenged at the polls, the challenge shall be indicated by the
66 poll clerks on the registration record together with the name of
67 the challenger. The subsequent removal of the challenge shall
68 be recorded on the registration record by the clerk of the county
69 commission.

70 (e)(1) No voter may receive any assistance in voting unless,
71 by reason of blindness, disability, advanced age or inability to
72 read and write, that voter is unable to vote without assistance.
73 Any voter qualified to receive assistance in voting under the
74 provisions of this section may:

75 (A) Declare his or her choice of candidates to an election
76 commissioner of each political party who, in the presence of the
77 voter and in the presence of each other, shall prepare the ballot
78 for voting in the manner hereinbefore provided, and, on request,
79 shall read over to the voter the names of candidates on the
80 ballot as so prepared;

81 (B) Require the election commissioners to indicate to him
82 or her the relative position of the names of the candidates on the
83 ballot, whereupon the voter shall retire to one of the booths or
84 compartments to prepare his or her ballot in the manner
85 hereinbefore provided;

86 (C) Be assisted by any person of the voter's choice:
87 *Provided*, That assistance may not be given by the voter's
88 present or former employer or agent of that employer or by the
89 officer or agent of a labor union of which the voter is a past or
90 present member; or

91 (D) If he or she is handicapped, vote from an automobile,
92 outside the polling place or precinct, in the presence of an
93 election commissioner of each political party if all of the
94 following conditions are met:

95 (i) The polling place is not handicap accessible; and

96 (ii) No voters are voting or waiting to vote inside the
97 polling place.

98 (2) Any voter who requests assistance in voting but who is
99 believed not to be qualified for such assistance under the
100 provisions of this section shall nevertheless be permitted to vote
101 a challenged ballot with the assistance of any person herein
102 authorized to render assistance.

103 (3) Any one or more of the election commissioners or poll
104 clerks in the precinct may challenge the ballot on the ground
105 that the voter thereof received assistance in voting it when in
106 his or their opinion that the person who received assistance in
107 voting is not so illiterate, blind, disabled or of such advanced
108 age as to have been unable to vote without assistance. The
109 election commissioner or poll clerk or commissioners or poll
110 clerks making the challenge shall enter the challenge and reason
111 therefor on the form and in the manner prescribed or authorized
112 by article three of this chapter.

113 (4) An election commissioner or other person who assists
114 a voter in voting:

115 (A) May not in any manner request, or seek to persuade, or
116 induce the voter to vote any particular ticket or for any particu-
117 lar candidate or for or against any public question, and must not
118 keep or make any memorandum or entry of anything occurring
119 within the voting booth or compartment, and must not, directly
120 or indirectly, reveal to any person the name of any candidate
121 voted for by the voter, or which ticket he or she had voted, or
122 how he or she had voted on any public question, or anything
123 occurring within the voting booth or compartment or voting
124 machine booth, except when required pursuant to law to give
125 testimony as to the matter in a judicial proceeding; and

126 (B) Shall sign a written oath or affirmation before assisting
127 the voter on a form prescribed by the secretary of state stating
128 that he or she will not override the actual preference of the voter
129 being assisted, attempt to influence the voter's choice or
130 mislead the voter into voting for someone other than the
131 candidate of voter's choice. The person assisting the voter shall
132 also swear or affirm that he or she believes that the voter is
133 voting free of intimidation or manipulation: *Provided*, That no
134 person providing assistance to a voter is required to sign an oath
135 or affirmation where the reason for requesting assistance is the
136 voter's inability to vote without assistance because of blindness
137 as defined in section three, article fifteen, chapter five of this
138 code, and the inability to vote without assistance because of
139 blindness is certified in writing by a physician of the voter's
140 choice and is on file in the office of the clerk of the county
141 commission.

142 (5) In accordance with instructions issued by the secretary
143 of state, the clerk of the county commission shall provide a
144 form entitled "list of assisted voters," the form of which list
145 shall likewise be prescribed by the secretary of state. The
146 commissioners shall enter the name of each voter receiving
147 assistance in voting the ballot, together with the poll slip
148 number of that voter and the signature of the person or the
149 commissioner from each party who assisted the voter. If no
150 voter has been assisted in voting the ballot as herein provided,
151 the commissioners shall likewise make and subscribe to an oath
152 of that fact on the list.

153 (f) After preparing the ballot the voter shall fold the same
154 so that the face is not exposed and so that the names of the poll
155 clerks thereon are seen. The voter shall then announce his or her
156 name and present his or her ballot to one of the commissioners
157 who shall hand the same to another commissioner, of a different
158 political party, who shall deposit it in the ballot box, if the

159 ballot is the official one and properly signed. The commissioner
160 of election may inspect every ballot before it is deposited in the
161 ballot box, to ascertain whether it is single, but without unfold-
162 ing or unrolling it, so as to disclose its content. When the voter
163 has voted, he or she shall retire immediately from the election
164 room, and beyond the sixty-foot limit thereof, and may not
165 return, except by permission of the commissioners.

166 (g) Following the election, the oaths or affirmations
167 required by this section from those assisting voters together
168 with the “list of assisted voters,” shall be returned by the
169 election commissioners to the clerk of the county commission
170 along with the election supplies, records and returns, who shall
171 make the oaths, affirmations and list available for public
172 inspection and who shall preserve these for a period of twenty-
173 two months or until disposition is authorized or directed by the
174 secretary of state, or court of record.

175 (h) Any person making an oath or affirmation required
176 under the provisions of this section who knowingly swears
177 falsely, or any person who counsels, advises, aids or abets
178 another in the commission of false swearing under this section,
179 is guilty of a misdemeanor and, upon conviction thereof, shall
180 be fined not more than one thousand dollars, or imprisoned in
181 the county or regional jail for a period of not more than one
182 year, or both fined and imprisoned.

183 (i) Any election commissioner or poll clerk who authorizes
184 or provides unchallenged assistance to a voter when the voter
185 is known to the election commissioner or poll clerk not to
186 require assistance in voting, is guilty of a felony and, upon
187 conviction thereof, shall be fined not more than five thousand
188 dollars, or imprisoned in a state correctional facility for a period
189 of not less than one year nor more than five years, or both fined
190 and imprisoned.

CHAPTER 117

(Com. Sub. for H. B. 4033 — By Delegate Staton)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen, relating to the time for commencement of civil and criminal enforcement proceedings under environmental statutes.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

§22-1-16. Time for commencing proceedings.

1 Notwithstanding any provision of this code to the contrary,
2 no action, suit or proceeding for the administrative, civil or
3 criminal enforcement of any provision of this chapter may be
4 entertained unless commenced within three years from the date
5 the right to bring the action, suit or proceeding has accrued. The
6 limitation of this section applies, but is not limited to, actions,
7 suits or proceedings for the recovery of any fine, penalty or
8 forfeiture, pecuniary or otherwise. This section does not apply
9 to the enforcement of any provision when the violation is part
10 of a continuing violation and the last act of the continuing
11 violation occurred within three years from the date of the
12 commencement of the enforcement action.

CHAPTER 118

(Com. Sub. for S. B. 595 — By Senators Helmick, Fanning,
Love, Anderson and Ross)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-three-a, relating to legislative findings regarding the coal industry and requiring prior legislative approval of any policies developed by or rules promulgated by the division of environmental protection arising from recommendations from the United States environmental protection agency or in response to an environmental impact study participated in the year one thousand nine hundred ninety-nine.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23A. ENVIRONMENTAL IMPACT STATEMENT.

§22-23A-1. Findings.

§22-23A-2. Requiring department of environmental protection to refrain from implementing or adopting rules or making certain commitments absent legislative approval; reporting required.

§22-23A-1. Findings.

1 The Legislature finds:

2 (1) The coal industry is and has been for many years an
3 integral part of the economic and social fabric of the state;

4 (2) That whole communities in this state rely in large part,
5 if not completely, on the coal industry for their continuing
6 vitality;

7 (3) That over the last decade changes in the mining industry
8 have necessitated the development of diverse mining tech-
9 niques;

10 (4) The coal industry remains essential to economic growth
11 and progress in West Virginia and the United States. Coal
12 continues to sustain our economy and provides the financial
13 security as future diversity and expansion of our job base is
14 explored;

15 (5) The state of West Virginia, through the division of
16 environmental protection, entered into an agreement on the
17 twenty-third day of December, one thousand nine hundred
18 ninety-eight, which imposed additional controls and oversight
19 on the states' mine permitting process by the U. S. corps of
20 engineers, U. S. environmental protection agency, U. S. office
21 of surface mining and the U. S. fish and wildlife service;

22 (6) The agreement of the twenty-third day of December,
23 one thousand nine hundred ninety-eight further authorized the
24 division of environmental protection, in conjunction with the
25 U.S. environmental protection agency, the U. S. fish and
26 wildlife service, the U. S. army corps of engineers and the U.S.
27 office of surface mining to undertake a two-year study of the
28 effects of mountaintop mining practices which remains incom-
29 plete as of the effective date of this article;

30 (7) The state has committed significant funding and other
31 resources to the study;

32 (8) The study is unprecedented in this country in its purpose
33 and scope;

34 (9) The environmental impact statement which will be
35 prepared upon the completion of the study may give rise to
36 consideration of new or revised regulations, policies, guidelines
37 or requirements which are untried or untested anywhere in this
38 country;

39 (10) It is imperative that balance be sought between state
40 rules designed to regulate and protect the environment and the
41 state regulations designed to enhance the ability of the state to
42 continue to market West Virginia coal throughout the nation
43 and the world; and

44 (11) Requiring West Virginia, through new or amended
45 policies, regulations, enforcement or permitting actions to meet
46 requirements more stringent than those otherwise applicable in
47 other states by the federal government and unnecessary for
48 environmental protection would unfairly affect interstate
49 competition for new mining development and employment
50 opportunities.

51 Wherefore the Legislature finds that prior to the implemen-
52 tation of any recommendation arising from the study that the
53 Legislature has an obligation to review the same to protect the
54 interests of the state and the citizens.

**§22-23A-2. Requiring department of environmental protection to
refrain from implementing or adopting rules or
making certain commitments absent legislative
approval; reporting required.**

1 (a) The division of environmental protection may not enter
2 into any legally enforceable commitments related to the
3 implementation of any recommendation which results from the
4 mountaintop mining/valley fill environmental impact statement

5 with any agency of the federal government unless the terms of
6 the commitment are reported to the Legislature.

7 (b) The division of environmental protection may not adopt
8 or modify any rule, in whole or in part, to implement a recom-
9 mendation resulting from the mountaintop mining/valley fill
10 environmental impact statement except by legislative rule
11 promulgated pursuant to article three, chapter twenty-nine-a of
12 this code.

13 (c) Within ninety days of receipt of any final recommenda-
14 tion from any agency of the federal government related to the
15 mountaintop mining/valley fill environmental impact statement,
16 the director of the West Virginia division of environmental
17 protection shall forward such recommendation, embodied in a
18 report, along with all scientific facts or technical evidence
19 relating to and substantiating such recommendation, to the
20 governor, president of the Senate and the speaker of the House
21 of Delegates.

CHAPTER 119

(S. B. 448 — By Senators Bowman, Bailey, Ball,
Boley, Dawson, Kessler, McCabe, Minard, Minear, Redd and Snyder)

[Passed March 8, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend and reenact sections three and four, article four, chapter twenty-two-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the county and regional solid waste authorities; and the appointments to the authorities by the division of environmental protection and the public service commission.

Be it enacted by the Legislature of West Virginia:

That sections three and four, article four, chapter twenty-two-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. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

§22C-4-3. Creation of county solid waste authority; appointment to board of directors; vacancies.

§22C-4-4. Establishment of regional solid waste authorities authorized; successor to county solid waste authorities; appointments to board of directors; vacancies.

§22C-4-3. Creation of county solid waste authority; appointment to board of directors; vacancies.

1 (a) Each and every county solid waste authority authorized
2 and created by the county commission of any county pursuant
3 to former article sixteen, chapter seven of this code is hereby
4 abolished on and after the first day of January, one thousand
5 nine hundred eighty-nine. On and after the first day of January,
6 one thousand nine hundred eighty-nine, a new county solid
7 waste authority is hereby created and established as a public
8 agency in every county of the state and is the successor to each
9 county solid waste authority which may have been created by
10 the county commission: *Provided*, That such county solid waste
11 authorities shall not be established or shall cease to exist, as the
12 case may be, in those counties which establish a regional solid
13 waste authority pursuant to section four of this article. The solid
14 waste management board may require a county solid waste
15 authority to cooperate and participate in programs with other
16 authorities if the need arises.

17 (b) The authority board of directors is comprised of five
18 members who are appointed as follows: One by the director of
19 the division of environmental protection, two by the county
20 commission, one by the board of supervisors for the soil
21 conservation district in which the county is situated and one by

22 the chairman of the public service commission. The members
23 of the board are appointed for terms of four years for which the
24 initial shall start on the first day of July, one thousand nine
25 hundred eighty-eight: *Provided*, That the first two members
26 appointed by the county commission shall be appointed to
27 initial terms of two and four years, respectively, and for terms
28 of four years for each appointment thereafter: *Provided*,
29 *however*, That on and after the first day of July, two thousand,
30 the member appointed by the director of the division of
31 environmental protection shall be appointed to an initial term
32 of one year and for a term of four years for each appointment
33 thereafter: *Provided further*, That the member appointed by the
34 chairman of the public service commission shall be appointed
35 to an initial term of three years and for a term of four years for
36 each appointment thereafter. The members of the board shall
37 receive no compensation for their service thereon but shall be
38 reimbursed for their actual expenses incurred in the discharge
39 of their duties. Vacancies in the office of member of the board
40 of directors shall be filled for the balance of the remaining term
41 by the appropriate appointing authority within sixty days after
42 such vacancy occurs. No member who has any financial interest
43 in the collection, transportation, processing, recycling or the
44 disposal of refuse, garbage, solid waste or hazardous waste
45 shall vote or act on any matter which directly affects the
46 member's personal interests.

**§22C-4-4. Establishment of regional solid waste authorities
authorized; successor to county solid waste au-
thorities; appointments to board of directors;
vacancies.**

1 (a) On and after the first day of January, one thousand nine
2 hundred eighty-nine, any two or more counties within the same
3 solid waste shed and with the approval of the solid waste
4 management board, may establish a regional solid waste
5 authority. Such a regional solid waste authority is a public

6 agency and is the successor to any county solid waste authority
7 existing on the date of said approval by the solid waste manage-
8 ment board. The solid waste management board may require a
9 county authority to cooperate and participate in programs with
10 other county and regional authorities if the need arises.

11 (b) The board of directors of the regional solid waste
12 authority are appointed as follows: One by the director of the
13 division of environmental protection, two by the county
14 commission of each county participating therein, one by the
15 board of supervisors for each soil conservation district in which
16 a county of the region is situated, one by the chairman of the
17 public service commission and two municipal representatives
18 from each county having one or more participating municipality
19 to be selected by the mayors of the participating municipality
20 from each such county. The members of the board are ap-
21 pointed for terms of four years for which the initial terms start
22 on the first day of July, one thousand nine hundred eighty-eight:
23 *Provided*, That the members appointed by the county commis-
24 sion shall be appointed to initial terms of two and four years,
25 respectively, and to terms of four years after the expiration of
26 each such initial term: *Provided, however*, That on and after the
27 first day of July, two thousand, the member appointed by the
28 director of the division of environmental protection shall be
29 appointed to an initial term of one year and for a term of four
30 years for each appointment thereafter: *Provided further*, That
31 the member appointed by the chairman of the public service
32 commission shall be appointed to an initial term of three years
33 and for a term of four years for each appointment thereafter:
34 *And provided further*, That of the two members appointed by
35 the mayors from each county, one shall be appointed to an
36 initial term of one year and for a term of four years for each
37 appointment thereafter, and one shall be appointed to an initial
38 term of three years and for a term of four years for each
39 appointment thereafter. The members of the board shall receive
40 no compensation for their service thereon but shall be reim-

41 bursed their actual expenses incurred in the discharge of their
42 duties. Vacancies in the office of member of the board of
43 directors shall be filled for the balance of the remaining term by
44 the appropriate appointing authority within sixty days after such
45 vacancy occurs. No member who has any financial interest in
46 the collection, transportation, processing, recycling or the
47 disposal of refuse, garbage, solid waste or hazardous waste
48 shall vote or act on any matter which directly affects the
49 member's personal interests.

CHAPTER 120

(Com. Sub. for S. B. 415 — By Senators Snyder and Anderson)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend article four, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-three, relating to regulating, restricting and placing a prohibition on additional exotic entertainment facilities; requiring regulation and licenses by the alcohol beverage control commissioner; providing definitions; providing effective date; prohibiting certain acts; prohibiting minors in licensed facilities; providing for application, renewal, license fee and restrictions on transfer; requiring commissioner to promulgate legislative rules to effectuate the same; and providing for unlawful acts and penalties to be imposed therefor.

Be it enacted by the Legislature of West Virginia:

That article four, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding

thereto a new section, designated section twenty-three, to read as follows:

ARTICLE 4. LICENSES.

§60-4-23. License to operate a facility where exotic entertainment is offered; definitions; restrictions, regulations and prohibitions; prohibitions against minors; application, renewal, license fee, restrictions on transfer; effective date; legislative rules; unlawful acts and penalties imposed.

1 (a) For purposes of this section:

2 (1) "Exotic entertainment" means live nude dancing, nude
3 service personnel or live nude entertainment, and "nude" means
4 any state of undress in which male or female genitalia or female
5 breasts are exposed.

6 (2) "Places set apart for traditional family-oriented
7 naturism" means family nudist parks, clubs and resorts char-
8 tered by the American association for nude recreation or the
9 naturist society, including all of their appurtenant business
10 components, and also including places temporarily in use for
11 traditional family-oriented naturist activities.

12 (b) No person may operate any commercial facility where
13 exotic entertainment is permitted or offered unless such person
14 is granted a license by the commissioner to operate a facility
15 where exotic entertainment may be offered. The provisions of
16 this subsection apply whether or not alcoholic liquor, wine or
17 nonalcoholic beer is legally kept, served, sold or dispensed in
18 a facility, or purchased for use in a facility, or permitted to be
19 brought by others into a facility and whether or not such person
20 holds any other license or permit issued pursuant to chapter
21 sixty of this code.

22 (c) A licensee is subject to all the regulatory provisions of
23 article seven of this chapter, whether or not the licensee is
24 otherwise a private club. The commissioner shall have all the
25 powers and authorization granted under article seven of this
26 chapter to regulate, restrict and sanction a licensee under this
27 section. No licensee may purchase, keep, sell, serve, dispense
28 or purchase for use in a licensed facility, or permit others to
29 bring into the facility, any alcoholic liquor, wine or nonintoxi-
30 cating beer without having the appropriate license therefor. No
31 licensee may operate a private club without being licensed
32 therefor.

33 (d) No person or licensee may allow a person under the age
34 of eighteen years to perform as an exotic entertainer. No person
35 under the age of twenty-one years, other than a performing
36 exotic entertainer, may be allowed to be in a commercial
37 facility on any day on which any exotic entertainment is offered
38 therein. No licensee may hold special nonalcoholic entertain-
39 ment events for persons under age twenty-one pursuant to the
40 provisions of section eight, article seven of this chapter in the
41 licensed facility.

42 (e) Any person operating a commercial facility where
43 exotic entertainment is offered on the effective date of this
44 section may apply to the commissioner for a license to operate
45 a facility where exotic entertainment may be offered. Applica-
46 tions must be filed with the commissioner on or before the first
47 day of July, two thousand; thereafter no application for license
48 may be received by the commissioner. The commissioner may
49 issue a license to a person complying with the provisions of this
50 chapter. Upon application for renewal, the commissioner shall
51 annually, on the first day of July of each succeeding year, renew
52 the license of any licensee then in compliance with the provi-
53 sions of this chapter. The commissioner shall specify the form
54 of application and information required of applicants and

55 licensees. No license which has lapsed, been revoked or expired
56 without renewal may be reissued.

57 (f) A person to whom a license is issued or renewed under
58 the provisions of this section shall pay annually to the commis-
59 sioner a license fee of three thousand dollars. A municipal
60 corporation wherein any such licensee is located shall issue a
61 municipal license to any person to whom the commissioner has
62 issued a license and may impose a license fee not in excess of
63 the state license fee.

64 (g) A person shall not sell, assign or otherwise transfer a
65 license without the prior written approval of the commissioner.
66 For purposes of this section, the merger of a licensee or the sale
67 of more than fifty percent of the outstanding stock of or
68 partnership interests in the licensee shall be deemed to be a
69 sale, assignment or transfer of a license under this section. A
70 license shall not be transferred to another location, except
71 within the county of original licensure. A transferee of a
72 licensed facility may apply for reissuance of the transferor's
73 license if the transferee applicant otherwise qualifies for a
74 license. The commissioner is authorized to propose the promul-
75 gation of a legislative rule in accordance with the provisions of
76 chapter twenty-nine-a of this code, to implement the provisions
77 of this subsection.

78 (h) This section shall be effective upon passage by the
79 Legislature in the year two thousand. On or before the first day
80 of May, two thousand, the commissioner shall promulgate an
81 emergency legislative rule pursuant to the provisions of chapter
82 twenty-nine-a of this code to effectuate the provisions of this
83 section, and shall propose a legislative rule therefor, for
84 consideration by the Legislature, prior to the last day of
85 December, two thousand.

86 (i) Any person who violates any provision of this section,
87 or principal of a firm or corporation which violates any provi-

88 sion of this section, or licensee, agent, employee or member of
89 any licensee who violates any provision of this section, or who
90 violates any of the provisions of section twelve, article seven of
91 this chapter, on the premises of a licensed facility, is guilty of
92 a misdemeanor and, upon conviction thereof, shall be fined not
93 less than one thousand dollars nor more than three thousand
94 dollars, or imprisoned for a period not to exceed one year, or
95 both so fined and imprisoned.

96 (j) The provisions of this section do not apply to places set
97 apart for traditional family-oriented naturist activities.

CHAPTER 121

(Com. Sub. for S. B. 170 — By Senators Ball,
Mitchell, Kessler, Ross and Hunter)

[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to firearms; prohibition against certain persons possessing firearms; procedures for regaining one's ability to possess firearms; offenses; and penalties.

Be it enacted by the Legislature of West Virginia:

That section seven, article seven, 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 7. DANGEROUS WEAPONS.

§61-7-7. Persons prohibited from possessing firearms; classifications; reinstatement of rights to possess; offenses; penalties.

1 (a) Except as provided for in this section, no person shall
2 possess a firearm as such is defined in section two of this article
3 who:

4 (1) Has been convicted in any court of a crime punishable
5 by imprisonment for a term exceeding one year;

6 (2) Is addicted to alcohol;

7 (3) Is an unlawful user of or addicted to any controlled
8 substance;

9 (4) Has been adjudicated as a mental defective or who has
10 been involuntarily committed to a mental institution;

11 (5) Being an alien is illegally or unlawfully in the United
12 States;

13 (6) Has been discharged from the armed forces under
14 dishonorable conditions;

15 (7) Is subject to a domestic violence protective order that:

16 (A) Was issued after a hearing of which such person
17 received actual notice and at which such person had an opportu-
18 nity to participate;

19 (B) Restrains such person from harassing, stalking or
20 threatening an intimate partner of such person or child of such
21 intimate partner or person, or engaging in other conduct that
22 would place an intimate partner in reasonable fear of bodily
23 injury to the partner or child; and

24 (C) (i) Includes a finding that such person represents a
25 credible threat to the physical safety of such intimate partner or
26 child; or

27 (ii) By its terms explicitly prohibits the use, attempted use
28 or threatened use of physical force against such intimate partner
29 or child that would reasonably be expected to cause bodily
30 injury; or

31 (8) Has been convicted in any court of a misdemeanor
32 crime of domestic violence.

33 Any person who violates the provisions of this subsection
34 shall be guilty of a misdemeanor and, upon conviction thereof,
35 shall be fined not less than one hundred dollars nor more than
36 one thousand dollars or confined in the county jail for not less
37 than ninety days nor more than one year, or both.

38 (b) Notwithstanding the provisions of subsection (a) of this
39 section, any person:

40 (1) Who has been convicted in this state or any other
41 jurisdiction of a felony crime of violence against the person of
42 another or of a felony sexual offense; or

43 (2) Who has been convicted in this state or any other
44 jurisdiction of a felony controlled substance offense involving
45 a schedule I controlled substances other than marijuana, a
46 schedule II or a schedule III controlled substance as such are
47 defined in sections two hundred four, two hundred five and two
48 hundred six, article two, chapter sixty-a of this code and who
49 possesses a firearm as such is defined in section two of this
50 article shall be guilty of a felony and, upon conviction thereof,
51 shall be confined in a state correctional facility for not more
52 than five years or fined not more than five thousand dollars, or
53 both. The provisions of subsection (c) of this section shall not
54 apply to persons convicted of offenses referred to in this
55 subsection or to persons convicted of a violations of this
56 subsection.

57 (c) Any person prohibited from possessing a firearm by the
58 provisions of subsection (a) of this section may petition the

59 circuit court of the county in which he or she resides to regain
60 the ability to possess a firearm and if the court finds by clear
61 and convincing evidence that the person is competent and
62 capable of exercising the responsibility concomitant with the
63 possession of a firearm, the court may enter an order allowing
64 the person to possess a firearm if such possession would not
65 violate any federal law.

CHAPTER 122

(Com. Sub. for H. B. 4470 — By Mr. Speaker, Mr. Kiss,
and Delegates Michael and Trump)

[Passed March 8, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight-b, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section fourteen, article four, chapter twelve of said code, all relating to state funds received by volunteer and part volunteer fire companies and departments; allowing funds to be expended on operating expenses; prohibiting the commingling of state funds with other funds; allowing the joint committee on government and finance to determine the amount of the annual expenditure filing fee; providing penalties for not filing statement of annual expenditures and filing late; requiring cooperation with the legislative auditor and providing a penalty for noncooperation; and requiring the state auditor to audit state funds received by volunteer and part volunteer fire companies and departments under certain circumstances.

Be it enacted by the Legislature of West Virginia:

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

Chapter

8. Municipal Corporations.

12. Public Moneys and Securities.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-8b. Authorized expenditures of revenues from the municipal pensions and protection fund and the fire protection fund.

1 Revenues allocated to volunteer and part volunteer fire
2 companies and departments may be expended only for the items
3 listed in subdivisions (a) through (k) of this section.

4 Funds received from the state for volunteer and part
5 volunteer fire companies and departments, pursuant to sections
6 fourteen-d and thirty-three, article three, and section sixteen-a,
7 article twelve, all of chapter thirty-three of this code, may not
8 be commingled with funds received from any other source.
9 Expenditures may be made for the following:

10 (a) Personal protective equipment, including protective
11 head gear, bunker coats, pants, boots, combination of bunker
12 pants and boots, coats and gloves;

13 (b) Equipment for compliance with the national fire
14 protection standard or automotive fire apparatus, NFPA-1901;

15 (c) Compliance with insurance service office recommenda-
16 tions relating to fire departments;

17 (d) Rescue equipment, communications equipment and
18 ambulance equipment: *Provided*, That no moneys received
19 from the municipal pensions and protection fund or the fire
20 protection fund may be used for equipment for personal
21 vehicles owned or operated by volunteer fire company or
22 department members;

23 (e) Capital improvements reasonably required for effective
24 and efficient fire protection service and maintenance of the
25 capital improvements;

26 (f) Retirement of debts;

27 (g) Payment of utility bills;

28 (h) Payment of the cost of immunizations, including any
29 laboratory work incident to the immunizations, for firefighters
30 against hepatitis-b and other blood borne pathogens: *Provided*,
31 That the vaccine shall be purchased through the state immuni-
32 zation program or from the lowest cost vendor available:
33 *Provided, however*, That volunteer and part volunteer fire
34 companies and departments shall seek to obtain no cost
35 administration of the vaccinations through local boards of
36 health: *Provided further*, That in the event any volunteer or part
37 volunteer fire company or department is unable to obtain no
38 cost administration of the vaccinations through a local board of
39 health, the company or department shall seek to obtain the
40 lowest cost available for the administration of the vaccinations
41 from a licensed health care provider;

42 (i) Any filing fee required to be paid to the legislative
43 auditor's office under section fourteen, article four, chapter
44 twelve of this code relating to sworn statements of annual
45 expenditures submitted by volunteer or part volunteer fire
46 companies or departments that receive state funds or grants;

47 (j) Property/casualty insurance premiums for protection and
48 indemnification against loss or damage or liability; and

49 (k) Operating expenses reasonably required in the normal
50 course of providing effective and efficient fire protection
51 service, which include, but are not limited to, gasoline, bank
52 fees, postage and accounting costs.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-14. Audits of corporations, associations or other organizations which receive state funds or grants.

1 (a) Any corporation, association or other organization in
2 West Virginia, whether nonprofit or for profit, which receives
3 state funds or grants in the amount of fifteen thousand dollars
4 or more shall file an audit of the disbursement of funds with the
5 legislative auditor's office. The audit shall be filed within two
6 years of the disbursement of funds or grants by the grantee and
7 shall be made by an independent certified public accountant at
8 the cost of the corporation, association or other organization
9 and shall show that the funds or grants were spent for the
10 purposes intended when the grant was made.

11 (b) Audits of state funds or grants under fifteen thousand
12 dollars may be authorized by the joint committee on govern-
13 ment and finance to be conducted by the legislative auditor's
14 office, at no cost to the grantee: *Provided*, That volunteer fire
15 departments satisfy the audit requirements of this section by
16 submitting a sworn statement of annual expenditures to the
17 legislative auditor's office, along with a filing fee of seventy-
18 five dollars, on or before the fourteenth day of February of each
19 year, if the volunteer fire department elects not to be audited.
20 The sworn statement of expenditures shall be signed by the
21 chief or director of the volunteer fire department, and shall be
22 made under oath and acknowledged before a notary public. An
23 additional filing fee of twenty-five dollars shall be included
24 with the sworn statement of annual expenditures if the state-
25 ment is submitted between the fifteenth day of February and the

26 fifteenth day of March. An additional filing fee of fifty dollars
27 shall be included with the sworn statement of annual expendi-
28 tures if the statement is submitted between the sixteenth day of
29 March and the fifteenth day of April. If the sworn statement is
30 not submitted on or before the fifteenth day of April the
31 volunteer fire department shall file an audit of the disbursement
32 of funds, made by an independent certified public accountant,
33 with the legislative auditor's office no later than the first day of
34 July. The audit shall be made at the cost of the volunteer fire
35 department. If the audit made by the independent certified
36 public accountant is not filed with the legislative auditor by the
37 first day of July, the legislative auditor shall notify the state
38 treasurer who shall withhold payment of one thousand dollars
39 from any amount that would otherwise be distributed to the fire
40 department under the provisions of sections fourteen-d and
41 thirty-three, article three, and section sixteen-a, article twelve,
42 all of chapter thirty-three of this code, and pay the amount
43 withheld to the fund from which it was distributed to be
44 redistributed the following year pursuant to the applicable
45 provisions of those sections. If the volunteer fire department
46 does not timely file a sworn statement of annual expenditures
47 or an audit of the disbursement of funds, made by an independ-
48 ent certified public accountant, with the legislative auditor's
49 office for three consecutive years, the legislative auditor shall
50 notify the state treasurer who shall withhold payment of any
51 amount that would otherwise be distributed to the fire depart-
52 ment under the provisions of sections fourteen-d and
53 thirty-three, article three, and section sixteen-a, article twelve,
54 all of chapter thirty-three of this code, and pay the amount
55 withheld to the fund from which it was distributed to be
56 redistributed the following year pursuant to the applicable
57 provisions of those sections.

58 (c) The office of the legislative auditor may assign an
59 employee or employees to perform audits at the direction of the
60 legislative auditor of the disbursement of funds or grants to

61 volunteer fire departments. The volunteer fire department shall
62 cooperate with the legislative auditor, the legislative auditor's
63 employees and the state auditor in performing their duties under
64 this section. If the legislative auditor determines a volunteer fire
65 department is not cooperating, the legislative auditor shall
66 notify the state treasurer who shall withhold payment of any
67 amount that would otherwise be distributed to the fire depart-
68 ment under the provisions of sections fourteen-d and thirty-
69 three, article three, and section sixteen-a, article twelve, all of
70 chapter thirty-three of this code, until the legislative auditor
71 informs the treasurer that the fire department has cooperated as
72 required by this section. The state treasurer shall pay the
73 amount withheld into a special revenue account hereby created
74 in the state treasury and designated the "Volunteer Fire Depart-
75 ment Audit Account". If after one year from payment of the
76 amount withheld into the special revenue account, the legisla-
77 tive auditor informs the state treasurer of continued
78 noncooperation by the fire department, the state treasurer shall
79 pay the amount withheld to the fund from which it was distrib-
80 uted to be redistributed the following year pursuant to the
81 applicable provisions of those sections.

82 (d) Filing fees paid by volunteer fire departments pursuant
83 to this section shall be paid into a special revenue account
84 created in the state treasury known as the "Special Legislative
85 Audit Fund". Expenditures from the fund are authorized to be
86 made by the legislative auditor's office solely for the purposes
87 of payment of costs associated with the audits conducted
88 pursuant to this section. Any person who files a fraudulent
89 sworn statement of expenditures under this section is guilty of
90 a felony and, upon conviction thereof, shall be fined not less
91 than one thousand dollars nor more than five thousand dollars,
92 or imprisoned in a state correctional facility for not less than
93 one year nor more than five years, or both fined and impris-
94 oned.

95 (e) Whenever the state auditor performs an audit of a
96 volunteer fire department for any purpose the auditor shall also
97 conduct an audit of other state funds received by the fire
98 department pursuant to sections fourteen-d and thirty-three,
99 article three, and section sixteen-a, article twelve, all of chapter
100 thirty-three of this code. The auditor shall send a copy of any
101 such audit to the legislative auditor. The legislative auditor may
102 accept an audit performed by the auditor in lieu of performing
103 an audit under this section.

CHAPTER 123

(Com. Sub. for H. B. 4568 — By Delegates Martin,
Michael, Mezzatesta and Stemple)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article six, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section forty-eight, article three of said chapter, relating to exempting the state fire marshal from certain department of administration rules and requirements for vehicle and aircraft.

Be it enacted by the Legislature of West Virginia:

That article six, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section forty-eight, article three of said chapter be amended and reenacted, to read as follows:

ARTICLE 3. PURCHASING DIVISION.

***§5A-3-48. Travel rules; exceptions.**

***Clerk's Note:** This section was also amended by S. B. 653 (Chapter 100), which passed subsequent to this act.

1 (a) The secretary of administration shall promulgate rules
2 relating to the ownership, purchase, use, storage, maintenance
3 and repair of all motor vehicles and aircraft owned by the state
4 of West Virginia and in the possession of any department,
5 institution or agency thereof: *Provided*, That the provisions of
6 sections forty-eight through fifty-three of this article do not
7 apply to the division of highways of the department of transpor-
8 tation, the West Virginia state police, the division of natural
9 resources, the division of forestry, the department of agricul-
10 ture, the office of the state fire marshal and the higher education
11 governing boards and their institutions: *Provided, however*,
12 That the higher education governing boards and their institu-
13 tions shall report annually to the secretary of education and the
14 arts and the legislative oversight commission on education
15 accountability in a form and manner as required by the secre-
16 tary of education and the arts. The report shall include at least
17 the following: The number of vehicles purchased and the
18 purchase price, the number of donated vehicles, and the cost of
19 lease agreements on leased vehicles.

20 (b) If, in the judgment of the secretary of administration,
21 economy or convenience indicate the expediency thereof, the
22 secretary may require all vehicles and the aircraft subject to
23 regulation by this article, or those he or she may designate, to
24 be kept in garages and other places of storage, and to be made
25 available in a manner and under the terms necessary for the
26 official use of any departments, institutions, agencies, officers,
27 agents and employees of the state as designated by the secretary
28 in rules promulgated pursuant to this section. The secretary may
29 administer the travel regulations promulgated by the governor
30 in accordance with section eleven, article three, chapter twelve
31 of this code, unless otherwise determined by the governor.

32 (c) Provisions of this section relating to the governing
33 boards of higher education and the institutions under their
34 jurisdiction shall expire on the first day of July, two thousand
35 one, unless the continuation thereof is authorized by the
36 legislative oversight commission on education accountability.

CHAPTER 124

(H. B. 4447 — By Delegates Douglas, Martin, Varner,
Kuhn, Stalnaker and Willison)

[Passed March 11, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article nineteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing that a master's degree in forestry satisfies the educational requirement for registered professional foresters.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 19. FORESTERS.

§30-19-6. General requirements and categories of licensure.

1 (a) The following is the minimum evidence required to
2 satisfy the board that the applicant is qualified for licensure and
3 entitled to use the title of "registered professional forester,"
4 "professional forester," "forester" or other title connoting to the
5 general public that the applicant is a registered forester quali-
6 fied to perform professional forestry services:

7 (1) Graduation from a four-year degree program or master's
8 degree program in professional forestry from an accredited
9 college or university plus two years related experience in the
10 field of forestry as defined by rule of the board; or

11 (2) Graduation from a two-year technical forestry program
12 in a program recognized by the society of American foresters,
13 plus a bachelor's degree from an accredited college or univer-
14 sity and four years related experience in the field of forestry as
15 defined by rule of the board.

16 (b) The following is the minimum evidence required to
17 satisfy the board that the applicant is qualified for licensure and
18 entitled to use the title of "registered forestry technician" or
19 "forestry technician": Graduation from a two-year technical
20 forestry program recognized by the society of American
21 foresters and four years related experience in the field of
22 forestry as defined by rule of the board.

23 (c) Evidence of graduation and completion of required
24 courses shall be presented by means of an official transcript
25 which shall be filed permanently with the board. Upon the
26 effective date of this section, the board may adopt an interpre-
27 tive rule pursuant to the provisions of article three, chapter
28 twenty-nine-a of this code, for the limited purpose of providing
29 information and guidance to prospective applicants and the
30 public related to the qualifying experience considered accept-
31 able to the board pursuant to this section and to the job titles
32 acceptable for use by persons obtaining qualifying experience,
33 until such time as a legislative rule is made effective. On or
34 before the first day of July, one thousand nine hundred ninety-
35 nine, the board shall propose for legislative approval pursuant
36 to the provisions of article three, chapter twenty-nine-a of this
37 code, rules authorized by this article and article one of this
38 chapter, which rules must include provisions relating to a code
39 of ethics for registered professional foresters and registered
40 forestry technicians.

CHAPTER 125

(Com. Sub. for S. B. 22 — By Senators Jackson,
Helmick, Ross, Ball and Sharpe)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article six, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to embalmers and funeral directors; requiring board members to take oath; allowing for selection of officers; providing for salary and expenses; requiring treasurer to post bond; authorizing board to establish duties and compensation of employees; allowing for meetings to be set as needed; establishing a quorum; establishing powers and duties of board; authorizing licensure; authorizing legislative rules; providing for continuing education; and authorizing continuing education through audio or video recordings.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. EMBALMERS AND FUNERAL DIRECTORS.

§30-6-3. Oath of members of board; officers; salary and expenses; bond of treasurer; meetings; powers and duties; notice; rules; school of instruction; inspection.

1 (a) Members of said board, before entering upon their
2 duties, shall take and subscribe to the oath of office prescribed
3 by the secretary of state.

4 (b) Said board shall select from its own members a presi-
5 dent, a secretary and a treasurer. Each member shall be reim-
6 bursed for his or her traveling expenses, incident to his or her

7 attendance upon the business of the board, and in addition
8 thereto, the sum of fifty dollars per day for each day actually
9 spent by the member upon the business of the board. The
10 secretary shall receive an annual salary of not to exceed one
11 thousand dollars, the amount and payment of which shall be
12 fixed by the board, and in addition thereto shall receive
13 traveling and other incidental expenses incurred in the perfor-
14 mance of his or her duties.

15 (c) The board may employ an executive director and such
16 clerks, inspectors and assistants as it shall consider necessary to
17 discharge the duties imposed by the provisions of this article
18 and duly promulgated rules of the board and to effect its
19 purposes, and the board shall determine the duties and fix the
20 compensation of the executive director, clerks, inspectors and
21 assistants, subject to the general laws of the state. Any inspector
22 employed by the board shall have either a West Virginia
23 embalmer's license or a West Virginia funeral director's
24 license. Any inspection shall be conducted in a manner so as
25 not to interfere with the conduct of business within the funeral
26 establishment, and the inspector shall be absolutely prohibited
27 from examining any books and records of the funeral establish-
28 ment.

29 (d) All the expenses, per diem and compensation shall be
30 paid out of the receipts of the board, but the allowances shall at
31 no time exceed the receipts of the board.

32 (e) The treasurer of the board shall give bond to the state of
33 West Virginia in the sum as the board shall direct with two or
34 more sureties or a reliable surety company approved by the
35 board and the bond shall be conditioned for the faithful dis-
36 charge of the duties of the officer. The bond, with approval of
37 the board endorsed thereon, shall be deposited with the trea-
38 surer of the state of West Virginia.

39 (f) The board shall hold not less than two meetings during
40 each calendar year for the purpose of examining applicants for
41 licenses, the meeting or meetings to be held at a time and place
42 as the board shall determine. The time and place of the meeting
43 shall be announced by publication in three daily newspapers of

44 general circulation in different locations in the state and
45 publication to be once a week for two consecutive weeks
46 immediately preceding each meeting.

47 (g) The board may hold such other meetings as it may
48 consider necessary and may transact any business at the
49 meetings. Four or more members shall comprise a quorum
50 authorizing the board to transact such business as is prescribed
51 under this article.

52 (h) The board shall have the power and it shall be its duty
53 to make and enforce all necessary rules, not inconsistent with
54 this article, for the examination and licensing of funeral
55 directors and the general practice of funeral directing; the
56 examination and licensing of embalmers and the general
57 practice of embalming and the registration and regulation of
58 apprentices; and the licensing and general operation of funeral
59 establishments, except that no rules issued by the board shall
60 require that an applicant for a license to operate a funeral
61 establishment shall be required to have either an embalmer's or
62 funeral director's license.

63 (i) On or before the first day of July, two thousand, the
64 board shall propose for legislative promulgation in accordance
65 with the provisions of article three, chapter twenty-nine-a of
66 this code rules necessary to effectuate the purpose of this article
67 including, but not limited to, the subjects to be covered in the
68 examinations and the standards to be attained for licensure;
69 requirements for continuing education, including authorizing
70 continuing education credits through audio or video recordings;
71 and a procedure for the investigation and resolution of com-
72 plaints against persons licensed under this article.

73 (j) The board may conduct annually a school of instruction
74 to apprise funeral directors and embalmers of the most recent
75 scientific knowledge and developments affecting their profes-
76 sion. Qualified lecturers and demonstrators may be employed
77 by the board for this purpose. The board shall give notice of the
78 time and place at which the school will be held for all licensed
79 funeral directors and embalmers and it shall be the duty of
80 every licensed funeral director and embalmer to attend at least

81 one such school or other approved program every three years:
82 *Provided*, That the location of any school of continuing
83 education shall accommodate the geographic diversity of the
84 embalmers and funeral directors of this state. Compliance with
85 the requirements of continuing education is a prerequisite for
86 license renewal.

87 (k) Hours of continuing education may be obtained by
88 attending and participating in board-approved programs,
89 meetings, seminars or activities. It is the responsibility of each
90 licensee to finance his or her costs of continuing education.

91 (l) The board, any of its members or any duly authorized
92 employee of the board shall have the authority to enter at all
93 reasonable hours for the purpose of inspecting the premises in
94 which the business or profession of funeral directing is con-
95 ducted or practiced or where embalming is practiced.

CHAPTER 126

(Com. Sub. for H. B. 4324 — By Delegates Douglas and Warner)

[Passed March 9, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, one-a, two, three, three-a, five, six, seven, seven-b, eight, eleven and twelve, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections five and eight, article six, chapter eighteen of said code, all relating to implementing a graduated driver's license program for persons under the age of eighteen; updating sections relating to time frames for new residents to obtain a drivers license; establishing a minimum thirty day instruction period prior to the skills test for adults previously unlicensed; and revising driver license reciprocity provisions to reflect reciprocal agreements with other states and countries.

Be it enacted by the Legislature of West Virginia:

That sections one, one-a, two, three, three-a, five, six, seven, seven-b, eight, eleven and twelve, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections five and eight, article six, chapter eighteen of said code be amended and reenacted, all to read as follows:

Chapter

17B. Motor Vehicle Driver's Licenses.

18. Education.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

- §17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards; penalty.
- §17B-2-1a. Surrender of license from other state or jurisdiction prior to receipt of license from this state; examination; fees required.
- §17B-2-2. Persons exempt from license.
- §17B-2-3. What persons shall not be licensed; exceptions.
- §17B-2-3a. Junior driver's license and graduated driver's license.
- §17B-2-5. Qualifications, issuance and fee for instruction permits.
- §17B-2-6. Application for license or instruction permit; fee to accompany application.
- §17B-2-7. Examination of applicants.
- §17B-2-7b. Separate examination and endorsement for a license valid for operation of motorcycle.
- §17B-2-8. Issuance and contents of licenses; fees.
- §17B-2-11. Duplicate permits and licenses.
- §17B-2-12. Expiration of licenses; renewal; renewal fees.

***§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards; penalty**

- 1 (a) No person, except those hereinafter expressly exempted,
- 2 may drive any motor vehicle upon a street or highway in this
- 3 state or upon any subdivision street, as used in article

***Clerk's Note:** This section was also amended by S. B. 558 (Chapter 182), which passed subsequent to this act.

4 twenty-four, chapter eight of this code, when the use of the
5 subdivision street is generally used by the public unless the
6 person has a valid driver's license under the provisions of this
7 code for the type or class of vehicle being driven.

8 Any person licensed to operate a motor vehicle as provided
9 in this code may exercise the privilege thereby granted as
10 provided in this code and, except as otherwise provided by law,
11 shall not be required to obtain any other license to exercise the
12 privilege by any county, municipality or local board or body
13 having authority to adopt local police regulations.

14 (b) The division, upon issuing a driver's license, shall
15 indicate on the license the type or general class or classes of
16 vehicle or vehicles the licensee may operate in accordance with
17 the provisions of this code, federal law or rule.

18 (c) Driver's licenses issued by the division shall be classi-
19 fied in the following manner:

20 (1) Class A, B or C license shall be issued to those persons
21 eighteen years of age or older with two years driving experience
22 and who have qualified for the commercial driver's license
23 established by chapter seventeen-e of this code and the federal
24 Commercial Motor Vehicle Safety Act of 1986, Title XII of
25 public law 99-570 and subsequent rules, and have paid the
26 required fee.

27 (2) Class D license shall be issued to those persons eighteen
28 years and older with one year driving experience who operate
29 motor vehicles other than those types of vehicles which require
30 the operator to be licensed under the provisions of chapter
31 seventeen-e of this code and federal law and rule and whose
32 primary function or employment is the transportation of persons
33 or property for compensation or wages and have paid the
34 required fee. For the purposes of the regulation of the operation
35 of a motor vehicle, wherever the term chauffeur's license is
36 used in this code, it shall be construed to mean the Class A, B,
37 C or D license described in this section or chapter seventeen-e

38 of this code or federal law or rule: *Provided*, That anyone who
39 is not required to be licensed under the provisions of chapter
40 seventeen-e of this code and federal law or rule and who
41 operates a motor vehicle which is registered or which is
42 required to be registered as a Class A motor vehicle as that term
43 is defined in section one, article ten, chapter seventeen-a of this
44 code with a gross vehicle weight rating of less than eight
45 thousand one pounds, is not required to obtain a Class D
46 license.

47 (3) Class E license shall be issued to those persons who
48 have qualified under the provisions of this chapter and who are
49 not required to obtain a Class A, B, C or D license and who
50 have paid the required fee. The Class E license may be en-
51 dorsed under the provisions of section seven-b of this article for
52 motorcycle operation. The Class E license for any person under
53 the age of eighteen may also be endorsed with the appropriate
54 graduated driver license level in accordance with the provisions
55 of section three-a of this article.

56 (4) Class F license shall be issued to those persons who
57 successfully complete the motorcycle examination procedure
58 provided for by this chapter and have paid the required fee, but
59 who do not possess a Class A, B, C and D or E driver's license.

60 (5) All licenses issued under this section may contain
61 information designating the licensee as a diabetic, if the
62 licensee requests this information on the license.

63 (d) No person, except those hereinafter expressly exempted,
64 shall drive any motorcycle upon a street or highway in this state
65 or upon any subdivision street, as used in article twenty-four,
66 chapter eight of this code, when the use of the subdivision street
67 is generally used by the public unless the person has a valid
68 motorcycle license or a valid license which has been endorsed
69 under section seven-b of this article for motorcycle operation or
70 has a valid motorcycle instruction permit.

71 (e) (1) A nondriver identification card may be issued to any
72 person who:

73 (A) Is a resident of this state in accordance with the
74 provisions of section one-a, article three, chapter seventeen-a of
75 this code;

76 (B) Does not have a valid driver's license;

77 (C) Has reached the age of two years. The division may
78 also issue a nondriver identification card to a person under the
79 age of two years for good cause shown;

80 (D) Has paid the required fee of two dollars and fifty cents
81 per year for each year the identification card is issued to be
82 valid: *Provided*, That the fee is not required if the applicant is
83 sixty-five years or older or is legally blind; and

84 (E) Presents a birth certificate or other proof of age and
85 identity acceptable to the division with a completed application
86 on a form furnished by the division.

87 (2) The nondriver identification card shall contain the same
88 information as a driver's license except that the identification
89 card shall be clearly marked as identification card. However,
90 the division may issue an identification card with less informa-
91 tion to persons under the age of sixteen. It may be renewed on
92 application and payment of the fee required by this section.

93 (A) Every identification card issued to persons who have
94 attained their twenty-first birthday shall expire on the day of the
95 month designated by the commissioner in which the applicant's
96 birthday occurs in those years in which the applicant's age is
97 evenly divisible by five. Except as provided in paragraph (B) or
98 (C) of this subdivision, no identification card may be issued for
99 less than three years nor more than seven years and shall be
100 valid for a period of five years expiring in the month in which
101 the applicant's birthday occurs and in a year in which the
102 applicant's age is evenly divisible by five.

103 (B) Every identification card issued to persons who have
104 not attained their twenty-first birthday shall expire on the day
105 of the month designated by the commissioner in the year in
106 which the applicant attains the age of twenty-one years.

107 (C) Every identification card issued to persons under the
108 age of sixteen shall expire on the day of the month designated
109 by the commissioner in which the applicant's birthday occurs
110 and shall be issued for a period of two years.

111 (3) The identification card shall be surrendered to the
112 division when the holder is issued a driver's license. The
113 division may issue an identification card to an applicant whose
114 privilege to operate a motor vehicle has been refused, canceled,
115 suspended or revoked under the provisions of this code.

116 (f) Any person violating the provisions of this section is
117 guilty of a misdemeanor and, upon conviction thereof, shall be
118 fined not more than five hundred dollars; and upon a second or
119 subsequent conviction, shall be fined not more than five
120 hundred dollars, or confined in the county or regional jail not
121 more than six months, or both.

**§17B-2-1a. Surrender of license from other state or jurisdiction
prior to receipt of license from this state; exami-
nation; fees required.**

1 (a) The division of motor vehicles shall not issue a driver's
2 license to a person who holds a valid license to operate a motor
3 vehicle issued by another state or jurisdiction unless or until the
4 applicant shall surrender to the division the foreign license, or
5 the person has signed and submitted to the division an affidavit
6 to the effect that the person has surrendered all valid licenses
7 issued to him or her by other states or jurisdictions. Any
8 surrendered license issued by any other state or jurisdiction
9 shall be returned to the division of motor vehicles or similar
10 agency in that state or jurisdiction together with a notice that
11 the person who surrendered the license has been licensed in this

12 state. It shall be unlawful for a person to possess more than one
13 valid driver's license at any time.

14 (b) Every driver shall, within thirty days after taking up
15 residence in this state, apply to the division for a driver's
16 license as prescribed in this article. For the purposes of this
17 chapter the presumption that a natural person is a resident of
18 this state is based on the provisions of section one-a, article
19 three, chapter seventeen-a of this code. The division may assign
20 the driver's license class, type, endorsements or restrictions
21 based on the applicant's prior licensing status, age and the type
22 of licensing system used by the state of prior licensing.

23 (c) All other applicable provisions of this article relating to
24 issuance, fees, expiration and renewal of licenses, and driver
25 examination of applicants shall also apply to this section.

§17B-2-2. Persons exempt from license.

1 The following persons are exempt from license hereunder:

2 (1) Any person while operating a motor vehicle in the
3 armed services of the United States while in the performance of
4 his official duties;

5 (2) A nonresident who is at least sixteen years of age and
6 who has in his immediate possession a valid driver's license
7 issued to the person in the person's home state or country
8 unless the commissioner determines the person's home state or
9 country does not extend the same privileges to a resident of this
10 state, may operate a motor vehicle in this state only as a
11 noncommercial driver for a period not to exceed ninety days in
12 any one calendar year;

13 (3) A nonresident who is at least sixteen years of age, who
14 has in the person's immediate possession a valid driver's
15 license issued to the person in the person's home state or
16 country and who is employed in this state, or owns, maintains
17 or operates a place or places of business in this state, or engages
18 in any trade, profession or occupation in this state, in addition

19 to the driving privileges extended under subdivision (2) of this
20 section, unless the commissioner determines the person's home
21 state or country does not extend the same privileges to a
22 resident of this state, may operate a motor vehicle in this state
23 only as a noncommercial driver in traveling to and from the
24 person's place or places of employment, place or places of
25 business or place or places at which the person engages in the
26 trade, profession or occupation and in the discharge of the
27 duties of the person's employment, business, trade, profession
28 or occupation if the duties are such that, if performed by a
29 resident of the state of West Virginia over the age of eighteen
30 years of age, the resident would not be required under the
31 provisions of this chapter to obtain a Class A, B, C or D driver's
32 license. However, this subsection shall not exempt any person
33 who is required to obtain a West Virginia driver's license in
34 accordance with the provisions of section one-a of this article;

35 (4) A nonresident who is at least eighteen years of age and
36 who has in his or her immediate possession a valid commercial
37 driver's license issued to the person in his or her home state or
38 country and which meets the requirements of the federal
39 commercial motor vehicle act of 1986, Title XI of public law
40 99-570 and unless the commissioner determines the person's
41 home state or country does not extend the same privilege to a
42 resident of this state may operate a motor vehicle in this state
43 either as a commercial driver subject to the age limits applica-
44 ble to commercial driver in this state, or as a noncommercial
45 driver subject to the limitations imposed on nonresident drivers
46 in subdivisions (2) and (3) of this section;

47 (5) Any person who is a student, properly enrolled and
48 registered in an accredited school, college or university in this
49 state, who is at least sixteen years of age and who has in his or
50 her immediate possession a valid driver's license issued to the
51 person in the person's home state, notwithstanding the limita-
52 tions of subdivisions (2) and (3) of this section may operate a
53 motor vehicle in this state only as noncommercial driver:
54 *Provided*, That the state of which the person is a resident shall

55 extend the same privileges to residents of this state. This
56 exemption shall be canceled immediately when the student is
57 graduated from school, college or university or is expelled or
58 ceases to be a student.

§17B-2-3. What persons shall not be licensed; exceptions.

1 The division may not issue any license hereunder:

2 (1) To any person who is under the age of eighteen years:
3 *Provided*, That the division may issue a junior driver's license
4 or on or after the first day of January, two thousand one, a
5 graduated driver's license, to a person under the age of eighteen
6 years in accordance with the provisions of section three-a of
7 this article;

8 (2) To any person, as a Class A, B, C or D driver, who is
9 under the age of eighteen years;

10 (3) To any person, whose license has been suspended or
11 revoked, during the suspension or revocation;

12 (4) To any person who is an habitual drunkard or is
13 addicted to the use of narcotic drugs;

14 (5) To any person, who has previously been adjudged to be
15 afflicted with or suffering from any mental disability or disease
16 and who has not at the time of application been restored to
17 competency by judicial decree or released from a hospital for
18 the mentally incompetent upon the certificate of the superinten-
19 dent of the institution that the person is competent, and not then
20 unless the commissioner is satisfied that the person is compe-
21 tent to operate a motor vehicle with a sufficient degree of care
22 for the safety of persons or property;

23 (6) To any person who is required by this chapter to take an
24 examination, unless the person has successfully passed the
25 examination;

26 (7) To any person when the commissioner has good cause
27 to believe that the operation of a motor vehicle on the highways
28 by the person would be inimical to public safety or welfare.

§17B-2-3a. Junior driver's license and graduated driver's license.

1 (a) In accordance with rules established by the commis-
2 sioner and with the provisions hereinafter set forth in this
3 section, a junior driver's license may be issued to any person
4 between the ages of sixteen and eighteen years, if the person is
5 in compliance with section eleven, article eight, chapter
6 eighteen of this code and is not otherwise disqualified by law.
7 Application for a junior driver's license shall be on a form
8 prescribed by the commissioner. A junior driver's license may
9 be issued upon the applicant's successful completion of all
10 examinations and driving tests required by law for the issuance
11 of a driver's license to a person eighteen years of age or older.
12 The commissioner may impose reasonable conditions or
13 restrictions on the operation of a motor vehicle by a person
14 holding a junior driver's license and the conditions or restric-
15 tions shall be printed on the license. After the thirty-first day of
16 December, two thousand, the division shall not issue a junior
17 driver's license to any person. However, any junior driver's
18 license issued before the first day of January, two thousand one,
19 unless otherwise suspended, revoked or canceled will continue
20 to be valid, and under the same restrictions, until the licensee's
21 eighteenth birthday.

22 (b) In addition to all other provisions of this chapter for
23 which a driver's license may be revoked, suspended or can-
24 celed, whenever a person holding a junior driver's license
25 operates a motor vehicle in violation of the conditions or
26 restrictions set forth on the license, or has a record of two
27 convictions for moving violations of the traffic regulations and
28 laws of the road, which convictions have become final, the
29 junior driver's license of the person shall be permanently
30 revoked, with like effect as if the person had never held a junior
31 driver's license: *Provided*, That a junior driver's license shall

32 be revoked upon one final conviction for any offense described
33 in section five, article three of this chapter. Under no circum-
34 stances shall such a license be revoked for convictions of
35 offenses in violation of any regulation or law governing the
36 standing or parking of motor vehicles.

37 (c) A junior driver's license shall be suspended for noncom-
38 pliance with the provisions of section eleven, article eight,
39 chapter eighteen of this code, and may be reinstated upon
40 compliance.

41 (d) A person whose junior driver's license has been
42 revoked, or has been suspended without reinstatement, shall not
43 thereafter receive a junior driver's license, but the person, upon
44 attaining the age of eighteen, shall be eligible, unless otherwise
45 disqualified by law, for examination and driver testing for a
46 regular driver's license. If a person has had his or her junior
47 driver's license revoked for a violation pursuant to section one
48 or two, article five-a, chapter seventeen-c of this code or any
49 offense specified in subsection (6), section five, article three of
50 this chapter, or has been adjudicated delinquent upon a charge
51 which would be a crime under the provisions of section two,
52 article five, chapter seventeen-c of this code if committed by an
53 adult, the person shall be disqualified for examination and
54 driver testing for a regular driver's license until that person: (1)
55 Has attained the age of eighteen years; (2) has successfully
56 completed the safety and treatment program provided for in
57 section three, article five-a, chapter seventeen-c of this code;
58 and (3) has had his or her junior driver's license revoked or
59 suspended for the applicable statutory period of revocation or
60 suspension or a period of time equal to the period of revocation
61 or suspension which would have been imposed pursuant to
62 section two of said article if the person had a regular driver's
63 license at the time of the violation.

64 (e) No person shall receive a junior driver's license unless
65 the application therefor is accompanied by a writing, duly
66 acknowledged, consenting to the issuance of the junior driver's

67 license and executed by a parent of the applicant; or if only one
68 parent is living, then by the parent; or if the parents be living
69 separate and apart, by the one to whom the custody of the
70 applicant was awarded; or if there is a guardian entitled to the
71 custody of the applicant, then by the guardian.

72 (f) Upon attaining the age of eighteen years, a person
73 holding an unrevoked, unsuspended or reinstated junior driver's
74 license shall be entitled to exercise all the privileges of a regular
75 driver's license without further examination or driver testing.

76 (g) On and after the first day of January, two thousand one,
77 any person under the age of eighteen who does not possess a
78 junior or regular driver's license may not operate a motor
79 vehicle unless he or she has obtained a graduated driver's
80 license in accordance with the three level graduated driver's
81 license system described in the following provisions.

82 (h) Any person under the age of twenty-one, regardless of
83 class or level or licensure, who operates a motor vehicle with
84 any measurable alcohol in his or her system is subject to the
85 provisions of section two, article five, and section two, article
86 five-a both of chapter seventeen-c of this code. Any person
87 under the age of eighteen, regardless of class or licensure level,
88 is subject to the mandatory school attendance provisions of
89 section eleven, article eight, chapter eighteen of this code.

90 (i) *Level one instruction permit.* — An applicant who is
91 fifteen years or older meeting all other requirements prescribed
92 in this code may be issued a level one instruction permit.

93 (1) *Eligibility.* — The division shall not issue a level one
94 instruction permit unless the applicant:

95 (A) Presents a completed application, as prescribed by the
96 provisions of section six of this article, and which is accompa-
97 nied by a writing, duly acknowledged, consenting to the
98 issuance of the graduated driver's license and executed by a
99 parent or guardian entitled to custody of the applicant;

100 (B) Presents a certified birth certificate issued by a state or
101 other governmental entity responsible for vital records, evi-
102 dencing that the applicant meets the minimum age requirement;

103 (C) Passes the vision and written knowledge examination,
104 and completes the driving under the influence awareness
105 program, as prescribed in section seven of this article;

106 (D) Presents a current school enrollment form or otherwise
107 shows compliance with the provisions of section eleven, article
108 eight, chapter eighteen of this code; and

109 (E) Pays a fee of five dollars.

110 (2) *Terms and conditions of instruction permit.* — A level
111 one instruction permit issued under the provisions of this
112 section is valid for a period of fourteen months and is not
113 renewable. However, any permit holder who allows his or her
114 permit to expire prior to successfully passing the road skills
115 portion of the driver examination, and who has not committed
116 any offense which requires the suspension, revocation or
117 cancellation of the instruction permit, may reapply for a new
118 instruction permit. The division shall immediately revoke the
119 permit upon receipt of a second conviction for a moving
120 violation of traffic regulations and laws of the road or violation
121 of the terms and conditions of a level one instruction permit,
122 which convictions have become final unless a greater penalty
123 is required by this section or any other provision of this code.
124 Any person whose instruction permit has been revoked is
125 disqualified from retesting for a period of ninety days. How-
126 ever, after the expiration of ninety days, the person may retest
127 if otherwise eligible. In addition to all other provisions of this
128 code for which a driver's license may be restricted, suspended,
129 revoked or canceled, the holder of a level one instruction permit
130 may only operate a motor vehicle under the following condi-
131 tions:

132 (A) Under the direct supervision of a licensed driver,
133 twenty-one years of age or older, or a driver's education or

134 driving school instructor who is acting in an official capacity as
135 an instructor, who is fully alert and unimpaired, and the only
136 other occupant of the front seat. The vehicle may be operated
137 with no more than two additional passengers, unless the
138 passengers are family members;

139 (B) Between the hours of five a.m. and eleven p.m.;

140 (C) All occupants must use safety belts in accordance with
141 the provisions of section forty-nine, article fifteen, chapter
142 seventeen-c of this code;

143 (D) Without any measurable blood alcohol content, in
144 accordance with the provisions of subsection (h), section two,
145 article five, chapter seventeen-c of this code; and

146 (E) Maintains current school enrollment or otherwise shows
147 compliance with the provisions of section eleven, article eight,
148 chapter eighteen of this code.

149 (j) *Level two intermediate driver's license.* — An applicant
150 sixteen years of age or older, meeting all other requirements of
151 the code, may be issued a level two intermediate driver's
152 license.

153 (1) *Eligibility.* -- The division shall not issue a level two
154 intermediate driver's license unless the applicant:

155 (A) Presents a completed application as prescribed in
156 section six of this article;

157 (B) Has held the level one instruction permit conviction-free for the one hundred eighty days immediately preceding the date of application for a level two intermediate license;

160 (C) Has completed either a driver's education course
161 approved by the state department of education or thirty hours of
162 behind the wheel driving experience certified by a parent or
163 legal guardian or other responsible adult over the age of twenty-
164 one as indicated on the form prescribed by the division:

165 *Provided*, That nothing in this paragraph shall be construed to
166 require any school or any county board of education to provide
167 any particular number of driver's education courses or to
168 provide driver's education training to any student;

169 (D) Presents a current school enrollment form or otherwise
170 shows compliance with the provisions of section eleven, article
171 eight, chapter eighteen of this code;

172 (E) Passes the road skills examination as prescribed by
173 section seven of this article; and

174 (F) Pays a fee of five dollars.

175 (2) *Terms and conditions of a level two intermediate*
176 *driver's license.* — A level two intermediate driver's license
177 issued under the provisions of this section shall expire on the
178 day designated by the commissioner of the month in which the
179 applicant attains the age of eighteen, or until the licensee
180 qualifies for a level three full Class E license, whichever comes
181 first. In addition to all other provisions of this code for which a
182 driver's license may be restricted, suspended, revoked or
183 canceled, the holder of a level two intermediate driver's license
184 may only operate a motor vehicle under the following condi-
185 tions:

186 (A) Unsupervised between the hours of five a.m. and eleven
187 p.m.;

188 (B) Only under the direct supervision of a licensed driver,
189 age twenty-one years or older, between the hours of eleven p.m.
190 and five a.m. except when the licensee is going to or returning
191 from:

192 (i) Lawful employment;

193 (ii) A school sanctioned activity;

194 (iii) A religious event; or

195 (iv) An emergency situation that requires the licensee to
196 operate a motor vehicle to prevent bodily injury or death of
197 another;

198 (C) All occupants shall use safety belts in accordance with
199 the provisions of section forty-nine, article fifteen, chapter
200 seventeen-c of this code;

201 (D) Operates the vehicle with no more than three passen-
202 gers under the age of nineteen, unless the passengers are family
203 members, in addition to the driver;

204 (E) Without any measurable blood alcohol content in
205 accordance with the provisions of subsection (h), section two,
206 article five, chapter seventeen-c of this code;

207 (F) Maintains current school enrollment or otherwise shows
208 compliance with the provisions of section eleven, article eight,
209 chapter eighteen of this code;

210 (G) Upon the first conviction for a moving traffic violation
211 or a violation of paragraph (A), (B), (C) or (D) of subdivision
212 one, subsection (j) of this section of the terms and conditions of
213 a level two intermediate driver's license, the licensee shall
214 enroll in an approved driver improvement program unless a
215 greater penalty is required by this section or by any other
216 provision of this code.

217 At the discretion of the commissioner, completion of an
218 approved driver improvement program may be used to negate
219 the effect of a minor traffic violation as defined by the commis-
220 sioner against the one year conviction free driving criteria for
221 early eligibility for a level three driver's license; and

222 (H) Upon the second conviction for a moving traffic
223 violation or a violation of the terms and conditions of the level
224 two intermediate driver's license, the licensee's privilege to
225 operate a motor vehicle shall be revoked or suspended for the
226 applicable statutory period or until the licensee's eighteenth
227 birthday, whichever is longer unless a greater penalty is

228 required by this section or any other provision of this code. Any
229 person whose driver's license has been revoked as a level two
230 intermediate driver, upon reaching the age of eighteen years and
231 if otherwise eligible may reapply for an instruction permit, then
232 a driver's license in accordance with the provisions of sections
233 five, six and seven of this article.

234 (k) *Level three, full class E license.* — The level three
235 license is valid until the day designated by the commissioner of
236 the month in which the licensee attains the age of twenty-one.
237 Unless otherwise provided in this section or any other section
238 of this code, the holder of a level three full Class E license is
239 subject to the same terms and conditions as the holder of a
240 regular Class E driver's license.

241 A level two intermediate licensee whose privilege to
242 operate a motor vehicle has not been suspended, revoked or
243 otherwise canceled and who meets all other requirements of the
244 code, may be issued a level three full Class E license without
245 further examination or road skills testing, if the licensee:

246 (1) Has reached the age of seventeen years, and

247 (A) Presents a completed application as prescribed by the
248 provisions of section six of this article;

249 (B) Has held the level two intermediate license conviction-
250 free for the twelve-month period immediately preceding the
251 date of the application;

252 (C) Has completed any driver improvement program
253 required under paragraph (G), subdivision (2), subsection (j) of
254 this section; and

255 (D) Pays a fee of two dollars and fifty cents for each year
256 the license is valid. An additional fee of fifty cents shall be
257 collected to be deposited in the combined voter registration and
258 driver's licensing fund established in section twelve, article
259 two, chapter three of this code; or

260 (2) Reaches the age of eighteen years, and

261 (A) Presents a completed application as prescribed by the
262 provisions of section six of this article; and

263 (B) Pays a fee of two dollars and fifty cents for each year
264 the license is valid. An additional fee of fifty cents shall be
265 collected to be deposited in the combined voter registration and
266 driver's licensing fund established in section twelve, article
267 two, chapter three of this code.

§17B-2-5. Qualifications, issuance and fee for instruction permits.

1 (a) Any person who is at least fifteen years of age may
2 apply to the division for an instruction permit. However, any
3 person who has not attained the age of eighteen shall comply
4 with the provisions of section three-a of this article. The
5 division may, in its discretion, after the applicant has success-
6 fully passed all parts of the examination other than the road
7 skills test, issue to the applicant an instruction permit which
8 entitles the applicant while having the permit in his or her
9 immediate possession to drive a motor vehicle upon the public
10 highways when accompanied by a licensed driver of at least
11 twenty-one years of age, a driver's education or driving school
12 instructor that is acting in an official capacity as an instructor,
13 who is alert and unimpaired or a certified division license
14 examiner acting in an official capacity as an examiner, who is
15 occupying a seat beside the driver. (1) Any instruction permit
16 issued to a person under the age of eighteen years shall be
17 issued in accordance with the provisions of section three-a of
18 this article. (2) Any permit issued to a person who has reached
19 the age of eighteen years is valid for a period of sixty days and
20 may be renewed within a period of sixty days without reexami-
21 nation for an additional period of sixty days or a new permit
22 issued. The fee for the instruction permit is four dollars, one
23 dollar of which shall be paid into the state treasury and credited
24 to the state road fund, and the other three dollars of which shall
25 be paid into the state treasury and credited to the general fund

26 to be appropriated to the state police for application in the
27 enforcement of the road law.

28 (b) Any person sixteen years of age or older may apply to
29 the division for a motorcycle instruction permit. On and after
30 the first day of January, two thousand one, any person under the
31 age of eighteen must have first completed the requirements for
32 a level two intermediate driver's license set forth in paragraphs
33 (B), (C) and (D), subdivision (1), subsection (j), section three-a
34 of this article, junior driver's license or driver's license before
35 being eligible for a motorcycle instruction permit.

36 The division may, in its discretion, after the applicant has
37 successfully passed all parts of the motorcycle examination
38 other than the driving test, and presented documentation of
39 compliance with the provisions of section eleven, article eight,
40 chapter eighteen of this code, issue to the applicant an instruc-
41 tion permit which entitles the applicant while having the permit
42 in his or her immediate possession to drive a motorcycle upon
43 the public streets or highways for a period of ninety days,
44 during the daylight hours between sunrise and sunset only. No
45 holder of a motorcycle instruction permit shall operate a
46 motorcycle while carrying any passenger on the vehicle.

47 A motorcycle instruction permit is not renewable, but a
48 qualified applicant may apply for a new permit. The fee for a
49 motorcycle instruction permit is five dollars, which shall be
50 paid into a special fund in the state treasury known as the
51 motorcycle license examination fund as established in section
52 seven-c, article two of this chapter.

**§17B-2-6. Application for license or instruction permit; fee to
accompany application.**

1 (a) Every application for an instruction permit or for a
2 driver's license shall be made upon a form furnished by the
3 division. Every application shall be accompanied by the proper
4 fee and payment of the fee shall entitle an applicant under the
5 age of eighteen to not more than three attempts to pass the road

6 skills test. An applicant age eighteen years or older is entitled
7 to not more than three attempts to pass the road skills test
8 within a period of sixty days from the date of issuance of the
9 instruction permit. An applicant who fails either the written test
10 or the road skills test may not be tested twice within a period of
11 one week.

12 (b) Any applicant who has not been previously licensed
13 must hold an instruction permit for a minimum of thirty days.
14 For the purposes of this section, the term "previously licensed"
15 means an applicant who has obtained at least a level two
16 graduated license or junior driver's license issued under the
17 provisions of this article or has obtained an equal or greater
18 level of licensure if previously licensed in another state.

19 (c) Every said application shall state the full name, date of
20 birth, sex, and residence address of the applicant, and briefly
21 describe the applicant, and shall state whether the applicant has
22 theretofore been a licensed driver, and, if so, when and by what
23 state or country, and whether any such license has ever been
24 suspended or revoked within the five years next preceding the
25 date of application, or whether an application has ever been
26 refused, and, if so, the date of and reason for the suspension,
27 revocation or refusal, whether the applicant desires a notation
28 on the drivers license indicating that the applicant is a diabetic,
29 and such other pertinent information as the commissioner may
30 require.

§17B-2-7. Examination of applicants.

1 (a) Upon the presentment of the applicant's birth certificate,
2 or a certified copy of the birth certificate issued by a state or
3 other governmental entity responsible for vital records, as
4 evidence that the applicant is of lawful age and verifiable
5 identity, the division of motor vehicles shall examine every
6 applicant for a license to operate a motor vehicle in this state,
7 except as otherwise provided in this section. The examination
8 shall include a test of the applicant's eyesight, the applicant's
9 ability to read and understand highway signs regulating,

10 warning, and directing traffic, the applicant's knowledge of the
11 traffic laws of this state, and the applicant's knowledge of the
12 effects of alcohol upon persons and the dangers of driving a
13 motor vehicle under the influence of alcohol. The examination
14 shall also include an actual demonstration of ability to exercise
15 ordinary and reasonable control in the operation of a motor
16 vehicle, and any further physical and mental examination as the
17 division of motor vehicles considers necessary to determine the
18 applicant's fitness to operate a motor vehicle safely upon the
19 highways.

20 (b) The commissioner shall propose legislative rules for
21 promulgation in accordance with the provisions of article three,
22 chapter twenty-nine-a of this code concerning the examination
23 of applicants for licenses and the qualifications required of
24 applicants, and the examination of applicants by the division
25 shall be in accordance with the rules. The rules shall provide for
26 the viewing of educational material or films on the medical,
27 biological, and psychological effects of alcohol upon persons,
28 the dangers of driving a motor vehicle while under the influence
29 of alcohol and the criminal penalties and administrative
30 sanctions for alcohol and drug related motor vehicle violations.

31 (c) After successful completion of the examination required
32 by this section, section three-a, or section seven-b of this article,
33 and prior to the issuance of a license pursuant to the provisions
34 of section eight of this article, every applicant for a driver's
35 license, junior driver's license, graduated driver's license, or
36 motorcycle-only license shall attend a mandatory education
37 class on the dangers and social consequences of driving a motor
38 vehicle while under the influence of alcohol. To the extent
39 practicable, the commissioner shall use as lecturers at those
40 classes persons who can relate first-hand experiences as victims
41 or family members of victims of alcohol-related accidents or
42 drivers who have been involved in alcohol-related accidents
43 which caused serious bodily injury or death.

**§17B-2-7b. Separate examination and endorsement for a license
valid for operation of motorcycle.**

1 The state police shall administer a separate motorcycle
2 examination for applicants for a license valid for operation of
3 a motorcycle. On and after the first day of July, two thousand,
4 the division of motor vehicles shall administer the examination
5 provided for in this section. Any applicant for a license valid for
6 operation of a motorcycle shall be required to successfully
7 complete the motorcycle examination, which is in addition to
8 the examination administered pursuant to section seven of this
9 article and, if under the age of eighteen, shall be required to
10 complete the requirements for a level two intermediate driver's
11 license set forth in paragraphs (B), (C), and (D), subdivision
12 (1), subsection (j), section three-a of this article: *Provided*, That
13 the commissioner may exempt an applicant for a motorcycle
14 driver license or endorsement from all or part of the motorcycle
15 license examination as provided in section six, article one-d of
16 this chapter. The motorcycle examination shall test the appli-
17 cant's knowledge of the operation of a motorcycle and of any
18 traffic laws specifically relating to the operation of a motorcy-
19 cle and shall include an actual demonstration of the ability to
20 exercise ordinary and reasonable control in the operation of a
21 motorcycle. An applicant for a license valid for the operation of
22 only a motorcycle shall be tested as provided in this section and
23 in section seven of this article, but need not demonstrate actual
24 driving ability in any vehicle other than a motorcycle. The
25 examination provided in this section shall not be made a
26 condition upon the renewal of the license of any person under
27 this section. For an applicant who successfully completes the
28 motorcycle examination, upon payment of the required fee, the
29 division shall issue a motorcycle endorsement on the driver's
30 license of the applicant, or shall issue a special motorcycle-only
31 license if the applicant does not possess a driver's license:
32 *Provided*, however, That any holder of a motorcycle-only
33 license under the age of eighteen shall be subject to the provi-
34 sions of paragraphs (A), (B), (E), (F), (G) and (H), subdivision
35 (2), subsection (j), section three-a of this article.

36 Every person, including those holding a valid driver's
37 license, is required to take the examination specified in this
38 section to obtain a motorcycle license or endorsement.

§17B-2-8. Issuance and contents of licenses; fees.

1 (a) The division shall, upon payment of the required fee,
2 issue to every applicant qualifying therefor a driver's license,
3 which shall indicate the type or general class or classes of
4 vehicle or vehicles the licensee may operate in accordance with
5 this chapter or chapter seventeen-e of this code, or motorcy-
6 cle-only license. Each license shall contain a coded number
7 assigned to the licensee, the full name, date of birth, residence
8 address, a brief description and a color photograph of the
9 licensee and either a facsimile of the signature of the licensee
10 or a space upon which the signature of the licensee shall be
11 written with pen and ink immediately upon receipt of the
12 license. No license shall be valid until it has been so signed by
13 the licensee: *Provided*, That the commissioner may issue upon
14 proper documentation, a duplicate or renewed valid without-
15 photo license for resident applicants temporarily out of state. A
16 driver's license which is valid for operation of a motorcycle
17 shall contain a motorcycle endorsement. The division shall use
18 such process or processes in the issuance of licenses that will,
19 insofar as possible, prevent any alteration, counterfeiting,
20 duplication, reproduction, forging or modification of, or the
21 superimposition of a photograph on, the license.

22 (b) The fee for the issuance of a Class E driver's license
23 shall be two dollars and fifty cents per year for each year the
24 license is issued to be valid. The fee for issuance of a Class D
25 driver's license shall be six dollars and twenty-five cents per
26 year for each year the license is issued to be valid. An addi-
27 tional fee of fifty cents shall be collected from the applicant at
28 the time of original issuance or each renewal and the additional
29 fee shall be deposited in the "combined voter registration and
30 driver's licensing fund," established pursuant to the provisions
31 of section twelve, article two, chapter three of this code. The

32 one-time only additional fee for adding a motorcycle endorse-
33 ment to a driver's license shall be five dollars.

34 The fee for issuance of a motorcycle-only license shall be
35 two dollars and fifty cents for each year for which the motorcy-
36 cle license is to be valid. The fees for the motorcycle endorse-
37 ment or motorcycle-only license shall be paid into a special
38 fund in the state treasury known as the motorcycle safety fund
39 as established in section seven, article one-d of this chapter.

40 (c) On or after the first day of January, two thousand one,
41 the fee for the issuance of either the level one or level two
42 graduated driver's license as prescribed in section three-a of
43 this article is five dollars.

§17B-2-11. Duplicate permits and licenses.

1 In the event that an instruction permit or driver's license
2 issued under the provisions of this chapter is lost or destroyed,
3 or if the information contained on the license has changed, the
4 person to whom the permit or license was issued may upon
5 making proper application and upon payment of a fee of five
6 dollars obtain a duplicate thereof upon furnishing proof
7 satisfactory to the division that the permit or license has been
8 lost or destroyed.

§17B-2-12. Expiration of licenses; renewal; renewal fees.

1 (a) Every driver's license shall expire five years from the
2 date of its issuance.

3 (b) (1) Every driver's license issued to persons who have
4 attained their twenty-first birthday shall expire on the day of the
5 month designated by the commissioner in which the applicant's
6 birthday occurs in those years in which the applicant's age is
7 evenly divisible by five. Except as provided in the following
8 subdivisions, no driver's license may be issued for less than
9 three years nor more than seven years and shall be valid for a
10 period of five years, expiring in the month in which the
11 applicant's birthday occurs and in a year in which the appli-

12 cant's age is evenly divisible by five.

13 (2) Every driver's license issued to persons who have not
14 attained their twenty-first birthday shall expire on the day of the
15 month designated by the commissioner in the year in which the
16 applicant attains the age of twenty-one years, except as pro-
17 vided in section three-a of this article.

18 (3) The driver's license of any person in the armed forces
19 is extended for a period of six months from the date the person
20 is separated under honorable circumstances from active duty in
21 the armed forces.

22 (4) The commissioner may change the date that a driver's
23 license expires from the last day of the month in those years
24 specified in subdivisions (1) and (2) of this subsection to the
25 day of the month in which the applicant's birthday occurs in
26 those years. If the commissioner changes the expiration date,
27 the change may only affect new licenses and renewed licenses.

28 (c) A person who allows his or her driver's license to expire
29 may apply to the division for renewal of the license. Applica-
30 tion shall be made upon a form furnished by the division and
31 shall be accompanied by payment of the fee required by section
32 eight of this article plus an additional fee of five dollars. The
33 commissioner shall determine whether the person qualifies for
34 a renewed license and may, in the commissioner's discretion,
35 renew any expired license without examination of the applicant.

36 (d) Each renewal of a driver's license shall contain a new
37 color photograph of the licensee. By first class mail to the
38 address last known to the division, the commissioner shall
39 notify each person who holds a valid driver's license of the
40 expiration date of the license. The notice shall be mailed at least
41 thirty days prior to the expiration date of the license and shall
42 include a renewal application form.

CHAPTER 18. EDUCATION.

ARTICLE 6. DRIVER EDUCATION.

- §18-6-5. Establishment and maintenance of driver education course; who may enroll; exemption from learner's permit requirement.
- §18-6-8. Driver education course to be made available to all secondary school pupils prior to their graduation; exemption; application by pupil for unrestricted operator's license.

§18-6-5. Establishment and maintenance of driver education course; who may enroll; exemption from learner's permit requirement.

1 The state superintendent shall promote and direct the
2 establishment and maintenance of courses of instruction in
3 driver education in secondary schools in accordance with the
4 provisions of this article and the rules that the state board
5 adopts pursuant to section four of this article. Directors, trustees
6 or other persons having control or authority over private,
7 parochial or denominational secondary schools, who establish
8 and maintain the courses in the schools under their control or
9 supervision, shall comply with the rules that the state board
10 adopts pursuant to section four of this article.

11 In the case of a pupil who will not reach the age of fifteen
12 years before completion of the driver education course in which
13 enrolled, instruction shall be limited to the classroom. Pupils
14 who are fifteen years of age and older shall receive instruction
15 and practical training in the operation of motor vehicles on the
16 public streets and highways.

§18-6-8. Driver education course to be made available to all secondary school pupils prior to their graduation; exemption; application by pupil for unrestricted operator's license.

1 Before any pupil is graduated from a secondary school after
2 the first day of September, one thousand nine hundred sev-
3 enty-five, he or she shall first be provided an opportunity and
4 encouraged to successfully complete a driver education course
5 approved by the state board in a public, private, parochial or
6 denominational secondary school within the state. If a pupil has
7 successfully completed a similar course in a secondary school

8 of another state and the course is accepted by the state board as
9 adequately meeting and complying with the course standards
10 established by the state board, then the aforementioned require-
11 ment shall be deemed fulfilled regarding that pupil.

12 On or before December thirty-first, two thousand, any
13 secondary school pupil sixteen years of age or older, but under
14 eighteen years of age, who has successfully completed a driver
15 education course approved by the state board in a public,
16 private, parochial or denominational secondary school within
17 the state or a similar course in a secondary school of another
18 state and accepted by the state board as adequately meeting and
19 complying with the course standards established by the state
20 board, shall, upon proper application and successful completion
21 of all examination and driving tests required by law for issuance
22 of an operator's license to a person eighteen years of age or
23 older, be issued an operator's license without any restriction
24 rather than the junior or probationary operator's license
25 provided for in section three, article two, chapter seventeen-b
26 of this code. On or after the first day of January, two thousand
27 one, any secondary school pupil sixteen years of age or older,
28 but under eighteen years of age, who has successfully com-
29 pleted a driver education course approved by the state board in
30 a public, private, parochial or denominational secondary school
31 within the state or a similar course in a secondary school of
32 another state and accepted by the state board as adequately
33 meeting and complying with the course standards established
34 by the state board, shall be exempted from submitting a sworn
35 affidavit certified by the parent, legal guardian, or other
36 responsible adult over the age of twenty-one that the applicant
37 has successfully completed the minimum number of hours of
38 behind-the-wheel training as provided in section three-a, article
39 two, chapter seventeen-b of the code.

CHAPTER 127

(Com. Sub. for H. B. 4672 — By Delegates Rowe,
J. Smith, Douglas, Compton, Capito, Smirl and Coleman)

[Passed March 11, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend and reenact sections three, four, eight, nine and ten, article one, chapter forty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, four, ten and thirteen, article two of said chapter; and to amend and reenact sections four, eight, eleven, thirteen and fourteen, article three of said chapter, all relating generally to guardians and conservators; adding definitions; adding and addressing qualifications; clarifying educational requirements; addressing de facto guardians and conservators; addressing liability of guardians and conservators and sureties; creating misdemeanor for certain violations; providing criminal penalties; creating a special revenue fund; increasing filing fees for petitions for appointment as guardian or conservator; requiring state auditor to conduct annual examination of accounts; requiring state auditor to prescribe forms for use by conservators and guardians; requiring additional information in petitions for appointment as guardian or conservators; providing notice of sale or abandonment of property of estate of protected person; and requiring biannual reports by conservators within the first year.

Be it enacted by the Legislature of West Virginia:

That sections three, four, eight, nine and ten, 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 sections one, two, four, ten and thirteen, article two of said chapter be amended and reenacted; and that sections four, eight, eleven, thirteen and fourteen,

article three of said chapter be amended and reenacted, all to read as follows:

Article

- 1. Definitions and General Provisions.**
- 2. Procedure for Appointment.**
- 3. Guardianship and Conservatorship Administration.**

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.

- §44A-1-3. Advance directives.
- §44A-1-4. Definitions.
- §44A-1-8. Persons and entities qualified to serve as guardian or conservator.
- §44A-1-9. Posting of bonds; actions on bond.
- §44A-1-10. Mandatory education.

§44A-1-3. Advance directives.

1 The existence of a living will, medical power of attorney,
2 durable power of attorney or other advance directive, duly
3 executed by a person alleged to be a “protected person”, as
4 defined in section four of this article, or the prior appointment
5 of a surrogate decisionmaker for the protected person may
6 eliminate, limit or supersede the need for the assistance or
7 protection of a guardian or conservator, and any person so
8 appointed is to be the first preferred nominee for guardian or
9 conservator, as set forth in section eight, article two of this
10 chapter.

§44A-1-4. Definitions.

1 As used in this chapter, unless a different meaning is clearly
2 required by the context:

3 (1) “Conservator” means a person appointed by the court
4 who is responsible for managing the estate and financial affairs
5 of a protected person, and, where the context plainly indicates,
6 the term “conservator” means or includes a “limited conserva-
7 tor” or a “temporary conservator.”

8 (2) “De facto guardian” means a person who is not the
9 medical power of attorney representative or appointed surrogate
10 and has assumed substantial responsibility for any of the
11 personal affairs of another person later found to be a protected
12 person.

13 (3) “De facto conservator” means a person who is not the
14 power of attorney representative or appointed surrogate and has
15 assumed substantial responsibility for managing any portion of
16 the estate and financial affairs of another person later found to
17 be a protected person.

18 (4) “Estate” means real and personal property or any
19 interest in the property and means anything that may be the
20 subject of ownership.

21 (5) “Guardian” means a person appointed by the court who
22 is responsible for the personal affairs of a protected person, and,
23 where the context plainly indicates, the term “guardian” means
24 or includes a “limited guardian” or a “temporary guardian”.

25 (6) “Interested person” means:

26 (A) An individual who is the subject of a guardianship or
27 conservatorship proceeding;

28 (B) A guardian or conservator of a protected person; and

29 (C) Any other person with an actual and substantial interest
30 in the proceeding, either generally or as to a particular matter,
31 as distinguished from a person who has only a nominal, formal,
32 or technical interest in or connection with the proceeding.

33 (7) “Limited conservator” means a person appointed by the
34 court who has only those responsibilities for managing the
35 estate and financial affairs of a protected person, as specified in
36 the order of appointment.

37 (8) “Limited guardian” means one appointed by the court
38 who has only those responsibilities for the personal affairs of a
39 protected person, as specified in the order of appointment.

40 (9) “Living will” means a living will existing and duly
41 executed in accordance with the provisions of article thirty,
42 chapter sixteen of this code.

43 (10) “Medical power of attorney” means a power of
44 attorney existing and duly executed in accordance with the
45 provisions of article thirty, chapter sixteen of this code or
46 existing and executed in accordance with the laws of another
47 state.

48 (11) “Missing person” means an adult individual, eighteen
49 years of age or older, who is absent from his or her usual place
50 of residence in the state and whose whereabouts are unknown
51 for a period of six months or more.

52 (12) “Person” means, generally, a natural person, any
53 corporation, association, partnership or other business entity,
54 any political subdivision or other public agency, public official
55 or any estate, trust or other collection of properties to which the
56 law attributes the capacity of having rights or duties.

57 (13) “Protected person” means an adult individual,
58 eighteen years of age or older, who has been found by a court,
59 because of mental impairment, to be unable to receive and
60 evaluate information effectively or to respond to people, events,
61 and environments to such an extent that the individual lacks the
62 capacity: (A) To meet the essential requirements for his or her
63 health, care, safety, habilitation, or therapeutic needs without
64 the assistance or protection of a guardian; or (B) to manage
65 property or financial affairs or to provide for his or her support
66 or for the support of legal dependents without the assistance or
67 protection of a conservator. A finding that the individual
68 displays poor judgment, alone, is not sufficient evidence that

69 the individual is a protected person within the meaning of this
70 subsection. "Protected person" also means a person whom a
71 court has determined is a missing person.

72 (14) "Surrogate decisionmaker" means an individual
73 identified as such by an attending physician in accordance with
74 the provisions of article thirty-b, chapter sixteen of this code.

§44A-1-8. Persons and entities qualified to serve as guardian or conservator.

1 (a) Any adult individual may be appointed to serve as a
2 guardian, a conservator, or both, upon a showing by the
3 individual of the necessary education, ability and background
4 to perform the duties of guardian or conservator and upon a
5 determination by the court that the individual is capable of
6 providing an active and suitable program of guardianship or
7 conservatorship for the protected person: *Provided*, That the
8 court may, after first determining it to be in the best interest of
9 the protected person, appoint coguardians, coconservators, or
10 both: *Provided, however*, That the individual is not employed
11 by or affiliated with any public agency, entity or facility which
12 is providing substantial services or financial assistance to the
13 protected person. Any person being considered by a court for
14 appointment as a guardian or conservator shall provide informa-
15 tion regarding any crime, other than traffic offenses, of which
16 he or she was convicted. The court shall consider this informa-
17 tion in determining the person's fitness to be appointed a
18 guardian or conservator.

19 (b) Any nonprofit corporation chartered in this state and
20 licensed as set forth in subsection (c) of this section or a public
21 agency that is not a provider of health care services to the
22 protected person may be appointed to serve as a guardian, a
23 conservator, or both: *Provided*, That the entity is capable of
24 providing an active and suitable program of guardianship or

25 conservatorship for the protected person and is not otherwise
26 providing substantial services or financial assistance to the
27 protected person.

28 (c) A nonprofit corporation chartered in this state may be
29 appointed to serve as a guardian or conservator or as a limited
30 or temporary guardian or conservator for a protected person if
31 it is licensed to do so by the secretary of health and human
32 resources. The secretary shall propose legislative rules, for
33 promulgation in accordance with the provisions of chapter
34 twenty-nine-a of this code, for the licensure of nonprofit
35 corporations and shall provide for the review of the licenses.
36 The rules shall, at a minimum, establish standards to assure that
37 any corporation licensed for guardianship or conservatorship:

38 (1) Has sufficient fiscal and administrative resources to
39 perform the fiduciary duties and make the reports and
40 accountings required by this chapter;

41 (2) Will respect and maintain the dignity and privacy of the
42 protected person;

43 (3) Will protect and advocate the legal human rights of the
44 protected person;

45 (4) Will assure that the protected person is receiving
46 appropriate educational, vocational, residential and medical
47 services in the setting least restrictive of the individual's
48 personal liberty;

49 (5) Will encourage the protected person to participate to the
50 maximum extent of his or her abilities in all decisions affecting
51 him or her and to act in his or her own behalf on all matters in
52 which he or she is able to do so;

53 (6) Does not provide educational, vocational, residential or
54 medical services to the protected person; and

55 (7) Has written provisions in effect for the distribution of
56 assets and for the appointment of temporary guardians and
57 conservators for any protected persons it serves in the event the
58 corporation ceases to be licensed by the department of health
59 and human resources or otherwise becomes unable to serve as
60 guardian.

61 (d) A duly licensed nonprofit corporation that has been
62 appointed to serve as a guardian or as a conservator pursuant to
63 the provisions of this article is entitled to compensation in
64 accordance with the provisions of section thirteen of this article.

65 (e) Except as provided in section thirteen of this article, no
66 guardian or conservator nor any officer, agent, director, servant
67 or employee of any guardian or conservator may do business
68 with or in any way profit, either directly or indirectly, from the
69 estate or income of any protected person for whom services are
70 being performed by the guardian or conservator.

71 (f) Any bank or trust company authorized to exercise trust
72 powers or to engage in trust business in this state may be
73 appointed as a conservator if the court determines it is capable
74 of providing suitable conservatorship for the protected person.

75 (g) The secretary of the department of health and human
76 resources shall designate a division or agency under his or her
77 jurisdiction which may be appointed to serve as a guardian, but
78 an appointment may only be made if there is no other individ-
79 ual, nonprofit corporation or other public agency that is equally
80 or better qualified and willing to serve: *Provided*, That when
81 any sheriff was initially appointed as guardian for the person,
82 the department may not refuse to accept the guardianship
83 appointment. If the department has been appointed as conserva-
84 tor, it may petition the circuit court to be released as conserva-
85 tor.

86 (h) The sheriff of the county in which a court has assumed
87 jurisdiction may be appointed as a conservator but the appoint-
88 ment may only be made if there is no other individual, nonprofit
89 corporation or other public agency that is equally or better
90 qualified and willing to serve: *Provided*, That when the
91 department of health and human resources was initially
92 appointed as conservator for the person, the sheriff may not
93 refuse to accept the conservatorship appointment. If the sheriff
94 has been appointed as guardian, he or she may petition the
95 circuit 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 state,
98 a person who has an interest as a creditor of a protected person
99 is not eligible for appointment as either a guardian or conserva-
100 tor of the protected person.

§44A-1-9. Posting of bonds; actions on bond.

1 (a) The court has the discretion to determine whether the
2 posting of a bond by a guardian, once appointed, is necessary.
3 No bond is required of any sheriff or representative of the
4 department of health and human resources appointed as
5 conservator or guardian.

6 (b) The court shall require the posting of a bond by a
7 conservator upon appointment except where the conservator is
8 excused from posting bond under the provisions of section
9 eighteen, article four, chapter thirty-one-a of this code. In
10 determining the amount or type of a conservator's bond, the
11 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 under
15 an arrangement requiring an order of court for its removal;

16 (3) Whether an order has been entered waiving the require-
17 ment that accountings be filed and presented or permitting
18 accountings to be presented less frequently than annually;

19 (4) The extent to which the income and receipts are payable
20 directly to a facility responsible for or which has assumed
21 responsibility for the care or custody of the protected person;

22 (5) The extent to which the income and receipts are derived
23 from state or federal programs that require periodic
24 accountings;

25 (6) Whether a guardian has been appointed, and if so,
26 whether the guardian has presented reports as required; and

27 (7) Whether the conservator was appointed pursuant to a
28 nomination which requested that bond be waived.

29 (c) Any required bond shall be with a surety and in an
30 amount and form as the court may order, and the court may
31 order additional bond or reduce the bond whenever the court
32 finds that a modification is in the best interests of the protected
33 person or of the estate. The court may allow a property bond in
34 lieu of a cash bond. Proof of bonding must be submitted to the
35 court within thirty days of appointment.

36 (d) In case of a breach of any condition placed on the bond
37 of any guardian or conservator, an action may be instituted by
38 any interested person for the use and benefit of the protected
39 person, for the estate of the protected person or for the benefi-
40 ciaries of the estate.

41 (e) The following requirements and provisions apply to any
42 bond which the court may require under this section:

43 (1) Sureties are jointly and severally liable with the
44 guardian/conservator and with each other;

45 (2) By executing an approved bond of a guardian or
46 conservator, the surety consents to the jurisdiction of the court
47 in any proceeding pertaining to the fiduciary duties of the
48 conservator and naming the surety as a party respondent. Notice
49 of any proceeding must be delivered to the surety or mailed by
50 registered or certified mail to the address of the surety listed
51 with the court in which the bond is filed. If the party initiating
52 a proceeding possesses information regarding the address of a
53 surety which would appear to be more current than the address
54 listed with the court, notice shall also be mailed by registered
55 or certified mail to the last address of the surety known to the
56 party initiating the proceeding;

57 (3) On petition of a successor guardian or conservator or
58 any interested person, a proceeding may be initiated against a
59 surety for breach of the obligation of the bond of the preceding
60 guardian or conservator; and

61 (4) The bond of the guardian or conservator is not void after
62 any recovery but may be proceeded against from time to time
63 until the whole penalty is exhausted.

64 (f) No proceeding may be commenced against the surety on
65 any matter as to which an action or proceeding against the
66 guardian or conservator is barred by adjudication or limitation.

§44A-1-10. Mandatory education.

1 (a) Any individual appointed to serve as a guardian or
2 conservator must receive educational material or complete
3 mandated educational training, unless the court enters an order
4 stating that the individual does not require the mandated
5 educational training because he or she has completed the
6 mandated educational training within the last three years.

7 (b) Upon a determination that the individual who is the
8 subject of proceedings under this chapter is a protected person,
9 as defined in section four of this article, the required educa-

10 tional training must be completed within thirty days of the
11 court's determination. Upon completion, the appointed guardian
12 or conservator shall provide an affidavit to the court, certifying
13 that the educational training has been completed, and the court
14 shall forthwith issue the order of appointment in accordance
15 with the provisions of section thirteen, article two of this
16 chapter.

17 (c) The secretary of health and human resources shall
18 develop and implement an educational program for guardians
19 and conservators. The secretary shall also propose legislative
20 rules for promulgation, in accordance with the provisions of
21 chapter twenty-nine-a of this code, regarding mandatory
22 educational training for guardians and conservators. The
23 educational training may include the following:

24 (1) Written materials;

25 (2) Recorded information, whether audio, visual or both; or

26 (3) A combination of the above.

ARTICLE 2. PROCEDURE FOR APPOINTMENT.

§44A-2-1. Filing of petition; jurisdiction; fees; special revenue account established; duties of auditor.

§44A-2-2. Who may file petition; contents.

§44A-2-4. Statement of financial resources.

§44A-2-10. Factors to be considered by court.

§44A-2-13. Order of appointment; notice.

§44A-2-1. Filing of petition; jurisdiction; fees; special revenue account established; duties of auditor.

1 (a) A petition for the appointment of a guardian or conser-
2 vator shall be filed with the clerk of the circuit court in the
3 county in which the alleged protected person resides, or, if an
4 alleged protected person has been admitted to a health care or
5 correctional facility, in the county in which that facility is
6 located. A petition for the appointment of a conservator for a

7 missing person shall be filed with the clerk of the circuit court
8 in the county in which the missing person last resided.

9 (b) The circuit court in which the proceeding is first
10 commenced shall have exclusive jurisdiction unless that court
11 determines that a transfer of venue would be in the best
12 interests of the person alleged to need protection.

13 (c) The fee for filing a petition shall be ninety dollars,
14 payable upon filing to the circuit clerk, seventy-five dollars of
15 which shall be retained by the circuit clerk and fifteen dollars
16 of which shall be remitted by the circuit clerk to the special
17 revenue account in the state treasury created in subsection (d)
18 of this section. The person bringing the petition shall be
19 responsible for fees for filings of the petition and other papers,
20 for service of process, and for copies of court documents and
21 transcripts. In the event that a guardian, conservator, or both, is
22 appointed by the court, such fees shall be reimbursed to the
23 individual who filed the petition from the protected person's
24 estate, if funds are available. Any person who is pecuniarily
25 unable to pay such fees and costs as set forth in article one,
26 chapter fifty-nine of this code and article two, chapter fifty-one
27 of this code will not be required to pay said fees and costs.

28 (d) There is hereby created in the state treasury a special
29 revenue account, which shall be an interest bearing account, to
30 be known as the "enforcement of guardianship and conservator-
31 ship act fund".

32 (e) The accounts established pursuant to the provisions of
33 this chapter shall be examined annually by the state auditor in
34 accordance with the provisions of section seven, article nine,
35 chapter six of this code, and the state auditor shall authorize
36 payments from the fund created in subsection (d) of this section
37 for expenses incurred in performing such examinations.

§44A-2-2. Who may file petition; contents.

1 (a) A petition for the appointment of a guardian, a conser-
2 vator, or both, may be filed by the individual alleged to be a
3 protected person, by a person who is responsible for the
4 individual's care or custody, by the facility providing care to
5 the individual, by the person that the individual has nominated
6 as guardian or conservator, by a person acting as a de facto
7 guardian or de facto conservator or by any other interested
8 person, including, but not limited to, the department of health
9 and human resources.

10 (b) A petition for the appointment of a guardian, a conser-
11 vator, or both, shall state the petitioner's name, place of
12 residence, post office address, and relationship to the alleged
13 protected person, and shall, to the extent known as of the date
14 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 none

21 (iii) The nearest known relatives who would be entitled to
22 succeed to the person's estate by intestate succession as set
23 forth in article one, chapter forty-two of this code.

24 Once a relative or several relatives have been identified in
25 one of the aforementioned categories, relatives in a lower
26 category do not have to be listed in the petition;

27 (3) The name, place of residence or location and post office
28 address of the individual or facility that is responsible for the
29 person's care or custody, any person acting as a de facto
30 guardian or de facto conservator or any medical power of

31 attorney representative or appointed surrogate, and a detailed
32 list of the acts performed by such person on behalf of the
33 protected person;

34 (4) The name, place of residence or location and post office
35 address of any person designated as a surrogate decisionmaker
36 for the alleged protected person, or of any representative or
37 representatives designated under a durable power of attorney,
38 medical power of attorney or living will, of which the alleged
39 protected person is the principal, and the petitioner shall attach
40 a copy of any of those documents, if available;

41 (5) The name, post office address and phone number of the
42 attorney representing the petitioner in the petition and appoint-
43 ment proceedings;

44 (6) Whether the person's incapacity will prevent attendance
45 at the hearing and the reasons therefor;

46 (7) The type of guardianship or conservatorship requested
47 and the reasons for the request;

48 (8) The proposed guardian or conservator's name, post
49 office address and, if the proposed guardian or conservator is an
50 individual, the individual's age, occupation, criminal history
51 and relationship to the alleged protected person;

52 (9) The name and post office address of a guardian nomi-
53 nated by the alleged protected person if different from the
54 proposed guardian or conservator, and, if the person nominated
55 as a guardian or conservator is an individual, the individual's
56 age, occupation, criminal history and relationship to the alleged
57 protected person;

58 (10) The name and post office address of any guardian or
59 conservator currently acting, whether in this state or elsewhere;

60 (11) If the appointment of a limited guardian is requested,
61 the specific areas of protection and assistance to be included in
62 the order of appointment;

63 (12) If the appointment of a limited conservator is re-
64 quested, the specific areas of management and assistance to be
65 included in the order of appointment; and

66 (13) If the appointment of a conservator is requested for a
67 missing person, the specific circumstances under which the
68 person is considered missing.

§44A-2-4. Statement of financial resources.

1 Prior to a hearing for a conservatorship, the petitioner shall
2 file a statement of the financial resources of the alleged
3 protected person which shall to the extent known list the
4 person's social security number, list with reasonable detail the
5 approximate value of the person's real and personal property,
6 and the person's anticipated annual gross income and other
7 receipts.

§44A-2-10. Factors to be considered by court.

1 (a) The court alone shall determine whether a guardian or
2 conservator should be appointed, the type of guardian or
3 conservator and the specific areas of protection, management
4 and assistance to be granted. Any determination that the
5 individual is a protected person shall contain a specific finding
6 that the person meets the definition set forth in section four,
7 article one of this chapter. In making the determination, the
8 court shall consider the suitability of the proposed guardian or
9 conservator, the limitations of the alleged protected person, the
10 development of the person's maximum self-reliance and
11 independence, the availability of less restrictive alternatives
12 including advance directives and the extent to which it is
13 necessary to protect the person from neglect, exploitation, or
14 abuse.

15 (b) Except as provided in section eight of this article, the
16 selection of the guardian or conservator is in the discretion of
17 the court. The court shall select the individual or entity best
18 qualified to act in the best interest of the protected person, after
19 consideration of the proposed guardian's or conservator's
20 geographic location, familial or other relationship with such
21 person, ability to carry out the powers and duties of the office,
22 commitment to promoting such person's welfare, any potential
23 conflicts of interest, the criminal history of the proposed
24 guardian or conservator and the recommendations of the
25 spouse, the parents, children or other interested relatives,
26 whether made by will or otherwise. The court may only appoint
27 one guardian and one conservator and it need not appoint the
28 same individual or entity to serve as both guardian and conser-
29 vator.

30 (c) A guardianship or conservatorship appointed under this
31 article shall be the least restrictive possible, and the powers
32 shall not extend beyond what is absolutely necessary for the
33 protection of the individual.

§44A-2-13. Order of appointment; notice.

1 (a) An order appointing a guardian or conservator may only
2 be issued by the court upon the following:

3 (1) The guardian or conservator has subscribed to and filed
4 an oath promising to faithfully perform the duties of the office
5 in accordance with all provisions of this chapter;

6 (2) Posting of any bond, if required; and

7 (3) The completion of mandatory education, as required
8 under the provisions of section ten, article one of this chapter,
9 unless the court enters an order stating that an individual does
10 not require educational training because he or she has com-
11 pleted the mandatory education within the last three years.

12 (b) In addition to the findings of fact and conclusions of law
13 required in section nine of this article, the order shall include
14 the specific areas of protection or assistance granted in the case
15 of a guardian and the specific areas of management and
16 assistance granted in the case of a conservator.

17 (c) Within fourteen days following the entry of an order of
18 appointment, the guardian or conservator shall mail a copy of
19 the order of appointment, together with a brief statement in
20 large print of rights to seek an appeal for modification or
21 termination, to the protected person and to all individuals and
22 entities given notice of the petition.

ARTICLE 3. GUARDIANSHIP AND CONSERVATORSHIP ADMINISTRATION.

§44A-3-4. Management powers and duties of conservator.

§44A-3-8. Conservator's inventory.

§44A-3-11. Filing of reports and accountings.

§44A-3-13. Personal liability of guardians.

§44A-3-14. Personal liability of conservators.

§44A-3-4. Management powers and duties of conservator.

1 (a) A conservator, in managing the estate, shall act as a
2 fiduciary and serve in the best interests of the protected person
3 and, in addition, has the following powers which may be
4 exercised without prior court authorization, except as otherwise
5 specifically provided:

6 (1) To invest and reinvest the funds of the estate in accor-
7 dance with a standard of prudent investing;

8 (2) To collect, hold, and retain assets of the estate, includ-
9 ing land in another state, and to receive additions to the estate;

10 (3) To continue or participate in the operation of any
11 unincorporated business or other enterprise;

12 (4) To deposit estate funds in a state or federally insured
13 financial institution, including one operated by the conservator;

14 (5) To manage, control and sell at public sale, for cash or
15 for credit, the personal property of the estate: *Provided*, That
16 the conservator has provided written notice by certified mail to
17 those persons named on the petition as the protected person's
18 nearest relatives at their last known address at least fourteen
19 days prior to any sale of the personal property;

20 (6) To perform a contract entered into by a protected
21 person, including, without limitation, a contract to convey or
22 purchase real property as approved by any court having
23 jurisdiction;

24 (7) To renew a lease entered into by a protected person as
25 lessor or lessee with or without an option to purchase, including
26 leases for real and personal property and leases and other
27 arrangements for exploration and removal of minerals or other
28 natural resources notwithstanding that the lease or other
29 arrangement may extend beyond the term of the conservator-
30 ship;

31 (8) To borrow money and to place, renew or extend an
32 encumbrance upon any property, real or personal, including the
33 power to borrow from a financial institution operated by the
34 conservator, subject to the provisions of section twelve of this
35 article;

36 (9) To abandon property when, in the opinion of the
37 conservator, it is valueless or is so encumbered or in a condition
38 that it is of no benefit to the estate: *Provided*, That the conser-
39 vator has provided written notice to those persons named on the
40 petition as the protected person's nearest relatives at their last
41 known address at least fourteen days prior to any abandonment
42 of the property: *Provided, however*, That any items listed in the
43 initial inventory as valueless may be abandoned no sooner than

44 thirty days following the filing of the initial inventory without
45 written notice;

46 (10) To make ordinary or extraordinary repairs or alter-
47 ations in buildings or other property and to grant easements for
48 public or private use, or both, with or without consideration;

49 (11) To vote a security, in person or by general or limited
50 proxy, and to consent to the reorganization, consolidation,
51 merger, dissolution, or liquidation of a corporation or other
52 enterprise;

53 (12) To sell or exercise stock subscription or conversion
54 rights and to pay calls, assessments, and any other sums
55 chargeable or accruing against or on account of securities;

56 (13) To hold a security in the name of a nominee or in other
57 form without disclosure of the conservatorship, so that title to
58 the security may pass by delivery, but the conservator is liable
59 for any act of the nominee in connection with a security so held;

60 (14) To insure the assets of the estate against damage or
61 loss, and the guardian and conservator against liability with
62 respect to third persons;

63 (15) To allow, pay, reject, contest or settle any claim by or
64 against the estate or protected person by compromise or
65 otherwise, and to release, in whole or in part, any claim
66 belonging to the estate to the extent it is uncollectible;

67 (16) To pay taxes, assessments and other expenses incurred
68 in the collection, care and administration of the estate;

69 (17) To pay any sum distributable for the benefit of the
70 protected person or for the benefit of a legal dependent by
71 paying the sum directly to the distributee, to the provider of
72 goods and services, to any individual or facility that is responsi-
73 ble for or has assumed responsibility for care and custody, to a

74 distributee's custodian under a Uniform Gifts or Transfers Act
75 of any applicable jurisdiction, or by paying the sum to the
76 guardian of the protected person or, in the case of a dependent,
77 to the dependent's guardian or conservator;

78 (18) To employ persons, including attorneys, accountants,
79 investment advisors, or agents; to act upon their recommenda-
80 tions without independent investigation; to delegate to them any
81 power, whether ministerial or discretionary; and to pay them
82 reasonable compensation;

83 (19) To maintain life, health, casualty and liability insur-
84 ance for the benefit of the protected person, or legal depend-
85 ents;

86 (20) To manage the estate following the termination of the
87 conservatorship and until its delivery to the protected person, or
88 successors in interest; and

89 (21) To execute and deliver all instruments and to take all
90 other actions that will accomplish or facilitate the exercise of
91 the powers conferred in accordance with the provisions of this
92 chapter.

93 (b) Any person acting as a conservator for more than one
94 protected person shall maintain funds for each protected person
95 in separate accounts.

96 (c) No conservator may make loans from the accounts of
97 the protected person to himself, herself or his or her spouse.

§44A-3-8. Conservator's inventory.

1 (a) Within sixty days following entry of an order of
2 appointment, a conservator shall file with the court an inventory
3 of the real and personal estate of the protected person which has
4 come into the conservator's possession or knowledge. The
5 inventory shall include, with reasonable detail, a listing of each
6 item of the estate, its approximate fair market value and the

7 type and amount of encumbrance to which it is subject. The
8 inventory shall list with reasonable detail any items that the
9 conservator believes are valueless and intends to abandon. If
10 any real or personal estate comes into the possession or
11 knowledge of the conservator subsequent to the filing of the
12 initial inventory, the conservator shall either amend the
13 inventory or list the same in the next accounting required to be
14 filed with the court, as described in this section.

15 (b) A conservator shall mail a copy of the inventory to the
16 individuals and entities who received notice of hearing, as
17 specified in section six, article two of this chapter, no later than
18 fourteen days following its presentation of the inventory.

19 (c) Any person who knowingly violates the provisions of
20 this section is guilty of a misdemeanor and, upon conviction
21 thereof, shall be fined not less than twenty-five dollars nor than
22 more one hundred dollars.

§44A-3-11. Filing of reports and accountings.

1 (a) Reports of guardians and accountings of conservators,
2 as described in this article shall be filed with the circuit clerk of
3 the county in which appointed, on a semi-annual basis during
4 the first twelve months of the guardian's or conservator's
5 appointment and:

6 (1) On the first day of February of each year thereafter;

7 (2) When the court orders additional reports or accountings
8 to be filed;

9 (3) When the guardian or conservator resigns or is re-
10 moved; and

11 (4) When the appointment of the guardian or conservator is
12 terminated, except that in the case of a guardian, the court may
13 determine that there is no need for a report upon the termina-
14 tion; and in the case of a conservator, no accounting is required

15 if all persons entitled to any of proceeds of the estate consent
16 thereto.

17 (b) A guardian or conservator may elect to file a periodic
18 report or accounting on a calendar-year basis; however, in no
19 event may such a report or accounting cover a period of more
20 than one year. A calendar-year report or accounting shall be
21 filed with the circuit clerk no later than the fifteenth day of
22 April of the succeeding year.

23 (d) Any person who knowingly violates the provisions of
24 this section is guilty of a misdemeanor and, upon conviction
25 thereof, shall be fined not less than twenty-five dollars nor than
26 more one hundred dollars.

27 (e) The state auditor shall prescribe forms for reports
28 required to be filed pursuant to the provisions of this article.

§44A-3-13. Personal liability of guardians.

1 (a) A guardian shall have a fiduciary duty to the protected
2 person for whom he or she was appointed guardian and may be
3 held personally liable for a breach of that duty, including being
4 required to pay restitution for any embezzled or concealed
5 funds.

6 (b) A guardian is not liable for the acts of the protected
7 person, unless the guardian is personally negligent, nor is a
8 guardian required to expend personal funds on behalf of the
9 protected person.

§44A-3-14. Personal liability of conservators.

1 (a) A conservator shall have a fiduciary duty to the pro-
2 tected person for whom he or she was appointed conservator
3 and may be held personally liable for a breach of that duty,
4 including being required to pay restitution for any embezzled or
5 concealed funds.

6 (b) Unless otherwise provided in the contract, a conservator
7 is not personally liable on a contract entered into in a fiduciary
8 capacity in the course of administration of the estate unless the
9 conservator fails to reveal the representative capacity or to
10 identify the estate in the contract.

11 (c) A conservator is personally liable for obligations arising
12 from ownership or control of property of the estate or for torts
13 committed in the course of administration of the estate only if
14 personally negligent.

15 (d) Claims based upon contracts entered into by a conserva-
16 tor in a fiduciary capacity, obligations arising from ownership
17 or control of the estate, or torts committed in the course of
18 administration of the estate, may be asserted against the estate
19 by proceeding against the conservator in a fiduciary capacity,
20 whether or not the conservator is personally liable therefor.

21 (e) A successor conservator is not personally liable for the
22 contracts or actions of a predecessor. However, a successor
23 conservator is not immunized from liability for a breach of
24 fiduciary duty committed by a predecessor if the successor
25 learns of the breach and fails to take reasonable corrective
26 action.

CHAPTER 128

(Com. Sub. for H. B. 4611 — By Delegates Rowe,
C. White, Hunt, Webb, Wills and Hines)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter forty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine, relating

to standby guardianship; and providing that the documents contained in the court file be confidential.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. STANDBY GUARDIANSHIP.

§44A-5-9. Petition and other records pertaining to standby guardianship confidential.

1 Upon the filing of a petition requesting the approval of a
2 standby guardian, all pleadings, exhibits and other documents
3 contained in the court file are considered confidential and not
4 open for public inspection, either during the pendency of the
5 case or after the case is closed. The contents of the court file are
6 open to inspection and copying by the parties, their designees
7 and their attorneys.

CHAPTER 129

(Com. Sub. for H. B. 4431 — By Delegates Staton,
Amores, Hunt, Rowe and Hutchins)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section five-b, article eleven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, three, four, five and six, article nineteen of chapter twenty-two of said code, all relating to providing funding for the hazardous waste emer-

gency response fund; deleting certain provisions relating to solid and hazardous waste supplemental assessment fee; updating references to federal law; modifying certain definitions; expanding circumstances when fund moneys may be utilized; modifying hazardous waste emergency response fund requirements; excluding certain materials and substances from the hazardous waste generator fund fee; modifying fee assessment criteria for fee assessments to the fund; modifying criteria for agreements for expenditures from the fund; and modifying rulemaking authority of the director of the division of environmental protection.

Be it enacted by the Legislature of West Virginia:

That section five-b, article eleven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, two, three, four, five and six, article nineteen, of chapter twenty-two of said code be amended and reenacted, all to read as follows:

ARTICLE 19. HAZARDOUS WASTE EMERGENCY RESPONSE FUND.

§22-19-1. Findings; purpose.

§22-19-2. Definitions.

§22-19-3. Hazardous waste emergency response fund; components of fund.

§22-19-4. Fee assessments; tonnage fees; due dates of payments; interest on unpaid fees.

§22-19-5. Director's responsibilities; fee schedules; authorized expenditures; other powers of director; authorizing civil actions; assistance of attorney general or prosecuting attorney.

§22-19-6. State hazardous waste contingency plan.

§22-19-1. Findings; purpose.

1 The Legislature recognizes that large quantities of hazard-
2 ous waste are generated within the state, and that emergency
3 situations involving hazardous waste can and will arise which
4 may present a hazard to human health, safety, or the environ-
5 ment. The Legislature also recognizes that some hazardous
6 waste has been stored, treated or disposed of at sites in the state

7 in a manner insufficient to protect human health, safety or the
8 environment. The Legislature further recognizes that the federal
9 government has enacted the Comprehensive Environmental
10 Response, Compensation and Liability Act of 1980, as amended
11 by the Superfund Amendments and Reauthorization Act of
12 1986, which provides for federal assistance to respond to
13 hazardous substance emergencies and to remove and remedy
14 the threat of damage to the public health or welfare or to the
15 environment, and declares that West Virginia desires to produce
16 revenue for matching the federal assistance provided under the
17 federal acts. Therefore, the Legislature hereby creates a
18 hazardous waste emergency fund to provide state funds for
19 responding to hazardous waste emergencies, responding to
20 releases of hazardous substances into the environment, match-
21 ing federal financial assistance for restoring hazardous waste
22 sites and other costs or expenses incurred in the administration
23 of this article.

§22-19-2. Definitions.

1 As used in this article, unless the context clearly requires a
2 different meaning:

3 (1) "Cleanup" means such actions as may be necessary to
4 monitor, assess and evaluate the threat of release of hazardous
5 waste or hazardous substances, the containment, collection,
6 control, identification, treatment, dispersal, removal or disposal
7 of hazardous waste or other such actions as may be necessary
8 to respond to hazardous waste or hazardous substance emergen-
9 cies or to prevent, minimize or mitigate damage to the public
10 health, safety, welfare or to the environment, and includes,
11 where necessary, replacement of existing, or provision of
12 alternative, drinking water supplies that have been contami-
13 nated with hazardous waste as a result of an emergency;

14 (2) "Cleanup costs" means all costs incurred by the
15 director, or with the approval of the director, by any state

16 agency or person participating in the cleanup of a hazardous
17 waste or hazardous substance emergency or remedial action and
18 also includes responding to emergencies that may contain
19 petroleum products: *Provided*, That cleanup costs do not
20 include expenditures for remediation of or responding to
21 releases from underground storage tanks;

22 (3) "Generator" means any person, corporation, partnership,
23 association or other legal entity, by site location, whose act or
24 process produces hazardous waste as identified or listed by the
25 director in rules promulgated pursuant to section six, article
26 eighteen of this chapter, in an amount greater than five thou-
27 sand kilograms per year.

28 All other terms have the meaning as prescribed in the rules
29 promulgated by the director pursuant to the provisions of
30 section six, article eighteen of this chapter.

**§22-19-3. Hazardous waste emergency response fund; compo-
nents of fund.**

1 (a) The special fund designated "The Hazardous Waste
2 Emergency Response Fund," hereinafter referred to as "the
3 fund," shall be continued in the state treasury.

4 (b) All generator fee assessments, any interest or surcharge
5 assessed and collected by the director, interest accruing on
6 investments and deposits of the fund, and any other moneys
7 designated shall be paid into the fund. Expenditures from the
8 fund shall be for the purposes set forth in this article and are not
9 authorized from collections but are to be made only in accor-
10 dance with appropriation by the Legislature and in accordance
11 with the provisions of article three, chapter twelve of this code
12 and upon the fulfillment of the provisions set forth in article
13 two, chapter five-a of this code: *Provided*, That for the fiscal
14 year ending the thirtieth day of June, two thousand, expendi-
15 tures are authorized from collections rather than pursuant to an

16 appropriation by the Legislature. Amounts collected which are
17 found from time to time to exceed the funds needed for
18 purposes set forth in this article may be transferred to other
19 accounts or funds and redesignated for other purposes by
20 appropriation of the Legislature.

**§22-19-4. Fee assessments; tonnage fees; due dates of payments;
interest on unpaid fees.**

1 (a) Each generator of hazardous waste within this state shall
2 pay an annual fee based upon the amount of hazardous waste
3 generated as reported to the director by the generator on a fee
4 assessment form prescribed by the director submitted pursuant
5 to article eighteen of this chapter. The director shall establish a
6 fee schedule according to the following: Full assessment for
7 generated hazardous waste disposed or treated off-site; ninety
8 percent of the full assessment for generated hazardous waste
9 either treated or disposed on-site; seventy-five percent of the
10 full assessment for generated hazardous waste treated off-site
11 so that such waste is rendered nonhazardous; and twenty-five
12 percent of the full assessment for generated hazardous waste
13 treated on-site so that such waste is rendered nonhazardous:
14 *Provided*, That the generator fee assessment does not apply to
15 the following: (1) Sludge from any publicly owned treatment
16 works in the state; (2) any discharge to waters of the state of
17 hazardous waste pursuant to a valid water pollution control
18 permit issued under federal or state law; (3) any hazardous
19 wastes beneficially used or reused or legitimately recycled or
20 reclaimed; (4) hazardous wastes which are created or retrieved
21 pursuant to an emergency or remedial action plan; (5) hazard-
22 ous wastes whose sole characteristic as a hazardous waste is
23 based on corrosivity and which are subjected to on-site elemen-
24 tary neutralization in containers or tanks; (6) fly ash waste,
25 bottom ash waste, slag waste, and flue gas emission control
26 waste generated primarily from the combustion of coal or other
27 fossil fuels; (7) solid waste from the extraction, beneficiation,

28 and processing of ores and minerals, including coal, phosphate
29 rock and overburden from the mining of uranium ore; (8)
30 cement kiln dust waste; (9) drilling fluids, produced waters, and
31 other wastes associated with the exploration, development or
32 production of crude oil, natural gas, or geo-thermal energy; and
33 (10) any other material that is exempted or excluded from
34 hazardous waste regulation pursuant to the federal Resource
35 Conservation and Recovery Act and the rules promulgated
36 thereunder, including, but not limited to, the exemptions and
37 exclusions set forth in 40 CFR 261.4 and 261.6, or the state
38 hazardous waste management act, article eighteen of this
39 chapter, and the rules promulgated thereunder.

40 (b) Each generator of hazardous waste within the state
41 subject to a fee assessment under subsection (a) of this section
42 shall pay a fee based on its annual tonnage of generated
43 hazardous waste. Any unexpended balance of such collected
44 fees shall not be transferred to the general revenue fund, but
45 shall remain in the fund. Whenever the balance in the fund is
46 less than one million dollars, the director is authorized to
47 impose a fee assessment as provided in this article, but in no
48 event shall the fees established be set to produce revenue
49 exceeding five hundred thousand dollars in any year.

50 (c) Generator fee assessments are due and payable to the
51 division of environmental protection on the fifteenth day of
52 January of each year. Such payments shall be accompanied by
53 information in such form as the director may prescribe.

54 (d) If the fees or any portion thereof are not paid by the date
55 prescribed, interest accrues upon the unpaid amount at the rate
56 of ten percent per annum from the date due until payment is
57 actually made. Such interest payments shall be deposited in the
58 fund. If any generator fails to pay the fees imposed before the
59 first day of April of the year in which they are due, there is
60 imposed in addition to the fee and interest determined to be

61 owed a surcharge equivalent to the total amount of the fee
62 which shall also be collected and deposited in the fund.

§22-19-5. Director's responsibilities; fee schedules; authorized expenditures; other powers of director; authorizing civil actions; assistance of attorney general or prosecuting attorney.

1 (a) The director shall collect all fees assessed pursuant to
2 this article and administer the fund. The fee schedule shall be
3 published in the state register by the first day of August of each
4 year. Each generator who filed the fee assessment form
5 prescribed by the director shall be notified and provided with a
6 copy of the fee schedule by certified mail. In the event the fee
7 schedule is not published by the first day of August, the date
8 prescribed for payment in section four of this article shall be
9 advanced by the same number of days that the publication of
10 the fee schedule is delayed. The interest and surcharge provi-
11 sions of section four of this article shall be similarly advanced.

12 (b) The director is authorized to enter into agreements and
13 contracts and to expend the moneys in the fund for the follow-
14 ing purposes:

15 (1) Responding to hazardous waste emergencies and
16 releases of hazardous substances when, based on readily
17 available information, the director determines that immediate
18 action may prevent or mitigate significant risk of harm to
19 human health, safety or the environment from hazardous wastes
20 or releases of hazardous substances in situations for which no
21 federal funds are immediately available for such response
22 cleanup or containment: *Provided*, That the director shall apply
23 for and diligently pursue available federal funds for such
24 emergencies at the earliest possible time;

25 (2) Reimbursing any person for reasonable cleanup costs
26 incurred with the authorization of the director in responding to

27 a hazardous waste emergency or release of hazardous sub-
28 stances pursuant to authorization of the director;

29 (3) Financing the nonfederal share of the cleanup and site
30 reclamation activities pursuant to the federal Comprehensive
31 Environmental Response, Compensation and Liability Act of
32 1980, as amended by the Superfund Amendments and
33 Reauthorization Act of 1986 as well as future operation and
34 maintenance costs for these sites; and

35 (4) Financing any and all preparations necessary for
36 responding to hazardous waste and hazardous substance
37 activities and emergencies within the state, including, but not
38 limited to, the purchase or lease of hazardous waste emergency
39 response equipment.

40 (c) Prior to making expenditures from the fund pursuant to
41 subdivision (1), (2) or (3), subsection (b) of this section, the
42 director will make reasonable efforts to secure agreements to
43 pay the costs of cleanup and remedial actions from owners or
44 operators of sites or other responsible persons.

45 (d) The director is authorized to promulgate and revise rules
46 in compliance with chapter twenty-nine-a of this code to
47 implement and effectuate the powers, duties and responsibilities
48 vested in him or her under this article. Prior to the assessment
49 of any fees under this article, the director shall promulgate rules
50 which account for the mixture of hazardous and nonhazardous
51 constituents in the hazardous waste which is generated. The
52 director may not assess a fee on the nonhazardous portion,
53 including, but not limited to, the weight of water.

54 (e) The director is authorized to recover through civil action
55 or cooperative agreements with responsible persons the full
56 amount of any funds expended for purposes enumerated in
57 subdivision (1), (2) or (3), subsection (b) of this section. All
58 moneys expended from the fund which are so recovered shall

59 be deposited in the fund. Any civil action instituted pursuant to
60 this subsection may be brought in either Kanawha County or
61 the county in which the hazardous waste emergency occurs or
62 the county in which remedial action is taken.

63 (f) The director is authorized to institute a civil action
64 against any generator for failure to pay any fee assessed
65 pursuant to this article. Any action instituted against a generator
66 pursuant to this subsection may be brought in either Kanawha
67 County or the county in which the generator does business. The
68 generator shall pay all attorney fees and costs of such action if
69 the director prevails.

70 (g) Upon request by the director, the attorney general or
71 prosecuting attorney for the county in which an action was
72 brought shall assist the director in any civil action instituted
73 pursuant to this section and any proceedings relating thereto.

74 (h) The director is authorized to enter into contracts or
75 cooperative agreements with the federal government to secure
76 to the state the benefits of funding for action taken pursuant to
77 the requirements of the federal Comprehensive Environmental
78 Response, Compensation and Liability Act of 1980 as amended
79 by the Superfund Amendments and Reauthorization Act of
80 1986.

81 (i) The director is authorized to accept gifts, donations,
82 contributions, bequests or devises of money, security or
83 property for deposit in the fund.

84 (j) The director is authorized to invest the fund to earn a
85 reasonable rate of return on the unexpended balance.

§22-19-6. State hazardous waste contingency plan.

1 The director shall promulgate rules in compliance with
2 chapter twenty-nine-a of this code, establishing a state hazard-
3 ous waste contingency plan which shall set forth procedures and

4 standards for responding to hazardous waste emergencies,
5 releases of hazardous substances, for conducting remedial
6 cleanup and maintenance of hazardous waste sites and for
7 making expenditures from the fund after the date of promulga-
8 tion of the plan. The plan shall include:

9 (a) Methods for discovering, reporting and investigating
10 sites at which hazardous waste or hazardous substances may
11 present significant risk of harm to the public health and safety
12 or to the environment;

13 (b) Methods and criteria for establishing priority responses
14 and for determining the appropriate extent of cleanup, contain-
15 ment and other measures authorized by this article;

16 (c) Appropriate roles for governmental, interstate and
17 nongovernmental entities in effectuating the plan;

18 (d) Methods for identifying, procuring, maintaining, and
19 storing hazardous waste response equipment and supplies; and

20 (e) Methods to identify the most appropriate and
21 cost-effective emergency and remedial actions in view of the
22 relative risk or danger presented by each case or event.

CHAPTER 130

(Com. Sub. for S. B. 542 — By Senators Walker, Prezioso, Kessler, Plymale,
McCabe, Snyder, Minear, Chafin, Love, Ball, Dawson, Mitchell, Bowman,
Jackson, Unger, Edgell, Sharpe, Ross, Redd, Anderson and Dittmar)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article two-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact articles one and two of said chapter, all relating to the state public health system and local boards of

health and their purposes; definitions; powers and duties of the secretary; rules; state health officer; powers and duties of the commissioner; disposition of fees collected by the commissioner; receipt and disbursement of federal aid; employee training; investigations and hearings; authority to create municipal, county and combined boards of health; appointment to and composition of local boards of health; terms of appointment, compensation and expenses of members of local boards of health; meetings, quorum, bylaws and powers and duties of local boards of health; local health officer appointment, qualifications and power and duties; financial responsibilities of appointing authorities for local boards of health; levies; appropriation of county or municipal general funds for public health purposes; state funding; penalties; and severability.

Be it enacted by the Legislature of West Virginia:

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

Article

- 1. State Public Health System.**
- 2. Local Boards of Health.**

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

- §16-1-1. Purpose.
- §16-1-2. Definitions.
- §16-1-3. Powers and duties of the secretary.
- §16-1-4. Proposal of rules by the secretary.
- §16-1-5. State health officer; appointment; qualifications; term.
- §16-1-6. Powers and duties of the commissioner.
- §16-1-7. Duties and powers of the commissioner; service on advisory councils, boards and commissions; authority to designate a representative to serve in his or her place on certain boards and commissions.
- §16-1-8. Duties and powers of the commissioner; authorization to cooperate with any state health planning and development agencies and any federal government agencies in hospital and other health facility programs.

- §16-1-9. Duties and powers of the commissioner; supervision over local sanitation; violations; jurisdiction; penalties.
- §16-1-9a. Public water system defined; regulation of maximum contaminant levels in water systems; authorization of inspections; violations; criminal, civil and administrative penalties; safe drinking water penalty fund.
- §16-1-9b. Permit approval for individual systems with surface water discharge; reserve areas.
- §16-1-10. Disposition of permit, license or registration fees received by the commissioner; report to auditor; health facility licensing account.
- §16-1-11. Disposition of fees for services charged and received by the commissioner; health services fund.
- §16-1-12. Receipt and disbursement of federal aid and other moneys for health purposes.
- §16-1-13. Hospital services revenue account; health facilities long-range plans.
- §16-1-14. Training employees.
- §16-1-15. Investigations and hearings; power to administer oaths, subpoena witnesses, etc.; use of information and material acquired.
- §16-1-16. Public health advisory council; duties; composition; appointment; meetings; compensation; expenses and continuation.
- §16-1-17. Penalties for interfering with examiners, inspectors or other authorized representatives of the commissioner in the performance of duty.
- §16-1-18. Penalties for violating provisions of article.

§16-1-1. Purpose.

1 It is the policy of this state to promote the physical and
2 mental health of all of its citizens and to prevent disease, injury,
3 and disability whenever possible. The state recognizes its
4 responsibility to assist in the provision of essential public health
5 services and establishes by this article a state public health
6 system to work in conjunction with local boards of health to
7 provide basic public health services that encourage healthy
8 people in healthy communities.

§16-1-2. Definitions.

1 Unless the context in which used clearly requires a different
2 meaning, as used in this article:

3 (a) “Basic public health services” means those services that
4 are necessary to protect the health of the public. The three areas

5 of basic public health services are communicable and reportable
6 disease prevention and control, community health promotion
7 and environmental health protection;

8 (b) "Bureau" means the bureau for public health in the
9 department of health and human resources;

10 (c) "Combined local board of health" is one form of
11 organization for a local board of health and means a board of
12 health serving any two or more counties or any county or
13 counties and one or more municipalities within or partially
14 within the county or counties;

15 (d) "Commissioner" means the commissioner of the bureau
16 for public health, who is the state health officer;

17 (e) "County board of health" is one form of organization for
18 a local board of health and means a local board of health
19 serving a single county;

20 (f) "Department" means the West Virginia department of
21 health and human resources;

22 (g) "Director" or "director of health" means the state health
23 officer. Administratively within the department, the bureau for
24 public health through its commissioner carries out the public
25 health functions of the department, unless otherwise assigned
26 by the secretary;

27 (h) "Essential public health services" means the core public
28 health activities necessary to promote health and prevent
29 disease, injury and disability for the citizens of the state. The
30 services include:

31 (1) Monitoring health status to identify community health
32 problems;

33 (2) Diagnosing and investigating health problems and
34 health hazards in the community;

35 (3) Informing, educating and empowering people about
36 health issues;

37 (4) Mobilizing community partnerships to identify and
38 solve health problems;

39 (5) Developing policies and plans that support individual
40 and community health efforts;

41 (6) Enforcing laws and rules that protect health and ensure
42 safety;

43 (7) Uniting people with needed personal health services and
44 assuring the provision of health care when it is otherwise not
45 available;

46 (8) Promoting a competent public health and personal
47 health care workforce;

48 (9) Evaluating the effectiveness, accessibility and quality of
49 personal and population-based health services; and

50 (10) Researching for new insights and innovative solutions
51 to health problems;

52 (i) "Licensing boards" means those boards charged with
53 regulating an occupation, business or profession and on which
54 the commissioner serves as a member;

55 (j) "Local board of health," "local board" or "board" means
56 a board of health serving one or more counties or one or more
57 municipalities or a combination thereof;

58 (k) "Local health department" means the staff of the local
59 board of health;

60 (l) "Local health officer" means the individual physician
61 with a current West Virginia license to practice medicine who
62 supervises and directs the activities of the local health depart-

63 ment services, staff and facilities and is appointed by the local
64 board of health with approval by the commissioner;

65 (m) "Municipal board of health" is one form of organiza-
66 tion for a local board of health and means a board of health
67 serving a single municipality;

68 (n) "Performance-based standards" means generally
69 accepted, objective standards such as rules or guidelines against
70 which public health performance can be measured;

71 (o) "Program plan" or "plan of operation" means the annual
72 plan for each local board of health that must be submitted to the
73 commissioner for approval;

74 (p) "Public water system" means any water supply or
75 system which regularly supplies or offers to supply water for
76 human consumption through pipes or other constructed convey-
77 ances, if serving at least an average of twenty-five individuals
78 per day for at least sixty days per year, or which has at least
79 fifteen service connections, and shall include: (1) Any collec-
80 tion, treatment, storage and distribution facilities under the
81 control of the owner or operator of the system and used
82 primarily in connection with the system; and (2) any collection
83 or pretreatment storage facilities not under such control which
84 are used primarily in connection with the system. A public
85 water system does not include a system which meets all of the
86 following conditions: (1) Which consists only of distribution
87 and storage facilities (and does not have any collection and
88 treatment facilities); (2) which obtains all of its water from, but
89 is not owned or operated by, a public water system which
90 otherwise meets the definition; (3) which does not sell water to
91 any person; and (4) which is not a carrier conveying passengers
92 in interstate commerce;

93 (q) "Secretary" means the secretary of the state department
94 of health and human resources;

95 (r) "Service area" means the territorial jurisdiction of a
96 local board of health;

97 (s) "State advisory council on public health" is the advisory
98 body charged by this article with providing advice to the
99 commissioner with respect to the provision of adequate public
100 health services for all areas in the state;

101 (t) "State board of health" means, and refers to, the secre-
102 tary, notwithstanding any other provision of this code to the
103 contrary, whenever and wherever in this code there is a refer-
104 ence to the state board of health.

§16-1-3. Powers and duties of the secretary.

1 (a) The secretary may establish a state public health system.

2 (b) All powers and duties of the director of health previ-
3 ously established by former section ten of this article that are
4 not specifically included in this chapter as powers and duties of
5 the commissioner are powers and duties of the secretary.

6 (c) As necessary for the effective, efficient and economical
7 operation of the system, the secretary may from time to time
8 delegate, assign, transfer or combine responsibilities or duties
9 to or among employees of the department.

10 (d) Within the limits of applicable federal law, the secretary
11 may require every applicant for a license, permit, certificate of
12 registration, or registration under this chapter to place his or her
13 social security number on the application.

§16-1-4. Proposal of rules by the secretary.

1 The secretary may propose rules, in accordance with the
2 provisions of article three, chapter twenty-nine-a of the code,
3 that are necessary and proper to effectuate the purposes of this
4 chapter. The secretary may appoint or designate advisory
5 councils of professionals in the areas of hospitals, nursing

6 homes, barbers and beauticians, postmortem examinations,
7 mental health and mental retardation centers and any other
8 areas necessary to advise the secretary on rules.

9 The rules may include, but are not limited to, the regulation
10 of:

11 (a) Land usage endangering the public health: *Provided,*
12 That no rules may be promulgated or enforced restricting the
13 subdivision or development of any parcel of land within which
14 the individual tracts, lots or parcels exceed two acres each in
15 total surface area and which individual tracts, lots or parcels
16 have an average frontage of not less than one hundred fifty feet
17 even though the total surface area of the tract, lot or parcel
18 equals or exceeds two acres in total surface area, and which
19 tracts are sold, leased or utilized only as single family dwelling
20 units. Notwithstanding the provisions of this subsection,
21 nothing in this section may be construed to abate the authority
22 of the department to: (1) Restrict the subdivision or develop-
23 ment of a tract for any more intense or higher density occu-
24 pancy than a single family dwelling unit; (2) propose or enforce
25 rules applicable to single family dwelling units for single family
26 dwelling unit sanitary sewerage disposal systems; or (3) restrict
27 any subdivision or development which might endanger the
28 public health, the sanitary condition of streams, or sources of
29 water supply;

30 (b) The sanitary condition of all institutions and schools,
31 whether public or private, public conveyances, dairies, slaugh-
32 terhouses, workshops, factories, labor camps, all other places
33 open to the general public and inviting public patronage or
34 public assembly, or tendering to the public any item for human
35 consumption, and places where trades or industries are con-
36 ducted;

37 (c) Occupational and industrial health hazards, the sanitary
38 conditions of streams, sources of water supply, sewerage

39 facilities and plumbing systems and the qualifications of
40 personnel connected with any of those facilities, without regard
41 to whether the supplies or systems are publicly or privately
42 owned; and the design of all water systems, plumbing systems,
43 sewerage systems, sewage treatment plants, excreta disposal
44 methods and swimming pools in this state, whether publicly or
45 privately owned;

46 (d) Safe drinking water, including:

47 (1) The maximum contaminant levels to which all public
48 water systems must conform in order to prevent adverse effects
49 on the health of individuals, and, if appropriate, treatment
50 techniques that reduce the contaminant or contaminants to a
51 level which will not adversely affect the health of the consumer.
52 The rule shall contain provisions to protect and prevent
53 contamination of wellheads and well fields used by public
54 water supplies so that contaminants do not reach a level that
55 would adversely affect the health of the consumer;

56 (2) The minimum requirements for: Sampling and testing;
57 system operation; public notification by a public water system
58 on being granted a variance or exemption or upon failure to
59 comply with specific requirements of this section and rules
60 promulgated under this section; record keeping; laboratory
61 certification; as well as procedures and conditions for granting
62 variances and exemptions to public water systems from state
63 public water systems rules; and

64 (3) The requirements covering the production and
65 distribution of bottled drinking water and may establish
66 requirements governing the taste, odor, appearance and
67 other consumer acceptability parameters of drinking
68 water;

69 (e) Food and drug standards, including cleanliness, pro-
70 scription of additives, proscription of sale and other require-

71 ments in accordance with article seven of this chapter, as are
72 necessary to protect the health of the citizens of this state;

73 (f) The training and examination requirements for emer-
74 gency medical service attendants and emergency medical care
75 technician-paramedics; the designation of the health care
76 facilities, health care services, and the industries and occupa-
77 tions in the state that must have emergency medical service
78 attendants and emergency medical care technician-paramedics
79 employed, and the availability, communications, and equipment
80 requirements with respect to emergency medical service
81 attendants and to emergency medical care technician-paramed-
82 ics: *Provided*, That any regulation of emergency medical
83 service attendants and emergency medical care technician-
84 paramedics shall not exceed the provisions of article four-c of
85 this chapter;

86 (g) The health and sanitary conditions of establishments
87 commonly referred to as bed and breakfast inns. For purposes
88 of this article, "bed and breakfast inn" means an establishment
89 providing sleeping accommodations and, at a minimum, a
90 breakfast for a fee: *Provided*, That the secretary may not require
91 an owner of a bed and breakfast providing sleeping accommo-
92 dations of six or fewer rooms to install a restaurant style or
93 commercial food service facility: *Provided, however*, That the
94 secretary may not require an owner of a bed and breakfast
95 providing sleeping accommodations of more than six rooms to
96 install a restaurant-type or commercial food service facility if
97 the entire bed and breakfast inn or those rooms numbering
98 above six are used on an aggregate of two weeks or less per
99 year;

100 (h) Fees for services provided by the bureau for public
101 health including, but not limited to, laboratory service fees,
102 environmental health service fees, health facility fees and
103 permit fees;

104 (i) The collection of data on health status, the health system
105 and the costs of health care; and

106 (j) Other health-related matters which the department is
107 authorized to supervise and for which the rule-making authority
108 has not been otherwise assigned.

§16-1-5. State health officer; appointment; qualifications; term.

1 The commissioner of the bureau for public health is the
2 state health officer and shall be appointed by the secretary. The
3 commissioner shall be a physician licensed under the laws of
4 this state to practice medicine or a person holding a doctorate
5 degree in public health administration. The commissioner shall
6 have not less than four years' experience in health services
7 administration or a related field. The commissioner serves at
8 the will and pleasure of the secretary and shall not be actively
9 engaged or employed in any other business, vocation or
10 employment, serving full time in the duties of the office as
11 prescribed by this article.

§16-1-6. Powers and duties of the commissioner.

1 The commissioner is the chief executive, administrative and
2 fiscal officer of the bureau for public health and has the
3 following powers and duties:

4 (a) To supervise and direct the fiscal and administrative
5 matters of the bureau, and in that regard and in accordance with
6 law, employ, fix the compensation of and discharge all persons
7 necessary for the proper execution of the public health laws of
8 this state and the efficient and proper discharge of the duties
9 imposed upon, and execution of powers vested in the commis-
10 sioner by law and as directed by the secretary;

11 (b) To enforce all laws of this state concerning public
12 health; to that end, the commissioner shall make, or cause to be
13 made, investigations and inquiries respecting the cause of

14 disease, especially of epidemics and endemic conditions,
15 and the means of prevention, suppression or control of
16 those conditions; the source of sickness and mortality, and
17 the effects of environment, employment, habits and circum-
18 stances of life on the public health. The commissioner shall
19 further make, or cause to be made, inspections and exami-
20 nations of food, drink and drugs offered for sale or public
21 consumption in the manner the commissioner considers
22 necessary to protect the public health and shall report all
23 violations of laws and rules relating to the law to the
24 prosecuting attorney of the county in which the violations
25 occur;

26 (c) To make complaint or cause proceedings to be instituted
27 against any person, corporation or other entity for the violation
28 of any public health law before any court or agency, without
29 being required to give security for costs; the action may be
30 taken without the sanction of the prosecuting attorney of the
31 county in which the proceedings are instituted or to which the
32 proceedings relate;

33 (d) To promote the provision of essential public health
34 services to citizens of this state;

35 (e) To monitor the administration, operation and coordina-
36 tion of the local boards of health and local health officers;

37 (f) To develop and maintain a state plan of operation that
38 sets forth the needs of the state in the areas of public health;
39 goals and objectives for meeting those needs; methods for
40 achieving the stated goals and objectives; and needed person-
41 nel, funds and authority for achieving the goals and objectives;

42 (g) To collect data as may be required to foster knowledge
43 on the citizenry's health status, the health system and costs of
44 health care;

45 (h) To delegate to any appointee, assistant or employee any
46 and all powers and duties vested in the commissioner, includ-
47 ing, but not limited to, the power to execute contracts and
48 agreements in the name of the bureau: *Provided*, That the
49 commissioner is responsible for the acts of his or her appoint-
50 ees, assistants and employees;

51 (i) To transfer at the direction of the secretary, notwith-
52 standing other provisions of this code, any patient or resident
53 between hospitals and facilities under the control of the
54 commissioner and, by agreement with the state commissioner
55 of corrections and otherwise in accord with law, accept a
56 transfer of a resident of a facility under the jurisdiction of the
57 state commissioner of corrections;

58 (j) To make periodic reports to the governor and to the
59 Legislature relative to specific subject areas of public health,
60 the state facilities under the supervision of the commissioner,
61 or other matters affecting the public health of the people of the
62 state, at the direction of the secretary;

63 (k) At the direction of the secretary, to accept and use for
64 the benefit of the health of the people of this state, any gift or
65 devise of any property or thing which is lawfully given:
66 *Provided*, That if any gift is for a specific purpose or for a
67 particular state hospital or facility it shall be used as specified.
68 Any profit which may arise from any gift or devise of any
69 property or thing shall be deposited in a special revenue fund
70 with the state treasurer and shall be used only as specified by
71 the donor or donors;

72 (l) To acquire by condemnation or otherwise any interest,
73 right, privilege, land or improvement and hold title to the land
74 or improvement, for the use or benefit of the state or a state
75 hospital or facility, and, by and with the consent of the gover-
76 nor, and at the direction of the secretary, to sell, exchange or
77 otherwise convey any interest, right, privilege, land or improve-

78 ment acquired or held by the state, state hospital or state facility
79 and deposit the proceeds from the sale, exchange or other
80 conveyance into the hospital services revenue account. Any
81 condemnation proceedings shall be conducted pursuant to
82 chapter fifty-four of this code;

83 (m) To inspect and enforce rules to control the sanitary
84 conditions of and license all institutions and health care
85 facilities as set forth in this chapter, including, but not limited
86 to, schools, whether public or private, public conveyances,
87 dairies, slaughterhouses, workshops, factories, labor camps,
88 places of entertainment, hotels, motels, tourist camps, all other
89 places open to the general public and inviting public patronage
90 or public assembly, or tendering to the public any item for
91 human consumption and places where trades or industries are
92 conducted;

93 (n) To make inspections, conduct hearings, and to enforce
94 the legislative rules concerning occupational and industrial
95 health hazards, the sanitary condition of streams, sources of
96 water supply, sewerage facilities, and plumbing systems, and
97 the qualifications of personnel connected with the supplies,
98 facilities or systems without regard to whether they are publicly
99 or privately owned; and to make inspections, conduct hearings
100 and enforce the legislative rules concerning the design of
101 chlorination and filtration facilities and swimming pools;

102 (o) To provide in accordance with this subdivision and the
103 definitions and other provisions of article one-a, chapter
104 twenty-seven of this code, and as directed by the secretary, for
105 a comprehensive program for the care, treatment and rehabilita-
106 tion of alcoholics and drug abusers; for research into the cause
107 and prevention of alcoholism and drug abuse; for the training
108 and employment of personnel to provide the requisite rehabili-
109 tation of alcoholics and drug abusers; and for the education of
110 the public concerning alcoholism and drug abuse;

111 (p) To provide in accordance with this subdivision for a
112 program for the care, treatment and rehabilitation of the parents
113 of sudden infant death syndrome victims; for the training and
114 employment of personnel to provide the requisite rehabilitation
115 of parents of sudden infant death syndrome victims; for the
116 education of the public concerning sudden infant death syn-
117 drome; for the responsibility of reporting to the Legislature on
118 a quarterly basis the incidence of sudden infant death syndrome
119 cases occurring in West Virginia; for the education of police,
120 employees and volunteers of all emergency services concerning
121 sudden infant death syndrome; for the state sudden infant death
122 syndrome advisory council to develop regional family support
123 groups to provide peer support to families of sudden infant
124 death syndrome victims; and for requesting appropriation of
125 funds in both federal and state budgets to fund the sudden infant
126 death syndrome program;

127 (q) To establish and maintain a state hygienic laboratory as
128 an aid in performing the duties imposed upon the commis-
129 sioner, and to employ chemists, bacteriologists, and other
130 employees that may be necessary to properly operate the
131 laboratory. The commissioner may establish branches of the
132 state laboratory at any points within the state that are necessary
133 in the interest of the public health;

134 (r) To establish and fund a uniform health professionals
135 data system to collect and maintain uniform data on all health
136 professionals in the state. This data shall include, but not be
137 limited to, the following information about each health profes-
138 sional: His or her name, profession, the area of the state where
139 he or she is practicing, his or her educational background, his
140 or her employer's name, and number of years practicing within
141 the profession. The boards provided for in articles three, four,
142 four-a, five, seven, seven-a, fourteen, fourteen-a, fifteen,
143 sixteen, twenty, twenty-one, twenty-three, twenty-eight, thirty-
144 one, thirty-two, thirty-four, thirty-five, thirty-six and thirty-

145 seven, chapter thirty of this code shall annually collect the data
146 on health professionals under their jurisdiction in the format
147 prescribed by the commissioner. Each board shall pay to the
148 bureau annually, an amount determined by the commissioner to
149 be a pro rata portion, for anticipated expenses to establish and
150 operate the uniform health professionals data system required
151 by this section. The commissioner may standardize data
152 collection methods if necessary to implement the provisions of
153 this section. The commissioner shall publish annually and make
154 available, upon request, a report setting forth the data which
155 was collected the previous year; areas of the state which the
156 collected data indicates have a shortage of health professionals;
157 and projections, based upon the collected data, as to the need
158 for more health professionals in certain areas;

159 (s) To expend, for the purpose of performing the public
160 health duties imposed on the bureau, or authorized by law, any
161 sums appropriated by the Legislature. The commissioner may
162 make advance payments to public and nonprofit health services
163 providers when the commissioner determines it is necessary for
164 the initiation or continuation of public health services. The
165 advance payments, being in derogation of the principle of
166 payment only after receipt of goods or services, shall be
167 authorized only after serious consideration by the commissioner
168 of the necessity of the advance payments and shall be for a
169 period no greater than ninety days in advance of rendition of
170 service or receipt of goods and continuation of health services;
171 and

172 (t) To exercise all other powers delegated to the commis-
173 sioner by the secretary or by this chapter or otherwise in this
174 code, to enforce all health laws, and to pursue all other activi-
175 ties necessary and incident to the authority and area of concern
176 entrusted to the bureau or the commissioner.

**§16-1-7. Duties and powers of the commissioner; service on
advisory councils, boards and commissions;**

authority to designate a representative to serve in his or her place on certain boards and commissions.

1 (a) The commissioner shall serve on the following business,
2 profession or occupation licensing boards:

3 (1) The West Virginia board of barbers and cosmetologists;

4 (2) The West Virginia board of chiropractic examiners;

5 (3) The West Virginia board of hearing aid dealers;

6 (4) The West Virginia board of medicine;

7 (5) The West Virginia nursing home administrators
8 licensing board;

9 (6) The West Virginia radiologic technology board of
10 examiners;

11 (7) The West Virginia board of registration for sanitarians;
12 and

13 (8) Any other licensing board or commission as directed by
14 the secretary.

15 (b) The commissioner shall serve on the following advisory
16 councils, boards and commissions:

17 (1) The advisory committee on cancer (cancer registry);

18 (2) The advisory committee on hemophilia;

19 (3) The air quality board;

20 (4) The Appalachian states low-level radioactive waste
21 commission;

22 (5) The attorney general of West Virginia public health
23 trust;

- 24 (6) The breast and cervical cancer screening program
25 advisory coalition;
- 26 (7) The child fatality review team;
- 27 (8) The clinical laboratories quality assurance act advisory
28 board;
- 29 (9) The childhood immunization advisory committee;
- 30 (10) The early intervention coordinating council;
- 31 (11) The interagency council on osteoporosis;
- 32 (12) The jail and prison standards commission;
- 33 (13) The medical service fund advisory council;
- 34 (14) The nursing home licensing advisory council;
- 35 (15) The sewage advisory board;
- 36 (16) The state emergency response commission;
- 37 (17) The state groundwater coordinating committee;
- 38 (18) The sudden infant death syndrome advisory council;
- 39 (19) The water development authority;
- 40 (20) The West Virginia commission for the deaf and hard
41 of hearing;
- 42 (21) The West Virginia infrastructure and jobs development
43 council;
- 44 (22) The West Virginia solid waste management board; and
- 45 (23) Any other advisory council, board or commission as
46 assigned by the secretary.

47 (c) Notwithstanding any other provision of this code to the
48 contrary, the commissioner may, at his or her discretion,
49 designate in writing a representative to serve in his or her stead
50 at the meetings and in the duties of all boards and commissions
51 on which the commissioner is designated as an ex officio
52 member. The appropriately designated representative or proxy
53 may act with the full power and authority of the commissioner
54 in voting, acting upon matters concerning the public health and
55 welfare and any other business that is properly the duty of any
56 board or commission, with the representative serving as proxy
57 for the commissioner at his or her will and pleasure: *Provided,*
58 That the provisions of this section do not apply to the medical
59 licensing board, the air quality board or any other board,
60 commission or body on which the commissioner is designated
61 by this code as chairman ex officio, secretary ex officio or any
62 board, commission or body on which the commissioner is
63 designated by this code as being that person whose signature
64 must appear on licenses, minutes or other documents necessary
65 to carry out the intents and purposes of the board, commission
66 or body.

§16-1-8. Duties and powers of the commissioner; authorization to cooperate with any state health planning and development agencies and any federal government agencies in hospital and other health facility programs.

1 The commissioner at the direction of the secretary may
2 cooperate with any state health planning and development
3 agencies and any federal government agencies in programs for
4 construction of public or private hospitals, diagnostic or
5 treatment centers, chronic disease hospitals, rehabilitation
6 facilities, nursing homes and similar or related facilities and
7 institutions. The commissioner may make inventories of
8 existing public health centers, public and private hospitals,
9 diagnostic or treatment centers, chronic disease hospitals,

10 rehabilitation facilities, nursing homes and similar or related
11 facilities and institutions, and the laboratories and other
12 facilities thereof, to make surveys of the need for construction
13 of health facilities. The commissioner may adopt, develop and
14 supervise the administration of the statewide plans or programs
15 for the construction of additional public and private hospitals,
16 public health centers, public or private diagnostic or treatment
17 centers, chronic disease hospitals, rehabilitation facilities,
18 nursing homes and similar or related facilities and institutions,
19 as may be necessary to comply with the requirements and
20 conditions of federal law in respect to the granting of federal
21 aid for those purposes. The commissioner, at the direction of
22 the secretary, shall develop standards to assure that all require-
23 ments to obtain federal funds and meet the commitments for
24 federal funds are met.

25 The state health plan of operation set forth in this article
26 and the state medical facilities plan shall be a part of the state
27 health plan, as authorized by the provisions of article two-d of
28 this chapter.

**§16-1-9. Duties and powers of the commissioner; supervision over
local sanitation; violations; jurisdiction; penalties.**

1 No person, firm, company, corporation, institution or
2 association, whether public or private, county or municipal,
3 may install or establish any system or method of drainage,
4 water supply, or sewage or excreta disposal without first
5 obtaining a written permit to install or establish the system or
6 method from the commissioner or his or her authorized
7 representative. All systems or methods shall be installed or
8 established in accordance with plans, specifications and
9 instructions issued by the commissioner or which have been
10 approved in writing by the commissioner or his or her autho-
11 rized representative.

12 Whenever the commissioner or his or her authorized
13 representative finds, upon investigation, that any system or
14 method of drainage, water supply, or sewage or excreta
15 disposal, whether publicly or privately owned, has not been
16 installed in accordance with plans, specifications and instruc-
17 tions issued by the commissioner or approved in writing by the
18 commissioner or his or her authorized representative, the
19 commissioner or his or her authorized representative shall issue
20 an order requiring the owner of the system or method to make
21 alterations necessary to correct the improper condition. The
22 alterations shall be made within a reasonable time, which shall
23 not exceed thirty days, unless a time extension is authorized by
24 the commissioner or his or her authorized representative.

25 The presence of sewage or excreta being disposed of in a
26 manner not approved by the commissioner or his or her
27 authorized representative constitutes prima facie evidence of
28 the existence of a condition endangering public health.

29 The personnel of the bureau for public health shall be
30 available to consult and advise with any person, firm, company,
31 corporation, institution or association, whether publicly or
32 privately owned, county or municipal, or public service
33 authority, as to the most appropriate design, method of opera-
34 tion or alteration of any system or method.

35 Any person, firm, company, corporation, institution or
36 association, whether public or private, county or municipal,
37 violating any provision of this section is guilty of a misde-
38 meanor and, upon conviction thereof, shall be punished by a
39 fine of not less than fifty dollars nor more than five hundred
40 dollars. Any continuing failure or refusal of the convicted
41 person, firm, company, corporation, institution or association,
42 whether public or private, county or municipal, to make the
43 alterations necessary to protect the public health required by the
44 commissioner or his or her authorized representative is a
45 separate, distinct and additional offense for each twenty-four

46 hour period of failure or refusal, and, upon conviction thereof,
47 the violator shall be fined not less than fifty dollars nor more
48 than five hundred dollars for each conviction: *Provided*, That
49 none of the provisions contained in this section apply to those
50 commercial or industrial wastes that are subject to the regula-
51 tory control of the West Virginia division of environmental
52 protection.

53 Magistrates have concurrent jurisdiction with the circuit
54 courts of this state for violations of any provisions of this
55 section.

**§16-1-9a. Public water system defined; regulation of maximum
contaminant levels in water systems; authoriza-
tion of inspections; violations; criminal, civil and
administrative penalties; safe drinking water
penalty fund.**

1 (a) A public water system is any water supply or system
2 that regularly supplies or offers to supply water for human
3 consumption through pipes or other constructed conveyances,
4 if serving at least an average of twenty-five individuals per day
5 for at least sixty days per year, or which has at least fifteen
6 service connections, and shall include: (1) Any collection,
7 treatment, storage and distribution facilities under the control
8 of the owner or operator of such system and used primarily in
9 connection with such system; and (2) any collection or pretreat-
10 ment storage facilities not under such control which are used
11 primarily in connection with such system. A public water
12 system does not include a system that meets all of the following
13 conditions: (1) Consists only of distribution and storage
14 facilities (and does not have any collection and treatment
15 facilities); (2) obtains all of its water from, but is not owned or
16 operated by, a public water system that otherwise meets the
17 definition; (3) does not sell water to any person; and (4) is not
18 a carrier conveying passengers in interstate commerce.

19 (b)(1) The secretary shall prescribe by legislative rule the
20 maximum contaminant levels to which all public water systems
21 shall conform in order to prevent adverse effects on the health
22 of individuals, and, if the secretary considers appropriate,
23 treatment techniques that reduce the contaminant or contami-
24 nants to a level which will not adversely affect the health of the
25 consumer. The rule shall contain provisions to protect and
26 prevent contamination of wellheads and well fields used by
27 public water supplies so that contaminants do not reach a level
28 that would adversely affect the health of the consumer.

29 (2) The secretary shall further prescribe by legislative rule
30 minimum requirements for: Sampling and testing; system
31 operation; public notification by a public water system on being
32 granted a variance or exemption or upon failure to comply with
33 specific requirements of this section and regulations promul-
34 gated under this section; record keeping; laboratory certifica-
35 tion; as well as procedures and conditions for granting vari-
36 ances and exemptions to public water systems from state public
37 water systems regulations.

38 (3) In addition, the secretary shall establish by legislative
39 rule, in accordance with article three, chapter twenty-nine-a of
40 this code, requirements covering the production and distribution
41 of bottled drinking water and may by legislative rule, in
42 accordance with article three, chapter twenty-nine-a of this
43 code, establish requirements governing the taste, odor, appear-
44 ance and other consumer acceptability parameters of drinking
45 water.

46 (c) Authorized representatives of the bureau have right of
47 entry to any part of a public water system, whether or not the
48 system is in violation of a legal requirement, for the purpose of
49 inspecting, sampling or testing, and shall be furnished records
50 or information reasonably required for a complete inspection.

51 (d)(1) Any individual, partnership, association, syndicate,
52 company, firm, trust, corporation, government corporation,
53 institution, department, division, bureau, agency, federal
54 agency, or any entity recognized by law who violates any
55 provision of this section, or any of the rules or orders issued
56 pursuant to this section, is guilty of a misdemeanor and, upon
57 conviction thereof, shall be fined not less than fifty dollars nor
58 more than five hundred dollars, and each day's violation shall
59 constitute a separate offense. The commissioner or his or her
60 authorized representative may also seek injunctive relief in the
61 circuit court of the county in which all or part of the public
62 water system is situated for threatened or continuing violations.

63 (2) For a willful violation of a provision of this section, or
64 of any of the rules or orders issued under this section for which
65 a penalty is not otherwise provided under subdivision (3) of this
66 subsection, an individual, partnership, association, syndicate,
67 company, firm, trust, corporation, government corporation,
68 institution, department, division, bureau, agency, federal
69 agency, or entity recognized by law, upon a finding of a willful
70 violation by the circuit court of the county in which the
71 violation occurs, shall be subject to a civil penalty of not more
72 than five thousand dollars, and each day's violation shall be
73 grounds for a separate penalty.

74 (3) The commissioner or his or her authorized representa-
75 tive shall have authority to assess administrative penalties and
76 initiate any proceedings necessary for the enforcement of
77 drinking water rules. The administrative penalty for a violation
78 of any drinking water rule is a minimum of one thousand
79 dollars per day per violation and each day's violation shall be
80 grounds for a separate penalty. In any action brought to enforce
81 drinking water rules, the administrative penalty may not exceed
82 an aggregate amount of five thousand dollars for systems
83 serving a population of less than ten thousand persons and may
84 not exceed twenty-five thousand dollars for systems serving a

85 population of ten thousand persons or more. Penalties are
86 payable to the commissioner. All moneys collected under this
87 section shall be deposited into a restricted account known as the
88 safe drinking water penalty fund previously created in the office
89 of the state treasurer. All money deposited into the fund shall be
90 used by the commissioner to provide technical assistance to
91 public water systems.

**§16-1-9b. Permit approval for individual systems with surface
water discharge; reserve areas.**

1 Individual systems with surface water discharge may be
2 considered for approval for a permit pursuant to section nine of
3 this article under the following conditions: (1) To correct
4 existing failures when other means of treatment and disposal
5 have proven ineffective; (2) on a tract, lot or parcel of land that
6 equals or exceeds two acres which cannot qualify for standard
7 or alternative soil absorption systems; or (3) on existing lots
8 which received approval under a prior permit where it has been
9 determined that applicable standards cannot be met to qualify
10 for a standard or alternate soil absorption system. Approval
11 under these conditions are applicable only to single family
12 residential units.

13 When installing a standard sewage disposal system,
14 modified system, experimental system or other approved
15 system, the reserve area shall consist of an area for the place-
16 ment of the original system together with an area for replace-
17 ment and upgrade of absorption field lines within the reserve
18 area. Testing of the site for approval shall consist of a six foot
19 hole and a percolation test of the soils.

**§16-1-10. Disposition of permit, license or registration fees re-
ceived by the commissioner; report to auditor;
health facility licensing account.**

1 (a) The commissioner shall receive and account for all
2 moneys required to be paid as fees to the bureau for permits,
3 licenses or registrations, pursuant to the provisions of this code
4 and legislative rules.

5 (b) Subject to the provisions set forth in section two, article
6 two, chapter twelve of this code, there is continued in the state
7 treasury a separate account which shall be designated "the
8 health facility licensing account". The commissioner shall
9 deposit to the health facility licensing account all health facility
10 licensing fees and may spend the moneys deposited in the
11 health facility licensing account in accordance with the laws of
12 this state to implement activities of health facility licensing. As
13 part of the annual state budget, the Legislature shall appropriate
14 for health facility licensure all moneys deposited in the health
15 facilities licensing account.

16 Any remaining balance including accrued interest in the
17 account at the end of any fiscal year shall not revert to the
18 general revenue fund, but shall remain in the account, and the
19 moneys may be spent after appropriation by the Legislature in
20 ensuing fiscal years. The commissioner shall make an annual
21 report to the Legislature on the health facility licensing account,
22 including the previous fiscal year's expenditures and projected
23 expenditures for the next fiscal year.

**§16-1-11. Disposition of fees for services charged and received by
the commissioner; health services fund.**

1 (a) Notwithstanding any other provisions of this chapter,
2 the commissioner may assess and charge reasonable fees for the
3 provision of services provided by the bureau: *Provided*, That no
4 individual may be denied health care services by the bureau
5 because of the inability of the individual to pay for services
6 when services are provided to similarly situated individuals
7 who have the ability to pay for them. The fees shall be depos-

8 ited into a special revolving fund in the state treasury desig-
9 nated the "health services fund".

10 (b) Any balance including accrued interest in the special
11 revolving fund at the end of any fiscal year shall not revert to
12 the general revenue fund but shall remain in the fund for use by
13 the commissioner for funding health programs in the ensuing
14 fiscal years.

15 (c) The commissioner may authorize reasonable fees for the
16 provision of services by local boards of health as created in
17 article two of this chapter: *Provided*, That no individual may be
18 denied health care services by the local health department
19 because of the inability of the individual to pay for services
20 when services are provided to similarly situated individuals
21 who have the ability to pay for them. The fees shall be depos-
22 ited into the local board of health account for use by the local
23 board for funding health programs. The commissioner shall
24 establish the fees on a sliding fee basis determined by an
25 individual's ability to pay: *Provided, however*, That the local
26 board of health may submit a request through the administrator
27 for third party reimbursement where the request is appropriate:
28 *Provided further*, That local boards of health that establish fees
29 shall annually submit a schedule of fees, a sliding fee scale and
30 an accounting of amounts collected to the commissioner as part
31 of its program plan or plan of operation.

32 (d) The secretary shall propose legislative rules in accor-
33 dance with article three, chapter twenty-nine-a of this code,
34 setting forth the fees established, assessed, and charged by the
35 commissioner.

§16-1-12. Receipt and disbursement of federal aid and other moneys for health purposes.

1 (a) The commissioner, at the direction of the secretary, may
2 accept, receive and receipt for federal moneys and other

3 moneys, either public or private, for and in behalf of this state
4 or any county or municipality of this state, for public health
5 purposes, or for the establishment or construction of public
6 health facilities, whether the work is to be done by the state, or
7 by the county or municipality, or jointly, aided by grants of aid
8 from the United States, upon such terms and conditions as are,
9 or may be, prescribed by the laws of the United States and
10 regulations made thereunder. The commissioner may act as the
11 agent of the state or any of its agencies, or of any county or
12 municipality of this state, upon the request of any agency of the
13 state or of any county or municipality, in accepting, receiving
14 and receipting for the moneys in its behalf, for public health
15 facilities financed either, in whole or in part, by federal moneys.

16 (b) The state, or any agency of the state, or any county or
17 municipality may, designate the commissioner as its agent for
18 the purposes set forth in subsection (a) of this section and the
19 agency, county or municipality may enter into an agreement
20 with the commissioner prescribing the terms and conditions of
21 the agency in accordance with federal laws and regulations, and
22 with the laws of this state. The moneys paid over by the United
23 States government shall be retained by the state or paid over to
24 the counties or municipalities under the terms and conditions
25 imposed by the United States government in making the grants.

26 (c) All moneys accepted for disbursement pursuant to this
27 section shall be deposited by the secretary or the commissioner
28 in the state treasury, and unless otherwise prescribed by the
29 authority from which the money is received, kept in separate
30 funds, designated according to the purpose for which the
31 moneys were made available, and held by the state in trust for
32 those purposes. All moneys are hereby appropriated for the
33 purposes for which the moneys were made available and shall
34 be expended in accordance with federal laws and regulations
35 and with the laws of this state. The commissioner may, whether
36 acting for the state or one of its agencies, or as the agency for

37 any county or municipality, when requested by the United
38 States government or any agency or department of the United
39 States government, or when requested by the state, a state
40 agency, or any county or municipality for which the moneys
41 have been made available, disburse the moneys for the desig-
42 nated purposes, but this shall not include any other authorized
43 method of disbursement.

**§16-1-13. Hospital services revenue account; health facilities
long-range plans.**

1 (a) Subject to the provisions set forth in section two, article
2 two, chapter twelve of this code, there is continued in the state
3 treasury a separate account which shall be designated the
4 "hospital services revenue account". The secretary shall deposit
5 promptly into the account any fees received by a facility owned
6 and operated by the department from whatever source including
7 the federal government, state government or other third-party
8 payer or personal payment.

9 (b) A five-year health facilities long-range plan shall be
10 developed by the secretary and shall be adopted as a rule in
11 accordance with this chapter and article three, chapter twenty-
12 nine-a of this code. The health facilities long-range plan shall
13 be updated and revised at least every two years.

14 (c) The secretary may spend the moneys deposited in the
15 hospital services revenue account in accordance with federal
16 laws and regulations and with the laws of this state as necessary
17 for the development of the five-year health facilities long-range
18 plan and subsequent revisions. The secretary may spend the
19 moneys deposited in the hospital services revenue account as
20 provided for in the health facilities long-range plan at those
21 times and in the amounts the secretary determines necessary for
22 the purpose of improving the delivery of health and mental
23 health services or for the purpose of maintaining or obtaining
24 certification at a state health or mental health facility: *Provided,*

25 That all disproportionate share hospital funds received into the
26 account shall be transferred by intergovernmental transfer to the
27 medical services trust fund created in section two-a, article
28 four-a, chapter nine of this code, except for funds appropriated
29 by the Legislature for other purposes within the annual budget
30 bill: *Provided, however,* That during any fiscal year in which
31 the secretary anticipates spending any money from the account,
32 he or she shall submit to the executive department during the
33 budget preparation period prior to the Legislature convening,
34 before that fiscal year for inclusion in the executive budget
35 document and budget bill, his or her recommended capital
36 investments, recommended priorities and estimated costs, as
37 well as requests of appropriations for the purpose of improving
38 the delivery of health or for the purpose of maintaining or
39 obtaining certification at a state health facility in the amounts
40 the secretary determines to be necessary for the development of,
41 and as provided for in, the five-year health facilities long-range
42 plan and subsequent revisions.

43 (d) The secretary shall make an annual report to the
44 Legislature on the status of the health services revenue account,
45 including the previous year's expenditures and projected
46 expenditures for the next year.

§16-1-14. Training of employees.

1 To insure adequate standards of public service, the commis-
2 sioner may provide technical and specialized instruction for
3 employees of the bureau.

4 If upon review of the personnel records of any employee of
5 the bureau, the commissioner is of the opinion that it would be
6 in the best interest of the bureau to provide the employee with
7 additional training or instruction, not to exceed nine months in
8 any four-year period, in the field or vocation in which the
9 employee is engaged, the commissioner may, upon approval of
10 the secretary, direct that the employee obtain the additional

11 training or instruction at any place the commissioner considers
12 suitable. Designated attendance of the employee shall be
13 compensated for as a part of regular employment. The commis-
14 sioner is further authorized to pay out of federal funds and such
15 state funds as are available to match such federal funds, any
16 required tuition or enrollment fees.

**§16-1-15. Investigations and hearings; power to administer oaths,
subpoena witnesses, etc.; use of information and
material acquired.**

1 (a) The secretary, the commissioner, any officer or em-
2 ployee of the department designated by the secretary, or any
3 other individual designated by the secretary may hold investiga-
4 tions, inquiries and hearings concerning matters covered by the
5 laws of this state pertaining to public health and within the
6 authority and the rules and orders of the secretary. Hearings
7 shall be open to the public and shall be held upon any call or
8 notice considered advisable by the secretary.

9 (b) Each individual designated to hold any inquiry, investi-
10 gation or hearing shall have the power to administer oaths and
11 affirmations, certify to all official acts, issue subpoenas and
12 order the attendance and testimony of witnesses in the produc-
13 tion of papers, books and documents. In case of the failure of
14 any person to comply with any subpoena or order issued under
15 the authority of this section, the secretary or his or her autho-
16 rized representative may invoke the aid of any circuit court of
17 this state. The court may thereupon order that person to comply
18 with the requirements of the subpoena order or to give evidence
19 as to the matter in question. Failure to obey the order of the
20 court may be punished by the court as a contempt of court.

21 (c) Subject to the provisions of subsections (a) and (b) of
22 this section, the secretary may in his or her discretion make
23 available to appropriate federal, state and municipal agencies
24 information and material developed in the course of its investi-

25 gation and hearings: *Provided*, That information obtained from
26 studies or from any investigation made or hearing held pursuant
27 to the provisions of this article may not be admissible in
28 evidence in any action at law to recover damages for personal
29 injury or in any action under the workers' compensation act, but
30 the information, if available, shall be furnished upon request to
31 the commissioner of the bureau of employment programs for
32 the sole purpose of adjusting claims presented to the commis-
33 sioner.

**§16-1-16. Public health advisory council; duties; composition;
appointment; meetings; compensation; expenses
and continuation.**

1 (a) The public health advisory council is hereby created as
2 an advisory body to the commissioner for the purpose of
3 advising the commissioner as to the provision of adequate
4 public health services for all areas in the state.

5 (b) The council may advise the commissioner in all matters
6 pertaining to the commissioner's duties and functions concern-
7 ing public health and the provisions of this chapter. The council
8 may review all state public health rules and advise the commis-
9 sioner on necessary revisions. The council may advise the
10 commissioner on the need for additional or special advisory
11 committees to assist the council in matters concerning public
12 health in relation to any business, profession or industry in the
13 state. The council shall review all performance based standards
14 and assist the commissioner in the development and implemen-
15 tation of a coordinated, population-based prevention oriented
16 program that promotes and protects the health of all citizens of
17 West Virginia.

18 (c) The council shall be composed of fifteen members
19 appointed by the governor by and with the advice and consent
20 of the Senate. The state insurance commissioner or his or her
21 designated representative shall serve as a member ex officio.

22 Twelve members shall be chosen from nominations by: (1) The
23 West Virginia association of local health officers which shall
24 submit to the governor a list of three names of local health
25 officers; (2) the West Virginia association of local health
26 departments which shall submit to the governor a list of three
27 names of members of local boards of health; (3) the West
28 Virginia association of county commissioners which shall
29 submit to the governor a list of three names of representatives
30 from its association; (4) the West Virginia association of
31 sanitarians which shall submit to the governor a list of three
32 names of representatives from its association; (5) the West
33 Virginia hospital association which shall submit to the governor
34 a list of three names of representatives from its association; (6)
35 the West Virginia medical association which shall submit to the
36 governor a list of three names of representatives from its
37 association; (7) the West Virginia emergency medical services
38 coalition, which shall submit to the governor a list of three
39 names of representatives from its association; (8) the West
40 Virginia primary care association which shall submit to the
41 governor a list of three names of representatives from its
42 association; (9) the nursing section of the West Virginia public
43 health association which shall submit to the governor a list of
44 three names of public health nurses; (10) the state college and
45 university systems of West Virginia which shall submit to the
46 governor a list of three names of representatives from its
47 members; (11) the state health education council which shall
48 submit to the governor a list of three names of individuals from
49 the prevention and wellness community; and (12) the state
50 chamber of commerce which shall submit to the governor a list
51 of three names of representatives from the business community.
52 The governor shall appoint one individual from each list
53 submitted to serve on the council. In addition the governor shall
54 appoint two persons to represent the general public.

55 (d) Pursuant to the provisions of this section, the governor
56 shall appoint an advisory council on the first day of July, two

57 thousand. Of those first members appointed, one-third shall
58 serve for one year, one-third shall serve for two years and
59 one-third shall serve for three years. Each subsequent term shall
60 be a three-year term and no member may serve more than four
61 consecutive terms.

62 (e) The advisory council shall choose its own chairperson
63 and meet at the call of the commissioner at least twice a year.

64 (f) The members of the council shall receive compensation
65 and expense reimbursement in an amount not to exceed the
66 same compensation and expense reimbursement that is paid to
67 members of the Legislature for their interim duties as recom-
68 mended by the citizens legislative compensation commission
69 and authorized by law, for each day or substantial portion of a
70 day engaged in the performance of official duties.

71 (g) Pursuant to the provisions of article ten, chapter four of
72 this code, the state advisory council on public health shall
73 continue to exist until the first day of July, two thousand three.

**§16-1-17. Penalties for interfering with examiners, inspectors or
other authorized representatives of the commis-
sioner in the performance of duty.**

1 The commissioner may employ such administrative
2 employees, inspectors, examiners or other persons as may be
3 necessary to properly carry out the provisions of the public
4 health laws of this state. The inspectors, examiners and other
5 employees shall act as the commission's representatives and,
6 under his or her direction, shall enforce the provisions of the
7 public health laws and all duly promulgated public health rules
8 and in the discharge of official duties, shall have the right of
9 entry into any institution or school, whether public or private,
10 public conveyances, dairy, creamery, slaughterhouse, work-
11 shop, factory, labor camp, place of entertainment, hotel, tourist
12 camp, all other places open to the general public and inviting

13 public patronage or public assembly, or tendering to the public
14 any item for human consumption, and places where hazardous
15 trades or industries are conducted.

16 Any person interfering with or attempting to interfere with
17 any inspector, examiner, or other duly authorized employee of
18 the commissioner in the discharge of his or her duties under this
19 section is guilty of a misdemeanor and, upon conviction
20 thereof, shall be fined not less than fifty dollars nor more than
21 five hundred dollars.

§16-1-18. Penalties for violating provisions of article.

1 Any person violating any of the provisions of this article for
2 which the penalty is not otherwise provided, or any of the rules
3 or orders issued pursuant to this article, shall be punishable by
4 a fine of not less than fifty dollars nor more than five hundred
5 dollars.

ARTICLE 2. LOCAL BOARDS OF HEALTH.

§16-2-1. Purpose.

§16-2-2. Definitions.

§16-2-3. Authority to create, establish and maintain county boards of health;
service area.

§16-2-4. Authority to create, establish and maintain municipal boards of health;
service area.

§16-2-5. Authority to create, establish and maintain combined local boards of
health; service area.

§16-2-6. Appointment to and composition of municipal boards of health; qualifica-
tions; number of appointees.

§16-2-7. Appointment to and composition of county boards of health; qualifica-
tions; number of appointees.

§16-2-8. Appointment to and composition of combined local boards of health;
qualifications; number of appointees.

§16-2-9. Local board of health; terms of appointment; reappointment; oath of
office; vacancies; removal; compensation; expenses.

§16-2-10. Local board of health; meetings; attendance; bylaws; quorum; chairperson
selection, powers and duties.

- §16-2-11. Local board of health; powers and duties.
- §16-2-12. Local health officer; term of appointment; qualifications; reappointment; compensation; and removal.
- §16-2-13. Local health officer; powers and duties.
- §16-2-14. Financial responsibilities of appointing authorities for local boards of health; levies; appropriation of county or municipal general funds for public health purposes; state funding.
- §16-2-15. Obstructing local health officers and others in the enforcement of public health laws; other violations; penalties.

§16-2-1. Purpose.

1 Local boards of health, created, established and operated
2 pursuant to the provisions of this article, are responsible for
3 directing, supervising and carrying out matters relating to the
4 public health of their respective counties or municipalities. This
5 article provides that local boards of health may be organized as
6 boards of health serving a single municipality, a single county
7 or a combination of any two or more counties or any county or
8 counties and one or more municipalities within or partially
9 within the county or counties. This article establishes uniform
10 provisions applicable to all local boards of health, whatever
11 organizational form is elected, to ensure the consistent perfor-
12 mance of duties relating to basic public health services and
13 other health services and the enforcement of the laws of this
14 state pertaining to public health.

§16-2-2. Definitions.

1 Unless the context in which used clearly requires a different
2 meaning, as used in this article:

3 (a) "Basic public health services" means those services that
4 are necessary to protect the health of the public and that a local
5 board of health must provide. The three areas of basic public
6 health services are communicable and reportable disease
7 prevention and control, community health promotion, and
8 environmental health protection;

9 (b) "Bureau" means the bureau for public health in the
10 department of health and human resources;

11 (c) "Clinical and categorical programs" means those
12 services provided to individuals of specified populations and
13 usually focus on health promotion or disease prevention. These
14 services are not considered comprehensive health care but focus
15 on specific health issues such as breast and cervical cancer,
16 prenatal and pediatric health services and home health services;

17 (d) "Combined local board of health" is one form of
18 organization for a local board of health and means a board of
19 health serving any two or more counties or any county or
20 counties and one or more municipalities within or partially
21 within the county or counties;

22 (e) "Commissioner" means the commissioner of the bureau
23 for public health, who is the state health officer;

24 (f) "Communicable and reportable disease prevention and
25 control" is one of three areas of basic public health services
26 each local board of health must offer. Services shall include
27 disease surveillance, case investigation and follow-up, outbreak
28 investigation, response to epidemics, and prevention and
29 control of rabies, sexually transmitted diseases, vaccine
30 preventable diseases, HIV/AIDS, tuberculosis and other
31 communicable and reportable diseases;

32 (g) "Community health promotion" is one of three areas of
33 basic public health services each local board of health must
34 offer. Services shall include assessing and reporting community
35 health needs to improve health status, facilitating community
36 partnerships including identifying the community's priority
37 health needs, mobilization of a community around identified
38 priorities, and monitoring the progress of community health
39 education services;

40 (h) "County board of health" is one form of organization for
41 a local board of health and means a local board of health
42 serving a single county;

43 (i) "Department" means the West Virginia department of
44 health and human resources;

45 (j) "Director" or "director of health" means the state health
46 officer. Administratively within the department, the bureau for
47 public health through its commissioner carries out the public
48 health function of the department, unless otherwise assigned by
49 the secretary;

50 (k) "Environmental health protection" is one of three areas
51 of basic public health services each local board of health must
52 offer. Services shall include efforts to protect the community
53 from environmental health risks including, inspection of
54 housing, institutions, recreational facilities, sewage and
55 wastewater facilities; inspection and sampling of drinking water
56 facilities; and response to disease outbreaks or disasters;

57 (l) "Enhanced public health services" means services that
58 focus on health promotion activities to address a major health
59 problem in a community, are targeted to a particular population
60 and assist individuals in this population to access the health
61 care system, such as lead and radon abatement for indoor air
62 quality and positive pregnancy tracking. Enhanced public health
63 services are services a local health department may offer;

64 (m) "Local board of health," "local board" or "board" means
65 a board of health serving one or more counties or one or more
66 municipalities or a combination thereof;

67 (n) "Local health department" means the staff of the local
68 board of health;

69 (o) "Local health officer" means the individual physician
70 with a current West Virginia license to practice medicine who

71 supervises and directs the activities of the local health depart-
72 ment services, staff and facilities and is appointed by the local
73 board of health with approval by the commissioner;

74 (p) “Municipal board of health” is one form of organization
75 for a local board of health and means a board of health serving
76 a single municipality;

77 (q) “Performance-based standards” means generally
78 accepted, objective standards such as rules or guidelines against
79 which a local health department’s level of performance can be
80 measured;

81 (r) “Primary care services” means health care services,
82 including medical care, that emphasize first contact patient care
83 and assume overall and ongoing responsibility for the patient in
84 health maintenance and treatment of disease. Primary care
85 services are services that local boards of health may offer if the
86 board has determined that an unmet need for primary care
87 services exists in its service area. Basic public health services
88 funding may not be used to support these services;

89 (s) “Program plan” or “plan of operation” means the annual
90 plan for each local board of health that must be submitted to the
91 commissioner for approval;

92 (t) “Secretary” means the secretary of the state department
93 of health and human resources; and

94 (u) “Service area” means the territorial jurisdiction of the
95 local board of health.

**§16-2-3. Authority to create, establish and maintain county
boards of health; service area.**

1 A county commission shall create, establish and maintain
2 a county board of health if no other local board of health
3 organized under this article is established and responsible for

4 public health in the service area. The county board of health
5 shall be organized pursuant to and with the powers and duties
6 prescribed by this article. The service area of any county board
7 of health is the county territorial limits and includes every
8 municipality within the county that does not have a municipal
9 board of health maintaining a separate full-time municipal
10 health department under the supervision of a municipal local
11 health officer or that is not a member of a combined local board
12 of health.

**§16-2-4. Authority to create, establish and maintain municipal
boards of health; service area.**

1 The governing body of a municipality may create, establish
2 and maintain a municipal board of health organized pursuant to
3 and with the powers and duties prescribed by this article. The
4 territorial jurisdiction of any municipal board of health is an
5 area including the municipality and all points within a distance
6 of one mile from the limits of the municipality.

**§16-2-5. Authority to create, establish and maintain combined
local boards of health; service area.**

1 Any two or more counties or any county or counties and
2 one or more municipalities within or partially within the county
3 or counties may combine to create, establish and maintain a
4 combined local board of health organized pursuant to and with
5 the powers and duties prescribed by this article. The plan of
6 combination must be approved by the commissioner. The
7 service area of any combined local board of health is the
8 combined territorial limits of the participating municipality or
9 municipalities and county or counties: *Provided*, That if all or
10 a portion of a participating municipality is located in a nonparticipating
11 county, the service area of the combined local board
12 of health is limited to the territorial limits of the municipality
13 and does not extend to or include any area of the nonparticipating
14 county outside of the municipal limits: *Provided, however*,

15 That the service area of a combined local board does not extend
16 to or include any area within the service area of a municipal
17 board of health maintaining a separate full-time municipal
18 health department under the supervision of a municipal local
19 health officer.

§16-2-6. Appointment to and composition of municipal boards of health; qualifications; number of appointees.

1 A municipal board of health is composed of five members
2 selected and appointed by vote of the governing body of the
3 municipality. Each member appointed to a municipal board of
4 health shall be a resident of the municipality. No more than two
5 members who reside in the same municipal ward may be
6 appointed and no more than two members may be appointed
7 who are personally licensed or certified in, engaged in, or
8 actively participating in the same business, profession or
9 occupation. No more than three members of a municipal board
10 of health may belong to the same political party.

§16-2-7. Appointment to and composition of county boards of health; qualifications; number of appointees.

1 A county board of health is composed of five members
2 selected and appointed by vote of the county commission. Each
3 member appointed to the county board of health shall be a
4 resident of the county. No more than two members who reside
5 in the same magisterial district may be appointed and no more
6 than two members may be appointed who are personally
7 licensed or certified in, engaged in, or actively participating in
8 the same business, profession or occupation. No more than
9 three members of a county board of health may belong to the
10 same political party.

§16-2-8. Appointment to and composition of combined local boards of health; qualifications; number of appointees.

1 A combined local board of health is composed of at least
2 five members. The number of combined local board of health
3 members to be selected by each participating county or municipi-
4 pality shall be established by agreement of the participating
5 counties or municipalities. No more than one half of the
6 members of a combined local board of health may be personally
7 licensed or certified in, engaged in, or actively participating in
8 the same business, profession or occupation. The number of
9 members of a combined local board of health belonging to the
10 same political party may not exceed by more than one the
11 number of members belonging to another political party. No
12 member may be selected and appointed by and represent more
13 than one participating county or municipality.

14 The county commission of each participating county may
15 select and appoint by vote no fewer than one and no more than
16 three persons to serve as the representatives of the county on
17 the combined local board of health. Each member appointed as
18 a county representative to the combined local board of health
19 shall be a resident of the participating county. No more than
20 two persons residing in the same magisterial district may be
21 appointed by a participating county as members and no more
22 than two members may be appointed by a participating county
23 who are personally licensed or certified in, engaged in, or
24 actively participating in the same business, profession or
25 occupation.

26 The governing body of each participating municipality may
27 select and appoint by vote no fewer than one and no more than
28 three persons to serve as the representatives of the municipality
29 on the combined local board of health. Each member appointed
30 as a municipality's representative to the combined local board
31 of health shall be a resident of the municipality. No more than
32 two members who reside in the same municipal ward may be
33 appointed and no more than two members may be appointed
34 who are personally licensed or certified in, engaged in, or

35 actively participating in the same business, profession or
36 occupation.

37 Upon the formation of a combined local board of health and
38 during the duration of its existence, there may be no separate
39 county board of health or municipal board of health in any
40 county or any municipality participating in the combined local
41 board of health.

**§16-2-9. Local board of health; terms of appointment; reappoint-
ment; oath of office; vacancies; removal; compensa-
tion; expenses.**

1 (a) The term of office for members selected and appointed
2 to a local board of health pursuant to the provisions of this
3 article is five years. Members may serve until their duly
4 qualified successors are selected and appointed by vote of the
5 original appointing authority. Members may be reappointed for
6 additional terms of five years. Board members' oaths of office
7 shall be duly recorded before entering into or discharging any
8 duties of the office.

9 (b) Any vacancy on any local board of health shall be filled
10 by appointment of the original appointing authority. This
11 appointment is for the unexpired term.

12 (c) A local board of health may remove any of its members
13 pursuant to the provisions of its lawfully adopted bylaws and
14 shall remove any of its members for official misconduct,
15 incompetence, neglect of duty, gross immorality or the revoca-
16 tion of any state professional license or certification. A local
17 board of health, or any of its members may be removed by the
18 state health officer for failure or refusal to comply with duties
19 as set forth by statute or rule. Upon removal, a successor or
20 successors to the member or members removed shall immedi-
21 ately be appointed by the original appointing body pursuant to
22 the provisions of this article.

23 (d) Each member of a local board of health may receive
24 compensation as determined by the local board for attending
25 meetings of and other activities for the board as required by
26 law: *Provided*, That this compensation may not exceed one
27 hundred dollars per day. Each member of a local board may be
28 reimbursed for all reasonable and necessary travel and other
29 expenses actually incurred by the member in the performance
30 of duties as a member of the local board.

**§16-2-10. Local board of health; meetings; attendance; bylaws;
quorum; chairperson selection, powers and duties.**

1 (a) Each local board of health may meet as often as
2 necessary to orderly and efficiently execute its duties and
3 exercise its powers: *Provided*, That in a service area having a
4 population of less than thirty thousand residents, the board shall
5 meet no fewer than four times per year and in a service area
6 having a population of more than thirty thousand residents, the
7 board shall meet no fewer than six times per year. Members of
8 a local board of health shall attend board meetings in compli-
9 ance with attendance policies established by its bylaws or rules.

10 (b) Each local board of health is authorized to and shall
11 adopt and may amend bylaws or rules governing the time and
12 place of its regular meetings, procedures and method of
13 conducting its meetings including quorum, meeting attendance
14 policies, requirements for written minutes and board actions as
15 public records, duties and election process for officers, process
16 for filling board vacancies, number, duties, tenure and eligibil-
17 ity of members, and any other matters affecting how the board
18 is organized to perform its duties. A quorum of the board for
19 transacting business is a simple majority of the constituent
20 membership of the board.

21 (c) Each local board of health, pursuant to its bylaws, shall
22 elect from its members a chairperson. The chairperson shall
23 serve for a term of one year and may be reelected for additional

24 terms. The chairperson may, on behalf of the board, sign
25 documents, execute contracts and otherwise act for and in the
26 name of the board in all matters within its lawful powers and as
27 duly authorized by a majority of the board members.

§16-2-11. Local board of health; powers and duties.

1 (a) Each local board of health created, established and
2 operated pursuant to the provisions of this article shall:

3 (1) Provide the following basic public health services and
4 programs in accordance with state public health performance-
5 based standards:

6 (i) Community health promotion including assessing and
7 reporting community health needs to improve health status,
8 facilitating community partnerships including identifying the
9 community's priority health needs, mobilization of a commu-
10 nity around identified priorities and monitoring the progress of
11 community health education services;

12 (ii) Environmental health protection including the promot-
13 ing and maintaining of clean and safe air, water, food and
14 facilities and the administering of public health laws as speci-
15 fied by the commissioner as to general sanitation, the sanitation
16 of public drinking water, sewage and wastewater, food and
17 milk, and the sanitation of housing, institutions, and recreation;
18 and

19 (iii) Communicable or reportable disease prevention and
20 control including disease surveillance, case investigation and
21 follow-up, outbreak investigation, response to epidemics, and
22 prevention and control of rabies, sexually transmitted diseases,
23 vaccine preventable diseases, HIV/AIDS, tuberculosis and other
24 communicable and reportable diseases;

25 (2) Appoint a local health officer to serve at the will and
26 pleasure of the local board of health with approval of the
27 commissioner;

28 (3) Submit a general plan of operation to the commissioner
29 for approval, if it receives any state or federal money for health
30 purposes. This program plan shall be submitted annually and
31 comply with provisions of the local board of health standards
32 administrative rule;

33 (4) Provide equipment and facilities for the local health
34 department that are in compliance with federal and state law;

35 (5) Permit the commissioner to act by and through it, as
36 needed. The commissioner may enforce all public health laws
37 of this state, the rules and orders of the secretary, any county
38 commission orders or municipal ordinances of the board's
39 service area relating to public health, and the rules and orders
40 of the local board within the service area of a local board. The
41 commissioner may enforce these laws, rules and orders when,
42 in the opinion of the commissioner, a public health emergency
43 exists or when the local board fails or refuses to enforce public
44 health laws and rules necessary to prevent and control the
45 spread of a communicable or reportable disease dangerous to
46 the public health. The expenses incurred shall be charged
47 against the counties or municipalities concerned;

48 (6) Deposit all moneys and collected fees into an account
49 designated for local board of health purposes. The moneys for
50 a municipal board of health shall be deposited with the municipi-
51 pal treasury in the service area. The moneys for a county board
52 of health shall be deposited with the county treasury in the
53 service area. The moneys for a combined local board of health
54 shall be deposited in an account as designated in the plan of
55 combination: *Provided*, That nothing contained in this subsection
56 is intended to conflict with the provisions of article one,
57 chapter sixteen of this code;

58 (7) Submit vouchers or other instruments approved by the
59 board and signed by the local health officer or designated
60 representative to the county or municipal treasurer for payment
61 of necessary and reasonable expenditures from the county or
62 municipal public health funds: *Provided*, That a combined local
63 board of health shall draw upon its public health funds account
64 in the manner designated in the plan of combination;

65 (8) Participate in audits, be in compliance with tax proce-
66 dures required by the state and annually develop a budget for
67 the next fiscal year;

68 (9) Perform public health duties assigned by order of a
69 county commission or by municipal ordinance consistent with
70 state public health laws; and

71 (10) Enforce the public health laws of this state and any
72 other laws of this state applicable to the local board.

73 (b) Each local board of health created, established and
74 operated pursuant to the provisions of this article may:

75 (1) Provide primary care services, clinical and categorical
76 programs, and enhanced public health services;

77 (2) Employ or contract with any technical, administrative,
78 clerical or other persons, to serve as needed and at the will and
79 pleasure of the local board of health. Staff and any contractors
80 providing services to the board shall comply with applicable
81 West Virginia certification and licensure requirements. Eligible
82 staff employed by the board shall be covered by the rules of the
83 division of personnel under section six, article ten, chapter
84 twenty-nine of this code. However, any local board of health
85 may, in the alternative and with the consent and approval of the
86 appointing authority, establish and adopt a merit system for its
87 eligible employees. The merit system may be similar to the
88 state merit system and may be established by the local board by
89 its order, subject to the approval of the appointing authority,

90 adopting and making applicable to the local health department
91 all, or any portion of any order, rule, standard, or compensation
92 rate in effect in the state merit system as may be desired and as
93 is properly applicable;

94 (3) Adopt and promulgate and from time to time amend
95 rules consistent with state public health laws and the rules of
96 the West Virginia state department of health and human
97 resources, that are necessary and proper for the protection of the
98 general health of the service area and the prevention of the
99 introduction, propagation and spread of disease. All rules shall
100 be filed with the clerk of the county commission or the clerk or
101 the recorder of the municipality or both and shall be kept by the
102 clerk or recording officer in a separate book as public records;

103 (4) Accept, receive and receipt for money or property from
104 any federal, state or local governmental agency, from any other
105 public source or from any private source, to be used for public
106 health purposes or for the establishment or construction of
107 public health facilities;

108 (5) Assess, charge and collect fees for permits and licenses
109 for the provision of public health services: *Provided*, That
110 permits and licenses required for agricultural activities may not
111 be assessed, charged or collected: *Provided, however*, That a
112 local board of health may assess, charge and collect all of the
113 expenses of inspection of the physical plant and facilities of any
114 distributor, producer or pasteurizer of milk whose milk distribu-
115 tion, production or pasteurization facilities are located outside
116 this state but who sells or distributes in the state, or transports,
117 causes or permits to be transported into this state, milk or milk
118 products for resale, use or consumption in the state and in the
119 service area of the local board of health. A local board of health
120 may not assess, charge and collect the expenses of inspection if
121 the physical plant and facilities are regularly inspected by
122 another agency of this state or its governmental subdivisions or
123 by an agency of another state or its governmental subdivisions

124 certified as an approved inspection agency by the commis-
125 sioner. No more than one local board of health may act as the
126 regular inspection agency of the physical plant and facilities;
127 when two or more include an inspection of the physical plant
128 and facilities in a regular schedule, the commissioner shall
129 designate one as the regular inspection agency;

130 (6) Assess, charge and collect fees for services provided by
131 the local health department: *Provided*, That fees for services
132 shall be submitted to and approved by the commissioner;

133 (7) Contract for payment with any municipality, county or
134 board of education for the provision of local health services or
135 for the use of public health facilities. Any contract shall be in
136 writing and permit provision of services or use of facilities for
137 a period not to exceed one fiscal year. The written contract may
138 include provisions for annual renewal by agreement of the
139 parties; and

140 (8) Retain and make available child safety car seats, collect
141 rental and security deposit fees for the expenses of retaining and
142 making available child safety car seats, and conduct public
143 education activities concerning the use and preventing the
144 misuse of child safety car seats: *Provided*, That this subsection
145 is not intended to conflict with the provisions of section forty-
146 six, article fifteen, chapter seventeen-c of this code: *Provided*,
147 *however*, That any local board of health offering a child safety
148 car seat program or employee or agent of a local board of health
149 is immune from civil or criminal liability in any action relating
150 to the improper use, malfunction or inadequate maintenance of
151 the child safety car seat and in any action relating to the
152 improper placement, maintenance or securing of a child in a
153 child safety car seat.

154 (c) The local boards of health are charged with protecting
155 the health and safety, as well as promoting the interests of the
156 citizens of West Virginia. All state funds appropriated by the

157 Legislature for the benefit of local boards of health shall be
158 used for provision of basic public health services.

§16-2-12. Local health officer; term of appointment; qualifications; reappointment; compensation; and removal.

1 A local board of health shall appoint a full-time or part-time
2 local health officer with approval by the commissioner. The
3 local health officer shall be a physician currently licensed in
4 this state and knowledgeable in the science of public health. A
5 local health officer serves at the will and pleasure of the local
6 board for a term of one year and is eligible for reappointment
7 at compensation determined by the local board of health.

8 A local health officer may be removed from office by the
9 commissioner if the local health officer fails or refuses to carry
10 out the lawful orders or rules of the secretary in the event the
11 commissioner determines a public health emergency exists or
12 if the local health officer fails or refuses to enforce public
13 health laws and rules necessary to prevent and control the
14 spread of communicable or reportable diseases dangerous to the
15 public health. Upon removal, a successor local health officer
16 shall immediately be appointed by the board pursuant to the
17 provisions of this article.

§16-2-13. Local health officer; powers and duties.

1 (a) A local health officer serves as the executive officer of
2 the local board and under its supervision, a local health officer
3 shall administer the provisions of this article, all other laws of
4 this state and the rules and orders of the secretary of the
5 department relating to public health and applicable to the local
6 board's service area, any county commission orders and
7 municipal ordinances of the board's service area relating to
8 public health and the rules and orders of the local board.

9 (b) A local health officer has the following additional
10 powers and duties which may be delegated with the approval of
11 the board:

12 (1) To attend local board meetings as a nonvoting member.
13 A local health officer serves as secretary at all board meetings
14 and is responsible for maintaining the board's offices, meeting
15 minutes and records;

16 (2) To supervise and direct the activities of the local
17 board's health services, employees and facilities;

18 (3) To ensure that procedures are established for the receipt
19 of communicable or reportable disease reports from local
20 physicians and other reporting sources and for the transmittal of
21 the reports to the commissioner;

22 (4) To perform mandatory HIV tests on persons convicted
23 of sex-related offenses and resident within the service area; and

24 (5) To determine when sufficient corrections have been
25 made to warrant removal of any restrictions or limitations
26 placed on an individual or entity for public health purposes by
27 an employee of the local board of health.

**§16-2-14. Financial responsibilities of appointing authorities for
local boards of health; levies; appropriation of
county or municipal general funds for public
health purposes; state funding.**

1 The appointing authorities for local boards of health shall
2 provide financial support for the operation of the local health
3 department. The county commission of any county or the
4 governing body of any municipality in which a local board of
5 health is established pursuant to the provisions of this article, or
6 the county commission of any county or the governing body of
7 any municipality who is a participating member of a combined
8 local board of health may levy a county or municipal tax to

9 provide funds for the local board of health: *Provided*, That the
10 tax may not exceed three cents on each one hundred dollars of
11 assessed valuation of the taxable property in the levying county
12 or municipality, according to the latest assessment.

13 The county commission of any county or the governing
14 body of any municipality in which a local board of health is
15 established pursuant to the provisions of this article, or the
16 county commission of any county or the governing body of any
17 municipality who is a participating member of a combined local
18 board of health may appropriate and spend money from the
19 county or municipal general funds for public health purposes
20 and to pay the expenses of the operation of the local board of
21 health services and facilities.

22 The commissioner and the secretary may pay over and
23 contribute to any board of health created and maintained
24 pursuant to the provisions of this article the sum or sums of
25 money that may be available from funds included in appropria-
26 tions made for the department of health and human resources.
27 The commissioner may withhold all or part of any funds until
28 a local board of health submits an acceptable plan to correct
29 deficiencies in the local board's program plan.

**§16-2-15. Obstructing local health officers and others in the
enforcement of public health laws; other viola-
tions; penalties.**

1 Any person who willfully obstructs any local health officer,
2 public health nurse, sanitarian or any other person charged with
3 the enforcement of any public health law, in the performance of
4 that person's legal duties in enforcing the law, is guilty of a
5 misdemeanor and, upon conviction, shall be punished by a fine
6 of not less than fifty dollars and not more than five hundred
7 dollars.

8 Any person who willfully violates any of the provisions of
9 this article, or any of the rules or orders adopted or issued
10 pursuant to the provisions, for which a penalty is not otherwise
11 provided, is guilty of a misdemeanor and, upon conviction,
12 shall be punished by a fine of not less than two hundred dollars
13 and not more than one thousand dollars.

14 Magistrates have concurrent jurisdiction with the circuit
15 courts of this state for violations of provisions of this article.

CHAPTER 131

(H. B. 4578 — By Delegates Compton, Hutchins and Leach)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four-a, article three, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to testing for tuberculosis of school children and personnel.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICABLE AND OTHER INFECTIOUS DISEASES.

§16-3-4a. Compulsory testing for tuberculosis of school children and school personnel; X rays required for reactors; suspension from school or employment for pupils and personnel found to have tuberculosis in a communicable stage.

1 (a) All students transferring from a school located outside
2 this state shall furnish a certificate from a licensed physician
3 stating that a tuberculin skin test approved by the director of the
4 department of health has been made within four months prior
5 to the beginning of the school year, unless such pupil has
6 moved to this state from another state less than four months
7 prior to starting the school year, in which event such pupil shall
8 have such test as soon in advance of the start of the school as is
9 reasonable, or if the school year has already started, the pupil
10 shall take such test within one month of the time he enters
11 school.

12 (b) Test results must be recorded on the certificate required
13 by subsection (a). Positive reactors to the skin test must be
14 immediately evaluated by a physician and, if medically
15 indicated, X rayed, and receive periodic X rays thereafter, when
16 medically indicated. Pupils found to have tuberculosis in a
17 communicable stage will not be allowed to attend school until
18 their disease has been arrested and is no longer communicable.

19 (c) All school personnel shall have an approved tuberculin
20 skin test at time of employment and once every two years or
21 more frequently if medically indicated. Positive reactors to the
22 skin test are to be immediately referred to a physician for
23 evaluation and indicated treatment or further studies. School
24 personnel found to have tuberculosis in a communicable stage
25 shall have their employment discontinued or suspended until
26 their disease has been arrested and is no longer communicable.
27 School personnel who have not had the required examination
28 will be suspended from employment until reports of examina-
29 tion are confirmed.

30 (d) The county health officer shall be responsible for
31 arranging proper follow-up of school personnel and students
32 who are unable to obtain physician evaluation for a positive
33 tuberculin skin test.

34 (e) The state commissioner of the bureau of public health
35 shall have the authority to require selective testing of school
36 children for tuberculosis when there is reason to believe that
37 such children may have been exposed to the tuberculosis
38 organism.

CHAPTER 132

(Com. Sub. for H. B. 4144 — By Delegates Douglas, Martin, Staton,
Fleischauer, Compton, Leach and Trump)

[Passed March 10, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal articles thirty-a and thirty-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article four-b, chapter sixteen of said code; to amend and reenact article thirty, chapter sixteen of said code; and to amend and reenact section five, article thirty-c, chapter sixteen of said code, all relating to the process for private health care decisionmaking for incapacitated adults; consent for autopsies on bodies of deceased persons; creating the West Virginia Health Care Decisions Act; and consent for do not resuscitate orders.

Be it enacted by the Legislature of West Virginia:

That articles thirty-a and thirty-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section one, article four-b, chapter sixteen of said code be amended and reenacted; that article thirty, chapter sixteen of said code be amended and reenacted; and that section five, article thirty-c, chapter sixteen of said code be amended and reenacted, all to read as follows:

Article

4B. Autopsies on Bodies of Deceased Persons.

30. West Virginia Health Care Decisions Act.

30C. Do Not Resuscitate Act.

ARTICLE 4B. AUTOPSIES ON BODIES OF DECEASED PERSONS.**§16-4B-1. Autopsy on body of deceased persons in interest of medical science; who may perform; consent required; who may give consent.**

1 In case of the death of any person in the state of West
2 Virginia, except those deaths subject to autopsy being made
3 pursuant to section ten, article twelve, chapter sixty-one of this
4 code, the attending physician, or if there be none, any physi-
5 cian, if he or she deems it advisable in the interest of medical
6 science or future health care of the deceased person's family,
7 may perform or cause to be performed an autopsy on the body
8 of such deceased person without liability therefor, provided
9 consent to such autopsy is first obtained in writing or by
10 telephone, if the telephone authorization is verified by a second
11 person, from one of the following in the priority order stated:
12 (1) The medical power of attorney representative; (2) if there is
13 no medical power of attorney representative, the surviving
14 spouse of deceased; (3) if there be no surviving spouse, then
15 any child of deceased over the age of eighteen years: *Provided,*
16 That the child's permission shall not be valid, if any other child
17 of the deceased over the age of eighteen years objects prior to
18 said autopsy and the objection shall be made known in writing
19 to the physician who is to perform the autopsy; (4) if there be
20 no surviving spouse, nor any child of deceased over the age of
21 eighteen years, then the mother or father of deceased; (5) if
22 there is no mother or father of the deceased, the health care
23 surrogate, if one is appointed; (6) if there be no surviving
24 spouse, nor any child over the age of eighteen years, nor mother
25 or father, then the duly appointed and acting fiduciary of the
26 estate of the deceased; or (7) if there be no surviving spouse,
27 nor any child over the age of eighteen years, nor mother or

28 father, nor duly appointed and acting fiduciary of the estate of
29 deceased, then the person, firm, corporation or agency legally
30 responsible for the financial obligation incurred in disposing of
31 the body of deceased.

32 In the event the medical power of attorney representative,
33 the health care surrogate, spouse, child or parent of deceased be
34 mentally incompetent then the person authorized to consent to
35 such autopsy shall be the next in the order of priority herein
36 above defined.

37 As used in this section, the term “surviving spouse” shall
38 mean any spouse of the deceased who is not legally separated
39 from the deceased immediately prior to the death of the
40 deceased.

ARTICLE 30. WEST VIRGINIA HEALTH CARE DECISIONS ACT.

- §16-30-1. Short title.
- §16-30-2. Legislative findings and purpose.
- §16-30-3. Definitions.
- §16-30-4. Executing a living will or medical power of attorney.
- §16-30-5. Applicability and resolving actual conflict between advance directives.
- §16-30-6. Private decision-making process; authority of living will, medical power or attorney representative and surrogate.
- §16-30-7. Determination of incapacity.
- §16-30-8. Selection of a surrogate.
- §16-30-9. Medical power of attorney representative and health care surrogate decision-making standards.
- §16-30-10. Reliance on authority of living will, medical power of attorney representative or surrogate decision maker and protection of health care provider.
- §16-30-11. Negligence.
- §16-30-12. Conscience objections.
- §16-30-13. Interinstitutional transfers.
- §16-30-14. Insurance.
- §16-30-15. Withholding of life support not assisted suicide or murder.
- §16-30-16. Preservation of existing rights and relation to existing law; no presumption.
- §16-30-17. No abrogation of common law doctrine of medical necessity.
- §16-30-18. Revocation.

§16-30-19. Physician's duty to confirm, communicate and document terminal condition or persistent vegetative state; medical record identification.

§16-30-20. Living wills previously executed.

§16-30-21. Reciprocity.

§16-30-22. Liability for failure to act in accordance with the directives of a living will or medical power of attorney or the directions of a medical power of attorney representative or health care surrogate.

§16-30-23. Prohibition.

§16-30-24. Need for a second opinion regarding incapacity for persons with psychiatric mental illness, mental retardation or addiction.

§16-30-1. Short title.

- 1 This article may be cited as the "West Virginia Health Care
- 2 Decisions Act."

§16-30-2. Legislative findings and purpose.

- 1 (a) *Purpose.* — The purpose of this article is to ensure that
- 2 a patient's right to self-determination in health care decisions
- 3 be communicated and protected; and to set forth a process for
- 4 private health care decision making for incapacitated adults,
- 5 including the use of advance directives, which reduces the need
- 6 for judicial involvement and defines the circumstances under
- 7 which immunity shall be available for health care providers and
- 8 surrogate decision makers who make health care decisions.

9 The intent of the Legislature is to establish an effective
10 method for private health care decision making for incapaci-
11 tated adults, and to provide that the courts should not be the
12 usual venue for making decisions. It is not the intent of the
13 Legislature to legalize, condone, authorize or approve mercy
14 killing or assisted suicide.

- 15 (b) *Findings.* - The Legislature hereby finds that:

16 (1) Common law tradition and the medical profession in
17 general have traditionally recognized the right of a capable
18 adult to accept or reject medical or surgical intervention
19 affecting one's own medical condition;

20 (2) The application of recent advances in medical science
21 and technology increasingly involves patients who are uncon-
22 scious or otherwise unable to accept or reject medical or
23 surgical treatment affecting their medical conditions;

24 (3) Such advances have also made it possible to prolong the
25 dying process artificially through the use of intervening
26 treatments or procedures which, in some cases, offer no hope of
27 medical benefit;

28 (4) Capable adults should be encouraged to issue advance
29 directives designating their health care representatives so that
30 in the event any such adult becomes unconscious or otherwise
31 incapable of making health care decisions, decisions may be
32 made by others who are aware of such person's own wishes and
33 values; and

34 (5) The right to make medical treatment decisions extends
35 to a person who is incapacitated at the moment of decision. An
36 incapacitated person who has not made his or her wishes known
37 in advance through an applicable living will, medical power of
38 attorney or through some other means has the right to have
39 health care decisions made on his or her behalf by a person who
40 will act in accordance with the incapacitated person's expressed
41 values and wishes, or, if those values and wishes are unknown,
42 in the incapacitated person's best interests.

§16-30-3. Definitions.

1 For the purposes of this article:

2 (a) "Actual knowledge" means the possession of informa-
3 tion of the person's wishes communicated to the health care
4 provider orally or in writing by the person, the person's medical
5 power of attorney representative, the person's health care
6 surrogate or other individuals resulting in the health care
7 provider's personal cognizance of these wishes. Constructive

8 notice and other forms of imputed knowledge are not actual
9 knowledge.

10 (b) "Adult" means a person who is eighteen years of age or
11 older, an emancipated minor who has been established as such
12 pursuant to the provisions of section twenty-seven, article
13 seven, chapter forty-nine of this code or a mature minor.

14 (c) "Attending physician" means the physician selected by
15 or assigned to the person who has primary responsibility for
16 treatment and care of the person and who is a licensed physi-
17 cian. If more than one physician shares that responsibility, any
18 of those physicians may act as the attending physician under
19 this article.

20 (d) "Advanced practice nurse" means a nurse with substan-
21 tial theoretical knowledge in a specialized area of nursing
22 practice and proficient clinical utilization of the knowledge in
23 implementing the nursing process pursuant to the provisions of
24 title 19, legislative rules for West Virginia board of examiners
25 for registered professional nurses, series 7.

26 (e) "Capable adult" means a person over the age of eighteen
27 years who is physically and mentally capable of making health
28 care decisions and who has not been deemed a protected person
29 pursuant to the provisions of chapter forty-four-a of this code.

30 (f) "Close friend" means any adult who has exhibited
31 significant care and concern for an incapacitated person who is
32 willing and able to become involved in the incapacitated
33 person's health care, and who has maintained regular contact
34 with the incapacitated person so as to be familiar with his or her
35 activities, health and religious and moral beliefs.

36 (g) "Death" means a finding made in accordance with
37 accepted medical standards of either: (1) The irreversible
38 cessation of circulatory and respiratory functions; or (2) the

39 irreversible cessation of all functions of the entire brain,
40 including the brain stem.

41 (h) “Guardian” means a person appointed by a court
42 pursuant to the provisions of chapter forty-four-a of this code
43 who is responsible for the personal affairs of a protected person,
44 and includes a limited guardian or a temporary guardian.

45 (i) “Health care decision” means a decision to give,
46 withhold or withdraw informed consent to any type of health
47 care, including, but not limited to, medical and surgical
48 treatments, including life-prolonging interventions, psychiatric
49 treatment, nursing care, hospitalization, treatment in a nursing
50 home or other facility, home health care and organ or tissue
51 donation.

52 (j) “Health care facility” means a facility commonly known
53 by a wide variety of titles, including, but not limited to,
54 hospital, psychiatric hospital, medical center, ambulatory health
55 care facility, physicians’ office and clinic, extended care facility
56 operated in connection with a hospital, nursing home, a hospital
57 extended care facility operated in connection with a rehabilita-
58 tion center, hospice, home health care and other facility
59 established to administer health care in its ordinary course of
60 business or practice.

61 (k) “Health care provider” means any licensed physician,
62 dentist, nurse, physician’s assistant, paramedic, psychologist or
63 other person providing medical, dental, nursing, psychological
64 or other health care services of any kind.

65 (l) “Incapacity” means the inability because of physical or
66 mental impairment to appreciate the nature and implications of
67 a health care decision, to make an informed choice regarding
68 the alternatives presented, and to communicate that choice in an
69 unambiguous manner.

70 (m) “Life-prolonging intervention” means any medical
71 procedure or intervention that, when applied to a person, would
72 serve to artificially prolong the dying process or to maintain the
73 person in a persistent vegetative state. Life-prolonging interven-
74 tion includes, among other things, nutrition and hydration
75 administered intravenously or through a feeding tube. The term
76 “life-prolonging intervention” does not include the administra-
77 tion of medication or the performance of any other medical
78 procedure deemed necessary to provide comfort or to alleviate
79 pain.

80 (n) “Living will” means a written, witnessed advance
81 directive governing the withholding or withdrawing of
82 life-prolonging intervention, voluntarily executed by a person
83 in accordance with the requirements of section four of this
84 article.

85 (o) “Mature minor” means a person less than eighteen years
86 of age who has been determined by a qualified physician, a
87 qualified psychologist or an advanced practice nurse in collabo-
88 ration with a physician to have the capacity to make health care
89 decisions.

90 (p) “Medical information” or “medical records” means and
91 includes without restriction any information recorded in any
92 form of medium that is created or received by a health care
93 provider, health care facility, health plan, public health author-
94 ity, employer, life insurer, school or university or health care
95 clearinghouse that relates to the past, present or future physical
96 or mental health of the person, the provision of health care to
97 the person, or the past, present or future payment for the
98 provision of health care to the person.

99 (q) “Medical power of attorney representative” or “repre-
100 sentative” means a person eighteen years of age or older
101 appointed by another person to make health care decisions
102 pursuant to the provisions of section six of this article or

103 similar act of another state and recognized as valid under the
104 laws of this state.

105 (r) "Parent" means a person who is another person's natural
106 or adoptive mother or father or who has been granted parental
107 rights by valid court order and whose parental rights have not
108 been terminated by a court of law.

109 (s) "Persistent vegetative state" means an irreversible state
110 as diagnosed by the attending physician or a qualified physician
111 in which the person has intact brain stem function but no higher
112 cortical function and has neither self-awareness or awareness of
113 the surroundings in a learned manner.

114 (t) "Person" means an individual, a corporation, a business
115 trust, a trust, a partnership, an association, a government, a
116 governmental subdivision or agency or any other legal entity.

117 (u) "Principal" means a person who has executed a living
118 will or medical power of attorney.

119 (v) "Protected person" means an adult, who, pursuant to the
120 provisions of chapter forty-four-a of this code, has been found
121 by a court, because of mental impairment, to be unable to
122 receive and evaluate information effectively or to respond to
123 people, events and environments to an extent that the individual
124 lacks the capacity to: (1) Meet the essential requirements for his
125 or her health, care, safety, habilitation or therapeutic needs
126 without the assistance or protection of a guardian; or (2)
127 manage property or financial affairs to provide for his or her
128 support or for the support of legal dependents without the
129 assistance or protection of a conservator.

130 (w) "Qualified physician" means a physician licensed to
131 practice medicine who has personally examined the person.

132 (x) "Qualified psychologist" means a psychologist licensed
133 to practice psychology who has personally examined the
134 person.

135 (y) "Surrogate decision maker" or "surrogate" means an
136 adult individual who is reasonably available, is willing to make
137 health care decisions on behalf of an incapacitated person,
138 possesses the capacity to make health care decisions, and is
139 selected by the attending physician or advanced practice nurse
140 in collaboration with the attending physician in accordance with
141 the provisions of this article as the person who is to make those
142 decisions in accordance with the provisions of this article.

143 (z) "Terminal condition" means an incurable or irreversible
144 condition as diagnosed by the attending physician or a qualified
145 physician for which the administration of life-prolonging
146 intervention will serve only to prolong the dying process.

§16-30-4. Executing a living will or medical power of attorney.

1 (a) Any competent adult may execute at any time a living
2 will or medical power of attorney. A living will or medical
3 power of attorney made pursuant to this article shall be: (1) In
4 writing; (2) executed by the principal or by another person in
5 the principal's presence at the principal's express direction if
6 the principal is physically unable to do so; (3) dated; (4) signed
7 in the presence of two or more witnesses at least eighteen years
8 of age; and (5) signed and attested by such witnesses whose
9 signatures and attestations shall be acknowledged before a
10 notary public as provided in subsection (d) of this section.

11 (b) In addition, a witness may not be:

12 (1) The person who signed the living will or medical power
13 of attorney on behalf of and at the direction of the principal;

14 (2) Related to the principal by blood or marriage;

15 (3) Entitled to any portion of the estate of the principal
16 under any will of the principal or codicil thereto: *Provided,*
17 That the validity of the living will or medical power of attorney
18 shall not be affected when a witness at the time of witnessing
19 such living will or medical power of attorney was unaware of
20 being a named beneficiary of the principal's will;

21 (4) Directly financially responsible for principal's medical
22 care;

23 (5) The attending physician; or

24 (6) The principal's medical power of attorney representa-
25 tive or successor medical power of attorney representative.

26 (c) The following persons may not serve as a medical
27 power of attorney representative or successor medical power of
28 attorney representative: (1) A treating health care provider of
29 the principal; (2) an employee of a treating health care provider
30 not related to the principal; (3) an operator of a health care
31 facility serving the principal; or (4) an employee of an operator
32 of a health care facility not related to the principal.

33 (d) It shall be the responsibility of the principal or his or her
34 representative to provide for notification to his or her attending
35 physician and other health care providers of the existence of the
36 living will or medical power of attorney or a revocation of the
37 living will or medical power of attorney. An attending physi-
38 cian or other health care provider, when presented with the
39 living will or medical power of attorney, or the revocation of a
40 living will or medical power of attorney, shall make the living
41 will, medical power of attorney or a copy of either or a revoca-
42 tion of either a part of the principal's medical records.

43 (e) At the time of admission to any health care facility, each
44 person shall be advised of the existence and availability of
45 living will and medical power of attorney forms and shall be
46 given assistance in completing such forms if the person desires:

47 *Provided*, That under no circumstances may admission to a
 48 health care facility be predicated upon a person having com-
 49 pleted either a medical power of attorney or living will.

50 (f) The provision of living will or medical power of
 51 attorney forms substantially in compliance with this article by
 52 health care providers, medical practitioners, social workers,
 53 social service agencies, senior citizens centers, hospitals,
 54 nursing homes, personal care homes, community care facilities
 55 or any other similar person or group, without separate compen-
 56 sation, does not constitute the unauthorized practice of law.

57 (g) The living will may, but need not, be in the following
 58 form, and may include other specific directions not inconsistent
 59 with other provisions of this article. Should any of the other
 60 specific directions be held to be invalid, such invalidity shall
 61 not affect other directions of the living will which can be given
 62 effect without the invalid direction and to this end the directions
 63 in the living will are severable.

64 **STATE OF WEST VIRGINIA**
 65 **LIVING WILL**

<p>The Kind of Medical Treatment I Want and Don't Want If I Have a Terminal Condition or Am In a Persistent Vegetative State</p>

66 Living will made this _____
 67 day of _____ (month, year).

68 I, _____,
 69 being of sound mind, willfully and voluntarily declare that I
 70 want my wishes to be respected if I am very sick and not able
 71 to communicate my wishes for myself. In the absence of my
 72 ability to give directions regarding the use of life-prolonging

73 medical intervention, it is my desire that my dying shall not be
74 prolonged under the following circumstances:

75 If I am very sick and not able to communicate my wishes
76 for myself and I am certified by one physician who has person-
77 ally examined me, to have a terminal condition or to be in a
78 persistent vegetative state (I am unconscious and am neither
79 aware of my environment nor able to interact with others,) I
80 direct that life-prolonging medical intervention that would serve
81 solely to prolong the dying process or maintain me in a persis-
82 tent vegetative state be withheld or withdrawn. I want to be
83 allowed to die naturally and only be given medications or other
84 medical procedures necessary to keep me comfortable. I want
85 to receive as much medication as is necessary to alleviate my
86 pain.

87 I give the following SPECIAL DIRECTIVES OR LIMITA-
88 TIONS: (Comments about tube feedings, breathing machines,
89 cardiopulmonary resuscitation, dialysis and mental health
90 treatment may be placed here. My failure to provide special
91 directives or limitations does not mean that I want or refuse
92 certain treatments.)

93 _____

94 _____

95 _____

96 It is my intention that this living will be honored as the final
97 expression of my legal right to refuse medical or surgical
98 treatment and accept the consequences resulting from such
99 refusal.

100 I understand the full import of this living will.

101 _____

102 Signed

103 _____

104 _____

105 Address

106 I did not sign the principal's signature above for or at the
107 direction of the principal. I am at least eighteen years of age and
108 am not related to the principal by blood or marriage, entitled to
109 any portion of the estate of the principal to the best of my
110 knowledge under any will of principal or codicil thereto, or
111 directly financially responsible for principal's medical care. I
112 am not the principal's attending physician or the principal's
113 medical power of attorney representative or successor medical
114 power of attorney representative under a medical power of
115 attorney.

116 _____

117 Witness

DATE

118 _____

119 Witness

DATE

120 _____

121 STATE OF

122 _____

123 COUNTY OF

124 I, _____, a Notary Public of said
125 County, do certify that _____, as
126 principal, and _____ and _____,
127 as witnesses, whose names are signed to the writing above
128 bearing date on the _____ day of _____,
129 2000, have this day acknowledged the same before me.

1032

HEALTH

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130 Given under my hand this _____ day of
131 _____, 2000.

132 My commission expires: _____

133 _____

134 Signature of Notary Public

135 (h) A medical power of attorney may, but need not, be in
136 the following form, and may include other specific directions
137 not inconsistent with other provisions of this article. Should any
138 of the other specific directions be held to be invalid, such
139 invalidity shall not affect other directions of the medical power
140 of attorney which can be given effect without invalid direction
141 and to this end the directions in the medical power of attorney
142 are severable.

143

STATE OF WEST VIRGINIA

144

MEDICAL POWER OF ATTORNEY

**The Person I Want to Make Health Care Decisions
For Me When I Can't Make Them for Myself**

145 Dated: _____, 20_____

146 I, _____, hereby

147 *(Insert your name and address)*

148 appoint as my representative to act on my behalf to give,
149 withhold or withdraw informed consent to health care decisions
150 in the event that I am not able to do so myself.

151 **The person I choose as my representative is:**

152 _____

153 *(Insert the name, address, area code and telephone number of*
154 *the person you wish to designate as your representative)*

155 **The person I choose as my successor representative is:**

156 If my representative is unable, unwilling or disqualified to
157 serve, then I appoint

158

159 *(Insert the name, address, area code and telephone number of*
160 *the person you wish to designate as your successor representa-*
161 *tive)*

162 This appointment shall extend to, but not be limited to,
163 health care decisions relating to medical treatment, surgical
164 treatment, nursing care, medication, hospitalization, care and
165 treatment in a nursing home or other facility, and home health
166 care. The representative appointed by this document is specifi-
167 cally authorized to be granted access to my medical records and
168 other health information and to act on my behalf to consent to,
169 refuse or withdraw any and all medical treatment or diagnostic
170 procedures, or autopsy if my representative determines that I,
171 if able to do so, would consent to, refuse or withdraw such
172 treatment or procedures. Such authority shall include, but not be
173 limited to, decisions regarding the withholding or withdrawal
174 of life-prolonging interventions.

175 I appoint this representative because I believe this person
176 understands my wishes and values and will act to carry into
177 effect the health care decisions that I would make if I were able
178 to do so, and because I also believe that this person will act in
179 my best interest when my wishes are unknown. It is my intent
180 that my family, my physician and all legal authorities be bound
181 by the decisions that are made by the representative appointed
182 by this document, and it is my intent that these decisions should
183 not be the subject of review by any health care provider or
184 administrative or judicial agency.

185 It is my intent that this document be legally binding and
186 effective and that this document be taken as a formal statement

187 of my desire concerning the method by which any health care
 188 decisions should be made on my behalf during any period when
 189 I am unable to make such decisions.

190 In exercising the authority under this medical power of
 191 attorney, my representative shall act consistently with my
 192 special directives or limitations as stated below.

193 I am giving the following SPECIAL DIRECTIVES OR
 194 LIMITATIONS ON THIS POWER: (Comments about tube
 195 feedings, breathing machines, cardiopulmonary resuscitation
 196 and dialysis may be placed here. My failure to provide special
 197 directives or limitations does not mean that I want or refuse
 198 certain treatments.)

199 _____

200 _____

201 THIS MEDICAL POWER OF ATTORNEY SHALL
 202 BECOME EFFECTIVE ONLY UPON MY INCAPACITY TO
 203 GIVE, WITHHOLD OR WITHDRAW INFORMED CON-
 204 SENT TO MY OWN MEDICAL CARE.

205 _____

206 Signature of the Principal

207 I did not sign the principal's signature above. I am at least
 208 eighteen years of age and am not related to the principal by
 209 blood or marriage. I am not entitled to any portion of the estate
 210 of the principal or to the best of my knowledge under any will
 211 of the principal or codicil thereto, or legally responsible for the
 212 costs of the principal's medical or other care. I am not the
 213 principal's attending physician, nor am I the representative or
 214 successor representative of the principal.

215 _____

216 Witness

DATE

217 _____
218 Witness DATE

219 _____
220 STATE OF

221 _____
222 COUNTY OF

223 I, _____, a Notary Public
224 of said County, do certify that _____,
225 as principal, and _____ and _____,
226 as witnesses, whose names are signed to the writing above
227 bearing date on the _____ day of _____,
228 20____, have this day acknowledged the same before me.

229 Given under my hand this _____ day of _____,
230 20_____.

231 My commission expires: _____.
232 _____
233 Notary Public

§16-30-5. Applicability and resolving actual conflict between advance directives.

1 (a) The provisions of this article which directly conflict
2 with the written directives contained in a living will or medical
3 power of attorney executed prior to the effective date of this
4 statute shall not apply. An expressed directive contained in a
5 living will or medical power of attorney or by any other means
6 the health care provider determines to be reliable shall be
7 followed.

8 (b) If there is a conflict between the person’s expressed
9 directives and the decisions of the medical power of attorney
10 representative or surrogate, the person’s expressed directives
11 shall be followed.

12 (c) In the event there is a conflict between two advance
13 directives executed by the person, the one most recently
14 completed takes precedence only to the extent needed to resolve
15 the inconsistency.

16 (d) If there is a conflict between the decisions of the
17 medical power of attorney representative or surrogate and the
18 person's best interests as determined by the attending physician
19 when the person's wishes are unknown, the attending physician
20 shall attempt to resolve the conflict by consultation with a
21 qualified physician, an ethics committee, or by some other
22 means. If the attending physician cannot resolve the conflict
23 with the medical power of attorney representative, the attending
24 physician may transfer the care of the person pursuant to
25 subsection (b), section twelve of this article.

§16-30-6. Private decision-making process; authority of living will, medical power of attorney representative and surrogate.

1 (a) Any capable adult may make his or her own health care
2 decisions without regard to guidelines contained in this article.

3 (b) Health care providers and health care facilities may rely
4 upon health care decisions made on behalf of an incapacitated
5 person without resort to the courts or legal process, if the
6 decisions are made in accordance with the provisions of this
7 article.

8 (c) The medical power of attorney representative or
9 surrogate shall have the authority to release or authorize the
10 release of an incapacitated person's medical records to third
11 parties and make any and all health care decisions on behalf of
12 an incapacitated person, except to the extent that a medical
13 power of attorney representative's authority is clearly limited
14 in the medical power of attorney.

15 (d) The medical power of attorney representative or
16 surrogate's authority shall commence upon a determination,
17 made pursuant to section seven of this article, of the incapacity
18 of the adult. In the event the person no longer is incapacitated
19 or the medical power of attorney representative or surrogate is
20 unwilling or unable to serve, the medical power of attorney
21 representative or surrogate's authority shall cease. However, the
22 authority of the medical power of attorney representative or
23 surrogate may recommence if the person subsequently becomes
24 incapacitated as determined pursuant to section seven of this
25 article unless during the intervening period of capacity the
26 person executes an advance directive which makes a surrogate
27 unnecessary or expressly rejects the previously appointed
28 surrogate as his or her surrogate. A medical power of attorney
29 representative or surrogate's authority terminates upon the
30 death of the incapacitated person except with respect to
31 decisions regarding autopsy, funeral arrangements or cremation
32 and organ and tissue donation.

33 (e) The medical power of attorney representative or
34 surrogate shall seek medical information necessary to make
35 health care decisions for an incapacitated person. For the sole
36 purpose of making health care decisions for the incapacitated
37 person, the medical power of attorney representative or
38 surrogate shall have the same right of access to the incapacitated
39 person's medical information and the same right to
40 discuss that information with the incapacitated person's health
41 care providers that the incapacitated person would have if he or
42 she was not incapacitated.

43 (f) If an incapacitated person previously expressed his or
44 her wishes regarding autopsy, funeral arrangements or crema-
45 tion, organ or tissue donation, or the desire to make an anatomi-
46 cal gift by a written directive such as a living will, medical
47 power of attorney, donor card, drivers' license or other means,
48 the medical power of attorney representative or surrogate shall

49 follow the person's expressed wishes regarding autopsy, funeral
50 arrangements or cremation, organ and tissue donation or
51 anatomical gift. In the absence of any written directives, any
52 decision regarding anatomical gifts shall be made pursuant to
53 the provisions of article nineteen of this chapter.

54 (g) If a person is incapacitated at the time of the decision to
55 withhold or withdraw life-prolonging intervention, the person's
56 living will or medical power of attorney executed in accordance
57 with section four of this article is presumed to be valid. For the
58 purposes of this article, a physician or health facility may
59 presume in the absence of actual notice to the contrary that a
60 person who executed a living will or medical power of attorney
61 was a competent adult when it was executed. The fact that a
62 person executed a living will or medical power of attorney is
63 not an indication of the person's mental incapacity.

§16-30-7. Determination of incapacity.

1 (a) For the purposes of this article, a person may not be
2 presumed to be incapacitated merely by reason of advanced age
3 or disability. With respect to a person who has a diagnosis of
4 mental illness or mental retardation, such a diagnosis is not a
5 presumption that the person is incapacitated. A determination
6 that a person is incapacitated shall be made by the attending
7 physician, a qualified physician, a qualified psychologist or an
8 advanced practice nurse in collaboration with a physician
9 provided that the advanced practice nurse has personally
10 examined the person.

11 (b) The determination of incapacity shall be recorded
12 contemporaneously in the person's medical record by the
13 attending physician, a qualified physician, advanced practice
14 nurse or a qualified psychologist. The recording shall state the
15 basis for the determination of incapacity, including the cause,
16 nature and expected duration of the person's incapacity, if these
17 are known.

18 (c) If the person is conscious, the attending physician shall
19 inform the person that he or she has been determined to be
20 incapacitated and that a medical power of attorney representa-
21 tive or surrogate decision maker may be making decisions
22 regarding life-prolonging intervention or mental health treat-
23 ment for the person.

§16-30-8. Selection of a surrogate.

1 (a) When a person is or becomes incapacitated, the attend-
2 ing physician or the advanced practice nurse in collaboration
3 with the attending physician, with the assistance of other health
4 care providers as necessary, shall select, in writing, a surrogate.
5 The attending physician shall reasonably attempt to determine
6 whether the incapacitated person has appointed a representative
7 under a medical power of attorney in accordance with the
8 provisions of section four of this article, or if the incapacitated
9 person has a court-appointed guardian in accordance with the
10 provisions of article one, chapter forty-four-a of this code. If no
11 representative or court-appointed guardian is authorized or
12 capable and willing to serve, the attending physician or ad-
13 vanced practice nurse is authorized to select a health care
14 surrogate. In selecting a surrogate, the attending physician or
15 advanced practice nurse must make a reasonable inquiry as to
16 the existence and availability of a surrogate from the following
17 persons:

- 18 (1) The person's spouse;
- 19 (2) The person's adult children;
- 20 (3) The person's parents;
- 21 (4) The person's adult siblings;
- 22 (5) The person's adult grandchildren;
- 23 (6) The person's close friends;

24 (7) Any other person or entity, including, but not limited to,
25 public agencies, public guardians, public officials, public and
26 private corporations and other persons or entities which the
27 department of health and human resources may from time to
28 time designate in rules promulgated pursuant to chapter twenty-
29 nine-a of this code.

30 (b) After inquiring about the existence and availability of
31 a medical power of attorney representative or a guardian as
32 required by subsection (a) of this section, and determining that
33 such persons either do not exist or are unavailable, incapable or
34 unwilling to serve as a surrogate, the attending physician or an
35 advanced practice nurse in collaboration with the attending
36 physician shall select and rely upon a surrogate in the order of
37 priority set forth in subsection (a) of this section, subject to the
38 following conditions:

39 (1) Where there are multiple possible surrogate decision
40 makers at the same priority level, the attending physician or the
41 advanced practice nurse in collaboration with the attending
42 physician shall, after reasonable inquiry, select as the surrogate
43 the person who reasonably appears to be best qualified. The
44 following criteria shall be considered in the determination of
45 the person or entity best qualified to serve as the surrogate:

46 (A) Whether the proposed surrogate reasonably appears to
47 be better able to make decisions either in accordance with the
48 known wishes of the person or in accordance with the person's
49 best interests;

50 (B) The proposed surrogate's regular contact with the
51 person prior to and during the incapacitating illness;

52 (C) The proposed surrogate's demonstrated care and
53 concern;

54 (D) The proposed surrogate's availability to visit the
55 incapacitated person during his or her illness; and

56 (E) The proposed surrogate's availability to engage in
57 face-to-face contact with health care providers for the purpose
58 of fully participating in the decision-making process;

59 (2) The attending physician or the advanced practice nurse
60 in consultation with the attending physician may select a
61 proposed surrogate who is ranked lower in priority if, in his or
62 her judgment, that individual is best qualified, as described in
63 this section, to serve as the incapacitated person's surrogate.
64 The attending physician or the advanced practice nurse shall
65 document in the incapacitated person's medical records his or
66 her reasons for selecting a surrogate in exception to the priority
67 order provided in subsection (a) of this section.

68 (c) The surrogate is authorized to make health care deci-
69 sions on behalf of the incapacitated person without a court order
70 or judicial involvement.

71 (d) A health care provider or health care facility may rely
72 upon the decisions of the selected surrogate if the provider
73 believes, after reasonable inquiry, that:

74 (1) A guardian or representative under a valid, applicable
75 medical power of attorney is unavailable, incapable or is
76 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 religious
80 beliefs; and

81 (4) The attending physician or advanced practice nurse has
82 not received actual notice of opposition to any health care
83 decisions made pursuant to the provisions of this section.

84 (e) If a person who is ranked as a possible surrogate
85 pursuant to subsection (a) of this section wishes to challenge the

86 selection of a surrogate or the health care decision of the
87 selected surrogate, he or she may seek injunctive relief or may
88 file a petition for review of the selection of, or decision of, the
89 selected surrogate with the circuit court of the county in which
90 the incapacitated person resides or the supreme court of
91 appeals. There shall be a rebuttable presumption that the
92 selection of the surrogate was valid, and the person who is
93 challenging the selection shall have the burden of proving the
94 invalidity of that selection. The challenging party shall be
95 responsible for all court costs and other costs related to the
96 proceeding, except attorneys' fees, unless the court finds that
97 the attending physician or advanced practice nurse acted in bad
98 faith, in which case the person so acting shall be responsible for
99 all costs. Each party shall be responsible for his or her own
100 attorneys' fees.

101 (f) If the attending physician or advanced practice nurse is
102 advised that a person who is ranked as a possible surrogate
103 pursuant to the provisions of subsection (a) of this section has
104 an objection to a health care decision to withhold or withdraw
105 a life-prolonging intervention which has been made by the
106 selected surrogate, the attending physician or advanced practice
107 nurse shall document the objection in the medical records of the
108 patient. Once notice of an objection or challenge is docu-
109 mented, the attending physician or advanced practice nurse
110 shall notify the challenging party that the decision shall be
111 implemented in seventy-two hours unless the attending physi-
112 cian receives a court order prohibiting or enjoining the imple-
113 mentation of the decision as provided in subsection (e) of this
114 section. In the event that the incapacitated person has been
115 determined to have undergone brain death and the selected
116 surrogate has authorized organ or tissue donation, the decision
117 shall be implemented in twenty-four hours unless the attending
118 physician receives a court order prohibiting or enjoining the
119 implementation of the decision as provided in subsection (e) of
120 this section.

121 (g) If the surrogate becomes unavailable for any reason, the
122 surrogate may be replaced by applying the provisions of this
123 section.

124 (h) If a person who ranks higher in priority relative to a
125 selected surrogate becomes available and willing to be the
126 surrogate, the person with higher priority may be substituted for
127 the identified surrogate unless the attending physician deter-
128 mines that the lower ranked person is best qualified to serve as
129 the surrogate.

130 (i) The following persons may not serve as a surrogate: (1)
131 A treating health care provider of the principal; (2) an employee
132 of a treating health care provider not related to the principal; (3)
133 an owner, operator or administrator of a health care facility
134 serving the principal; or (4) an employee of an owner, operator
135 or administrator of a health care facility not related to the
136 principal.

**§16-30-9. Medical power of attorney representative and health
care surrogate decision-making standards.**

1 (a) General standards.

2 The medical power of attorney representative or the health
3 care surrogate shall make health care decisions:

4 (1) In accordance with the person's wishes, including
5 religious and moral beliefs; or

6 (2) In accordance with the person's best interests if these
7 wishes are not reasonably known and cannot with reasonable
8 diligence be ascertained; and

9 (3) Which reflect the values of the person, including the
10 person's religious and moral beliefs, to the extent they are
11 reasonably known or can with reasonable diligence be ascer-
12 tained.

13 (b) Assessment of best interests.

14 An assessment of the person's best interests shall include
15 consideration of the person's medical condition, prognosis, the
16 dignity and uniqueness of every person, the possibility and
17 extent of preserving the person's life, the possibility of preserv-
18 ing, improving or restoring the person's functioning, the
19 possibility of relieving the person's suffering, the balance of the
20 burdens to the benefits of the proposed treatment or interven-
21 tion and such other concerns and values as a reasonable
22 individual in the person's circumstances would wish to con-
23 sider.

**§16-30-10. Reliance on authority of living will, medical power of
attorney representative or surrogate decision
maker and protection of health care providers.**

1 (a) A physician, licensed health care professional, health
2 care facility or employee thereof shall not be subject to criminal
3 or civil liability for good-faith compliance with or reliance upon
4 the directions of the medical power of attorney representative
5 in accordance with this article.

6 (b) A health care provider shall not be subject to civil or
7 criminal liability for surrogate selection or good faith compli-
8 ance and reliance upon the directions of the surrogate in
9 accordance with the provisions of this article.

10 (c) No health care provider or employee thereof who in
11 good faith and pursuant to reasonable medical standards causes
12 or participates in the withholding or withdrawing of life-
13 prolonging intervention from a person pursuant to a living will
14 made in accordance with this article shall, as a result thereof, be
15 subject to criminal or civil liability.

16 (d) An attending physician who cannot comply with the
17 living will or medical power of attorney of a principal pursuant
18 to this article shall, in conjunction with the medical power of

19 attorney representative, health care surrogate or other responsi-
20 ble person, effect the transfer of the principal to another
21 physician who will honor the living will of the principal.
22 Transfer under these circumstances does not constitute aban-
23 donment.

§16-30-11. Negligence.

1 Nothing in this article shall be deemed to protect a provider
2 from liability for the provider's own negligence in the perfor-
3 mance of the provider's duties or in carrying out any instruc-
4 tions of the medical power of attorney representative or
5 surrogate. Nothing in this article shall be deemed to alter the
6 law of negligence as it applies to the acts of any medical power
7 of attorney representative or surrogate or provider, and nothing
8 herein shall be interpreted as establishing a standard of care for
9 health care providers for purposes of the law of negligence.

§16-30-12. Conscience objections.

1 (a) *Health care facilities.*— Nothing in this article shall be
2 construed to require a health care facility to change published
3 policy of the health care facility that is expressly based on
4 sincerely held religious beliefs or sincerely held moral convic-
5 tions central to the facility's operating principles.

6 (b) *Health care providers.* — Nothing in this article shall be
7 construed to require an individual health care provider to honor
8 a health care decision made pursuant to this article if:

9 (1) The decision is contrary to the individual provider's
10 sincerely held religious beliefs or sincerely held moral convic-
11 tions; and

12 (2) The individual health care provider promptly informs
13 the person who made the decision and the health care facility of
14 his or her refusal to honor the decision. In such event, the
15 medical power of attorney representative or surrogate decision

16 maker shall have responsibility for arranging the transfer of the
17 person to another health care provider. The individual health
18 care provider shall cooperate in facilitating such transfer, and
19 a transfer under these circumstances shall not constitute
20 abandonment.

§16-30-13. Interinstitutional transfers.

1 (a) In the event that a person admitted to any health care
2 facility in this state has been determined to lack capacity and
3 that person's medical power of attorney has been declared to be
4 in effect or a surrogate decision maker has been selected for
5 that person all in accordance with the requirements of this
6 article, and that person is subsequently transferred from one
7 health care facility to another, the receiving health care facility
8 may rely upon the prior determination of incapacity and the
9 activation of the medical power of attorney or selection of a
10 surrogate decision maker as valid and continuing until such
11 time as an attending physician, a qualified physician, a qualified
12 psychologist or advanced practice nurse in collaboration with
13 a physician in the receiving facility assesses the person's
14 capacity. Should the reassessment by the attending physician,
15 a qualified physician, a qualified psychologist or an advanced
16 practice nurse in collaboration with a physician of the person at
17 the receiving facility result in a determination of continued
18 incapacity, the receiving facility may rely upon the medical
19 power of attorney representative or surrogate decision maker
20 who provided health care decisions at the transferring facility
21 to continue to make all health care decisions at the receiving
22 facility until such time as the person regains capacity. If a
23 person admitted to any health care facility in this state has been
24 determined to lack capacity and the person's medical power of
25 attorney has been declared to be in effect or a surrogate
26 decision maker has been selected for that person all in accor-
27 dance with the requirements of this article, and that person is
28 subsequently discharged home in the care of a home health care

29 agency or hospice, the home health care agency or hospice may
30 rely upon the prior determination of incapacity. The home
31 health care agency or hospice may rely upon the medical power
32 of attorney representative or health care surrogate who provided
33 health care decisions at the transferring facility to continue to
34 make all health care decisions until such time as the person
35 regains capacity.

36 (b) If a person with an order to withhold or withdraw
37 life-prolonging intervention is transferred from one health care
38 facility to another, the existence of such order shall be commu-
39 nicated to the receiving facility prior to the transfer, and the
40 written order shall accompany the person to the receiving
41 facility and shall remain effective until a physician at the
42 receiving facility issues admission orders.

§16-30-14. Insurance.

1 (a) No policy of life insurance or annuity or other type of
2 contract that is conditioned on the life or death of the person,
3 shall be legally impaired or invalidated in any manner by the
4 withholding or withdrawal of life-prolonging intervention from
5 a person in accordance with the provisions of this article,
6 notwithstanding any terms of the policy to the contrary.

7 (b) The withholding or withdrawal of life-prolonging
8 intervention from a principal in accordance with the provisions
9 of this article does not, for any purpose, constitute a suicide and
10 does not constitute the crime of assisting suicide.

11 (c) The making of a living will or medical power of
12 attorney pursuant to this article does not affect in any manner
13 the sale, procurement or issuance of any insurance policy nor
14 does it modify the terms of an existing policy.

15 (d) No health care provider or health care service plan,
16 health maintenance organization, insurer issuing disability
17 insurance, self-insured employee welfare benefit plan, nonprofit

18 medical service corporation or mutual nonprofit hospital service
19 corporation shall require any person to execute a living will or
20 medical power of attorney as a condition for being insured for
21 or receiving health care services.

§16-30-15. Withholding of life support not assisted suicide or murder.

1 The withholding or withdrawal of life-prolonging interven-
2 tion from a person in accordance with the decision of a medical
3 power of attorney representative or surrogate decision maker
4 made pursuant to the provisions of this article does not, for any
5 purpose, constitute assisted suicide or murder. The withholding
6 or withdrawal of life-prolonging intervention from a person in
7 accordance with the decisions of a medical power of attorney
8 representative or surrogate decision maker made pursuant to the
9 provisions of this article, however, shall not relieve any
10 individual of responsibility for any criminal acts that may have
11 caused the person's condition. Nothing in this article shall be
12 construed to legalize, condone, authorize or approve mercy
13 killing or assisted suicide.

§16-30-16. Preservation of existing rights and relation to existing law; no presumption.

1 (a) The provisions of this article are cumulative with
2 existing law regarding an individual's right to consent to or
3 refuse medical treatment. The provisions of this article shall not
4 impair any existing rights or responsibilities that a health care
5 provider, a person, including a minor or an incapacitated person
6 or a person's family may have in regard to the withholding or
7 withdrawal of life-prolonging intervention, including any rights
8 to seek or forego judicial review of decisions regarding life-
9 prolonging intervention under the common law or statutes of
10 this state.

11 (b) This article creates no presumption concerning the
12 intention of an individual who has not executed a living will or
13 medical power of attorney to consent to, refuse or withdraw any
14 and all medical treatment or diagnostic procedures, including,
15 but not limited to, life-prolonging intervention.

§16-30-17. No abrogation of common law doctrine of medical necessity.

1 Nothing in this article shall be construed to abrogate the
2 common law doctrine of medical necessity.

§16-30-18. Revocation.

1 (a) A living will or medical power of attorney may be
2 revoked at any time only by the principal or at the express
3 direction of the principal by any of the following methods:

4 (1) By being destroyed by the principal or by some person
5 in the principal's presence and at his or her direction;

6 (2) By a written revocation of the living will or medical
7 power of attorney signed and dated by the principal or person
8 acting at the direction of the principal. Such revocation shall
9 become effective only upon delivery of the written revocation
10 to the attending physician by the principal or by a person acting
11 on behalf of the principal.

12 The attending physician shall record in the principal's
13 medical record the time and date when he or she receives
14 notification of the written revocation; or

15 (3) By a verbal expression of the intent to revoke the living
16 will or medical power of attorney in the presence of a witness
17 eighteen years of age or older who signs and dates a writing
18 confirming that such expression of intent was made. Any verbal
19 revocation shall become effective only upon communication of
20 the revocation to the attending physician by the principal or by

21 a person acting on behalf of the principal. The attending
22 physician shall record, in the principal's medical record, the
23 time, date and place of when he or she receives notification of
24 the revocation.

25 (b) There is no criminal or civil liability on the part of any
26 person for failure to act upon a revocation made pursuant to this
27 section unless that person has actual knowledge of the revoca-
28 tion.

29 (c) The grant of a final divorce decree shall act as an
30 automatic revocation of the designation of the former spouse to
31 act as a medical power of attorney representative or successor
32 representative.

**§16-30-19. Physician's duty to confirm, communicate and docu-
ment terminal condition or persistent vegetative
state; medical record identification.**

1 (a) An attending physician who has been notified of the
2 existence of a living will executed under this article, without
3 delay after the diagnosis of a terminal condition or persistent
4 vegetative state of the principal, shall take steps as needed to
5 provide for confirmation, written certification and documenta-
6 tion of the principal's terminal condition or persistent vegeta-
7 tive state in the principal's medical record.

8 (b) Once confirmation, written certification and documenta-
9 tion of the principal's terminal condition or persistent vegeta-
10 tive state is made, the attending physician shall verbally or in
11 writing inform the principal of his or her condition or the
12 principal's medical power of attorney representative or surro-
13 gate, if the principal lacks capacity to comprehend such
14 information and shall document such communication in the
15 principal's medical record.

16 (c) All inpatient health care facilities shall develop a system
17 to visibly identify a person's chart which contains a living will
18 or medical power of attorney as set forth in this article.

§16-30-20. Living wills previously executed.

1 A living will executed prior to the effective date of this
2 article and which expressly provides for the withholding or
3 withdrawal of life-prolonging intervention or for the termina-
4 tion of life-sustaining procedures in substantial compliance with
5 the provisions of section four of this article is hereby recog-
6 nized as a valid living will, as though it were executed in
7 compliance with the provisions of this article.

§16-30-21. Reciprocity.

1 A living will or medical power of attorney executed in
2 another state is validly executed for the purposes of this article
3 if it is executed in compliance with the laws of this state or with
4 the laws of the state where executed.

§16-30-22. Liability for failure to act in accordance with the directives of a living will or medical power of attorney or the directions of a medical power of attorney representative or health care surrogate.

1 (a) A health care provider or health care facility who does
2 not have actual knowledge of a living will or medical power of
3 attorney completed by a person is not civilly or criminally
4 liable for failing to act in accordance with the directives of a
5 principal's living will or medical power of attorney.

6 (b) A health care provider or a health care facility is subject
7 to review and disciplinary action by the appropriate licensing
8 board for failing to act in accordance with a principal's direc-
9 tives in a living will or medical power of attorney, or the
10 decisions of a medical power of attorney representative or

11 health care surrogate, provided that the provider or facility had
12 actual knowledge of the directives or decisions.

13 (c) Once a principal has been determined to be incapacitated
14 in accordance with the provisions of this article and his or
15 her living will or medical power of attorney has become
16 effective, any health care provider or health care facility which
17 refuses to follow the principal's directives in a living will or
18 medical power of attorney or the decisions of a medical power
19 of attorney representative or health care surrogate, because the
20 principal has asked the health care provider or health care
21 facility not to follow such directions or decisions, shall have
22 two physicians, one of whom may be the attending physician,
23 or one physician and a qualified psychologist, or one physician
24 and an advanced practice nurse in collaboration with a physi-
25 cian, certify that the principal has regained capacity to make the
26 request. If such certification occurs, the provisions of the
27 applicable living will or medical power of attorney, or the
28 statute creating the authority of the health care surrogate shall
29 not apply because the principal has regained decision-making
30 capacity.

§16-30-23. Prohibition.

1 Under no circumstances may the presence or absence of a
2 living will or medical power of attorney be used to deny a
3 person admission to a health care facility.

**§16-30-24. Need for a second opinion regarding incapacity for
persons with psychiatric mental illness, mental
retardation or addiction.**

1 For persons with psychiatric mental illness, mental retarda-
2 tion or addiction who have been determined by their attending
3 physician or a qualified physician to be incapacitated, a second
4 opinion by a qualified physician or qualified psychologist that
5 the person is incapacitated is required before the attending

6 physician is authorized to select a surrogate. The requirement
7 for a second opinion shall not apply in those instances in which
8 the medical treatment to be rendered is not for the person's
9 psychiatric mental illness.

ARTICLE 30C. DO NOT RESUSCITATE ACT.

**§16-30C-5. Presumed consent to cardiopulmonary resuscitation;
health care facilities not required to expand to
provide cardiopulmonary resuscitation.**

1 (a) Every person shall be presumed to consent to the
2 administration of cardiopulmonary resuscitation in the event of
3 cardiac or respiratory arrest, unless one or more of the follow-
4 ing conditions, of which the health care provider has actual
5 knowledge, apply:

6 (1) A do not resuscitate order in accordance with the
7 provisions of this article has been issued for that person;

8 (2) A completed living will for that person is in effect,
9 pursuant to the provisions of article thirty of this chapter, and
10 the person is in a terminal condition or a persistent vegetative
11 state; or

12 (3) A completed medical power of attorney for that person
13 is in effect, pursuant to the provisions of article thirty of this
14 chapter, in which the person indicated that he or she does not
15 wish to receive cardiopulmonary resuscitation, or his or her
16 representative has determined that the person would not wish to
17 receive cardiopulmonary resuscitation.

18 (b) Nothing in this article shall require a nursing home,
19 personal care home, hospice, or extended care facility operated
20 in connection with hospitals to institute or maintain the ability
21 to provide cardiopulmonary resuscitation or to expand its
22 existing equipment, facilities or personnel to provide
23 cardiopulmonary resuscitation: *Provided*, That if a health care

24 facility does not provide cardiopulmonary resuscitation, this
 25 policy shall be communicated in writing to the person, repre-
 26 sentative or surrogate decision maker prior to admission.

CHAPTER 133

(H. B. 4460 — By Delegates Marshall, Houston, Fleischauer and Warner)

[Passed March 11, 2000; 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-r, relating to the “Alzheimer’s special care standards act”; legislative findings and declarations; defining terms; requiring written disclosure of care or treatment of alzheimer residents; authorizing the secretary of health and human resources to propose legislative rules designed to set minimum standards of care and treatment of alzheimer patients; and authorizing the secretary to enforce the standards, investigate facilities and issue warnings and other penalties.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5R. THE ALZHEIMER’S SPECIAL CARE STANDARDS ACT.

§16-5R-1. Name of act.

§16-5R-2. Findings and declarations.

§16-5R-3. Definition of alzheimer’s special care unit/program.

§16-5R-4. Alzheimer’s special care disclosure required.

§16-5R-5. Standards for care; rules.

§16-5R-1. Name of act.

1 This act shall be known and may be cited as the “Alzhei-
2 mer’s Special Care Standards Act.”

§16-5R-2. Findings and declarations.

1 The Legislature finds and declares that:

2 (a) Certain nursing homes and related facilities, adult
3 congregate living facilities, adult day care centers, hospices and
4 adult foster homes claim to provide special care units and
5 services for persons who have alzheimer’s disease;

6 (b) It is in the public interest to provide for the protection
7 of consumers by ensuring the accuracy and authenticity of such
8 claims; and

9 (c) The provisions of this article are intended to require the
10 facilities to actually provide the care they claim to offer, require
11 written disclosure of special services provided, require the
12 appropriate state licensing agency to examine the performance
13 of such facilities in providing special services for persons who
14 have alzheimer’s disease, and provide penalties for failure to
15 provide the services claimed as the agency considers appropri-
16 ate.

§16-5R-3. Definition of alzheimer’s special care unit/program.

1 For the purposes of this article, the following definitions
2 apply:

3 (a) “Alzheimer’s disease” means a diagnosis of presenile
4 dementia or senile dementia-Alzheimer type (SDAT), charac-
5 terized by confusion, memory failure, disorientation, restless-
6 ness, agnosia, speech disturbances, inability to carry out
7 purposeful movements and hallucinosis.

8 (b) "Alzheimer's Special Care Unit or Program," means
9 any facility that secures, segregates or provides a special
10 program or special unit for residents with a diagnosis of
11 probable alzheimer's disease or a related disorder and that
12 advertises, markets or otherwise promotes the facility as
13 providing specialized alzheimer's or dementia care services.

14 (c) "Department" means the department of health and
15 human resources.

16 (d) "Facility" means any nursing home or facility, residen-
17 tial board and care home, personal care home, assisted living
18 facility, adult congregate living facility, home health agency,
19 adult day care center, hospice or adult foster home situate or
20 operating in this state.

21 (e) "Resident" means an individual living in a facility that
22 offers an alzheimer's special care unit or program.

23 (f) "Secretary" means the secretary of the department of
24 health and human resources.

§16-5R-4. Alzheimer's special care disclosure required.

1 (a) Any facility which offers to provide or provides care for
2 a person with alzheimer's disease through an alzheimer's
3 special care unit or special care program shall disclose in
4 writing the form of care or treatment that distinguishes the unit
5 or program as being especially applicable to or suitable for such
6 persons. The disclosure shall be provided to the department of
7 health and human resources, to any person seeking placement
8 within an alzheimer's special care unit or program, and to any
9 legal guardian or relative acting on behalf of a resident or
10 person seeking placement.

11 (b) The department of health and human resources shall
12 examine all disclosures provided to it as part of the facility's

13 license renewal procedure and verify the accuracy of the
14 disclosures.

15 (c) The disclosure required by this section shall include the
16 following information:

17 (1) A statement of the overall treatment philosophy and
18 mission of the special care unit or program which reflects the
19 needs of residents afflicted with alzheimer's disease or demen-
20 tia;

21 (2) A description of the facility's screening, admission and
22 discharge procedures, assessment, care planning and implemen-
23 tation, staffing patterns and training ratios unique to the
24 program or unit;

25 (3) A description of the physical environment and design
26 features and an explanation of how they are appropriate to
27 support the functioning of cognitively impaired adult residents;

28 (4) A description of activities available to residents, the
29 frequency and types of resident activities, and how they are
30 specialized for residents who suffer from alzheimer's disease;

31 (5) A statement that describes the involvement of families
32 in the care of residents and the availability of family support
33 programs;

34 (6) The costs of care and any additional fees unique to the
35 alzheimer's special care unit or program.

§16-5R-5. Standards for care; rules.

1 (a) The secretary shall propose rules for legislative approval
2 in accordance with the provisions of article three, chapter
3 twenty-nine-a of this code, setting minimum standards for the
4 care and treatment of persons with alzheimer's disease and
5 other dementia in facilities offering alzheimer's special care
6 units or programs.

7 (b) The standards established pursuant to this section shall
8 apply to all facilities offering alzheimer's special care units or
9 program and shall be in addition to any other statutory require-
10 ments, rules or standards that are applicable to the facility.

11 (c) The secretary shall enforce the rules and standards for
12 alzheimer's special care units or programs and shall exercise all
13 powers necessary for such enforcement, including investigation
14 and reporting of violation of the rules, issuance of notices or
15 warnings to facilities found in violation of the standards,
16 assessment of civil penalties in accordance with the applicable
17 licensing provisions of the facility, and suspension or revoca-
18 tion of licenses.

19 (d) If a facility advertising, marketing or otherwise promot-
20 ing the facility as providing specialized alzheimer or dementia
21 care services does not meet the standards established by the
22 secretary, the department shall instruct the facility to cease such
23 advertising, marketing or promoting.

CHAPTER 134

(Com. Sub. for H. B. 4298 — By Delegates Hatfield, Leach, Rowe,
Spencer, Kelley, Perdue and L. Smith)

[Passed March 10, 2000; 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 thirty-six, relating to creating a needlestick injury prevention program in hospitals, nursing homes, public health departments and home health agencies, including those staffed by public employees; requiring the proposal of rules by the director of the division of health; making

compliance with rules a condition of licensure; requirements for facilities to use needleless systems; keeping sharps injury logs; maintaining list of existing needleless systems; establishing a needlestick injury prevention advisory committee; and exceptions to requirements.

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 thirty-six, to read as follows:

ARTICLE 36. NEEDLESTICK INJURY PREVENTION.

§16-36-1. Definitions.

§16-36-2. Needlestick injury prevention rules.

§16-36-3. Needlestick injury prevention advisory committee.

§16-36-4. Exception.

§16-36-1. Definitions.

1 As used in this article:

2 (a) "Director" means the director of the division of health;

3 (b) "Engineering controls" means sharps prevention
4 technology including, but not limited to, systems not using
5 needles and needles with engineered sharps injury protection;

6 (c) "Facility" means every hospital licensed under the
7 provisions of article five-b of this chapter; every nursing home
8 licensed under the provisions of article five-c of this chapter;
9 every local health department, every home health agency
10 certified by the office of health facility licensure and certifica-
11 tion, all hospitals and nursing homes operated by the state or
12 any agency of the state and all hospitals, nursing homes, local
13 health departments and home health agencies which are staffed,
14 in whole or in part, by public employees;

15 (d) "Health care worker" means any person working in a
16 facility;

17 (e) "Needleless system" means a device that does not utilize
18 needles for the withdrawal of body fluids after initial venous or
19 arterial access is established, the administration of medication
20 or fluids, or any other procedure involving the potential for an
21 exposure incident;

22 (f) "Needlestick injury" means the parenteral introduction
23 into the body of a health care worker, during the performance
24 of his or her duties, of blood or other potentially infectious
25 material by a hollow-bore needle or sharp instrument, includ-
26 ing, but not limited to, needles, lancets, scalpels and contami-
27 nated broken glass; and

28 (g) "Sharps" means hollow-bore needles or sharp instru-
29 ments, including, but not limited to, needles, lancets and
30 scalpels.

§16-36-2. Needlestick injury prevention rules.

1 (a) On or before the first day of July, two thousand, the
2 director shall, with the advice and cooperation of the advisory
3 committee established under this article, propose rules for
4 legislative approval in accordance with the provisions of article
5 three, chapter twenty-nine-a of this code requiring facilities, as
6 a condition of licensure, certification or operation, to minimize
7 the risk of needlestick and sharps injuries to health care
8 workers. In developing the rules the director shall take into
9 consideration the most recent guidelines of the occupational
10 safety and health administration that relate to prevention of
11 needlestick and sharps injuries.

12 (b) The rules shall include, but not be limited to, the
13 following provisions:

14 (1) A requirement that facilities utilize needless systems
15 or other engineering controls designed to prevent needlestick or
16 sharps injuries, except in cases where the facility can demon-
17 strate circumstances in which the technology does not promote
18 employee or patient safety or interferes with a medical proce-
19 dure. Those circumstances shall be specified by the facility and
20 shall include, but not be limited to, circumstances where the
21 technology is medically contraindicated or not more effective
22 than alternative measures used by the facility to prevent
23 exposure incidents: *Provided*, That no specific device may be
24 mandated;

25 (2) A requirement that information concerning exposure
26 incidents be recorded in a sharps injury log, to be kept within
27 the facility and reported annually to the director. Information
28 recorded in the log shall contain, at a minimum:

29 (A) The date and time of the exposure incident;

30 (B) The type and brand of sharp involved in the incident;
31 and

32 (C) A description of the exposure incident which shall at a
33 minimum include:

34 (i) The job classification of the exposed worker;

35 (ii) The department or work area where the exposure
36 incident occurred;

37 (iii) The procedure that the exposed worker was performing
38 at the time of the incident;

39 (iv) How the incident occurred;

40 (v) The body part involved in the exposure incident;

41 (vi) If the sharp had engineered sharps injury protection,
42 whether the protective mechanism was activated and whether
43 the injury occurred before the protective mechanism was
44 activated, during activation of the mechanism or after activation
45 of the mechanism, if applicable; and

46 (vii) Any suggestions by the injured employee as to
47 whether or how protective mechanisms or work practice control
48 could be utilized to prevent such injuries;

49 (3) A provision for maintaining a list of existing needleless
50 systems and needles and sharps with engineered injury
51 protections. The director shall make the list available to assist
52 employers in complying with the requirements of the standards
53 adopted in accordance with this article; and

54 (4) Any additional provisions consistent with the purposes
55 of this article, including, but not limited to, training and
56 educational requirements, measures to increase vaccinations,
57 strategic placement of sharps containers as close to the work
58 area as is practical and increased use of protective equipment.

§16-36-3. Needlestick injury prevention advisory committee.

1 (a) There is established a needlestick injury prevention
2 advisory committee to advise the director in the development of
3 rules required under this article.

4 (b) The committee shall meet at least four times a year for
5 the initial two years after the effective date of this article and on
6 the call of the director thereafter. The director shall serve as the
7 chair and shall appoint thirteen members, one representing each
8 of the following groups:

9 (1) A representative of the health insurance industry;

10 (2) The commissioner of the bureau of employment
11 programs, or his or her designee from the division of workers'
12 compensation;

13 (3) Five nurses who work primarily providing direct patient
14 care in a hospital or nursing home, at least one of which is
15 employed in a state operated facility;

16 (4) A phlebotomist employed in a hospital or nursing home;

17 (5) Two administrators of different hospitals operating
18 within the state;

19 (6) A director of nursing employed in a nursing home
20 within the state;

21 (7) A licensed physician practicing in the state; and

22 (8) An administrator of a nursing home operating within the
23 state.

24 (c) Members of the committee serve without compensation.
25 Each member shall be reimbursed for actual and necessary
26 expenses incurred for each day or portion thereof engaged in
27 the discharge of official duties, in a manner consistent with
28 guidelines of the travel management office of the department of
29 administration.

30 (d) A majority of all members constitutes a quorum for the
31 transaction of all business. Members serve for two-year terms
32 and may not serve for more than two consecutive terms.

§16-36-4. Exception.

1 Until the first day of July, two thousand five, drugs and
2 biologics regulated by the food and drug administration whose
3 packaging, on the effective date of this article, includes needles
4 and syringes, are considered to meet any standards promulgated
5 under this article.

CHAPTER 135

(H. B. 4012 — By Delegate Linch)

[Passed March 11, 2000; 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 thirty-seven, relating to regulating the body piercing studio business; definitions; requiring registration of body piercing studios; requiring inspection of body piercing studios by local boards of health; requiring operating permits; power of local board of health to order studio to close; legislative rules; general physical requirements; record keeping; written notification of risks and minimum age requirements; body piercing procedures; permitting requirements; fees; limitations and prohibitions of certain procedures; report to the Legislature on permanent body alteration activities; and establishing fines and criminal penalties for certain violations.

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 thirty-seven, to read as follows:

ARTICLE 37. BODY PIERCING STUDIO BUSINESS.

§16-37-1. Short title.

§16-37-2. Definitions.

§16-37-3. Registration requirements; inspections by local boards of health; posting of permit; power of local board of health to order studio to close.

§16-37-4. Rules to be proposed by the department of health and human resources.

§16-37-5. Violations and penalties.

§16-37-1. Short title.

1 This article is known as the “Body Piercing Studio Act.”

§16-37-2. Definitions.

1 (a) “Adequate ventilation” means a free and unrestricted
2 circulation of fresh air throughout the body piercing studio and
3 the expulsion of foul or stagnant air.

4 (b) “Antimicrobial solution” means any solution used to
5 retard the growth of microorganisms.

6 (c) “Body piercing” means to puncture the skin for the
7 purpose of creating a hole to be decorated or adorned, but does
8 not include the use of a mechanized, presterilized ear-piercing
9 system that penetrates the outer perimeter or lobe of the ear or
10 both.

11 (d) “Body piercing studio” means any room or space where
12 body piercing is practiced or where the business of body
13 piercing or any part thereof is conducted.

14 (e) “Operator” means any person who is registered with the
15 state to operate, control or manage a body piercing studio, and
16 whose studio has been issued an operating permit by the local
17 board of health.

18 (f) “Single use” means products, instruments or items that
19 are used one time on one client and then properly disposed of
20 in accordance with rules of the department of health and human
21 resources regarding the disposal of medical wastes.

22 (g) “Standard precautions” means that all blood and body
23 fluids are treated so as to contain all blood-borne pathogens and
24 all proper precautions are taken to prevent the spread of any
25 blood-borne pathogens.

26 (h) "Technician" means an individual who engages in the
27 practice of body piercing.

**§16-37-3. Registration requirements; inspections by local boards
of health; posting of permit; power of local board
of health to order studio to close.**

1 (a) On or after the first day of July, two thousand one, any
2 body piercing studio in West Virginia shall obtain a West
3 Virginia business registration certificate and shall register with
4 the local board of health, request an inspection of the facility,
5 and obtain an operating permit before engaging in the business
6 of body piercing.

7 (b) Each local board of health shall conduct annual inspec-
8 tions of body piercing studios to determine compliance with
9 this article.

10 (c) Upon a determination by the board that the body
11 piercing studio is in compliance with the provisions of this
12 article, the board shall issue to the body piercing studio an
13 operating permit, which shall be posted in a conspicuous place
14 in the body piercing studio, clearly visible to the general public.

15 (d) Upon a determination by the board that any body
16 piercing studio is not in compliance with the provisions of this
17 article, or the rules promulgated hereunder, the board may order
18 the body piercing studio to cease operations until such time as
19 the board determines that the body piercing studio is in compli-
20 ance.

21 (e) Nothing in this article may be construed as prohibiting
22 any health care provider licensed under chapter thirty of this
23 code from performing any action within the scope of his or her
24 practice, or as restricting the lawful practice of medicine or
25 surgery in this state.

§16-37-4. Rules to be proposed by the department of health and human resources.

1 (a) On or before the first day of July, two thousand, the
2 department of health and human resources shall propose rules
3 for legislative approval in accordance with the provisions of
4 article three, chapter twenty-nine-a of this code, which rules
5 shall provide at a minimum:

6 (1) General physical requirements for facilities and equip-
7 ment, including requirements for adequate ventilation and
8 lighting;

9 (2) Record keeping requirements and forms;

10 (3) Written notification of the risks of body piercing
11 procedures and minimum age requirements;

12 (4) Body piercing procedures, including, but not limited to,
13 safety and sterilization procedures; the use of antimicrobial
14 solutions, needles, single use instruments and other instruments;
15 the exercise of standard precautions; and instructions on the
16 care of the skin after body piercing procedures;

17 (5) Permitting requirements for operators and technicians,
18 including fees for permits and renewals of permits sufficient to
19 cover the costs of inspecting facilities and administering this
20 article; and

21 (6) For the disposal of waste in compliance with the rules
22 of the department of health and human resources regarding the
23 disposal of medical wastes.

24 (b) The rules required by this section may also include
25 provisions on training or educational requirements or materials;
26 health screenings for technicians; and any other provisions
27 considered necessary to protect the public or assure adequate
28 health and safety.

29 (c) The rules may also include limitations or prohibitions on
30 the performance of certain procedures, including, but not
31 limited to, procedures referred to as cutting, branding and
32 scarification, which are identified as posing a risk to the public
33 health and safety.

34 (d) Before the first day of December, two thousand, the
35 department shall report to the Legislature on permanent body
36 alteration activities, including, but not limited to, procedures
37 referred to as cutting, branding and scarification, and identify
38 those activities that pose a risk to the public health and safety,
39 and report its recommendations for legislation.

§16-37-5. Violations and penalties.

1 (a) Any owner of a body piercing studio who does not
2 obtain a West Virginia business registration certificate, who
3 does not register with the local board of health, or who fails to
4 request an inspection pursuant to section three of this article is
5 guilty of a misdemeanor and, upon conviction thereof, for a first
6 offense, may have all of the body piercing equipment and
7 paraphernalia confiscated and shall be fined one hundred
8 dollars.

9 (b) For a second offense, which is a misdemeanor, the
10 owner may have all of the body piercing equipment and
11 paraphernalia confiscated and shall be fined not less than five
12 hundred dollars nor more than one thousand dollars or be
13 imprisoned in the county or regional jail for not less than ten
14 days nor more than one year, or both fined and imprisoned.

15 (c) For a third offense, which is a misdemeanor, the owner
16 shall have all the body piercing equipment and paraphernalia
17 confiscated, shall be fined not less than one thousand dollars
18 nor more than five thousand dollars, or be imprisoned in the
19 county or regional jail not less than thirty days nor more than
20 one year, or both fined and imprisoned.

CHAPTER 136

(H. B. 4487 — By Delegates L. White, Doyle, Manuel and Faircloth)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve-c, article twenty-three, chapter nineteen 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-four, all relating to allowing a thoroughbred racetrack and its horsemen's organization to use a portion of export simulcast proceeds for capital improvements at the track; and enacting the interstate compact on licensure of participants in live horse racing with pari-mutuel wagering.

Be it enacted by the Legislature of West Virginia:

That section twelve-c, article twenty-three, chapter nineteen 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-four, all to read as follows:

Article

23. Horse and Dog Racing.

24. Interstate Compact on Licensure of Participants in Live Horse Racing with Pari-mutuel Wagering.

ARTICLE 23. HORSE AND DOG RACING.

§19-23-12c. Interstate simulcasts by licensed racetracks.

- 1 (a) Any licensed racing association may be authorized by
- 2 the commission to transmit broadcasts of races conducted at its
- 3 racetrack to legal wagering entities located outside this state,

4 which legal wagering entities located outside this state shall not
5 be subject to the provisions of subsection (e), section twelve-b
6 of this article: *Provided*, That as consideration for the televised
7 racing services it provides, the host racing association shall
8 receive a signal transmission fee to be paid by the receiving
9 legal wagering entity which shall be in an amount agreed upon
10 by the receiving legal wagering entity and the host racing
11 association. All broadcasts of horse races shall be in accordance
12 with all of the provisions of the "Federal Interstate Horseracing
13 Act of 1978," also known as Public Law 95-515, Section 3001-
14 3007 of Title 15 of the United States Code.

15 (b) One percent of the total signal transmission fee provided
16 in subsection (a) of this section shall be paid into a special fund
17 to be established by the racing commission for and on behalf of
18 all employees of the licensed racing association to be used for
19 payments into the pension plan for all employees of the licensed
20 racing association, and any thoroughbred horse racetrack which
21 has participated in the West Virginia thoroughbred develop-
22 ment fund for a period of more than four consecutive calendar
23 years prior to the thirty-first day of December, one thousand
24 nine hundred ninety-two, shall pay seven and one-half percent
25 of the signal transmission fee into the West Virginia thorough-
26 bred development fund established by the racing commission
27 according to section thirteen-b of this article. After deducting:
28 (i) The amounts required to be placed into the pension plan for
29 all employees of the licensed racing association under this
30 section; (ii) the amounts, if any, required to be paid into the
31 West Virginia thoroughbred development fund under this
32 section; and (iii) the direct costs necessary to send a live audio
33 and visual signal of horse races or dog races from any racetrack
34 licensed under the provisions of section one of this article to
35 any legal wagering entities outside this state for the purpose of
36 pari-mutuel wagering, which direct costs shall include the cost
37 of satellite equipment necessary to transmit the signal, a
38 satellite operator and the satellite time necessary to broadcast

39 the signal and the cost of telecommunication and facsimile
40 services needed to communicate necessary information to all
41 legal wagering entities for the purpose of pari-mutuel wagering,
42 thoroughbred horseracing associations shall make a deposit
43 equal to fifty percent of the remainder into the purse fund
44 established under the provisions of subdivision (1), subsection
45 (b), section nine of this article: *Provided*, That the funds
46 deposited in the purse fund pursuant to this section may be used
47 for the payment of regular purses or, upon agreement between
48 the horse racing association and the representative of the
49 majority of owners and trainers at a particular thoroughbred
50 racetrack, may be used for capital improvements supporting
51 simulcast operations.

**ARTICLE 24. INTERSTATE COMPACT ON LICENSURE OF PARTICI-
PANTS IN LIVE HORSE RACING WITH PARI-MUTUEL
WAGERING.**

§19-24-1. Interstate compact on licensure of participants in live horse racing with
pari-mutuel wagering; form of compact.

§19-24-2. Compact committee members.

§19-24-3. Cooperation of departments, agencies and officers.

§19-24-4. Racing commission powers preserved.

**§19-24-1. Interstate compact on licensure of participants in live
horse racing with pari-mutuel wagering; form of
compact.**

1 The interstate compact on licensure of participants in live
2 horse racing with pari-mutuel wagering is enacted into law and
3 entered into with all other jurisdictions legally joining in the
4 compact in the form substantially as follows:

ARTICLE I. PURPOSES.

§1. Purposes.

1 The purposes of this compact are to:

2 1. Establish uniform requirements among the party states
3 for the licensing of participants in live horse racing with
4 pari-mutuel wagering, and ensure that all the participants who
5 are licensed pursuant to this compact meet a uniform minimum
6 standard of honesty and integrity.

7 2. Facilitate the growth of the horse racing industry in each
8 party state and nationwide by simplifying the process for
9 licensing participants in live racing, and reduce the duplicative
10 and costly process of separate licensing by the regulatory
11 agency in each state that conducts live horse racing with
12 pari-mutuel wagering.

13 3. Authorize the West Virginia Racing Commission to
14 participate in this compact.

15 4. Provide for participation in this compact by officials of
16 the party states, and permit those officials, through the compact
17 committee established by this compact, to enter into contracts
18 with governmental agencies and nongovernmental persons to
19 carry out the purposes of this compact.

20 5. Establish the compact committee created by this compact
21 as an interstate governmental entity duly authorized to request
22 and receive criminal history record information from the
23 Federal Bureau of Investigation and other state and local law-
24 enforcement agencies.

ARTICLE II. DEFINITIONS.

§2. Definitions.

1 “Compact committee” means the organization of officials
2 from the party states that is authorized and empowered by this
3 compact to carry out the purposes of this compact.

4 “Official” means the appointed, elected, designated or
5 otherwise duly selected member of a racing commission or the

6 equivalent of a racing commission in a party state who repre-
7 sents that party state as a member of the compact committee.

8 “Participants in live racing” means participants in live horse
9 racing with pari-mutuel wagering in the party states.

10 “Party state” means each state that has enacted this com-
11 pact.

12 “State” means each of the several states of the United
13 States, the District of Columbia, the Commonwealth of Puerto
14 Rico and each territory or possession of the United States.

ARTICLE III. ENTRY INTO FORCE, ELIGIBLE PARTIES AND WITH- DRAWAL.

§3. Entry into force.

1 This compact shall come into force when enacted by any
2 four states. Thereafter, this compact shall become effective as
3 to any other state upon: (i) That state’s enactment of this
4 compact; and (ii) the affirmative vote of a majority of the
5 officials on the compact committee as provided in section eight.

§4. States eligible to join compact.

1 Any state that has adopted or authorized horse racing with
2 pari-mutuel wagering is eligible to become party to this
3 compact.

§5. Withdrawal from compact and impact thereof on force and effect of compact.

1 Any party state may withdraw from this compact by
2 enacting a statute repealing this compact, but the withdrawal
3 does not become effective until the head of the executive
4 branch of the withdrawing state has given notice in writing of
5 the withdrawal to the head of the executive branch of all other
6 party states. If as a result of withdrawals participation in this

7 compact decreases to less than three party states, this compact
8 is no longer in force and effect unless and until there are at least
9 three or more party states again participating in this compact.

ARTICLE IV. COMPACT COMMITTEE.

§6. Compact committee established.

1 There is hereby created an interstate governmental entity to
2 be known as the “compact committee,” which shall be com-
3 prised of one official from the racing commission or its
4 equivalent in each party state who shall be appointed, serve and
5 is subject to removal in accordance with the laws of the party
6 state he or she represents. Pursuant to the laws of his or her
7 party state, each official shall have the assistance of his or her
8 state’s racing commission or the equivalent of a racing commis-
9 sion in considering issues related to licensing of participants in
10 live racing and in fulfilling his or her responsibilities as the
11 representative from his or her state to the compact committee.
12 If an official is unable to perform any duty in connection with
13 the powers and duties of the compact committee, the racing
14 commission or equivalent from his or her state shall designate
15 another of its members as an alternate who shall serve in his or
16 her place and represent the party state as its official on the
17 compact committee until that racing commission or equivalent
18 determines that the original representative official is able once
19 again to perform his or her duties as that party state’s represen-
20 tative official on the compact committee. The designation of an
21 alternate shall be communicated by the affected state’s racing
22 commission or equivalent to the compact committee as the
23 committee’s bylaws may provide.

§7. Powers and duties of compact committee.

1 In order to carry out the purposes of this compact, the
2 compact committee is hereby granted the power and duty to:

3 1. Determine which categories of participants in live racing,
4 including, but not limited to, owners, trainers, jockeys, grooms,
5 mutuel clerks, racing officials, veterinarians and farriers, should
6 be licensed by the committee, and establish the requirements
7 for the initial licensure of applicants in each such category, the
8 term of the license for each category, and the requirements for
9 renewal of licenses in each category: *Provided*, That with
10 regard to requests for criminal history record information on
11 each applicant for a license, and with regard to the effect of a
12 criminal record on the issuance or renewal of a license, the
13 compact committee shall determine for each category of
14 participants in live racing which licensure requirements for that
15 category are, in its judgment, the most restrictive licensure
16 requirements of any party state for that category and shall adopt
17 licensure requirements for that category that are, in its judg-
18 ment, comparable to those most restrictive requirements.

19 2. Investigate applicants for a license from the compact
20 committee and, as permitted by federal and state law, gather
21 information on the applicants, including criminal history record
22 information from the Federal Bureau of Investigation and
23 relevant state and local law-enforcement agencies, and, where
24 appropriate, from the Royal Canadian Mounted Police and law-
25 enforcement agencies of other countries, necessary to determine
26 whether a license should be issued under the licensure require-
27 ments established by the committee as provided in paragraph
28 one above. Only officials on, and employees of, the compact
29 committee may receive and review the criminal history record
30 information, and those officials and employees may use that
31 information only for the purposes of this compact. No such
32 official or employee may disclose or disseminate the informa-
33 tion to any person or entity other than another official on or
34 employee of the compact committee. The fingerprints of each
35 applicant for a license from the compact committee shall be
36 taken by the compact committee, its employees or its designee
37 and, pursuant to Public Law 92-544 or Public Law 100-413,

38 shall be forwarded to a state identification bureau, or to the
39 Association of Racing Commissioners, International, an
40 association of state officials regulating pari-mutuel wagering
41 designated by the Attorney General of the United States, for
42 submission to the Federal Bureau of Investigation for a criminal
43 history record check. The fingerprints may be submitted on a
44 fingerprint card or by electronic or other means authorized by
45 the Federal Bureau of Investigation or other receiving law-
46 enforcement agency.

47 3. Issue licenses to, and renew the licenses of, participants
48 in live racing listed in paragraph one of this section who are
49 found by the committee to have met the licensure and renewal
50 requirements established by the committee. The compact
51 committee does not have the power or authority to deny a
52 license. If it determines that an applicant will not be eligible for
53 the issuance or renewal of a compact committee license, the
54 compact committee shall notify the applicant that it will not be
55 able to process his or her application further. The notification
56 does not constitute and shall not be considered to be the denial
57 of a license. Any such applicant has the right to present
58 additional evidence to, and to be heard by, the compact commit-
59 tee, but the final decision on issuance or renewal of the license
60 shall be made by the compact committee using the requirements
61 established pursuant to paragraph one of this section.

62 4. Enter into contracts or agreements with governmental
63 agencies and with nongovernmental persons to provide personal
64 services for its activities and other services as may be necessary
65 to effectuate the purposes of this compact.

66 5. Create, appoint and abolish those offices, employments
67 and positions, including an executive director, as it considers
68 necessary for the purposes of this compact, prescribe their
69 powers, duties and qualifications, hire persons to fill those
70 offices, employments and positions, and provide for the
71 removal, term, tenure, compensation, fringe benefits, retirement

72 benefits and other conditions of employment of its officers,
73 employees and other positions.

74 6. Borrow, accept or contract for the services of personnel
75 from any state, the United States, any other governmental
76 agency or from any person, firm, association, corporation or
77 other entity.

78 7. Acquire, hold and dispose of real and personal property
79 by gift, purchase, lease, license or in other similar manner, in
80 furtherance of the purposes of this compact.

81 8. Charge a fee to each applicant for an initial license or
82 renewal of a license.

83 9. Receive other funds through gifts, grants and appropria-
84 tions.

§8. Voting requirements.

1 A. Each official shall be entitled to one vote on the compact
2 committee.

3 B. All action taken by the compact committee with regard
4 to the addition of party states as provided in section three, the
5 licensure of participants in live racing, and the receipt and
6 disbursement of funds requires a majority vote of the total
7 number of officials, or their alternates, on the committee. All
8 other action by the compact committee requires a majority vote
9 of those officials, or their alternates, present and voting.

10 C. No action of the compact committee may be taken unless
11 a quorum is present. A majority of the officials, or their
12 alternates, on the compact committee constitutes a quorum.

§9. Administration and management.

1 A. The compact committee shall elect annually from among
2 its members a chairman, a vice-chairman and a secre-
3 tary/treasurer.

4 B. The compact committee shall adopt bylaws for the
5 conduct of its business by a two-thirds vote of the total number
6 of officials, or their alternates, on the committee at that time
7 and shall have the power by the same vote to amend and rescind
8 these bylaws. The committee shall publish its bylaws in
9 convenient form and shall file a copy of the bylaws and a copy
10 of any amendments to the bylaws with the secretary of state or
11 equivalent agency of each of the party states.

12 C. The compact committee may delegate the day-to-day
13 management and administration of its duties and responsibilities
14 to an executive director and his or her support staff.

15 D. Employees of the compact committee shall be consid-
16 ered governmental employees.

§10. Immunity from liability for performance of official responsibilities and duties.

1 No official of a party state or employee of the compact
2 committee may be held personally liable for any good faith act
3 or omission that occurs during the performance and within the
4 scope of his or her responsibilities and duties under this
5 compact.

ARTICLE V. RIGHTS AND RESPONSIBILITIES OF EACH PARTY STATE.

§11. Rights and responsibilities of each party state.

1 A. By enacting this compact, each party state:

2 1. Agrees: (i) To accept the decisions of the compact
3 committee regarding the issuance of compact committee
4 licenses to participants in live racing pursuant to the commit-
5 tee's licensure requirements; and (ii) to reimburse or otherwise
6 pay the expenses of its official representative on the compact
7 committee or his or her alternate.

8 2. Agrees not to treat a notification to an applicant by the
9 compact committee under paragraph three of section seven that
10 the compact committee will not be able to process his or her

11 application further as the denial of a license, or to penalize such
12 an applicant in any other way based solely on such a decision
13 by the compact committee.

14 3. Reserves the right: (i) To charge a fee for the use of a
15 compact committee license in that state; (ii) to apply its own
16 standards in determining whether, on the facts of a particular
17 case, a compact committee license should be suspended or
18 revoked; (iii) to apply its own standards in determining
19 licensure eligibility, under the laws of that party state, for
20 categories of participants in live racing that the compact
21 committee determines not to license and for individual partici-
22 pants in live racing who do not meet the licensure requirements
23 of the compact committee; and (iv) to establish its own
24 licensure standards for the licensure of nonracing employees at
25 horse racetracks and employees at separate satellite wagering
26 facilities. Any party state that suspends or revokes a compact
27 committee license shall, through its racing commission or the
28 equivalent thereof or otherwise, promptly notify the compact
29 committee of that suspension or revocation.

30 B. No party state may be held liable for the debts or other
31 financial obligations incurred by the compact committee.

ARTICLE VI. CONSTRUCTION AND SEVERABILITY.

§12. Construction and severability.

1 This compact shall be liberally construed so as to effectuate
2 its purposes. The provisions of this compact shall be severable,
3 and, if any phrase, clause, sentence or provision of this compact
4 is declared to be contrary to the Constitution of the United
5 States or of any party state, or the applicability of this compact
6 to any government, agency, person or circumstance is held
7 invalid, the validity of the remainder of this compact and the
8 applicability thereof to any government, agency, person or
9 circumstance shall not be affected thereby. If all or some
10 portion of this compact is held to be contrary to the constitution
11 of any party state, the compact shall remain in full force and

12 effect as to the remaining party states and in full force and
 13 effect as to the state affected as to all severable matters.

§19-24-2. Compact committee members.

1 The governor shall appoint one official to represent West
 2 Virginia on the compact committee for a term of four years. No
 3 official may serve more than three consecutive terms. A
 4 vacancy shall be filled by the governor for the unexpired term.

§19-24-3. Cooperation of departments, agencies and officers.

1 All departments, agencies and officers of the state and its
 2 political subdivisions are authorized to cooperate with the
 3 compact committee in furtherance of any of its activities
 4 pursuant to the compact.

§19-24-4. Racing commission powers preserved.

1 Nothing in this article diminishes or limits the powers and
 2 responsibilities of the racing commission established in article
 3 twenty-three of this chapter, or invalidates any action of the
 4 racing commission previously taken, including, without
 5 limitation, any rule promulgated by the commission.

CHAPTER 137

(H. B. 4689 — By Delegates Faircloth, Doyle and Manuel)

[Passed March 18, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections thirteen and thirteen-b, article twenty-three, chapter nineteen 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 thirteen-c; and to amend and reenact section ten, article twenty-

two-a, chapter twenty-nine of said code, all relating generally to horse and dog racing; disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; increasing prize money for restricted races; defining West Virginia bred-foal; limiting qualification for payments from West Virginia accredited race fund to West Virginia bred-foals; providing for distribution of racetrack video lottery money for purses at breeders' classic to be expended as provided in racing statutes; and making technical changes that make the code more readable and delete obsolete language.

Be it enacted by the Legislature of West Virginia:

That sections thirteen and thirteen-b, article twenty-three, chapter nineteen 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 thirteen-c; and that section ten, article twenty-two-a, chapter twenty-nine of said code be amended and reenacted, all to read as follows:

Chapter

19. Agriculture.

29. Miscellaneous Boards and Officers.

CHAPTER 19. AGRICULTURE.

ARTICLE 23. HORSE AND DOG RACING.

§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.

§19-23-13b. West Virginia thoroughbred development fund; distribution; restricted races; nonrestricted purse supplements.

§19-23-13c. Expenditure of racetrack video lottery distribution.

§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 of
2 outstanding and unredeemed pari-mutuel tickets, if not claimed
3 within ninety days after the close of a horse or dog race meeting
4 or the televised racing day, as the case may be, in connection
5 with which the tickets were issued, shall be turned over by the
6 licensee to the racing commission within fifteen days after the
7 expiration of the ninety-day period, and the licensee shall give
8 any information required by the racing commission concerning
9 the outstanding and unredeemed tickets. The moneys shall be
10 deposited by the racing commission in a banking institution of
11 its choice in a special account to be known as "West Virginia
12 Racing Commission Special Account - Unredeemed Pari-
13 Mutuel Tickets". Notice of the amount, date and place of each
14 deposit shall be given by the racing commission, in writing, to
15 the state treasurer. The racing commission shall then cause to
16 be published a notice to the holders of the outstanding and
17 unredeemed pari-mutuel tickets, notifying them to present their
18 unredeemed tickets for payment at the principal office of the
19 racing commission within ninety days from the date of the
20 publication of the notice. The notice shall be published within
21 fifteen days following the receipt of the outstanding and
22 unredeemed pari-mutuel ticket moneys by the commission from
23 the licensee as a Class I legal advertisement in compliance with
24 the provisions of article three, chapter fifty-nine of this code,
25 and the publication area for the publication shall be the county
26 in which the horse or dog race meeting was held and the county
27 in which the televised racing day wagering was conducted in
28 this state.

29 (b) Any outstanding and unredeemed pari-mutuel tickets
30 that are not presented for payment within ninety days from the
31 date of the publication of the notice are thereafter irredeemable,
32 and the moneys theretofore held for the redemption of the pari-
33 mutuel tickets shall become the property of the racing commis-
34 sion and shall be expended as provided in this subsection. The
35 racing commission shall maintain separate accounts for each

36 licensee and shall record in each separate account the moneys
37 turned over by the licensee and the amount expended at the
38 licensee's track for the purposes set forth in this subsection.
39 The moneys in the West Virginia racing commission special
40 account - unredeemed pari-mutuel tickets shall be expended as
41 follows:

42 (1) To the owner of the winning horse in any horse race at
43 a horse race meeting held or conducted by any licensee:
44 *Provided*, That the owner of the horse is at the time of the horse
45 race a bona fide resident of this state, a sum equal to ten percent
46 of the purse won by the horse at that race. The commission may
47 require proof that the owner was, at the time of the race, a bona
48 fide resident of this state. Upon proof by the owner that he or
49 she filed a personal income tax return in this state for the
50 previous two years and that he or she owned real or personal
51 property in this state and paid taxes in this state on real or
52 personal property for the previous two years, he or she shall be
53 presumed to be a bona fide resident of this state; and

54 (2) To the breeder (that is, the owner of the mare) of the
55 winning horse in any horse race at a horse race meeting held or
56 conducted by any licensee: *Provided*, That the mare foaled in
57 this state, a sum equal to ten percent of the purse won by the
58 horse; and

59 (3) To the owner of the stallion which sired the winning
60 horse in any horse race at a horse race meeting held or con-
61 ducted by any licensee: *Provided*, That the mare which foaled
62 the winning horse was served by a stallion standing and
63 registered in this state, a sum equal to ten percent of the purse
64 won by the horse; and

65 (4) To those horse racing licensees not participating in the
66 thoroughbred development fund authorized in section thirteen-b
67 of this article, the unexpended balance of the licensee's account
68 not expended as provided in subdivisions (1), (2) and (3) of this

69 subsection: *Provided*, That all moneys distributed under this
70 subdivision shall be expended solely for capital improvements
71 at the licensee's track: *Provided, however*, That the capital
72 improvements must be approved, in writing, by the West
73 Virginia racing commission before funds are expended by the
74 licensee for that capital improvement; and

75 (5) When the moneys in the special account, known as the
76 West Virginia racing commission special account - unredeemed
77 pari-mutuel tickets will more than satisfy the requirements of
78 subdivisions (1), (2), (3) and (4) of this subsection, the West
79 Virginia racing commission shall have the authority to expend
80 the excess moneys from unredeemed horse racing pari-mutuel
81 tickets as purse money in any race conditioned exclusively for
82 West Virginia bred or sired horses, and to expend the excess
83 moneys from unredeemed dog racing pari-mutuel tickets in
84 supplementing purses and establishing stake races and dog
85 racing handicaps at the dog tracks: *Provided*, That subject to the
86 availability of funds, the commission shall, after the require-
87 ments of subdivisions (1), (2), (3) and (4) of this subsection
88 have been satisfied:

89 (A) Transfer annually two hundred thousand dollars to the
90 West Virginia racing commission special account - West
91 Virginia greyhound breeding development fund; and

92 (B) Transfer annually two hundred thousand dollars into a
93 separate account to be used for stakes races for West Virginia
94 bred greyhounds at dog racetracks.

95 (c) The commission shall submit to the legislative auditor
96 a quarterly report and accounting of the income, expenditures
97 and unobligated balance in the special account created by this
98 section known as the West Virginia racing commission special
99 account - unredeemed pari-mutuel tickets.

100 (d) Nothing contained in this article shall prohibit one
101 person from qualifying for all or more than one of the aforesaid
102 awards or for awards under section thirteen-b of this article.

103 (e) The cost of publication of the notice provided for in this
104 section shall be paid from the funds in the hands of the state
105 treasurer collected from the pari-mutuel pools' tax provided for
106 in section ten of this article, when not otherwise provided in the
107 budget; but no such costs shall be paid unless an itemized
108 account thereof, under oath, be first filed with the state auditor.

**§19-23-13b. West Virginia thoroughbred development fund;
distribution; restricted races; nonrestricted purse
supplements.**

1 (a) The racing commission shall deposit moneys required
2 to be withheld by an association or licensee in subsection (b),
3 section nine of this article in a banking institution of its choice
4 in a special account to be known as "West Virginia Racing
5 Commission Special Account — West Virginia Thoroughbred
6 Development Fund". Notice of the amount, date and place of
7 the deposit shall be given by the racing commission, in writing,
8 to the state treasurer. The purpose of the fund is to promote
9 better breeding and racing of thoroughbred horses in the state
10 through awards and purses for accredited breeders/raisers, sire
11 owners and thoroughbred race horse owners. A further objec-
12 tive of the fund is to aid in the rejuvenation and development of
13 the present horse tracks now operating in West Virginia for
14 capital improvements, operations or increased purses: *Provided,*
15 That five percent of the deposits required to be withheld by an
16 association or licensee in subsection (b), section nine of this
17 article shall be placed in a special revenue account hereby
18 created in the state treasury called the "administration and
19 promotion account".

20 (b) The racing commission is authorized to expend the
21 moneys deposited in the administration and promotion account

22 at such times and in such amounts as the commission deter-
23 mines to be necessary for purposes of administering and
24 promoting the thoroughbred development program: *Provided,*
25 That during any fiscal year in which the commission anticipates
26 spending any money from the account, the commission shall
27 submit to the executive department during the budget prepara-
28 tion period prior to the Legislature convening before that fiscal
29 year for inclusion in the executive budget document and budget
30 bill the recommended expenditures, as well as requests of
31 appropriations for the purpose of administration and promotion
32 of the program. The commission shall make an annual report to
33 the Legislature on the status of the administration and promo-
34 tion account, including the previous year's expenditures and
35 projected expenditures for the next year.

36 (c) The fund and the account established in subsection (a)
37 of this section shall operate on an annual basis.

38 (d) Funds in the thoroughbred development fund shall
39 be expended for awards and purses except as otherwise
40 provided in this section. Annually, the first one hundred
41 thousand dollars of the fund shall be available for
42 distribution for a maximum of four stakes races. One of
43 these races shall be the West Virginia futurity and the
44 second shall be the Frank Gall memorial stakes. The
45 remaining races may be chosen by the committee set
46 forth in subsection(g) of this section.

47 (e) Awards and purses shall be distributed as follows:

48 (1) The breeders/raisers of accredited thoroughbred horses
49 that earn a purse at any West Virginia meet shall receive a
50 bonus award calculated at the end of the year as a percentage of
51 the fund dedicated to the breeders/raisers, which shall be sixty
52 percent of the fund available for distribution in any one year.
53 The total amount available for the breeders'/raisers' awards

54 shall be distributed according to the ratio of purses earned by an
55 accredited race horse to the total amount earned in the races by
56 all accredited race horses for that year as a percentage of the
57 fund dedicated to the breeders/raisers. However, no
58 breeder/raiser may receive from the fund dedicated to breed-
59 ers'/raisers' awards an amount in excess of the earnings of the
60 accredited horse at West Virginia meets. In addition, should a
61 horse's breeder and raiser qualify for the same award on the
62 same horse, they will each be awarded one half of the proceeds.
63 The bonus referred to in this subdivision (1) shall only be paid
64 on the first one hundred thousand dollars of any purse, and not
65 on any amounts in excess thereof.

66 (2) The owner of a West Virginia sire of an accredited
67 thoroughbred horse that earns a purse in any race at a West
68 Virginia meet shall receive a bonus award calculated at the end
69 of the year as a percentage of the fund dedicated to sire owners,
70 which shall be fifteen percent of the fund available for distribu-
71 tion in any one year. The total amount available for the sire
72 owners' awards shall be distributed according to the ratio of
73 purses earned by the progeny of accredited West Virginia
74 stallions in the races for a particular stallion to the total purses
75 earned by the progeny of all accredited West Virginia stallions
76 in the races. However, no sire owner may receive from the fund
77 dedicated to sire owners an amount in excess of thirty-five
78 percent of the accredited earnings for each sire. The bonus
79 referred to in this subdivision (2) shall only be paid on the first
80 one hundred thousand dollars of any purse, and not on any
81 amounts in excess thereof.

82 (3) The owner of an accredited thoroughbred horse that
83 earns a purse in any race at a West Virginia meet shall receive
84 a restricted purse supplement award calculated at the end of the
85 year, which shall be twenty-five percent of the fund available
86 for distribution in any one year, based on the ratio of the
87 earnings in the races of a particular race horse to the total

88 amount earned by all accredited race horses in the races during
89 that year as a percentage of the fund dedicated to purse supple-
90 ments. However, the owners may not receive from the fund
91 dedicated to purse supplements an amount in excess of thirty-
92 five percent of the total accredited earnings for each accredited
93 race horse. The bonus referred to in this subdivision shall only
94 be paid on the first one hundred thousand dollars of any purse,
95 and not on any amounts in excess thereof.

96 (4) In no event shall purses earned at a meet held at a track
97 which did not make a contribution to the thoroughbred develop-
98 ment fund out of the daily pool on the day the meet was held
99 qualify or count toward eligibility for an award under this
100 subsection (e).

101 (5) Any balance in the breeders/raisers, sire owners and
102 purse supplement funds after yearly distributions shall first be
103 utilized to fund the races established in subsection (g) of this
104 section. Any amount not so used shall revert back into the
105 general account of the thoroughbred development fund for
106 distribution in the next year.

107 Distribution shall be made on the fifteenth day of each
108 February for the preceding year's achievements.

109 (f) The remainder, if any, of the thoroughbred development
110 fund that is not available for distribution in the program
111 provided for in subsection (e) of this section in any one year is
112 reserved for regular purses, marketing expenses and for capital
113 improvements in the amounts and under the conditions pro-
114 vided in this subsection (f).

115 (1) Fifty percent of the remainder shall be reserved for
116 payments into the regular purse fund established in subsection
117 (b), section nine of this article.

118 (2) Up to five hundred thousand dollars per year shall be
119 available for:

120 (A) Capital improvements at the eligible licensed horse
121 racing tracks in the state; and

122 (B) Marketing and advertising programs above and beyond
123 two hundred fifty thousand dollars for the eligible licensed
124 horse racing tracks in the state: *Provided*, That moneys shall be
125 expended for capital improvements or marketing and advertis-
126 ing purposes as described in this subsection only in accordance
127 with a plan filed with and receiving the prior approval of the
128 racing commission, and on a basis of fifty percent participation
129 by the licensee and fifty percent participation by moneys from
130 the fund, in the total cost of approved projects: *Provided*,
131 *however*, That funds approved for one track may not be used at
132 another track unless the first track ceases to operate or is
133 viewed by the commission as unworthy of additional invest-
134 ment due to financial or ethical reasons.

135 (g)(1) Each pari-mutuel thoroughbred horse track shall
136 provide at least one restricted race per three racing days.

137 (2) The restricted races established in this subsection shall
138 be administered by a three-member committee consisting of:

139 (A) The racing secretary;

140 (B) A member appointed by the authorized representative
141 of a majority of the owners and trainers at the thoroughbred
142 track; and

143 (C) A member appointed by a majority of the thoroughbred
144 breeders.

145 (3) The purses for the restricted races established in this
146 subsection shall be twenty percent larger than the purses for
147 similar type races at each track.

148 (4) Restricted races shall be funded by each racing associa-
149 tion from:

150 (A) Moneys placed in the general purse fund up to a
151 maximum of three hundred fifty thousand dollars per year.

152 (B) Moneys as provided in subdivision (5), subsection (e)
153 of this section, which shall be placed in a special fund called the
154 "West Virginia accredited race fund".

155 (5) The racing schedules, purse amounts and types of races
156 are subject to the approval of the West Virginia racing commis-
157 sion.

158 (h) Effective on and after the first day of July, two thou-
159 sand, as used in this section, "West Virginia bred-foal" means
160 a horse that was born in the state of West Virginia.

161 (i) To qualify for the West Virginia accredited race fund,
162 the breeder must qualify under one of the following:

163 (1) The breeder of the West Virginia bred-foal is a West
164 Virginia resident;

165 (2) The breeder of the West Virginia bred-foal is not a West
166 Virginia resident, but keeps his or her breeding stock in West
167 Virginia year-round; or

168 (3) The breeder of the West Virginia bred-foal is not a West
169 Virginia resident and does not qualify under (2) above, but
170 either the sire of the West Virginia bred-foal is a West Virginia
171 stallion, or the mare is covered by a West Virginia stallion
172 following the birth of that West Virginia bred-foal.

173 (j) No association or licensee qualifying for the alternate tax
174 provision of subsection (b), section ten of this article is eligible
175 for participation in any of the provisions of this section:
176 *Provided*, That the provisions of this subsection shall not apply
177 to a thoroughbred race track at which the licensee has partici-
178 pated in the West Virginia thoroughbred development fund for
179 a period of more than four consecutive calendar years prior to

180 the thirty-first day of December, one thousand nine hundred
181 ninety-two.

§19-23-13c. Expenditure of racetrack video lottery distribution.

1 (a) Funds received by the racing commission pursuant to
2 subdivision (6), subsection (c), section ten, article twenty-two-
3 a, chapter twenty-nine of this code, after the effective date of
4 this section together with the balance in the bank account
5 previously established by the commission to receive those funds
6 shall be deposited in a banking institution of its choice in a
7 special account to be known as "West Virginia Racing Com-
8 mission Racetrack Video Lottery Account". Notice of the
9 amount, date and place of each deposit shall be given by the
10 racing commission, in writing, to the state treasurer.

11 (b) Funds in this account shall be allocated and expended
12 as follows:

13 (1) For each fiscal year, the first eight hundred thousand
14 dollars deposited in the separate account plus the amount then
15 remaining of the June thirtieth, one thousand nine hundred
16 ninety-seven, balance in the separate account previously
17 established for the West Virginia breeders classic under section
18 thirteen of this article, shall be used by the commission for
19 promotional activities, advertising, administrative costs and
20 purses for the West Virginia thoroughbred breeders classic,
21 which shall give equal consideration to all horses qualifying
22 under the West Virginia breeders program for each stake race,
23 based solely on the horses' sex, age and earnings.

24 (2) For each fiscal year, the next two hundred thousand
25 dollars deposited into the separate account shall be used by the
26 commission for promotional activities and purses for open stake
27 races for a race event to be known as the West Virginia derby
28 to be held at a thoroughbred racetrack which does not partici-
29 pate in the West Virginia thoroughbred development fund.

30 (3) For each fiscal year, once the amounts provided in
31 subdivisions (1) and (2) of this subsection (b) have been
32 deposited into separate bank accounts for use in connection
33 with the West Virginia thoroughbred breeders classics and the
34 West Virginia derby, the commission shall return to each
35 racetrack all additional amounts deposited which originate
36 during that fiscal year from each respective racetrack pursuant
37 to subdivision (6), subsection (c), section ten, article twenty-
38 two-a, chapter twenty-nine of this code, which returned excess
39 funds shall be used as follows:

40 (A) For each dog racetrack, one half of the returned excess
41 funds shall be used for capital improvements at the racetrack
42 and one half of the returned excess funds shall be deposited into
43 the West Virginia racing commission special account - West
44 Virginia greyhound breeding development fund.

45 (B) At those thoroughbred racetracks that have participated
46 in the West Virginia thoroughbred development fund for a
47 period of more than four consecutive calendar years prior to the
48 thirty-first day of December, one thousand nine hundred ninety-
49 two, one half of the returned excess funds shall be used for
50 capital improvements at the licensee's racetrack and one half of
51 the returned excess funds shall be equally divided between the
52 West Virginia thoroughbred breeders classic and the West
53 Virginia thoroughbred development fund.

54 (C) At those thoroughbred horse racetracks which do not
55 participate in the West Virginia thoroughbred development
56 fund, one half of the returned excess funds shall be used for
57 capital improvements at the licensee's racetrack and one half of
58 the returned excess funds shall be used for purses for the open
59 stakes race event known as the West Virginia derby.

60 (c) All expenditures that are funded under this section must
61 be approved in writing by the West Virginia racing commission

62 before the funds are expended for any of the purposes autho-
63 rized by this section.

64 (d) The commission shall submit to the legislative auditor
65 a quarterly report and accounting of the income, expenditures
66 and unobligated balance in the special bank accounts authorized
67 by this section.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

***§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.**

1 (a) The commission shall provide to manufacturers, or
2 applicants applying for a manufacturer's permit, the protocol
3 documentation data necessary to enable the respective manufac-
4 turer's video lottery terminals to communicate with the
5 commission's central computer for transmitting auditing
6 program information and for activation and disabling of video
7 lottery terminals.

8 (b) The gross terminal income of a licensed racetrack shall
9 be remitted to the commission through the electronic transfer of
10 funds. Licensed racetracks shall furnish to the commission all
11 information and bank authorizations required to facilitate the
12 timely transfer of moneys to the commission. Licensed race-
13 tracks must provide the commission thirty days' advance notice

***Clerk's Note:** This section was also amended by S. B. 657 (Chapter 91), which passed prior to this act.

14 of any proposed account changes in order to assure the uninter-
15 rupted electronic transfer of funds. From the gross terminal
16 income remitted by the licensee to the commission, the com-
17 mission shall deduct an amount sufficient to reimburse the
18 commission for its actual costs and expenses incurred in
19 administering racetrack video lottery at the licensed racetrack,
20 and the resulting amount after such deduction shall be the net
21 terminal income. The amount deducted for administrative costs
22 and expenses of the commission may not exceed four percent
23 of gross terminal income.

24 (c) Net terminal income shall be divided as set out in this
25 subsection. The licensed racetrack's share shall be in lieu of all
26 lottery agent commissions and is considered to cover all costs
27 and expenses required to be expended by the licensed racetrack
28 in connection with video lottery operations. The division shall
29 be made as follows:

30 (1) The commission shall receive thirty percent of net
31 terminal income, which shall be paid into the general revenue
32 fund of the state to be appropriated by the Legislature;

33 (2) Fourteen percent of net terminal income at a licensed
34 racetrack shall be deposited in the special fund established by
35 the licensee, and used for payment of regular purses in addition
36 to other amounts provided for in article twenty-three, chapter
37 nineteen of this code;

38 (3) The county where the video lottery terminals are located
39 shall receive two percent of the net terminal income: *Provided,*
40 *That:*

41 (A) Beginning the first day of July, one thousand nine
42 hundred ninety-nine, and thereafter, any amount in excess of
43 the two percent received during fiscal year one thousand nine
44 hundred ninety-nine by a county in which a racetrack is located
45 that has participated in the West Virginia thoroughbred devel-
46 opment fund since on or before the first day of January, one
47 thousand nine hundred ninety-nine, shall be divided as follows:

47 (i) The county shall receive fifty percent of the excess
48 amount; and

49 (ii) The municipalities of the county shall receive fifty
50 percent of the excess amount, said fifty percent to be divided
51 among the municipalities on a per capita basis as determined by
52 the most recent decennial United States census of population;
53 and

54 (B) Beginning the first day of July, one thousand nine
55 hundred ninety-nine, and thereafter, any amount in excess of
56 the two percent received during fiscal year one thousand nine
57 hundred ninety-nine by a county in which a racetrack other than
58 a racetrack described in paragraph (A) of this proviso is located
59 and where the racetrack has been located in a municipality
60 within the county since on or before the first day of January,
61 one thousand nine hundred ninety-nine, shall be divided, if
62 applicable, as follows:

63 (i) The county shall receive fifty percent of the excess
64 amount; and

65 (ii) The municipality shall receive fifty percent of the
66 excess amount; and

67 (C) This proviso shall not affect the amount to be received
68 under this subdivision by any county other than a county
69 described in paragraph (A) or (B) of this proviso;

70 (4) One half of one percent of net terminal income shall be
71 paid for and on behalf of all employees of the licensed racing
72 association by making a deposit into a special fund to be
73 established by the racing commission to be used for payment
74 into the pension plan for all employees of the licensed racing
75 association;

76 (5) The West Virginia thoroughbred development fund
77 created under section thirteen-b, article twenty-three, chapter

78 nineteen of this code and the West Virginia greyhound breeding
79 development fund created under section ten, article twenty-
80 three, chapter nineteen of this code shall receive an equal share
81 of a total of not less than one and one-half percent of the net
82 terminal income: *Provided*, That for any racetrack which does
83 not have a breeder's program supported by the thoroughbred
84 development fund or the greyhound breeding development
85 fund, the one and one-half percent provided for in this subdivi-
86 sion shall be deposited in the special fund established by the
87 licensee and used for payment of regular purses, in addition to
88 other amounts provided for in subdivision (2) of this subsection
89 and article twenty-three, chapter nineteen of this code;

90 (6) The West Virginia racing commission shall receive one
91 percent of the net terminal income which shall be deposited and
92 used as provided in section thirteen-c, article twenty-three,
93 chapter nineteen of this code;

94 (7) A licensee shall receive forty-seven percent of net
95 terminal income;

96 (8) The tourism promotion fund established in section
97 twelve, article two, chapter five-b of this code shall receive
98 three percent of the net terminal income; and

99 (9) The veterans memorial program shall receive one
100 percent of the net terminal income until sufficient moneys have
101 been received to complete the veterans memorial on the
102 grounds of the state capitol complex in Charleston, West
103 Virginia. The moneys shall be deposited in the state treasury in
104 the division of culture and history special fund created under
105 section three, article one-i, chapter twenty-nine of this code:
106 *Provided*, That only after sufficient moneys have been depos-
107 ited in the fund to complete the veterans memorial and to pay
108 in full the annual bonded indebtedness on the veterans memo-
109 rial, not more than twenty thousand dollars of the one percent

110 of net terminal income provided for in this subdivision shall be
111 deposited into a special revenue fund in the state treasury, to be
112 known as the "John F. 'Jack' Bennett Fund". The moneys in
113 this fund shall be expended by the division of veterans affairs
114 to provide for the placement of markers for the graves of
115 veterans in perpetual cemeteries in this state. The division of
116 veterans affairs shall promulgate legislative rules pursuant to
117 the provisions of article three, chapter twenty-nine-a of this
118 code specifying the manner in which the funds are spent,
119 determine the ability of the surviving spouse to pay for the
120 placement of the marker, and setting forth the standards to be
121 used to determine the priority in which the veterans grave
122 markers will be placed in the event that there are not sufficient
123 funds to complete the placement of veterans grave markers in
124 any one year, or at all. Upon payment in full of the bonded
125 indebtedness on the veterans memorial, one hundred thousand
126 dollars of the one percent of net terminal income provided for
127 in this subdivision shall be deposited in the special fund in the
128 division of culture and history created under section three,
129 article one-i, chapter twenty-nine of this code and be expended
130 by the division of culture and history to establish a West
131 Virginia veterans memorial archives within the cultural center
132 to serve as a repository for the documents and records pertain-
133 ing to the veterans memorial, to restore and maintain the
134 monuments and memorial on the capitol grounds, and not more
135 than twenty thousand dollars be deposited in the "John F. 'Jack'
136 Bennett Fund": *Provided, however,* That five hundred thousand
137 dollars of the one percent of net terminal income shall be
138 deposited in the state treasury in a special fund of the depart-
139 ment of administration, created under section five, article four,
140 chapter five-a of this code to be used for construction and
141 maintenance of a parking garage on the state capitol complex:
142 *Provided further,* That the remainder of the one percent of net
143 terminal income shall be deposited in equal amounts in the
144 capitol dome and improvements fund created under section two,

145 article four, chapter five-a of this code and cultural facilities
146 and capitol resources matching grant program fund created
147 under section three, article one of this chapter.

148 (d) Each licensed racetrack shall maintain in its account an
149 amount equal to or greater than the gross terminal income from
150 its operation of video lottery machines, to be electronically
151 transferred by the commission on dates established by the
152 commission. Upon a licensed racetrack's failure to maintain
153 this balance, the commission may disable all of a licensed
154 racetrack's video lottery terminals until full payment of all
155 amounts due is made. Interest shall accrue on any unpaid
156 balance at a rate consistent with the amount charged for state
157 income tax delinquency under chapter eleven of this code,
158 which interest shall begin to accrue on the date payment is due
159 to the commission.

160 (e) The commission's central control computer shall keep
161 accurate records of all income generated by each video lottery
162 terminal. The commission shall prepare and mail to the licensed
163 racetrack a statement reflecting the gross terminal income
164 generated by the licensee's video lottery terminals. Each
165 licensed racetrack must report to the commission any discrep-
166 ancies between the commission's statement and each terminal's
167 mechanical and electronic meter readings. The licensed
168 racetrack is solely responsible for resolving income discrep-
169 ancies between actual money collected and the amount shown on
170 the accounting meters or on the commission's billing statement.

171 (f) Until an accounting discrepancy is resolved in favor of
172 the licensed racetrack, the commission may make no credit
173 adjustments. For any video lottery terminal reflecting a discrep-
174 ancy, the licensed racetrack shall submit to the commission the
175 maintenance log which includes current mechanical meter
176 readings and the audit ticket which contains electronic meter

177 readings generated by the terminal's software. If the meter
178 readings and the commission's records cannot be reconciled,
179 final disposition of the matter shall be determined by the
180 commission. Any accounting discrepancies which cannot be
181 otherwise resolved shall be resolved in favor of the commis-
182 sion.

183 (g) Licensed racetracks shall remit payment by mail if the
184 electronic transfer of funds is not operational or the commission
185 notifies licensed racetracks that remittance by this method is
186 required. The licensed racetracks shall report an amount equal
187 to the total amount of cash inserted into each video lottery
188 terminal operated by a licensee, minus the total value of game
189 credits which are cleared from the video lottery terminal in
190 exchange for winning redemption tickets, and remit such
191 amount as generated from its terminals during the reporting
192 period. The remittance shall be sealed in a properly addressed
193 and stamped envelope and deposited in the United States mail
194 no later than noon on the day when the payment would other-
195 wise be completed through electronic funds transfer.

196 (h) Licensed racetracks may, upon request, receive addi-
197 tional reports of play transactions for their respective video
198 lottery terminals and other marketing information not consid-
199 ered confidential by the commission. The commission may
200 charge a reasonable fee for the cost of producing and mailing
201 any report other than the billing statements.

202 (i) The commission has the right to examine all accounts,
203 bank accounts, financial statements and records in a licensed
204 racetrack's possession, under its control or in which it has an
205 interest and the licensed racetrack must authorize all third
206 parties in possession or in control of the accounts or records to
207 allow examination of any of those accounts or records by the
208 commission.

CHAPTER 138

(Com. Sub. for H. B. 4579 — By Delegates Compton and Leach)

[Passed March 18, 2000; 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 nineteen, relating to behavioral health services; providing for summary review procedure for certain services; requiring the secretary of the department of health and human resources to direct the revision of the state mental health plan, appoint an advisory committee, and requiring reporting of the revisions; authorizing the secretary to initiate a summary review process for certain behavioral health services; requiring notice; requiring certain findings; providing the right of appeal; and providing for an expiration date for the provisions of this section.

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 nineteen, to read as follows:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-19. Summary review for certain behavioral health facilities and services.

- 1 (a) A certificate of need as provided for in article two-d,
- 2 chapter sixteen of this code is not required by an entity propos-
- 3 ing additional behavioral health care services, but only to the
- 4 extent necessary to gain federal approval of the medicaid
- 5 MR/DD waiver program, if a summary review is performed in
- 6 accordance with the provisions of this section.

7 (b) Prior to initiating any summary review, the secretary
8 shall direct the revision of the state mental health plan as
9 required by the provisions of 42 U.S.C. 300x and section 4,
10 article one-a, chapter twenty-seven of this code. In developing
11 those revisions, the secretary is to appoint an advisory commit-
12 tee composed of representatives of the associations representing
13 providers, child care providers, physicians and advocates. The
14 secretary shall appoint the appropriate department employees
15 representing regulatory agencies, reimbursement agencies and
16 oversight agencies of the behavioral health system. The
17 members shall submit the revisions to the secretary for final
18 approval and the report is to be submitted to the Legislature and
19 governor on the first day of January, two thousand one.

20 (c) If the secretary of the department of health and human
21 resources determines that specific services are needed but
22 unavailable, he or she shall provide notice of the department's
23 intent to develop those services. Notice may be provided
24 through publication in the state register, publication in newspa-
25 pers, or a modified request for proposal as developed by the
26 secretary.

27 (d) The secretary may initiate a summary review of
28 additional behavioral health care services, but only to the extent
29 necessary to gain federal approval of the medicaid MR/DD
30 waiver program, by recommending exemption from the
31 provisions of article two-d, chapter sixteen of this code to the
32 health care authority. The recommendation is to include the
33 following findings:

34 (1) That the proposed service is consistent with the state
35 health plan and the state mental health plan;

36 (2) That the proposed service is consistent with the depart-
37 ment's programmatic and fiscal plan for behavioral health
38 services;

39 (3) That the proposed service contributes to providing
40 services that prevent admission to restrictive environments or

41 enables an individual to remain in a nonrestrictive environ-
42 ment;

43 (4) That the proposed service contributes to reducing the
44 number of individuals admitted to inpatient or residential
45 treatment programs or services;

46 (5) If applicable, that the proposed service will be
47 community-based, locally accessible, provided in an appropri-
48 ate setting consistent with the unique needs and potential of
49 each client and his or her family, and located in an area that is
50 unserved or underserved or does not allow consumers a choice
51 of providers; and

52 (6) That the secretary is determining that sufficient funds
53 are available for the proposed service without decreasing access
54 to or provision of existing services. The secretary may from
55 time to time transfer funds pursuant to the general provisions of
56 the budget bill.

57 (e) The secretary's findings required by this section shall be
58 filed with the secretary's recommendation and appropriate
59 documentation. If the secretary's findings are supported by the
60 accompanying documentation, the proposal shall not require a
61 certificate of need.

62 (f) Any entity that does not qualify for summary review
63 shall be subject to a certificate of need review.

64 (g) Any provider of the proposed services denied authoriza-
65 tion to provide those services pursuant to the summary review,
66 has the right to appeal that decision to the state agency in
67 accordance with the provisions of section ten, article two-d,
68 chapter sixteen of this code.

69 (h) The provisions of this section shall expire on the
70 thirtieth day of June, two thousand three.

CHAPTER 139

(H. B. 4390 — By Delegates Compton, Hutchins, Leach,
Hatfield, Houston, Perdue and Romine)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, eight, nine, ten, eleven and twelve, article six, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to reporting for complaints of abuse or neglect of incapacitated adults or residents in nursing homes and other adult residential care facilities; defining terms; providing for application of article to certain types of facilities; authorizing secretary of the department of health and human resources to propose certain rules; adding certain goals relating to preventing abuse and neglect and developing a coordinated and cooperative system for investigating complaints; providing for confidentiality of certain records; increasing the types of persons who are required to report incident of suspected abuse or neglect; providing for development and distribution of a complaint reporting form; providing for disclosure of complaint reports to certain persons or agencies; specifying additional reporting procedures; prohibiting discrimination against persons making reports of incidents of abuse or neglect and providing for violations of same; and making technical changes and corrections.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. SOCIAL SERVICES FOR ADULTS.

- §9-6-1. Definitions.
- §9-6-2. Adult protective services; rules and regulations; organization and duties.
- §9-6-3. Cooperation among agencies; termination and reduction of assistance by commissioner.
- §9-6-8. Confidentiality of records.
- §9-6-9. Mandatory reporting of incidences of abuse, neglect or emergency situation.
- §9-6-10. Mandatory reporting to medical examiner or coroner; postmortem investigation.
- §9-6-11. Reporting procedures.
- §9-6-12. Reporting person's immunity from liability.

§9-6-1. Definitions.

1 The following words and terms, when used in this article,
2 shall have the same meaning hereinafter ascribed to them unless
3 the context clearly indicates a different meaning:

4 (1) "Adult protective services agency" means any public or
5 nonprofit private agency, corporation, board or organization
6 furnishing protective services to adults;

7 (2) "Abuse" means the infliction or threat to inflict physical
8 pain or injury on or the imprisonment of any incapacitated adult
9 or facility resident;

10 (3) "Neglect" means: (A) The failure to provide the
11 necessities of life to an incapacitated adult or facility resident
12 with intent to coerce or physically harm the incapacitated adult
13 or resident; and (B) the unlawful expenditure or willful dissipa-
14 tion of the funds or other assets owned or paid to or for the
15 benefit of an incapacitated adult or resident;

16 (4) "Incapacitated adult" means any person who by reason
17 of physical, mental or other infirmity is unable to independently
18 carry on the daily activities of life necessary to sustaining life
19 and reasonable health;

20 (5) "Emergency" or "emergency situation" means a
21 situation or set of circumstances which presents a substantial

22 and immediate risk of death or serious injury to an incapacitated adult;
23

24 (6) "Legal representative" means a person lawfully invested
25 with the power and charged with the duty of taking care of
26 another person or with managing the property and rights of
27 another person, including, but not limited to, a guardian,
28 conservator, medical power of attorney representative, trustee
29 or other duly appointed person;

30 (7) "Nursing home" or "facility" means any institution,
31 residence, intermediate care facility for the mentally retarded,
32 care home or any other adult residential facility, or any part or
33 unit thereof, that is subject to the provisions of articles five-c,
34 five-d, five-e or five-h, chapter sixteen of this code;

35 (8) "Regional long-term care ombudsman" means any paid
36 staff of a designated regional long-term care ombudsman
37 program who has obtained appropriate certification from the
38 bureau for senior services and meets the qualifications set forth
39 in section seven, article five-l, chapter sixteen of this code;

40 (9) "Facility resident" means an individual living in a
41 nursing home or other facility, as that term is defined in
42 subdivision (7) of this section;

43 (10) "Responsible family member" means a member of a
44 resident's family who has undertaken primary responsibility for
45 the care of the resident and who has established a working
46 relationship with the nursing home or other facility in which the
47 resident resides. For purposes of this article, a responsible
48 family member may include someone other than the resident's
49 legal representative;

50 (11) "State long-term care ombudsman" means an individual
51 who meets the qualifications of section five, article five-l,
52 chapter sixteen of this code and who is employed by the state
53 bureau for senior services to implement the state long-term care
54 ombudsman program;

55 (12) "Secretary" means the secretary of the department of
56 health and human resources.

§9-6-2. Adult protective services; rules; organization and duties.

1 (a) There is hereby established and continued within the
2 department of health and human resources the system of adult
3 protective services heretofore existing.

4 (b) The secretary shall propose rules for legislative ap-
5 proval in accordance with the provisions of article three,
6 chapter twenty-nine-a of this code regarding the organization
7 and duties of the adult protective services system and the
8 procedures to be used by the department to effectuate the
9 purposes of this article. The rules may be amended and supple-
10 mented from time to time.

11 (c) The secretary shall design and arrange such rules to
12 attain, or move toward the attainment of the following goals, to
13 the extent that the secretary believes feasible under the provi-
14 sions of this article within the state appropriations and other
15 funds available:

16 (1) Assisting adults who are abused, neglected or incapaci-
17 tated in achieving or maintaining self-sufficiency and self-
18 support, and preventing, reducing and eliminating their depend-
19 ency on the state;

20 (2) Preventing, reducing and eliminating neglect and abuse
21 of adults who are unable to protect their own interests;

22 (3) Preventing and reducing institutional care of adults by
23 providing less intensive forms of care, preferably in the home;

24 (4) Referring and admitting abused, neglected or incapaci-
25 tated adults to institutional care only where other available
26 services are inappropriate;

27 (5) Providing services and monitoring to adults in institu-
28 tions designed to assist adults in returning to community
29 settings;

30 (6) Preventing, reducing and eliminating the exploitation of
31 incapacitated adults and facility residents through the joint
32 efforts of the various agencies of the department of health and
33 human resources, the adult protective services system, the state
34 and regional long-term care ombudsmen, administrators of
35 nursing homes or other residential facilities and county prose-
36 cutors;

37 (7) Preventing, reducing and eliminating abuse and neglect
38 of residents in nursing homes or facilities; and

39 (8) Coordinating investigation activities for complaints of
40 abuse and neglect of incapacitated adults and facility residents
41 among the various agencies of the department of health and
42 human resources, the adult protective services system, the state
43 and regional long-term care ombudsmen, administrators of
44 nursing homes or other residential facilities, county prosecutors,
45 if necessary, and other state or federal agencies or officials, as
46 appropriate.

47 (d) The rules proposed by the secretary shall provide for the
48 means by which the department shall cooperate with federal,
49 state and other agencies to fulfill the objectives of the system of
50 adult protective services.

**§9-6-3. Cooperation among agencies; termination and reduction
of assistance by commissioner.**

1 The secretary shall direct the coordination of the investiga-
2 tion of complaints of abuse or neglect made pursuant to this
3 article; and the various agencies of the department, the adult
4 protective services system, the state and regional long-term care
5 ombudsmen, administrators of nursing homes or other residen-
6 tial facilities, county prosecutors and any other applicable state
7 or federal agency shall cooperate among each other for the

8 purposes of observing, reporting, investigating and acting upon
9 complaints of abuse or neglect of any incapacitated adult or
10 facility resident in this state.

§9-6-8. Confidentiality of records.

1 (a) Except as otherwise provided in this section, all records
2 of the department, state and regional long-term care ombuds-
3 men, nursing home or facility administrators, the office of
4 health facility licensure and certification and all protective
5 services agencies concerning an adult or facility resident under
6 this article shall be confidential and shall not be released,
7 except in accordance with the provisions of section eleven of
8 this article.

9 (b) Unless the adult concerned is receiving adult protective
10 services or unless there are pending proceedings with regard to
11 the adult, the records maintained by the adult protective
12 services agency shall be destroyed two years following their
13 preparation. A circuit court or the supreme court of appeals may
14 subpoena such records, but shall, before permitting their use in
15 connection with any court proceeding, review the same for
16 relevancy and materiality to the issues in the proceeding, and
17 may issue such order to limit the examination and use of such
18 records or any part thereof, having due regard for the purposes
19 of this article and the requirements of the litigation as shall be
20 just.

**§9-6-9. Mandatory reporting of incidences of abuse, neglect or
emergency situation.**

1 (a) If any medical, dental or mental health professional,
2 christian science practitioner, religious healer, social service
3 worker, law-enforcement officer, state or regional ombudsman
4 or any employee of any nursing home or other residential
5 facility has reasonable cause to believe that an incapacitated
6 adult or facility resident is or has been neglected, abused or

7 placed in an emergency situation, or if such person observes an
8 incapacitated adult or facility resident being subjected to
9 conditions that are likely to result in abuse, neglect or an
10 emergency situation, the person shall immediately report the
11 circumstances pursuant to the provisions of section eleven of
12 this article: *Provided*, That nothing in this article is intended to
13 prevent individuals from reporting on their own behalf.

14 (b) In addition to those persons and officials specifically
15 required to report situations involving suspected abuse or
16 neglect of an incapacitated adult or facility resident or the
17 existence of an emergency situation, any other person may
18 make such a report.

19 (c) The secretary shall develop a form for the filing of
20 written complaints, as provided by section eleven of this article,
21 and provide these forms to all nursing homes or other residen-
22 tial facilities, hospitals, ombudsmen, and adult protective
23 service agencies in this state. The forms shall be designed to
24 protect the identity of the complainant, if desired, and to
25 facilitate the prompt filing of complaints.

**§9-6-10. Mandatory reporting to medical examiner or coroner;
postmortem investigation.**

1 (a) Any person or official who is required under section
2 nine of this article to report cases of suspected abuse or neglect
3 and who has probable cause to believe that an incapacitated
4 adult or facility resident has died as a result of abuse or neglect
5 shall report that fact to the appropriate medical examiner or
6 coroner.

7 (b) Upon the receipt of such a report, the medical examiner
8 or coroner shall cause an investigation to be made and shall
9 report the findings to the local law-enforcement agency, the
10 local prosecuting attorney, the department's local adult protec-
11 tive services agency, and, if the institution making a report is a

12 hospital, nursing home or other residential facility, to the
13 administrator of the facility, the state and regional long-term
14 care ombudsman and the office of health facility licensure and
15 certification.

§9-6-11. Reporting procedures.

1 (a) A report of neglect or abuse of an incapacitated adult or
2 facility resident or of an emergency situation involving such an
3 adult shall be made immediately by telephone to the depart-
4 ment's local adult protective services agency and shall be
5 followed by a written report by the complainant or the receiving
6 agency within forty-eight hours. The department shall, upon
7 receiving any such report, take such action as may be appropri-
8 ate and shall maintain a record thereof. The department shall
9 receive such telephonic reports on its twenty-four hour, seven-
10 day-a-week, toll-free number established to receive calls
11 reporting cases of suspected or known adult abuse or neglect.

12 (b) A copy of any report of abuse, neglect or emergency
13 situation shall be immediately filed with the following agen-
14 cies:

15 (1) The department of health and human resources;

16 (2) The appropriate law-enforcement agency and the
17 prosecuting attorney, if necessary; or

18 (3) In case of a death, to the appropriate medical examiner
19 or coroner's office.

20 (c) If the person who is alleged to be abused or neglected is
21 a resident of a nursing home or other residential facility, a copy
22 of the report shall also be filed with the state or regional
23 ombudsman and the administrator of the nursing home or
24 facility.

25 (d) The department shall omit from such report in the first
26 instance, the name of the person making a report, when
27 requested by such person.

28 (e) Reports of known or suspected institutional abuse or
29 neglect of an incapacitated adult or facility resident or the
30 existence of an emergency situation in an institution, nursing
31 home or other residential facility shall be made, received and
32 investigated in the same manner as other reports provided for
33 in this article. In the case of a report regarding an institution,
34 nursing home or residential facility, the department shall
35 immediately cause an investigation to be conducted.

36 (f) Upon receipt of a written complaint, the department
37 shall coordinate an investigation pursuant to section three of
38 this article and applicable state or federal laws, rules or regula-
39 tions.

§9-6-12. Reporting person's immunity from liability.

1 (a) Any person who in good faith makes or causes to be
2 made any report permitted or required by this article shall be
3 immune from any civil or criminal liability which might
4 otherwise arise solely out of making such report.

5 (b) No nursing home may discharge or in any manner
6 discriminate against any resident, family member, legal
7 representative or employee for the reason that he or she filed a
8 complaint or participated in any matter or proceeding stemming
9 from the provisions of this article.

10 (c) Violation of the prohibition contained in subsection (b)
11 of this section by a nursing home or other residential facility
12 constitutes grounds for the suspension or revocation of the
13 license of the facility, if it operates under license pursuant to
14 this code, or other appropriate measure.

CHAPTER 140

(Com. Sub. for S. B. 577 — By Senator Walker)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, five, six, seven, eight, nine, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, nineteen and twenty, article nine, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twenty-one, all relating to the West Virginia works act; amending legislative findings; amending and adding definitions; deleting obsolete provisions; specifically authorizing payment for support services; increasing certain cash assistance to specified at-risk families; providing that certain activities satisfy the article's work requirement; conforming specific requirements to federal law; requiring implementation of a plan to use educational resources of the state for the benefit of program participants; mandating that support services be provided to assist participants in meeting work requirements; clarifying existing provisions; increasing the allowable amount of diversionary assistance; authorizing public-private partnerships to provide family health insurance to former participants; providing for confidentiality of certain records; and establishing a rainy day fund for the program.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, six, seven, eight, nine, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, nineteen and twenty, article nine, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and

reenacted; and that said article be further amended by adding thereto a new section, designated section twenty-one, all to read as follows:

ARTICLE 9. WEST VIRGINIA WORKS PROGRAM.

- §9-9-2. Legislative findings; purpose.
- §9-9-3. Definitions.
- §9-9-4. Authorization for program.
- §9-9-5. West Virginia works program fund.
- §9-9-6. Program participation.
- §9-9-7. Work requirements.
- §9-9-8. Exemptions.
- §9-9-9. Personal responsibility contract.
- §9-9-11. Breach of contract; notice; sanctions.
- §9-9-12. Diversionary assistance allowance in lieu of monthly cash assistance.
- §9-9-13. Subsidized employment.
- §9-9-14. Transitional assistance.
- §9-9-15. Interagency coordination.
- §9-9-16. Intergovernmental coordination.
- §9-9-17. Public-private partnerships.
- §9-9-19. Legislative oversight.
- §9-9-20. Confidentiality, fines and penalties.
- §9-9-21. Temporary assistance for needy families rainy day fund.

§9-9-2. Legislative findings; purpose.

- 1 (a) The Legislature hereby finds and declares that:
 - 2 (1) The entitlement of any person to receive federal-state
 - 3 cash assistance is hereby discontinued;
 - 4 (2) At-risk families are capable of becoming self-support-
 - 5 ing;
 - 6 (3) A reformed assistance program should both expect and
 - 7 assist a parent and caretaker-relatives in at-risk families to
 - 8 support their dependent children and children for which they
 - 9 are caretakers;
 - 10 (4) Every parent or caretaker-relative can exhibit responsi-
 - 11 ble patterns of behavior so as to be a positive role model;

12 (5) Every parent or caretaker-relative who receives cash
13 assistance has a responsibility to participate in an activity to
14 help them prepare for, obtain and maintain gainful employment;

15 (6) For a parent or caretaker-relative who receives cash
16 assistance and for whom full-time work is not feasible, partici-
17 pation in some activity is expected to further himself or herself,
18 his or her family or his or her community;

19 (7) The state should promote the value of work and the
20 capabilities of individuals;

21 (8) Job development efforts should enhance the employ-
22 ment opportunities of participants;

23 (9) Education is the key to achieving and maintaining life-
24 long self-sufficiency; and

25 (10) A reformed assistance program should be structured to
26 achieve a clear set of outcomes; deliver services in an expedi-
27 ent, effective and efficient manner; and maximize community
28 support for participants. After five years, there is expected to be
29 a decrease in the following: (i) The number of persons receiving
30 public assistance; and (ii) the amount of time an individual
31 remains on public assistance.

32 (b) The goals of the program are to achieve more efficient
33 and effective use of public assistance funds; reduce dependency
34 on public programs by promoting self-sufficiency; and structure
35 the assistance programs to emphasize employment and personal
36 responsibility. The program is to be evaluated on the increase
37 in employment rates in the program areas; the completion of
38 educational and training programs; the increased compliance in
39 preventive health activities, including immunizations; and a
40 decrease in the case-load of the department.

§9-9-3. Definitions.

1 In addition to the rules for the construction of statutes in
2 section ten, article two, chapter two of this code and the words
3 and terms defined in section two, article one of this chapter,
4 unless a different meaning appears from the context:

5 (a) "At-risk family" means a group of persons living in the
6 same household, living below the federally designated poverty
7 level, lacking the resources to become self-supporting and
8 consisting of a dependent minor child or children living with a
9 parent, stepparent or caretaker-relative; an "at-risk family" may
10 include an unmarried minor parent and his or her dependent
11 child or children who live in an adult-supervised setting;

12 (b) "Beneficiary" or "participant" means any parent or
13 caretaker-relative in an at-risk family who receives cash
14 assistance for himself or herself and family members;

15 (c) "Cash assistance" means temporary assistance for needy
16 families;

17 (d) "Challenge" means any fact, circumstance or situation
18 that prevents a person from becoming self-sufficient or from
19 seeking, obtaining or maintaining employment of any kind,
20 including physical or mental disabilities, lack of education,
21 testing, training, counseling, child care arrangements, transpor-
22 tation, medical treatment or substance abuse treatment;

23 (e) "Community or personal development" means activities
24 designed or intended to eliminate challenges to participation in
25 self-sufficiency activities. These activities are to provide
26 community benefit and enhance personal responsibility,
27 including, but not limited to, classes or counseling for learning
28 life skills or parenting, dependent care, job readiness, volunteer
29 work, participation in sheltered workshops or substance abuse
30 treatment;

31 (f) “Department” means the state department of health and
32 human resources;

33 (g) “Education and training” means any hours spent
34 regularly attending and preparing for classes in any approved
35 course of schooling or training, including job training, high
36 school equivalency, literacy, English as a second language or
37 vocational or post-secondary program, including two-year and
38 four-year programs;

39 (h) “Income” means money received by any member of an
40 at-risk family which can be used at the discretion of the
41 household to meet its basic needs: *Provided*, That income does
42 not include:

43 (1) Supplemental security income paid to any member or
44 members of the at-risk family;

45 (2) Earnings of minor children;

46 (3) Payments received from earned income tax credit or tax
47 refunds;

48 (4) Earnings deposited in an individual development
49 account approved by the department; or

50 (5) Any moneys specifically excluded from countable
51 income by federal law;

52 (i) “Personal responsibility contract” means a written
53 agreement entered into by the department and a beneficiary
54 which establishes the responsibilities and obligations of the
55 beneficiary;

56 (j) “Secretary” means the secretary of the state department
57 of health and human resources;

58 (k) “Subsidized employment” means employment with
59 earnings provided by an employer who receives a subsidy from

60 the department for the creation and maintenance of the employ-
61 ment position;

62 (l) "Support services" includes, but is not limited to, the
63 following services: Child care; medicaid; transportation
64 assistance; information and referral; resource development
65 services which includes assisting families to receive child
66 support enforcement and supplemental security income; family
67 support services which includes parenting, budgeting and
68 family planning; relocation assistance; and mentoring services;

69 (m) "Unsubsidized employment" means employment with
70 earnings provided by an employer who does not receive a
71 subsidy from the department for the creation and maintenance
72 of the employment position;

73 (n) "Work" means unsubsidized employment, subsidized
74 employment, work experience, community or personal develop-
75 ment, and education and training; and

76 (o) "Work experience" means unpaid structured work
77 activities that are provided in an environment where perfor-
78 mance expectations are similar to those existing in unsubsidized
79 employment and which provide training in occupational areas
80 that can realistically be expected to lead to unsubsidized
81 employment.

§9-9-4. Authorization for program.

1 (a) The secretary shall conduct the West Virginia works
2 program in accordance with this article and any applicable
3 regulations promulgated by the secretary of the federal depart-
4 ment of health and human services in accordance with federal
5 block-grant funding or similar federal funding stream. This
6 program shall be implemented to replace welfare assistance
7 programs for at-risk families in accordance with this article and
8 within federal requirements; to coordinate the transfer of all

9 applicable state programs into the temporary assistance to
10 needy families West Virginia works program; to expend only
11 the funds appropriated by the Legislature to establish and
12 operate the program or any other funds available to the program
13 pursuant to any other provisions of the code or rules; to
14 establish administrative due process procedures for revocation
15 or termination proceedings; and to implement any other
16 procedures necessary to accomplish the purpose of this article.

17 (b) The West Virginia works program authorized pursuant
18 to this act does not create an entitlement to that program or any
19 services offered within that program, unless entitlement is
20 created pursuant to a federal law or regulation. The West
21 Virginia works program, and each component of that program
22 established by this act or the expansion of any component
23 established pursuant to federal law or regulation, is subject to
24 the annual appropriation of funds by the Legislature.

25 (c) Copies of all rules proposed by the secretary shall also
26 be filed with the legislative oversight commission on health and
27 human resources accountability established pursuant to article
28 twenty-nine-e, chapter sixteen of this code.

§9-9-5. West Virginia works program fund.

1 There is hereby continued a special account within the state
2 treasury to be known as the "West Virginia Works Program
3 Fund". Expenditures from the fund shall be used exclusively to
4 meet the necessary expenditures of the program, including
5 wage reimbursements to participating employers, temporary
6 assistance to needy families, payments for support services,
7 employment-related child care payments, transportation
8 expenses and administrative costs directly associated with the
9 operation of the program. Moneys paid into the account shall be
10 from specific annual appropriations of funds by the Legislature.

§9-9-6. Program participation.

1 (a) Unless otherwise noted in this article, all adult recipients
2 of cash assistance shall participate in the West Virginia works
3 program in accordance with the provisions of this article. The
4 level of participation, services to be delivered and work
5 requirements shall be defined within the terms of the personal
6 responsibility contract and through rules established by the
7 secretary.

8 (b) To the extent funding permits, any individual exempt
9 under the provisions of section eight of this article may partici-
10 pate in the activities and programs offered through the West
11 Virginia works program.

12 (c) Support services other than cash assistance through the
13 works program may be provided to at-risk families to eliminate
14 the need for cash assistance.

15 (d) Cash assistance through the works program may be
16 provided to an at-risk family if the combined family income, as
17 defined in subsection (h), section three of this article, is below
18 the income and asset test levels established by the department:
19 *Provided*, That any adult member of an at-risk family who
20 receives supplemental security income shall be excluded from
21 the benefit group: *Provided, however*, That an at-risk family
22 that includes a married man and woman and dependent children
23 of either one or both may receive an additional cash assistance
24 benefit in the amount of one hundred dollars: *Provided further*,
25 That an at-risk family shall receive an additional cash assistance
26 benefit in the amount of fifty dollars regardless of the amount
27 of child support collected in a month on behalf of a child or
28 children of the at-risk family, as allowed by federal law.

§9-9-7. Work requirements.

1 (a) Unless otherwise exempted by the provisions of section
2 eight of this article, the West Virginia works program shall
3 require that anyone who possesses a high school diploma, or its

4 equivalent, or anyone who is of the age of twenty years or
5 more, to work or attend an educational or training program for
6 at least the minimum number of hours per week required by
7 federal law under the work participation rate requirements for
8 all families in order to receive any form of cash assistance.
9 Participation in any education or training activity, as defined in
10 section three of this article, shall be counted toward satisfaction
11 of the work requirement imposed by this section to the extent
12 permissible under federal law and regulation: *Provided*, That
13 the participant demonstrates adequate progress toward comple-
14 tion of the program: *Provided, however*, That participants who
15 are enrolled in post-secondary courses leading to a two- or four-
16 year degree may be required to engage in no more than ten
17 hours per week of federally defined work activities, unless the
18 department certifies that allowing education to count toward
19 required work activities would affect the state's ability to meet
20 federal work participation rates. In accordance with federal law
21 or regulation, the work, education and training requirements of
22 this section are waived for any qualifying participant with a
23 child under six years of age if the participant is unable to obtain
24 appropriate and available child care services. In order for any
25 participant to receive cash assistance, he or she shall enter into
26 a personal responsibility contract pursuant to the provisions of
27 section nine of this article.

28 (b) The department and representatives of all college and
29 university systems of West Virginia shall develop and imple-
30 ment a plan to utilize and expand the programs available at the
31 state's community and technical colleges, colleges and univer-
32 sities to assist beneficiaries or participants who are enrolled or
33 wish to become enrolled in two- and four-year degree programs
34 of post-secondary education to meet the work requirements of
35 this section.

36 (c) The secretary shall ensure that all necessary support
37 services are made available to participants in order to assist

38 them in meeting the work requirement imposed by this section,
39 including participation in education and training programs.

§9-9-8. Exemptions.

1 Participants exempt from the work requirements of the
2 works program pursuant to the provisions of this section
3 nevertheless are required to enter into a personal responsibility
4 contract. The secretary shall establish by rule categories of
5 persons exempt, but only from the work requirements of the
6 program. The categories shall include, but are not limited to, the
7 following:

8 (a) A parent caring for a dependent child with a
9 life-threatening illness;

10 (b) Individuals over the age of sixty years;

11 (c) Full-time students who are less than twenty years of age
12 and are pursuing a high school diploma or its equivalent;

13 (d) Persons with a physical or mental incapacity or persons
14 suffering from a temporary debilitating injury lasting more than
15 thirty days, as defined by the secretary;

16 (e) Relatives providing in-home care for an individual who
17 would otherwise be institutionalized; and

18 (f) Any female beneficiary who is eighteen years of age or
19 older, for a period of twelve months upon the birth of her first
20 child while receiving cash assistance and for a period of six
21 months upon the birth of any additional child: *Provided*, That
22 any period of exemption from the work requirement may
23 include the last trimester of her pregnancy.

§9-9-9. Personal responsibility contract.

1 (a) Every eligible adult beneficiary shall participate in a
2 program orientation and the development, and subsequent

3 revisions, of a personal responsibility contract. The contract
4 shall be defined based on the assessed goals and challenges of
5 the participant:

6 (1) If the participant has a recent attachment to the work
7 force, the contract shall include provisions regarding required
8 job search activities, identified support services, level of
9 benefits requested and time limitation.

10 (2) If the participant does not have a recent attachment to
11 the work force, the contract shall identify the evaluation or
12 testing activities, or job training activities necessary prior to job
13 search activities, identified support services, benefits requested
14 and time limitation.

15 (3) If it is determined that the participant is not able to
16 obtain or maintain gainful employment, the contract shall
17 contain appropriate provisions defining the activities that
18 benefit the participant, his or her family or his or her commu-
19 nity.

20 (4) The participant's contract shall include the following
21 requirements: That the participant develop and maintain, with
22 the appropriate health care provider, a schedule of preventive
23 care for his or her dependent child or children, including routine
24 examinations and immunizations; assurance of school atten-
25 dance for school-age children under his or her care; assurance
26 of properly supervised child care, including after-school care;
27 and establishment of paternity or active pursuit of child support,
28 or both, if applicable and if considered necessary; and nutrition
29 or other counseling, parenting or family-planning classes.

30 (5) If the participant must overcome challenges prior to
31 employment, the contract shall include a list of the identified
32 challenges and an individualized plan for overcoming them.

33 (6) If the participant is a teenage parent, he or she may
34 work, but the contract shall include the requirements that the
35 participant:

36 (A) Remain in an educational activity to complete high
37 school, obtain a general equivalency diploma or obtain voca-
38 tional training and make satisfactory scholastic progress;

39 (B) Attend parenting classes or participate in a mentorship
40 program, or both, if appropriate; and

41 (C) Live at home with his or her parent or guardian or in
42 some other adult-supervised arrangements if he or she is an
43 unemancipated minor.

44 (7) If the participant is under the age of twenty years and
45 does not have a high school diploma or its equivalent, the
46 contract shall include requirements to participate in mandatory
47 education or training which, if the participant is unemployed,
48 may include a return to high school, with satisfactory scholastic
49 progress required.

50 (b) In order to receive cash assistance, the participant shall
51 enter into a personal responsibility contract. If the participant
52 refuses to sign the personal responsibility contract, the partici-
53 pant and family members are ineligible to receive cash assis-
54 tance: *Provided*, That a participant who alleges that the terms
55 of a personal responsibility contract are inappropriate based on
56 his or her individual circumstances may request and shall be
57 provided a fair and impartial hearing in accordance with
58 administrative procedures established by the department and
59 due process of law. A participant who signs a personal responsi-
60 bility contract, or complies with a personal responsibility
61 contract, does not waive his or her right to request and receive
62 a hearing under this subsection.

63 (c) Personal responsibility contracts shall be drafted by the
64 department on a case-by-case basis; take into consideration the
65 individual circumstances of each beneficiary; reviewed and
66 reevaluated periodically, but not less than on an annual basis;
67 and, in the discretion of the department, amended or extended
68 on a periodic basis.

§9-9-11. Breach of contract; notice; sanctions.

1 (a) The department may refuse to extend or renew a
2 personal responsibility contract and the benefits received by the
3 beneficiary, or may terminate an existing contract and benefits,
4 if it finds any of the following:

5 (1) Fraud or deception by the beneficiary in applying for or
6 receiving program benefits;

7 (2) A substantial breach by the beneficiary of the require-
8 ments and obligations set forth in the personal responsibility
9 contract; or

10 (3) A violation by the beneficiary of any provision of the
11 personal responsibility contract, this article, or any rule
12 promulgated by the secretary pursuant to this article.

13 (b) In the event the department determines that a personal
14 responsibility contract or the benefits received by the benefi-
15 ciary are subject to revocation or termination, written notice of
16 the revocation or termination, and the reason for the revocation
17 or termination, shall be deposited in the United States mail,
18 postage prepaid and addressed to the beneficiary at his or her
19 last known address at least thirteen days prior to the termination
20 or revocation. The notice shall state the action being taken by
21 the department and grant to the beneficiary a reasonable
22 opportunity to be heard at a fair and impartial hearing before
23 the department in accordance with administrative procedures
24 established by the department and due process of law.

25 (c) In any hearing conducted pursuant to the provisions of
26 this section, the beneficiary has the burden of proving that his
27 or her benefits were improperly terminated and shall bear his or
28 her own costs, including attorneys fees.

29 (d) The secretary shall determine by rule what constitutes
30 de minimis violations and those violations subject to sanctions
31 and maximum penalties. In the event the department finds that
32 a beneficiary has violated any provision of this article, of his or
33 her personal responsibility contract or any applicable depart-
34 ment rule, the department shall impose sanctions against the
35 beneficiary as follows:

36 (1) For the first violation, a one-third reduction of benefits
37 for three months;

38 (2) For the second violation, a two-thirds reduction of
39 benefits for three months; and

40 (3) For the third violation, a total termination of benefits for
41 a minimum period of six months.

42 (e) For any sanction imposed pursuant to subsection (d) of
43 this section, if the beneficiary corrects the violation or other-
44 wise comes into compliance within thirteen days of the date of
45 the notice of the sanction, the reduction in benefits shall not be
46 imposed, but the violation shall count in determining the level
47 of sanction to be imposed for any future violation. Once a
48 reduction in benefits is in effect, it shall remain in effect for the
49 designated time period: *Provided*, That if a participant incurs a
50 subsequent sanction before the sanction for a previous violation
51 has expired, the sanctions shall run concurrently: *Provided*,
52 *however*, That if a third violation occurs before the period for
53 a previous sanction has expired, benefits shall be terminated
54 and may not be reinstated until the six-month termination
55 period has expired and the violation which resulted in the third
56 sanction has been either corrected or excused.

§9-9-12. Diversionary assistance allowance in lieu of monthly cash assistance.

1 (a) In order to encourage at-risk families not to apply for
2 ongoing monthly cash assistance from the state, the secretary
3 may issue one-time diversionary assistance allowances to
4 families in an amount not to exceed the equivalent of four
5 months of cash assistance in order to enable the families to
6 become immediately self-supporting.

7 (b) The secretary shall establish by rule the standards to be
8 considered in making diversionary assistance allowances.

9 (c) Nothing in this section may be construed to require that
10 the department or any assistance issued pursuant to this section
11 be subject to any of the provisions of chapter thirty-one or
12 chapter forty-six-a of this code.

§9-9-13. Subsidized employment.

1 (a) To the extent that resources are available, an employer
2 may be paid a subsidy by the department to employ a parent or
3 caretaker-relative of an at-risk family if the employer agrees to
4 hire the works program participant at the end of the subsidized
5 period. If the employer does not hire the participant at the end
6 of the subsidized period, the program shall not use that em-
7 ployer for subsidized employment for the next twelve months.

8 (b) If the department determines that an employer has
9 demonstrated a pattern of discharging employees hired pursuant
10 to the provisions of this section subsequent to the expiration of
11 the subsidized period without good cause, the employer shall no
12 longer be eligible for participation in the subsidized employ-
13 ment program for a period to be determined by the department.

§9-9-14. Transitional assistance.

1 The West Virginia works program may provide transitional
2 assistance in the form of supportive services and allow at-risk
3 families to retain a portion of their cash assistance when their
4 earnings are below the federal poverty guideline, if considered
5 appropriate by the secretary.

§9-9-15. Interagency coordination.

1 The Legislature encourages the development of a system of
2 coordinated services, shared information and streamlined
3 application procedures between the program and the other
4 agencies within the department to implement the provisions of
5 this article. The secretary shall require the coordination of
6 activities between the program and the following agencies:

7 (a) The child support enforcement division for the purpose
8 of establishing paternity, promoting cooperation in the pursuit
9 of child support, encouraging noncustodial parents to get job
10 search assistance and determining eligibility for cash assistance
11 and support services;

12 (b) The bureau of public health for the purpose of determin-
13 ing appropriate immunization schedules, delivery systems and
14 verification procedures; and

15 (c) The bureau of medical services for the purpose of
16 reporting eligibility for medical assistance and transitional
17 benefits.

18 The secretary may require the coordination of procedures
19 and services with any other agency he or she considers neces-
20 sary to implement this program: *Provided*, That all agencies
21 coordinating services with the department shall, when provided
22 with access to department records or information, abide by state
23 and federal confidentiality requirements including the provi-
24 sions of section twenty of this article.

25 The secretary shall propose any rules, including emergency
26 rules, necessary for the coordination of various agency activi-
27 ties in the implementation of this section.

§9-9-16. Intergovernmental coordination.

1 The commissioner of the bureau of employment programs
2 and the superintendent of the department of education shall
3 assist the secretary in the establishment of the West Virginia
4 works program. Prior to implementation of this program, each
5 department shall address in its respective plan the method in
6 which its resources will be devoted to facilitate the identifica-
7 tion of or delivery of services for participants and shall coordi-
8 nate its respective programs with the department in the provi-
9 sion of services to participants and their families. Each county
10 board of education shall designate a person to coordinate with
11 the local department of health and human resources office the
12 board's services to participant families and that person shall
13 work to achieve coordination at the local level.

14 The secretary and the superintendent shall develop a plan
15 for program implementation to occur with the use of existing
16 state facilities and county transportation systems within the
17 project areas whenever practicable. This agreement shall
18 include, but not be limited to, the use of buildings, grounds and
19 buses. Whenever possible, the supportive services, education
20 and training programs should be offered at the existing school
21 facilities.

22 The commissioner shall give priority to participants of the
23 works program within the various programs of the bureau of
24 employment programs. The secretary and the commissioner
25 shall develop reporting and monitoring mechanisms between
26 their respective agencies.

§9-9-17. Public-private partnerships.

1 The secretary may enter into agreements with any private,
2 nonprofit, charitable or religious organizations to promote the
3 development of the community support services necessary for
4 the effective implementation of this program, including
5 cooperative arrangements with private employers of former
6 program participants for the purpose of obtaining and maintain-
7 ing employer-based family health insurance coverage for
8 former participants and their spouses and dependent children
9 through direct payments to the employers out of funds appropri-
10 ated for the cooperative agreements.

§9-9-19. Legislative oversight.

1 The legislative oversight commission on health and human
2 resources accountability is charged with immediate and
3 ongoing oversight of the program created by this article. This
4 commission shall study, review and examine the work of the
5 program, the department and its staff; study, review and
6 examine all rules proposed by the department; and monitor the
7 development and implementation of the West Virginia works
8 program. The commission shall review and make recommenda-
9 tions to the Legislature and the legislative rule-making review
10 committee regarding any plan, policy or rule proposed by the
11 secretary, the department or the program.

§9-9-20. Confidentiality, fines and penalties.

1 (a) Except as otherwise provided in this code or rules, all
2 records and information of the department regarding any
3 beneficiary or beneficiary's family members, including food
4 stamps, child support and medicaid records, are confidential
5 and shall not be released, except under the following circum-
6 stances:

7 (1) If permissible under state or federal rules or regulations;

8 (2) Upon the express written consent of the beneficiary or
9 his or her legally authorized representative;

10 (3) Pursuant to an order of any court of record of this state
11 or the United States based upon a finding that the information

12 is sufficiently relevant to a proceeding before the court to
13 outweigh the importance of maintaining the confidentiality
14 established by this section: *Provided*, That all confidential
15 records and information presented to the court shall after review
16 be sealed by the clerk and shall not be open to any person
17 except upon order of the court upon good cause being shown
18 for the confidential records and information to be opened; or

19 (4) To a department or division of the state or other entity,
20 pursuant to the terms of an interagency or other agreement:
21 *Provided*, That any agreement specifically references this
22 section and extends its requirements for confidentiality to the
23 other entity receiving the records or information, its agents and
24 employees.

25 (b) Any person who knowingly and willfully releases or
26 causes to be released the confidential records and information
27 described in this section, except under the specific circum-
28 stances enumerated in this section, is guilty of a misdemeanor
29 and, upon conviction thereof, shall be fined not more than five
30 hundred dollars or confined in the county or regional jail for not
31 more than six months, or both.

§9-9-21. Temporary assistance for needy families rainy day fund.

1 There is hereby established in the state treasury a special
2 fund designated as the “temporary assistance for needy families
3 rainy day fund” into which the secretary shall cause to be
4 initially deposited the amount of thirty-six million dollars in
5 federal block grant moneys. The purpose of this fund is to serve
6 as a safety net for the program established in this article and it
7 shall be used for continued support of the program in the event
8 of reduced federal funding, economic downturn, natural disaster
9 or other event which depletes the program’s funds or makes
10 them otherwise unavailable, if determined by the secretary to be
11 necessary and appropriate under the circumstances.

CHAPTER 141

(Com. Sub. for S. B. 516 — By Senators Tomblin, Mr. President, Helmick, Walker, Hunter, Sprouse, Wooton, Mitchell, Prezioso, McCabe, Craigo, Snyder, Minard, Kessler, Ross, Anderson, Sharpe, Plymale, Edgell, Ball, Love, Dawson, Unger, Redd, Bowman and Jackson)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-a; to amend article fifteen, chapter thirty-three of said code by adding thereto a new section, designated section four-f; to amend article sixteen of said chapter by adding thereto a new section, designated section three-o; to amend article twenty-four of said chapter by adding thereto a new section, designated section seven-f; to amend article twenty-five of said chapter by adding thereto a new section, designated section eight-e; and to amend article twenty-five-a of said chapter by adding thereto a new section, designated section eight-e, all relating to requiring insurance companies that provide health care coverage to provide for colorectal cancer examinations and laboratory tests for colorectal cancer.

Be it enacted by the Legislature of West Virginia:

That article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section seven-a; that article fifteen, chapter thirty-three of said code be amended by adding thereto a new section, designated section four-f; that article sixteen of said chapter be amended by adding thereto a new section, designated section three-o; that article twenty-four of said chapter be amended by adding thereto a new section, designated section seven-f; that article twenty-

five of said chapter be amended by adding thereto a new section, designated section eight-e; and that article twenty-five-a of said chapter be amended by adding thereto a new section, designated section eight-e, all to read as follows:

Chapter

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

33. Insurance.

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

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-7a. Additional mandated benefits; third party reimbursement for colorectal cancer examination and laboratory testing.

1 (a) Notwithstanding any provision of any policy, provision,
2 contract, plan or agreement applicable to this article, reimburse-
3 ment or indemnification for colorectal cancer examinations and
4 laboratory testing may not be denied for any nonsymptomatic
5 person fifty years of age or older, or a symptomatic person
6 under fifty years of age, when reimbursement or indemnity for
7 laboratory or X-ray services are covered under the policy and
8 are performed for colorectal cancer screening or diagnostic
9 purposes at the direction of a person licensed to practice
10 medicine and surgery by the board of medicine. The tests are as
11 follows: An annual fecal occult blood test, a flexible
12 sigmoidoscopy repeated every five years, a colonoscopy
13 repeated every ten years and a double contrast barium enema
14 repeated every five years.

15 (b) A symptomatic person is defined as: (1) An individual
16 who experiences a change in bowel habits, rectal bleeding or
17 stomach cramps that are persistent; or (2) an individual who
18 poses a higher than average risk for colorectal cancer because
19 he or she has had colorectal cancer or polyps, inflammatory
20 bowel disease, or an immediate family history of such condi-
21 tions.

22 (c) The same deductibles, coinsurance, network restrictions
23 and other limitations for covered services found in the policy,
24 provision, contract, plan or agreement of the covered person
25 may apply to colorectal cancer examinations and laboratory
26 testing.

CHAPTER 33. INSURANCE.

Article

- 15. Accident and Sickness Insurance.
- 16. Group Accident and Sickness Insurance.
- 24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.
- 25. Health Care Corporations.
- 25A. Health Maintenance Organization Act.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4f. Third party reimbursement for colorectal cancer examination and laboratory testing.

1 (a) Notwithstanding any provision of any policy, provision,
2 contract, plan or agreement applicable to this article, reimburse-
3 ment or indemnification for colorectal cancer examinations and
4 laboratory testing may not be denied for any nonsymptomatic
5 person fifty years of age or older, or a symptomatic person
6 under fifty years of age, when reimbursement or indemnity for
7 laboratory or X-ray services are covered under the policy and

8 are performed for colorectal cancer screening or diagnostic
9 purposes at the direction of a person licensed to practice
10 medicine and surgery by the board of medicine. The tests are as
11 follows: An annual fecal occult blood test, a flexible
12 sigmoidoscopy repeated every five years, a colonoscopy
13 repeated every ten years and a double contrast barium enema
14 repeated every five years.

15 (b) A symptomatic person is defined as: (i) An individual
16 who experiences a change in bowel habits, rectal bleeding or
17 stomach cramps that are persistent; or (ii) an individual who
18 poses a higher than average risk for colorectal cancer because
19 he or she has had colorectal cancer or polyps, inflammatory
20 bowel disease, or an immediate family history of such condi-
21 tions.

22 (c) The same deductibles, coinsurance, network restrictions
23 and other limitations for covered services found in the policy,
24 provision, contract, plan or agreement of the covered person
25 may apply to colorectal cancer examinations and laboratory
26 testing.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3o. Third party reimbursement for colorectal cancer examination and laboratory testing.

1 (a) Notwithstanding any provision of any policy, provision,
2 contract, plan or agreement applicable to this article, reimburse-
3 ment or indemnification for colorectal cancer examinations and
4 laboratory testing may not be denied for any nonsymptomatic
5 person fifty years of age or older, or a symptomatic person
6 under fifty years of age, when reimbursement or indemnity for
7 laboratory or X-ray services are covered under the policy and
8 are performed for colorectal cancer screening or diagnostic
9 purposes at the direction of a person licensed to practice
10 medicine and surgery by the board of medicine. The tests are as

11 follows: An annual fecal occult blood test, a flexible
12 sigmoidoscopy repeated every five years, a colonoscopy
13 repeated every ten years and a double contrast barium enema
14 repeated every five years.

15 (b) A symptomatic person is defined as: (i) An individual
16 who experiences a change in bowel habits, rectal bleeding or
17 stomach cramps that are persistent; or (ii) an individual who
18 poses a higher than average risk for colorectal cancer because
19 he or she has had colorectal cancer or polyps, inflammatory
20 bowel disease, or an immediate family history of such condi-
21 tions.

22 (c) The same deductibles, coinsurance, network restrictions
23 and other limitations for covered services found in the policy,
24 provision, contract, plan or agreement of the covered person
25 may apply to colorectal cancer examinations and laboratory
26 testing.

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

**§33-24-7f. Third party reimbursement for colorectal cancer
examination and laboratory testing.**

1 (a) Notwithstanding any provision of any policy, provision,
2 contract, plan or agreement applicable to this article, reimburse-
3 ment or indemnification for colorectal cancer examinations and
4 laboratory testing may not be denied for any nonsymptomatic
5 person fifty years of age or older, or a symptomatic person
6 under fifty years of age, when reimbursement or indemnity for
7 laboratory or X-ray services are covered under the policy and
8 are performed for colorectal cancer screening or diagnostic
9 purposes at the direction of a person licensed to practice
10 medicine and surgery by the board of medicine. The tests are as
11 follows: An annual fecal occult blood test, a flexible
12 sigmoidoscopy repeated every five years, a colonoscopy

13 repeated every ten years and a double contrast barium enema
14 repeated every five years.

15 (b) A symptomatic person is defined as: (i) An individual
16 who experiences a change in bowel habits, rectal bleeding or
17 stomach cramps that are persistent; or (ii) an individual who
18 poses a higher than average risk for colorectal cancer because
19 he or she has had colorectal cancer or polyps, inflammatory
20 bowel disease, or an immediate family history of such condi-
21 tions.

22 (c) The same deductibles, coinsurance, network restrictions
23 and other limitations for covered services found in the policy,
24 provision, contract, plan or agreement of the covered person
25 may apply to colorectal cancer examinations and laboratory
26 testing.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8e. Third party reimbursement for colorectal cancer examination and laboratory testing.

1 (a) Notwithstanding any provision of any policy, provision,
2 contract, plan or agreement applicable to this article, reimburse-
3 ment or indemnification for colorectal cancer examinations and
4 laboratory testing may not be denied for any nonsymptomatic
5 person fifty years of age or older, or a symptomatic person
6 under fifty years of age, when reimbursement or indemnity for
7 laboratory or X-ray services are covered under the policy and
8 are performed for colorectal cancer screening or diagnostic
9 purposes at the direction of a person licensed to practice
10 medicine and surgery by the board of medicine. The tests are as
11 follows: An annual fecal occult blood test, a flexible
12 sigmoidoscopy repeated every five years, a colonoscopy
13 repeated every ten years and a double contrast barium enema
14 repeated every five years.

15 (b) A symptomatic person is defined as: (i) An individual
16 who experiences a change in bowel habits, rectal bleeding or
17 stomach cramps that are persistent; or (ii) an individual who
18 poses a higher than average risk for colorectal cancer because
19 he or she has had colorectal cancer or polyps, inflammatory
20 bowel disease, or an immediate family history of such condi-
21 tions.

22 (c) The same deductibles, coinsurance, network restrictions
23 and other limitations for covered services found in the policy,
24 provision, contract, plan or agreement of the covered person
25 may apply to colorectal cancer examinations and laboratory
26 testing.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

**§33-25A-8e. Third party reimbursement for colorectal cancer
examination and laboratory testing.**

1 (a) Notwithstanding any provision of any policy, provision,
2 contract, plan or agreement applicable to this article, reimburse-
3 ment or indemnification for colorectal cancer examinations and
4 laboratory testing may not be denied for any nonsymptomatic
5 person fifty years of age or older, or a symptomatic person
6 under fifty years of age, when reimbursement or indemnity for
7 laboratory or X-ray services are covered under the policy and
8 are performed for colorectal cancer screening or diagnostic
9 purposes at the direction of a person licensed to practice
10 medicine and surgery by the board of medicine. The tests are as
11 follows: An annual fecal occult blood test, a flexible
12 sigmoidoscopy repeated every five years, a colonoscopy
13 repeated every ten years and a double contrast barium enema
14 repeated every five years.

15 (b) A symptomatic person is defined as: (i) An individual
16 who experiences a change in bowel habits, rectal bleeding or
17 stomach cramps that are persistent; or (ii) an individual who

18 poses a higher than average risk for colorectal cancer because
19 he or she has had colorectal cancer or polyps, inflammatory
20 bowel disease, or an immediate family history of such condi-
21 tions.

22 (c) The same deductibles, coinsurance, network restrictions
23 and other limitations for covered services found in the policy,
24 provision, contract, plan or agreement of the covered person
25 may apply to colorectal cancer examinations and laboratory
26 testing.

CHAPTER 142

(H. B. 4084 — By Delegates Thompson, Beane,
Faircloth, Compton, Douglas and Hutchins)

[Passed March 9, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-one, article one; section twenty-one, article fifteen; section three-i, article sixteen; section seven-e, article twenty-four; section eight-d, article twenty-five; and section eight-d, article twenty-five-a, all of chapter thirty-three of said code, all relating to eliminating the date restrictions on insurance coverage for emergency medical services.

Be it enacted by the Legislature of West Virginia:

That section eight, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted,; that section twenty-one, article one; section twenty-one, article fifteen; section three-i, article sixteen; section seven-e, article twenty-four; section eight-d, article twenty-five; and

section eight-d, article twenty-five-a, all of chapter thirty-three of said code be amended and reenacted, all to read as follows:

Chapter

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

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

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-8. Conditions of insurance program.

1 The insurance plans provided for in this article shall be
2 designed by the public employees insurance agency:

3 (1) To provide a reasonable relationship between the
4 hospital, surgical, medical and prescription drug benefits to be
5 included and the expected reasonable and customary hospital,
6 surgical, medical and prescription drug expenses as established
7 by the director to be incurred by the affected employee, his or
8 her spouse and his or her dependents. The establishment of
9 reasonable and customary expenses by the public employees
10 insurance agency pursuant to the preceding sentence is not
11 subject to the state administrative procedures act in chapter
12 twenty-nine-a of this code;

13 (2) To include reasonable controls which may include
14 deductible and coinsurance provisions applicable to some or all
15 of the benefits, and shall include other provisions, including,

16 but not limited to, copayments, preadmission certification, case
17 management programs and preferred provider arrangements;

18 (3) To prevent unnecessary utilization of the various
19 hospital, surgical, medical and prescription drug services
20 available;

21 (4) To provide reasonable assurance of stability in future
22 years for the plans;

23 (5) To provide major medical insurance for the employees
24 covered under this article;

25 (6) To provide certain group life and accidental death
26 insurance for the employees covered under this article;

27 (7) To include provisions for the coordination of benefits
28 payable by the terms of the plans with the benefits to which the
29 employee, or his or her spouse or his or her dependents may be
30 entitled by the provisions of any other group hospital, surgical,
31 medical, major medical, or prescription drug insurance or any
32 combination thereof;

33 (8) To provide a cash incentive plan for employees, spouses
34 and dependents to increase utilization of, and to encourage the
35 use of, lower cost alternative health care facilities, health care
36 providers and generic drugs. The plan shall be reviewed
37 annually by the director and the advisory board;

38 (9) To provide "wellness" programs and activities which
39 will include, but not be limited to, benefit plan incentives to
40 discourage tobacco, alcohol and chemical abuse and an educa-
41 tional program to encourage proper diet and exercise. In
42 establishing "wellness" programs, the division of vocational
43 rehabilitation shall cooperate with the public employees
44 insurance agency in establishing statewide wellness programs.
45 The director of the public employees insurance agency shall
46 contract with county boards of education for the use of facili-

47 ties, equipment or any service related to that purpose. Boards of
48 education may charge only the cost of janitorial service and
49 increased utilities for the use of the gymnasium and related
50 equipment. The cost of the exercise program shall be paid by
51 county boards of education, the public employees insurance
52 agency, or participating employees, their spouses or depend-
53 ents. All exercise programs shall be made available to all
54 employees, their spouses or dependents and shall not be limited
55 to employees of county boards of education;

56 (10) To provide a program, to be administered by the
57 director, for a patient audit plan with reimbursement up to a
58 maximum of one thousand dollars annually, to employees for
59 discovery of health care provider or hospital overcharges when
60 the affected employee brings the overcharge to the attention of
61 the plan. The hospital or health care provider shall certify to the
62 director that it has provided, prior to or simultaneously with the
63 submission of the statement of charges for payments, an
64 itemized statement of the charges to the employee participant
65 for which payment is requested of the plan;

66 (11) To require that all employers give written notice to
67 each covered employee prior to institution of any changes in
68 benefits to employees, and to include appropriate penalty for
69 any employer not providing the required information to any
70 employee; and

71 (12)(a) To provide coverage for emergency services under
72 offered plans. For the purposes of this subsection, "emergency
73 services" means services provided in or by a hospital emer-
74 gency facility, an ambulance providing related services under
75 the provisions of article four-c, chapter sixteen of this code or
76 the private office of a dentist to evaluate and treat a medical
77 condition manifesting itself by the sudden, and at the time,
78 unexpected onset of symptoms that require immediate medical
79 attention and for which failure to provide medical attention

80 would result in serious impairment to bodily function, serious
81 dysfunction to any bodily organ or part, or would place the
82 person's health in jeopardy.

83 (b) From the first day of July, one thousand nine hundred
84 ninety-eight, plans shall provide coverage for emergency
85 services, including any prehospital services, to the extent
86 necessary to screen and stabilize the covered person. The plans
87 shall reimburse, less any applicable copayments, deductibles,
88 or coinsurance, for emergency services rendered and related to
89 the condition for which the covered person presented. Prior
90 authorization of coverage shall not be required for the screening
91 services if a prudent layperson acting reasonably would have
92 believed that an emergency medical condition existed. Prior
93 authorization of coverage shall not be required for stabilization
94 if an emergency medical condition exists. In the event that prior
95 authorization was obtained, the authorization may not be
96 retracted after the services have been provided except when the
97 authorization was based on a material misrepresentation about
98 the medical condition by the provider of the services or the
99 insured person. The provider of the emergency services and the
100 plan representative shall make a good faith effort to communi-
101 cate with each other in a timely fashion to expedite
102 postevaluation or poststabilization services. Payment of claims
103 for emergency services shall be based on the retrospective
104 review of the presenting history and symptoms of the covered
105 person.

106 (c) For purposes of this subdivision:

107 (A) "Emergency services" means those services required to
108 screen for or treat an emergency medical condition until the
109 condition is stabilized, including prehospital care;

110 (B) "Prudent layperson" means a person who is without
111 medical training and who draws on his or her practical experi-
112 ence when making a decision regarding whether an emergency

113 medical condition exists for which emergency treatment should
114 be sought;

115 (C) “Emergency medical condition for the prudent
116 layperson” means one that manifests itself by acute symptoms
117 of sufficient severity, including severe pain, such that the
118 person could reasonably expect the absence of immediate
119 medical attention to result in serious jeopardy to the individ-
120 ual’s health, or, with respect to a pregnant woman, the health of
121 the unborn child; serious impairment to bodily functions; or
122 serious dysfunction of any bodily organ or part;

123 (D) “Stabilize” means with respect to an emergency
124 medical condition, to provide medical treatment of the condi-
125 tion necessary to assure, with reasonable medical probability
126 that no medical deterioration of the condition is likely to result
127 from or occur during the transfer of the individual from a
128 facility: *Provided*, That this provision may not be construed to
129 prohibit, limit or otherwise delay the transportation required for
130 a higher level of care than that possible at the treating facility;

131 (E) “Medical screening examination” means an appropriate
132 examination within the capability of the hospital’s emergency
133 department, including ancillary services routinely available to
134 the emergency department, to determine whether or not an
135 emergency medical condition exists; and

136 (F) “Emergency medical condition” means a condition that
137 manifests itself by acute symptoms of sufficient severity
138 including severe pain such that the absence of immediate
139 medical attention could reasonably be expected to result in
140 serious jeopardy to the individual’s health or with respect to a
141 pregnant woman the health of the unborn child, serious impair-
142 ment to bodily functions or serious dysfunction of any bodily
143 part or organ.

CHAPTER 33. INSURANCE.**Article**

1. **Definitions.**
15. **Accident and Sickness Insurance.**
16. **Group Accident and Sickness Insurance.**
24. **Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.**
25. **Health Care Corporations.**
- 25A. **Health Maintenance Organization Act.**

ARTICLE 1. DEFINITIONS.**§33-1-21. Emergency services.**

1 (a) Emergency services are: Those services provided in or
2 by a hospital emergency facility, an ambulance providing
3 related services under the provisions of article four-c, chapter
4 sixteen of this code or the private office of a dentist to evaluate
5 and treat a medical condition manifesting itself by the sudden,
6 and at the time, unexpected onset of symptoms that require
7 immediate medical attention and that failure to provide medical
8 attention would result in serious impairment to bodily function,
9 serious dysfunction to any bodily organ or part, or would place
10 the person's health in jeopardy.

11 (b) From the first day of July, one thousand nine hundred
12 ninety-eight, the following provisions apply:

13 (1) "Emergency medical services" means those services
14 required to screen for or treat an emergency medical condition
15 until the condition is stabilized, including prehospital care;

16 (2) "Prudent layperson" means a person who is without
17 medical training and who draws on his or her practical experi-
18 ence when making a decision regarding whether an emergency
19 medical condition exists for which emergency treatment should
20 be sought;

21 (3) "Emergency medical condition for the prudent
22 layperson" means one that manifests itself by acute symptoms
23 of sufficient severity, including severe pain, such that the
24 person could reasonably expect the absence of immediate
25 medical attention to result in serious jeopardy to the individ-
26 ual's health, or, with respect to a pregnant woman, the health of
27 the unborn child; serious impairment to bodily functions; or
28 serious dysfunction of any bodily organ or part;

29 (4) "Stabilize" means with respect to an emergency medical
30 condition, to provide medical treatment of the condition
31 necessary to assure, with reasonable medical probability that no
32 medical deterioration of the condition is likely to result from or
33 occur during the transfer of the individual from a facility:
34 *Provided*, That this provision may not be construed to prohibit,
35 limit or otherwise delay the transportation required for a higher
36 level of care than that possible at the treating facility;

37 (5) "Medical screening examination" means an appropriate
38 examination within the capability of the hospital's emergency
39 department, including ancillary services routinely available to
40 the emergency department, to determine whether or not an
41 emergency medical condition exists; and

42 (6) "Emergency medical condition" means a condition that
43 manifests itself by acute symptoms of sufficient severity
44 including severe pain such that the absence of immediate
45 medical attention could reasonably be expected to result in
46 serious jeopardy to the individual's health or with respect to a
47 pregnant woman the health of the unborn child, serious impair-
48 ment to bodily functions or serious dysfunction of any bodily
49 part or organ.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-21. Coverage of emergency services.

1 From the first day of July, one thousand nine hundred
2 ninety-eight:

3 (a) Every insurer shall provide coverage for emergency
4 medical services, including prehospital services, to the extent
5 necessary to screen and to stabilize an emergency medical
6 condition. The insurer shall not require prior authorization of
7 the screening services if a prudent layperson acting reasonably
8 would have believed that an emergency medical condition
9 existed. Prior authorization of coverage shall not be required for
10 stabilization if an emergency medical condition exists. Payment
11 of claims for emergency services shall be based on the retro-
12 spective review of the presenting history and symptoms of the
13 covered person.

14 (b) An insurer that has given prior authorization for
15 emergency services shall cover the services and shall not retract
16 the authorization after the services have been provided unless
17 the authorization was based on a material misrepresentation
18 about the covered person's health condition made by the
19 referring provider, the provider of the emergency services or the
20 covered person.

21 (c) Coverage of emergency services shall be subject to
22 coinsurance, copayments and deductibles applicable under the
23 health benefit plan.

24 (d) The emergency department and the insurer shall make
25 a good faith effort to communicate with each other in a timely
26 fashion to expedite postevaluation or poststabilization services
27 in order to avoid material deterioration of the covered person's
28 condition.

29 (e) As used in this section:

30 (1) "Emergency medical services" means those services
31 required to screen for or treat an emergency medical condition
32 until the condition is stabilized, including prehospital care;

33 (2) "Prudent layperson" means a person who is without
34 medical training and who draws on his or her practical experi-
35 ence when making a decision regarding whether an emergency
36 medical condition exists for which emergency treatment should
37 be sought;

38 (3) "Emergency medical condition for the prudent
39 layperson" means one that manifests itself by acute symptoms
40 of sufficient severity, including severe pain, such that the
41 person could reasonably expect the absence of immediate
42 medical attention to result in serious jeopardy to the individ-
43 ual's health, or, with respect to a pregnant woman, the health of
44 the unborn child; serious impairment to bodily functions; or
45 serious dysfunction of any bodily organ or part;

46 (4) "Stabilize" means with respect to an emergency medical
47 condition, to provide medical treatment of the condition
48 necessary to assure, with reasonable medical probability that no
49 medical deterioration of the condition is likely to result from or
50 occur during the transfer of the individual from a facility:
51 *Provided*, That this provision may not be construed to prohibit,
52 limit or otherwise delay the transportation required for a higher
53 level of care than that possible at the treating facility;

54 (5) "Medical screening examination" means an appropriate
55 examination within the capability of the hospital's emergency
56 department, including ancillary services routinely available to
57 the emergency department, to determine whether or not an
58 emergency medical condition exists; and

59 (6) "Emergency medical condition" means a condition that
60 manifests itself by acute symptoms of sufficient severity
61 including severe pain such that the absence of immediate

57 that no medical deterioration of the condition is likely to result
58 from or occur during the transfer of the individual from a
59 facility: *Provided*, That this provision may not be construed to
60 prohibit, limit or otherwise delay the transportation required for
61 a higher level of care than that possible at the treating facility;

62 (E) "Medical screening examination" means an appropriate
63 examination within the capability of the hospital's emergency
64 department, including ancillary services routinely available to
65 the emergency department, to determine whether or not an
66 emergency medical condition exists; and

67 (F) "Emergency medical condition" means a condition that
68 manifests itself by acute symptoms of sufficient severity
69 including severe pain such that the absence of immediate
70 medical attention could reasonably be expected to result in
71 serious jeopardy to the individual's health or with respect to a
72 pregnant woman the health of the unborn child, serious impair-
73 ment to bodily functions or serious dysfunction of any bodily
74 part or organ.

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

§33-24-7e. Coverage of emergency services.

1 (a) Notwithstanding any provision of any policy, provision,
2 contract, plan or agreement to which this article applies, any
3 entity regulated by this article shall provide as benefits to all
4 subscribers and members coverage for emergency services. A
5 policy, provision, contract, plan or agreement may apply to
6 emergency services the same deductibles, coinsurance and other
7 limitations as apply to other covered services: *Provided*, That
8 preauthorization or precertification shall not be required.

9 (b) From the first day of July, one thousand nine hundred
10 ninety-eight, the following provisions apply:

11 (1) Every insurer shall provide coverage for emergency
12 medical services, including prehospital services, to the extent
13 necessary to screen and to stabilize an emergency medical
14 condition. The insurer shall not require prior authorization of
15 the screening services if a prudent layperson acting reasonably
16 would have believed that an emergency medical condition
17 existed. Prior authorization of coverage shall not be required for
18 stabilization if an emergency medical condition exists. Payment
19 of claims for emergency services shall be based on the retro-
20 spective review of the presenting history and symptoms of the
21 covered person.

22 (2) An insurer that has given prior authorization for
23 emergency services shall cover the services and shall not retract
24 the authorization after the services have been provided unless
25 the authorization was based on a material misrepresentation
26 about the covered person's health condition made by the
27 referring provider, the provider of the emergency services or the
28 covered person.

29 (3) Coverage of emergency services shall be subject to
30 coinsurance, copayments and deductibles applicable under the
31 health benefit plan.

32 (4) The emergency department and the insurer shall make
33 a good faith effort to communicate with each other in a timely
34 fashion to expedite postevaluation or poststabilization services
35 in order to avoid material deterioration of the covered person's
36 condition.

37 (5) As used in this section:

38 (A) "Emergency medical services" means those services
39 required to screen for or treat an emergency medical condition
40 until the condition is stabilized, including prehospital care;

41 (B) “Prudent layperson” means a person who is without
42 medical training and who draws on his or her practical experi-
43 ence when making a decision regarding whether an emergency
44 medical condition exists for which emergency treatment should
45 be sought;

46 (C) “Emergency medical condition for the prudent
47 layperson” means one that manifests itself by acute symptoms
48 of sufficient severity, including severe pain, such that the
49 person could reasonably expect the absence of immediate
50 medical attention to result in serious jeopardy to the individ-
51 ual’s health, or, with respect to a pregnant woman, the health of
52 the unborn child; serious impairment to bodily functions; or
53 serious dysfunction of any bodily organ or part;

54 (D) “Stabilize” means with respect to an emergency
55 medical condition, to provide medical treatment of the condi-
56 tion necessary to assure, with reasonable medical probability
57 that no medical deterioration of the condition is likely to result
58 from or occur during the transfer of the individual from a
59 facility: *Provided*, That this provision may not be construed to
60 prohibit, limit or otherwise delay the transportation required for
61 a higher level of care than that possible at the treating facility;

62 (E) “Medical screening examination” means an appropriate
63 examination within the capability of the hospital’s emergency
64 department, including ancillary services routinely available to
65 the emergency department, to determine whether or not an
66 emergency medical condition exists; and

67 (F) “Emergency medical condition” means a condition that
68 manifests itself by acute symptoms of sufficient severity
69 including severe pain such that the absence of immediate
70 medical attention could reasonably be expected to result in
71 serious jeopardy to the individual’s health or with respect to a
72 pregnant woman the health of the unborn child, serious impair-

73 ment to bodily functions or serious dysfunction of any bodily
74 part or organ.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8d. Coverage of emergency services.

1 (a) Notwithstanding any provision of any policy, provision,
2 contract, plan or agreement to which this article applies, any
3 entity regulated by this article shall provide as benefits to all
4 subscribers and members coverage for emergency services. A
5 policy, provision, contract, plan or agreement may apply to
6 emergency services the same deductibles, coinsurance and other
7 limitations as apply to other covered services: *Provided*, That
8 preauthorization or precertification shall not be required.

9 (b) From the first day of July, one thousand nine hundred
10 ninety-eight, the following provisions apply:

11 (1) Every insurer shall provide coverage for emergency
12 medical services, including prehospital services, to the extent
13 necessary to screen and to stabilize an emergency medical
14 condition. The insurer shall not require prior authorization of
15 the screening services if a prudent layperson acting reasonably
16 would have believed that an emergency medical condition
17 existed. Prior authorization of coverage shall not be required for
18 stabilization if an emergency medical condition exists. Payment
19 of claims for emergency services shall be based on the retro-
20 spective review of the presenting history and symptoms of the
21 covered person.

22 (2) An insurer that has given prior authorization for
23 emergency services shall cover the services and shall not retract
24 the authorization after the services have been provided unless
25 the authorization was based on a material misrepresentation
26 about the covered person's health condition made by the
27 referring provider, the provider of the emergency services or the
28 covered person.

29 (3) Coverage of emergency services shall be subject to
30 coinsurance, copayments and deductibles applicable under the
31 health benefit plan.

32 (4) The emergency department and the insurer shall make
33 a good faith effort to communicate with each other in a timely
34 fashion to expedite postevaluation or poststabilization services
35 in order to avoid material deterioration of the covered person's
36 condition.

37 (5) As used in this section:

38 (A) "Emergency medical services" means those services
39 required to screen for or treat an emergency medical condition
40 until the condition is stabilized, including prehospital care;

41 (B) "Prudent layperson" means a person who is without
42 medical training and who draws on his or her practical experi-
43 ence when making a decision regarding whether an emergency
44 medical condition exists for which emergency treatment should
45 be sought;

46 (C) "Emergency medical condition for the prudent
47 layperson" means one that manifests itself by acute symptoms
48 of sufficient severity, including severe pain, such that the
49 person could reasonably expect the absence of immediate
50 medical attention to result in serious jeopardy to the individ-
51 ual's health, or, with respect to a pregnant woman, the health of
52 the unborn child; serious impairment to bodily functions; or
53 serious dysfunction of any bodily organ or part;

54 (D) "Stabilize" means with respect to an emergency
55 medical condition, to provide medical treatment of the condi-
56 tion necessary to assure, with reasonable medical probability
57 that no medical deterioration of the condition is likely to result
58 from or occur during the transfer of the individual from a
59 facility: *Provided*, That this provision may not be construed to

60 prohibit, limit or otherwise delay the transportation required for
61 a higher level of care than that possible at the treating facility;

62 (E) "Medical screening examination" means an appropriate
63 examination within the capability of the hospital's emergency
64 department, including ancillary services routinely available to
65 the emergency department, to determine whether or not an
66 emergency medical condition exists; and

67 (F) "Emergency medical condition" means a condition that
68 manifests itself by acute symptoms of sufficient severity
69 including severe pain such that the absence of immediate
70 medical attention could reasonably be expected to result in
71 serious jeopardy to the individual's health or with respect to a
72 pregnant woman the health of the unborn child, serious impair-
73 ment to bodily functions or serious dysfunction of any bodily
74 part or organ.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8d. Coverage of emergency services.

1 (a) Notwithstanding any provision of any policy, provision,
2 contract, plan or agreement to which this article applies, any
3 entity regulated by this article shall provide as benefits to all
4 subscribers and members coverage for emergency services. A
5 policy, provision, contract, plan or agreement may apply to
6 emergency services the same deductibles, coinsurance and other
7 limitations as apply to other covered services: *Provided*, That
8 preauthorization or precertification shall not be required.

9 (b) From the first day of July, one thousand nine hundred
10 ninety-eight, the following provisions apply:

11 (1) Every insurer shall provide coverage for emergency
12 medical services, including prehospital services, to the extent
13 necessary to screen and to stabilize an emergency medical
14 condition. The insurer shall not require prior authorization of

15 the screening services if a prudent layperson acting reasonably
16 would have believed that an emergency medical condition
17 existed. Prior authorization of coverage shall not be required for
18 stabilization if an emergency medical condition exists. Payment
19 of claims for emergency services shall be based on the retro-
20 spective review of the presenting history and symptoms of the
21 covered person.

22 (2) An insurer that has given prior authorization for
23 emergency services shall cover the services and shall not retract
24 the authorization after the services have been provided unless
25 the authorization was based on a material misrepresentation
26 about the covered person's health condition made by the
27 referring provider, the provider of the emergency services or the
28 covered person.

29 (3) Coverage of emergency services shall be subject to
30 coinsurance, copayments and deductibles applicable under the
31 health benefit plan.

32 (4) The emergency department and the insurer shall make
33 a good faith effort to communicate with each other in a timely
34 fashion to expedite postevaluation or poststabilization services
35 in order to avoid material deterioration of the covered person's
36 condition.

37 (5) As used in this section:

38 (A) "Emergency medical services" means those services
39 required to screen for or treat an emergency medical condition
40 until the condition is stabilized, including prehospital care;

41 (B) "Prudent layperson" means a person who is without
42 medical training and who draws on his or her practical experi-
43 ence when making a decision regarding whether an emergency
44 medical condition exists for which emergency treatment should
45 be sought;

46 (C) "Emergency medical condition for the prudent
47 layperson" means one that manifests itself by acute symptoms
48 of sufficient severity, including severe pain, such that the
49 person could reasonably expect the absence of immediate
50 medical attention to result in serious jeopardy to the individ-
51 ual's health, or, with respect to a pregnant woman, the health of
52 the unborn child; serious impairment to bodily functions; or
53 serious dysfunction of any bodily organ or part;

54 (D) "Stabilize" means with respect to an emergency
55 medical condition, to provide medical treatment of the condi-
56 tion necessary to assure, with reasonable medical probability
57 that no medical deterioration of the condition is likely to result
58 from or occur during the transfer of the individual from a
59 facility: *Provided*, That this provision may not be construed to
60 prohibit, limit or otherwise delay the transportation required for
61 a higher level of care than that possible at the treating facility;

62 (E) "Medical screening examination" means an appropriate
63 examination within the capability of the hospital's emergency
64 department, including ancillary services routinely available to
65 the emergency department, to determine whether or not an
66 emergency medical condition exists; and

67 (F) "Emergency medical condition" means a condition that
68 manifests itself by acute symptoms of sufficient severity
69 including severe pain such that the absence of immediate
70 medical attention could reasonably be expected to result in
71 serious jeopardy to the individual's health or with respect to a
72 pregnant woman the health of the unborn child, serious impair-
73 ment to bodily functions or serious dysfunction of any bodily
74 part or organ.

75 (6) Each insurer shall provide the enrolled member with a
76 description of procedures to be followed by the member for
77 emergency services, including the following:

- 78 (A) The appropriate use of emergency facilities;
- 79 (B) The appropriate use of any prehospital services pro-
80 vided by the health maintenance organization;
- 81 (C) Any potential responsibility of the member for payment
82 for nonemergency services rendered in an emergency facility;
- 83 (D) Any cost-sharing provisions for emergency services;
84 and
- 85 (E) An explanation of the prudent layperson standard for
86 emergency medical condition.

CHAPTER 143

**(S. B. 428 — By Senators Craig, Deem, Dittmar, Fanning,
Kessler, Minard, Sharpe, Sprouse and Wooton)**

[Passed March 1, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend and reenact section nine, article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing for the payment from the commissioner's examination revolving fund of attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals and specialists retained by the insurance commissioner as examiners; and requiring the insurance commissioner to recover costs paid for that purpose in certain circumstances.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. INSURANCE COMMISSIONER.

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

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

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

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

14 (2) "Company" or "insurance company" means any person
15 engaging in or proposing or attempting to engage in any
16 transaction or kind of insurance or surety business and any
17 person or group of persons who may otherwise be subject to the
18 administrative, regulatory or taxing authority of the commis-
19 sioner, including, but not limited to, any domestic or foreign
20 stock company, mutual company, mutual protective association,
21 farmers mutual fire companies, fraternal benefit society,
22 reciprocal or inter-insurance exchange, nonprofit medical care
23 corporation, nonprofit health care corporation, nonprofit
24 hospital service association, nonprofit dental care corporation,
25 health maintenance organization, captive insurance company,
26 risk retention group or other insurer, regardless of the type of

27 coverage written, benefits provided or guarantees made by
28 each.

29 (3) "Department" means the department of insurance of this
30 state.

31 (4) "Examiners" means the commissioner of insurance, or
32 any individual or firm having been authorized by the commis-
33 sioner to conduct an examination pursuant to this section,
34 including, but not limited to, the commissioner's deputies, other
35 employees, appointed examiners or other appointed individuals
36 or firms who are not employees of the department of insurance.

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

47 (d) The commissioner or his examiners shall, at a mini-
48 mum, conduct an examination of every foreign or alien insurer
49 licensed in this state not less frequently than once every five
50 years. The examination of an alien insurer may be limited to its
51 United States business: *Provided*, That in lieu of an examina-
52 tion under this section of any foreign or alien insurer licensed
53 in this state, the commissioner may accept an examination
54 report on the company as prepared by the insurance department
55 for the company's state of domicile or port-of-entry state until
56 the first day of January, one thousand nine hundred ninety-four.
57 Thereafter, such reports may only be accepted if:

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

62 (2) The examination is performed under the supervision of
63 an accredited insurance department or with the participation of
64 one or more examiners who are employed by such an accredited
65 state insurance department and who, after a review of the
66 examination work papers and report, state under oath that the
67 examination was performed in a manner consistent with the
68 standards and procedures required by their insurance depart-
69 ment.

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

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

85 (g) The commissioner may also cause to be examined at
86 such times as he or she deems necessary the books, records,
87 papers, documents, correspondence and methods of doing
88 business of any agent, broker, excess lines broker or solicitor
89 licensed by this state. For these purposes the commissioner or
90 his examiners shall have free access to all books, records,

91 papers, documents and correspondence of all the agents,
92 brokers, excess lines brokers and solicitors wherever the books,
93 records, papers, documents and records are situate. The
94 commissioner may revoke the license of any agent, broker,
95 excess lines broker or solicitor who refuses to submit to such
96 examination.

97 (h) In addition to conducting an examination, the commis-
98 sioner or his examiners may, as the commissioner deems
99 necessary, analyze or review any phase of the operations or
100 methods of doing business of an insurer, agent, broker, excess
101 lines broker, solicitor or other individual or corporation
102 transacting or attempting to transact an insurance business in
103 the state of West Virginia. The commissioner may use the full
104 resources provided by this section in carrying out these respon-
105 sibilities, including any personnel and equipment provided by
106 this section as the commissioner deems necessary.

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

109 (1) Upon determining that an examination should be
110 conducted, the commissioner or his designee shall issue an
111 examination warrant appointing one or more examiners to
112 perform the examination and instructing them as to the scope of
113 the examination. In conducting the examination, the examiner
114 shall observe those guidelines and procedures set forth in the
115 examiners' handbook adopted by the national association of
116 insurance commissioners. The commissioner may also employ
117 any other guidelines or procedures as the commissioner may
118 deem appropriate.

119 (2) Every company or person from whom information is
120 sought, its officers, directors and agents shall provide to the
121 examiners appointed under subdivision (1) timely, convenient
122 and free access at all reasonable hours at its offices to all books,
123 records, accounts, papers, documents and any or all computer

124 or other recordings relating to the property, assets, business and
125 affairs of the company being examined. The officers, directors,
126 employees and agents of the company or person shall facilitate
127 the examination and aid in the examination so far as it is in their
128 power to do so.

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

139 (4) The commissioner or his examiners shall have the
140 power to issue subpoenas, to administer oaths and to examine
141 under oath any person as to any matter pertinent to the exami-
142 nation, analysis or review. The subpoenas shall be enforced
143 pursuant to the provisions of section six, article two of this
144 chapter.

145 (5) When making an examination, analysis or review under
146 this section, the commissioner may retain attorneys, appraisers,
147 independent actuaries, independent certified public accountants
148 or other professionals and specialists as examiners, the cost of
149 which shall be borne by the company which is the subject of the
150 examination, analysis or review or, in the commissioner's
151 discretion, paid from the commissioner's examination revolving
152 fund. The commissioner may recover costs paid from the
153 commissioner's examination revolving fund pursuant to this
154 subdivision from the company upon which the examination,
155 analysis or review is conducted unless the subject of the
156 examination, analysis or review is an individual, described in
157 subdivision (2), subsection (q) of this section.

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

167 (7) Nothing contained in this section may be construed to
168 limit the commissioner's authority to use and, if appropriate, to
169 make public any final or preliminary examination report, any
170 examiner or company workpapers or other documents or any
171 other information discovered or developed during the course of
172 any examination, analysis or review in the furtherance of any
173 legal or regulatory action which the commissioner may, in his
174 or her sole discretion, deem appropriate. An examination report,
175 when filed, shall be admissible in evidence in any action or
176 proceeding brought by the commissioner against an insurance
177 company, its officers or agents and shall be prima facie
178 evidence of the facts stated therein.

179 (j) Examination reports prepared pursuant to the provisions
180 of this section shall comply with the following requirements:

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

188 (2) No later than sixty days following completion of the
189 examination, the examiner in charge shall file with the commis-
190 sioner a verified written report of examination under oath. Upon

191 receipt of the verified report, the commissioner shall transmit
192 the report to the company examined, together with a notice
193 which shall afford the company examined a reasonable opportu-
194 nity of not more than ten days to make a written submission or
195 rebuttal with respect to any matters contained in the examina-
196 tion report.

197 (3) Within thirty days of the end of the period allowed for
198 the receipt of written submissions or rebuttals, the commis-
199 sioner shall fully consider and review the report, together with
200 any written submissions or rebuttals and any relevant portions
201 of the examiner's workpapers and enter an order:

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

208 (B) Rejecting the examination report with directions to the
209 examiners to reopen the examination for purposes of obtaining
210 additional data, documentation or information and refileing
211 pursuant to subdivision (2) above; or

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

215 (4) All orders entered pursuant to this subsection shall be
216 accompanied by findings and conclusions resulting from the
217 commissioner's consideration and review of the examination
218 report, relevant examiner workpapers and any written submis-
219 sions or rebuttals. Any order issued pursuant to paragraph (A),
220 subdivision three of this subsection shall be considered a final
221 administrative decision and may be appealed pursuant to
222 section fourteen, article two of this chapter and shall be served

223 upon the company by certified mail, together with a copy of the
224 adopted examination report. Within thirty days of the issuance
225 of the adopted report, the company shall file affidavits executed
226 by each of its directors stating under oath that they have
227 received a copy of the adopted report and related orders.

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

230 (1) Any hearing conducted pursuant to this section by the
231 commissioner or the commissioner's authorized representative
232 shall be conducted as a nonadversarial confidential investiga-
233 tory proceeding as necessary for the resolution of any inconsis-
234 tencies, discrepancies or disputed issues apparent upon the face
235 of the filed examination report or raised by or as a result of the
236 commissioner's review of relevant workpapers or by the written
237 submission or rebuttal of the company. Within twenty days of
238 the conclusion of any such hearing, the commissioner shall
239 enter an order pursuant to paragraph (A), subdivision (3),
240 subsection (j) of this section.

241 (2) The commissioner may not appoint an examiner as an
242 authorized representative to conduct the hearing. The hearing
243 shall proceed expeditiously with discovery by the company
244 limited to the examiner's workpapers which tend to substantiate
245 any assertions set forth in any written submission or rebuttal.
246 The commissioner or the commissioner's representative may
247 issue subpoenas for the attendance of any witnesses or the
248 production of any documents deemed relevant to the investiga-
249 tion whether under the control of the commissioner, the
250 company or other persons. The documents produced shall be
251 included in the record and testimony taken by the commissioner
252 or the commissioner's representative shall be under oath and
253 preserved for the record. Nothing contained in this section shall
254 require the commissioner to disclose any information or records
255 which would indicate or show the existence or content of any
256 investigation or activity of a criminal justice agency.

257 (3) The hearing shall proceed with the commissioner or the
258 commissioner's representative posing questions to the persons
259 subpoenaed. Thereafter the company and the department may
260 present testimony relevant to the investigation. Cross-examina-
261 tion may be conducted only by the commissioner or the
262 commissioner's representative. The company and the commis-
263 sioner shall be permitted to make closing statements and may
264 be represented by counsel of their choice.

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

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

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

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

289 (4) All working papers, recorded information, documents
290 and copies thereof produced by, obtained by or disclosed to the
291 commissioner or any other person in the course of an examina-
292 tion, analysis or review made under this section must be given
293 confidential treatment and are not subject to subpoena and may
294 not be made public by the commissioner or any other person,
295 except to the extent provided in subdivision (5), subsection (i)
296 of this section. Access may also be granted to the national
297 association of insurance commissioners. The parties must agree
298 in writing prior to receiving the information to provide to it the
299 same confidential treatment as required by this section, unless
300 the prior written consent of the company to which it pertains
301 has been obtained.

302 (m) No examiner may be appointed by the commissioner if
303 the examiner, either directly or indirectly, has a conflict of
304 interest or is affiliated with the management of or owns a
305 pecuniary interest in any person subject to examination under
306 this section. This section shall not be construed to automatically
307 preclude an examiner from being:

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

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

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

314 (4) A settlor or beneficiary of a "blind trust" into which any
315 otherwise impermissible holdings have been placed.

316 (5) Notwithstanding the requirements of this subsection, the
317 commissioner may retain from time to time, on an individual
318 basis, qualified actuaries, certified public accountants or other
319 similar individuals who are independently practicing their
320 professions, even though these persons may from time to time

321 be similarly employed or retained by persons subject to
322 examination under this section.

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

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

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

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

344 (o) All insurers subject to the provisions of this section of
345 the code shall annually pay to the commissioner on or before
346 the first day of July, one thousand nine hundred ninety-one and
347 every first day of July thereafter, an examination assessment fee
348 of eight hundred dollars. Four hundred fifty dollars of this fee
349 shall be paid to the treasurer of the state to the credit of a
350 special revolving fund to be known as the "Commissioner's
351 Examination Revolving Fund" which is hereby established and
352 three hundred fifty dollars shall be paid to the treasurer of the

353 state. The commissioner may at his discretion, upon notice to
354 the insurers subject to this section, increase this examination
355 assessment fee or levy an additional examination assessment
356 fee of two hundred fifty dollars. In no event may the total
357 examination assessment fee including any additional examina-
358 tion assessment fee levied exceed one thousand five hundred
359 dollars per insurer in any calendar year.

360 (p) The moneys collected by the commissioner from an
361 increase or additional examination assessment fee shall be paid
362 to the treasurer of the state to be credited to the commissioner's
363 examination revolving fund. Any funds expended or obligated
364 by the commissioner from the commissioner's examination
365 revolving fund may be expended or obligated solely for
366 defrayment of the costs of examinations, analyses or reviews of
367 the financial affairs and business practices of insurance compa-
368 nies, agents, brokers, excess lines brokers, solicitors or other
369 individuals or corporations transacting or attempting to transact
370 an insurance business in this state made by the commissioner
371 pursuant to this section or for the purchase of equipment and
372 supplies, travel, education and training for the commissioner's
373 deputies, other employees and appointed examiners necessary
374 for the commissioner to fulfill the statutory obligations created
375 by this section.

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

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

387 (2) If an individual agent, broker or solicitor is being
388 examined, analyzed or reviewed, bill and receive payments
389 directly from the commissioner's examination revolving fund
390 for their work, travel and living expenses as previously pro-
391 vided for in this section. The commissioner may recover costs
392 paid from the commissioner's examination revolving fund
393 pursuant to this subdivision from the person upon whom the
394 examination, analysis or review is conducted.

395 (r) The commissioner and his examiners shall be entitled to
396 immunity to the following extent:

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

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

408 (3) The commissioner or any examiner shall be entitled to
409 an award of attorney's fees and costs if he or she is the prevail-
410 ing party in a civil cause of action for libel, slander or any other
411 relevant tort arising out of activities in carrying out the provi-
412 sions of this section and the party bringing the action was not
413 substantially justified in doing so. For purposes of this section
414 a proceeding is "substantially justified" if it had a reasonable
415 basis in law or fact at the time that it was initiated.

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

CHAPTER 144

(H. B. 4500 — By Delegates Beane, Mahan and Hutchins)

[Passed March 7, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article three-a, all relating to eliminating trade barriers affecting insurers and producers; the prohibition against licensing insurance companies owned by state or foreign governments; and establishing a process for licensing insurers organized under the laws of foreign countries.

Be it enacted by the Legislature of West Virginia:

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

Article

3. Licensing, Fees and Taxation of Insurers.

3A. State of Entry for Foreign Insurers.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-2. Qualifications for license.

- 1 (a) To qualify for a license to transact insurance in West
- 2 Virginia an insurer must be otherwise in compliance with the
- 3 provisions of this chapter and with its charter, and must be an
- 4 incorporated stock insurer, or an incorporated mutual insurer or
- 5 a reciprocal insurer.

6 (b) No foreign insurer may be authorized to transact
7 insurance in this state if it is domiciled in a state that does not
8 have reserve requirements that are equal to or greater than those
9 required by article seven of this chapter, as applicable to the
10 kind or kinds of insurance transacted by the insurer, wherever
11 transacted in the United States of America, or which transacts
12 business anywhere in the United States of America on the
13 assessment plan, the stipulated premium plan or any similar
14 plan.

15 (c) No insurer may be authorized to transact a kind of
16 insurance in this state unless duly authorized or qualified to
17 transact such insurance in the state or country of its domicile.

18 (d) No insurer may be authorized to transact in this state
19 any kind of insurance which is not defined in section ten, article
20 one of this chapter.

21 (e) No authority to transact insurance may be granted or
22 continued to any insurer that is in arrears to the state for fees,
23 licenses, taxes, assessments, fines or penalties accrued on
24 insurance previously transacted in this state.

ARTICLE 3A. STATE OF ENTRY FOR FOREIGN INSURERS.

§33-3A-1. Definitions.

§33-3A-2. Scope.

§33-3A-3. Authorization of entry.

§33-3A-4. Maintenance of trust account.

§33-3A-5. Requirements for trust agreement.

§33-3A-6. Reporting requirements for U.S. branches of non-U.S. insurers.

§33-3A-7. Additional requirements for the U.S. branch license.

§33-3A-8. Authority of commissioner.

§33-3A-1. Definitions.

1 (a) "Non-U.S. insurer" means an insurer organized under
2 the laws of a foreign country.

3 (b) "United States branch" or "U.S. branch" means the
4 business unit through which business is transacted within the
5 United States by a non-U.S. insurer and the assets and liabilities

6 of the insurer within the United States pertaining to such
7 business.

8 (c) "Home jurisdiction" means the foreign country under
9 whose laws the non-U.S. insurer has been organized.

§33-3A-2. Scope.

1 This article applies to a U.S. branch using this state as a
2 state of entry to transact insurance in the United States. The
3 U.S. branch shall also be subject to all state laws applicable to
4 an insurer domiciled in this state unless otherwise provided.

§33-3A-3. Authorization of entry.

1 (a) A non-U.S. insurer may use this state as a state of entry
2 to transact insurance in the United States through a U.S. branch
3 by:

4 (1) Qualifying as an insurer to do business in this state; and

5 (2) Establishing a trust account, pursuant to a trust agree-
6 ment approved by the commissioner with a U.S. bank approved
7 by the commissioner, in an amount at least equal to the mini-
8 mum capital and surplus or authorized control level risk based
9 capital, whichever is greater, required to be maintained by a
10 domestic insurer licensed to transact the same kind of insur-
11 ance.

12 (b) Before authorizing the entry through this state of a U.S.
13 branch of any non-U.S. insurer, the commissioner shall require
14 the non-U.S. insurer, in addition to meeting the requirements of
15 section five of this article and any other requirement of this
16 chapter:

17 (1) To submit a copy of its charter and bylaws, if any,
18 currently in force, and any other documents necessary to show
19 the kinds of business which it is empowered to transact in its
20 home jurisdiction, attested to as accurate and complete by the
21 insurance supervisory official of its home jurisdiction; and a
22 full statement, subscribed and affirmed as true under the
23 penalties of perjury by two officers, or equivalent responsible

24 representatives, in a manner as the commissioner shall pre-
25 scribe, of its financial conditions as of the close of its latest
26 fiscal year, showing its assets, liabilities, income disbursements,
27 business transacted and other facts required to be shown in its
28 annual statement, as reported to the insurance supervisory
29 official of its home jurisdiction; an English language transla-
30 tion, as necessary, of any other documents required herein; and

31 (2) To submit to an examination of the insurer's affairs at
32 its principal office within the United States. However, the
33 commissioner may instead accept a report of the insurance
34 supervisory official of the insurer's home jurisdiction.

§33-3A-4. Maintenance of trust account.

1 The assets in the trust account shall be known as "trusteed
2 assets" and shall at all times be in an amount equal to the U.S.
3 branch's reserves and other liabilities plus the minimum capital
4 and surplus, or authorized control level risk based capital,
5 whichever is greater, required to be maintained by a domestic
6 insurer licensed to do the same kind of insurance.

§33-3A-5. Requirements for trust agreement.

1 (a) The deed of trust and all amendments thereto shall be
2 authenticated in a form and manner as the commissioner may
3 prescribe and shall not be effective unless approved by the
4 commissioner upon a finding that:

5 (1) A deed of trust or its amendments are sufficient in form
6 and in conformity with law;

7 (2) The trustee or trustees are eligible as such; and

8 (3) The deed of trust is adequate to protect the interests of
9 the beneficiaries of the trust.

10 (b) If at any time the commissioner finds, after reasonable
11 notice and hearing, that the requisites for the approval no longer
12 exist, the commissioner may withdraw approval.

13 (c) The commissioner may from time to time approve
14 modifications of, or variations in any deed of trust, which in the
15 commissioner's judgment are not prejudicial to the interests of
16 the people of this state or the United States policyholders and
17 creditors of the U.S. branch.

18 (d) The deed of trust shall contain provisions which:

19 (1) Vest legal title to trusteed assets in the trustees, and
20 their successors lawfully appointed;

21 (2) Require that all assets deposited in the trust shall be
22 continuously kept within the United States;

23 (3) Provide for substitution of a new trustee or trustees in
24 case of a vacancy by death; resignation or otherwise, subject to
25 the approval of the commissioner;

26 (4) Require that the trustee or trustees shall continuously
27 maintain a record at all times sufficient to identify the assets of
28 the fund;

29 (5) Require that the trusteed assets shall consist of cash
30 and/or investments eligible for investment of the funds of
31 domestic insurers and accrued interest thereon if collectible by
32 the trustee;

33 (6) Require that the trust shall be for the exclusive benefit,
34 security and protection of the policyholders, or policyholders
35 and creditors, of the U.S. branch in the United States and that
36 it shall be maintained as long as there is outstanding any
37 liability of the non-U.S. insurer arising out of its insurance
38 transactions in the United States; and

39 (7) Provide, in substance, that no withdrawals of assets,
40 other than income as specified in subsection (e) of this section
41 shall be made or permitted by the trustee or trustees without the
42 approval of the commissioner except to:

43 (A) Make deposits required by law in any state for the
44 security or benefit of all policyholders, or policyholders and
45 creditors, of the U.S. branch in the United States;

46 (B) Substitute other assets permitted by law and at least
47 equal in value and quality to those withdrawn, upon the specific
48 written direction of the United States manager of the U.S.
49 branch when duly empowered and acting pursuant to either
50 general or specific written authority previously given or
51 delegated by the board of directors; or

52 (C) Transfer such assets to an official liquidator or
53 rehabilitator pursuant to an order of a court of competent
54 jurisdiction.

55 (e) The deed of trust may provide that income, earnings,
56 dividends or interest accumulations of the assets of the fund
57 may be paid over the United States manager of the U.S. branch
58 upon request, provided that the total trustee assets shall not
59 thereby be less than the amount required to be maintained
60 pursuant to section four of this article.

61 (f) Upon withdrawal of trustee assets deposited in another
62 state in which the insurer is authorized to do business, it shall
63 be sufficient if the deed of trust requires similar written
64 approval of the insurance supervising official of that state in
65 lieu of approval of the commissioner provided that the total
66 trustee assets shall not thereby be less than the amount
67 required to be maintained pursuant to section four of this
68 article. In all such cases the U.S. branch shall notify the
69 commissioner in writing of the nature and extent of the with-
70 drawal.

71 (g) The commissioner may from time to time:

72 (1) Make examinations of the trustee assets of any
73 authorized U.S. branch at the insurer's expense; and

74 (2) Require the trustee or trustees to file a statement, in
75 such form as the commissioner may prescribe, certifying the
76 assets of the trust fund and the amounts thereof.

77 (h) Refusal or neglect of any trustee to comply with the
78 foregoing requirements shall be grounds for the revocation of

79 the insurer's license or the liquidation of its United States
80 branch.

§33-3A-6. Reporting requirements for U.S. branches of non-U.S. insurers.

1 (a) In addition to other requirements of this article, every
2 authorized U.S. branch shall, not later than the first day of
3 March in each year and forty-five days after the end of each of
4 the first three calendar-year quarters, file with the commissioner
5 and with the National Association of Insurance Commissioners
6 (NAIC):

7 (1) Annual and quarterly statements of the business
8 transacted within the U.S. and the assets held by or for it within
9 the United States for the protection of United States policyhold-
10 ers and creditors within the United States, and of the liabilities
11 incurred against the assets. The forms shall not contain any
12 statement in regard to its assets and business elsewhere. The
13 statements shall be in the same format required of an insurer
14 domiciled in the U.S. branch's state of entry state and licensed
15 to write the same kinds of insurance; and

16 (2) A statement of trustee surplus, in such form as the
17 commissioner may prescribe, as of the end of the same period
18 covered by the statement filed pursuant to subdivision (1) of
19 this subsection. The aggregate value of the insurer's general
20 state deposits and trustee assets deposited with a trustee in
21 compliance with section five of this article, plus accrued
22 investment income thereon where the interest is collected by the
23 states for trustees, less the aggregate net amount of all of its
24 reserves and other liabilities in the United States, as determined
25 in accordance with this section, shall be known as its "trustee
26 surplus" in the United States. In determining the net amount of
27 the U.S. branch's liabilities in the United States to be reported
28 in the statement of trustee surplus, the U.S. branch shall make
29 adjustments to total liabilities reported on the accompanying
30 annual or quarterly statement as follows:

31 (A) Add back liabilities used to offset admitted assets
32 reported in the accompanying quarterly or annual statement;
33 and

34 (B) Deduct:

35 (i) Unearned premiums on agent's balances or uncollected
36 premiums not more than ninety days past due;

37 (ii) Reinsurance on losses with authorized insurers, less
38 unpaid reinsurance premiums;

39 (iii) Reinsurance recoverables on paid losses from unautho-
40 rized insurers that are included as an asset in the annual
41 statement, but only to the extent a liability for unauthorized
42 recoverables is included in the liabilities report in the trustee
43 surplus statement;

44 (iv) Special state deposits held for the exclusive benefit of
45 policyholders, or policyholders and creditors, of any particular
46 state not exceeding net liabilities reports for that state;

47 (v) Secured accrued retrospective premiums;

48 (vi) If the insurer is a life insurer:

49 (I) The amount of its policy loans to policyholders within
50 the United States, not exceeding the amount of legal reserve
51 required on each policy; and

52 (II) The net amount of uncollected and deferred premiums;
53 and

54 (vii) Any other nontrusteed asset which the commissioner
55 determines secures liabilities in a substantially similar manner;
56 and

57 (3) Any additional information that the commissioner may
58 require relating to the total business or assets, or any portion
59 thereof, of the non-U.S. insurer.

60 (b) The annual statement and trustee surplus statement
61 shall be signed and verified by the United States manager,

62 attorney-in-fact, or a duly empowered assistant United States
63 manager, of the U.S. branch. The items of securities and other
64 property held under trust deeds shall be certified in the trustee
65 surplus statement by the United States trustee or trustees.

66 (c) Every report on examination of a U.S. branch shall
67 include a trustee surplus statement as of the date of examina-
68 tion in addition to the general statement of the financial
69 condition of the U.S. branch.

§33-3A-7. Additional requirements for the U.S. branch license.

1 (a) Before issuing any new or renewal license to any U.S.
2 branch, the commissioner may require satisfactory proof, either
3 in the non-U.S. insurer's charter or by an agreement evidenced
4 by a duly certified resolution of its board of directors, or
5 otherwise as the commissioner may require, that the insurer will
6 not engage in any insurance business in contravention of the
7 provisions of this article or not authorized by its charter.

8 (b) The commissioner shall issue a renewal license to any
9 U.S. branch if satisfied, by proof as he or she considers satisfac-
10 tory, that the insurer is not delinquent with respect to any
11 requirement imposed by this article, and that its continuance in
12 business in this state will not be hazardous or prejudicial to the
13 best interests of the people of this state.

14 (c) No U.S. branch shall be licensed to do in this state any
15 kind of insurance business, or any combination of kinds of
16 insurance business, which are not permitted to be done by
17 domestic insurers licensed under the provisions of this article.
18 No U.S. branch shall be authorized to do an insurance business
19 in this state if it does anywhere within the United States any
20 kind of business other than an insurance business and the
21 business necessarily or properly incidental to the kind or kinds
22 of insurance business which it is authorized to do in this state.

23 (d) Except as otherwise specifically provided, no U.S.
24 branch, entering through this state or another state, shall be or

25 continue to be authorized to do an insurance business in this
26 state if it fails to comply substantially with any requirement or
27 limitation of this chapter, applicable to similar domestic
28 insurers hereafter organized, which in the judgment of the
29 commissioner is reasonably necessary to protect the interest of
30 the policyholders.

31 (e) No U.S. branch which does outside of this state any kind
32 or combination of kinds of insurance business not permitted to
33 be done in this state by similar domestic insurers hereafter
34 organized, shall be or continue to be authorized to do an
35 insurance business in this state, unless in the judgment of the
36 commissioner the doing of such kind or combination of kinds
37 of insurance business will not be prejudicial to the best interests
38 of the people of this state.

39 (f) No U.S. branch shall be or continue to be authorized to
40 do an insurance business in this state if it fails to keep full and
41 correct entries of its transactions, which shall at all times be
42 open to the inspection of persons invested by law with the
43 rights of inspection and be maintained in its principal office
44 within this state.

§33-3A-8. Authority of commissioner.

1 Whenever it appears to the commissioner from any annual
2 or quarterly statement or trustee surplus statement or any other
3 report that a U.S. branch's trustee surplus is reduced below
4 minimum capital and surplus, or the authorized control level
5 risk based capital, whichever is greater, required to be main-
6 tained by a domestic insurer licensed to transact the same kinds
7 of insurance, the commissioner may proceed against the insurer
8 pursuant to the provisions of sections ten and eleven of article
9 three of this chapter, and treat the insurer as one whose condi-
10 tion is such that its further transaction of business in the United
11 States will be hazardous to its policyholders, its creditors or the
12 public in the United States.

CHAPTER 145

(H. B. 4303 — By Delegate Michael)

[Passed March 18, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen-b, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to limiting eligibility to receive credit against premium tax for investment by insurance company in West Virginia securities and limiting the types of investments that qualify for the credit.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14b. Credits against premium tax for investment in West Virginia securities.

1 If the annual statement of any insurance company covering
2 a calendar year shows it to have investments at the close of said
3 year in West Virginia securities, as hereinafter defined, of as
4 much as twenty-five percent of its admitted assets, it shall be
5 entitled to a credit against the premium tax levied by section
6 fourteen of this article and the premium tax levied by section
7 fourteen-a of this article in an amount equal to one hundred
8 percent of such tax for such calendar year: *Provided*, That the
9 insurance company employs less than twenty full-time employ-
10 ees, has net written premiums of less than ten million dollars
11 and provides a minimum of fifty percent of its net written
12 premiums to under-served and high risk areas of West Virginia.

13 West Virginia securities, as used in this section, shall mean
14 real estate situate in this state; bonds or interest-bearing notes
15 or obligations of this state; bonds or interest-bearing notes or
16 obligations of any county, district, school district or independ-
17 ent school district, municipality or any other political subdivi-
18 sion of this state.

CHAPTER 146

(H. B. 4499 — By Delegates Beane and Hutchins)

[Passed March 8, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the exemption of warranties, service contracts and maintenance agreements from regulation under the insurance laws.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. GENERAL PROVISIONS.

§33-4-2. Application of chapter to particular types of insurers.

1 (a) No provision of this chapter shall apply to:

2 (1) Hospital service corporations and medical service
3 corporations except as stated in article twenty-four of this
4 chapter;

5 (2) Fraternal benefit societies except as stated in article
6 twenty-three of this chapter;

7 (3) Farmers' mutual fire insurance companies except as
8 stated in article twenty-two of this chapter;

9 (4) Warranties;

10 (5) Service contracts;

11 (6) Maintenance agreements.

12 (b) For the purposes of this article:

13 (1) "Holder" means a resident of this state who either
14 purchases a service agreement or is legally in possession of a
15 service contract and is entitled to enforce the rights of the
16 original purchaser of the service contract.

17 (2) "Maintenance agreement" means a contract for a limited
18 period that provides only for scheduled maintenance.

19 (3) "Provider" means a person who is obligated to a holder
20 pursuant to the terms of a service contract to repair, replace or
21 perform maintenance on or to indemnify the holder for the costs
22 of repairing, replacing or performing maintenance on goods.

23 (4) "Service contract" means an agreement entered into for
24 a separately stated consideration and for a specified term under
25 which a provider agrees to repair, replace or maintain a product
26 or provide indemnification for the repair, replacement or
27 maintenance of a product for operational or structural failure
28 caused by a defect in materials or workmanship or by normal
29 wear. A service contract may additionally provide for incidental
30 payment or indemnity under limited circumstances including
31 towing, rental and emergency road service or for the repair or
32 replacement of a product for damage resulting from power
33 surges or accidental damage incurred in handling the product.

34 (5) "Warranty" means in relation to a product or service an
35 undertaking that guarantees indemnity for defective parts,
36 mechanical or electrical breakdown, labor costs or other

37 remedial measures, such as repair or replacement of the product
38 or repetition of services and that is made solely by the manufact-
39 urer, importer or seller of the product or services made without
40 payment of additional consideration, not negotiated or separated
41 from the sale of the product or service and incidental to the sale
42 of the product or service.

CHAPTER 147

(H. B. 4650 — By Delegates Beane, Angotti, L. White, Facemyer and Capito)

[Passed March 11, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two and four, article six-a; section three, article six-b; and section six, article seventeen-a, all of chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to insurance policies; canceling and not renewing an automobile liability insurance policy for moving violations resulting in three or more points on the driver's record; permitting an insurer to transfer an insured between companies for a valid underwriting reason; clarifying the reinstatement date of an automobile liability insurance policy; and prohibiting the declination of an automobile liability insurance policy and a homeowner's insurance policy based solely on an adverse credit report.

Be it enacted by the Legislature of West Virginia:

That sections one, two and four, article six-a; section three, article six-b; and section six, article seventeen-a, all of 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

- 6A. Cancellation or Nonrenewal of Automobile Liability Policies.**
- 6B. Declination of Automobile Liability Insurance.**
- 17A. Property Insurance Declination, Termination and Disclosure.**

ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES.

§33-6A-1. Cancellation prohibited except for specified reasons; notice.

§33-6A-2. Cancellation for other reasons void.

§33-6A-4. Advance notice of nonrenewal required; assigned risk policies; reasons for nonrenewal; hearing and review after nonrenewal.

§33-6A-1. Cancellation prohibited except for specified reasons; notice.

1 No insurer once having issued or delivered a policy
2 providing automobile liability insurance for a private passenger
3 automobile may, after the policy has been in effect for sixty
4 days, or in case of renewal effective immediately, issue or cause
5 to issue a notice of cancellation during the term of the policy
6 except for one or more of the reasons specified in this section:

7 (a) The named insured fails to make payments of premium
8 for the policy or any installment of the premium when due;

9 (b) The policy is obtained through material misrepresenta-
10 tion;

11 (c) The insured violates any of the material terms and
12 conditions of the policy;

13 (d) The named insured or any other operator, either residing
14 in the same household or who customarily operates an automo-
15 bile insured under the policy:

16 (1) Has had his or her operator's license suspended or
17 revoked during the policy period including suspension or
18 revocation for failure to comply with the provisions of article
19 five-a, chapter seventeen-c of this code, regarding consent for
20 a chemical test for intoxication: *Provided*, That when a license
21 is suspended for sixty days by the commissioner of motor
22 vehicles because a person drove a motor vehicle while under
23 the age of twenty-one years with an alcohol concentration in his
24 or her blood of two hundredths of one percent or more, by
25 weight, but less than ten hundredths of one percent, by weight,

26 pursuant to subsection (l), section two, article five-a, chapter
27 seventeen-c of this code, the suspension shall not be grounds
28 for cancellation; or

29 (2) Is or becomes subject to epilepsy or heart attacks and
30 the individual cannot produce a certificate from a physician
31 testifying to his or her ability to operate a motor vehicle.

32 (e) The named insured or any other operator, either residing
33 in the same household or who customarily operates an automom-
34 bile insured under such policy, is convicted of or forfeits bail
35 during the policy period for any of the following reasons:

36 (1) Any felony or assault involving the use of a motor
37 vehicle;

38 (2) Negligent homicide arising out of the operation of a
39 motor vehicle;

40 (3) Operating a motor vehicle while under the influence of
41 alcohol or of any controlled substance or while having an
42 alcohol concentration in his or her blood of ten hundredths of
43 one percent or more, by weight;

44 (4) Leaving the scene of a motor vehicle accident in which
45 the insured is involved without reporting it as required by law;

46 (5) Theft of a motor vehicle or the unlawful taking of a
47 motor vehicle;

48 (6) Making false statements in an application for a motor
49 vehicle operator's license;

50 (7) Three or more moving traffic violations committed
51 within a period of twelve months, each of which results in three
52 or more points being assessed on the driver's record by the
53 division of motor vehicles, whether or not the insurer renewed
54 the policy without knowledge of all such violations. Notice of
55 any cancellation made pursuant to this subsection shall be
56 mailed to the named insured either during the current policy

57 period or during the first full policy period following the date
58 that the third moving traffic violation is recorded by the
59 division of motor vehicles.

60 Notwithstanding any of the provisions of this section to the
61 contrary, no insurer may cancel a policy of automobile liability
62 insurance without first giving the insured thirty days' notice of
63 its intention to cancel: *Provided*, That cancellation of the
64 insurance policy by the insurer for failure of consideration to be
65 paid by the insured upon initial issuance of the insurance policy
66 is effective upon the expiration of ten days' notice of cancella-
67 tion to the insured.

§33-6A-2. Cancellation for other reasons void.

1 Any purported cancellation by an insurer of a policy of
2 automobile liability insurance which has been in effect for sixty
3 days and which has been renewed shall be void if the purported
4 cancellation is contrary to section one of this article. For
5 purposes of this article, the transfer of an insured between
6 insurance companies within the same group is not considered
7 a cancellation or nonrenewal of an automobile liability insur-
8 ance policy if the transfer is based upon any valid underwriting
9 reason involving a substantially increased risk associated with
10 the policy.

§33-6A-4. Advance notice of nonrenewal required; assigned risk policies; reasons for nonrenewal; hearing and review after nonrenewal.

1 No insurer shall fail to renew an outstanding automobile
2 liability or physical damage insurance policy unless such
3 nonrenewal is preceded by at least forty-five days of advance
4 notice to the named insured of such insurer's election not to
5 renew such policy: *Provided*, That subject to this section,
6 nothing contained in this article shall be construed so as to
7 prevent an insurer from refusing to issue an automobile liability
8 or physical damage insurance policy upon application to such

9 insurer, nor shall any provision of this article be construed to
10 prevent an insurer from refusing to renew such a policy upon
11 expiration, except as to the notice requirements of this section,
12 and except further as to those applicants lawfully submitted
13 pursuant to the West Virginia assigned risk plan: *Provided,*
14 *however,* That an insurer may not fail to renew an outstanding
15 automobile liability or physical damage insurance policy which
16 has been in existence for two consecutive years or longer except
17 for the following reasons:

18 (a) The named insured fails to make payments of premium
19 for such policy or any installment of the premium when due;

20 (b) The policy is obtained through material misrepresenta-
21 tion;

22 (c) The insured violates any of the material terms and
23 conditions of the policy;

24 (d) The named insured or any other operator, either residing
25 in the same household or who customarily operates an automo-
26 bile insured under such policy:

27 (1) Has had his or her operator's license suspended or
28 revoked during the policy period; or

29 (2) Is or becomes subject to epilepsy or heart attacks and
30 such individual cannot produce a certificate from a physician
31 testifying to his ability to operate a motor vehicle;

32 (e) The named insured or any other operator, either residing
33 in the same household or who customarily operates an automo-
34 bile insured under such policy, is convicted of or forfeits bail
35 during the policy period for any of the following reasons:

36 (1) Any felony or assault involving the use of a motor
37 vehicle;

38 (2) Negligent homicide arising out of the operation of a
39 motor vehicle;

40 (3) Operating a motor vehicle while under the influence of
41 intoxicating liquor or of any narcotic drug;

42 (4) Leaving the scene of a motor vehicle accident in which
43 the insured is involved without reporting it as required by law;

44 (5) Theft of a motor vehicle or the unlawful taking of a
45 motor vehicle;

46 (6) Making false statements in an application for a motor
47 vehicle operator's license;

48 (7) Two or more moving traffic violations committed
49 within a period of twelve months, each of which results in three
50 or more points being assessed on the driver's record by the
51 division of motor vehicles, whether or not the insurer renewed
52 the policy without knowledge of all such violations. Notice of
53 any nonrenewal made pursuant to this subsection shall be
54 mailed to the named insured either during the current policy
55 period or during the first full policy period following the date
56 that the second moving traffic violation is recorded by the
57 division of motor vehicles.

58 (f) The named insured or any other operator has had a
59 second at-fault motor vehicle accident within a period of twelve
60 months, whether or not the insurer renewed the policy without
61 knowledge of all such accidents. Notice of any nonrenewal
62 made pursuant to this subsection shall be mailed to the named
63 insured either during the current policy period or during the
64 first full policy period following the date of the second acci-
65 dent.

66 Nonrenewal of such policy for any reason is subject to a
67 hearing and review as provided for in section five of this article.
68 Cost of the hearing shall be assessed against the losing party but
69 shall not exceed seventy-five dollars.

70 Notwithstanding the provisions of subsection (a) of this
71 section, the insurer shall renew any automobile liability or

72 physical damage insurance policy that has not been renewed
73 due to the insured's failure to pay the renewal premium when
74 due if: (1) None of the other grounds for nonrenewal as set forth
75 in subsections (b) through (f), inclusive, of this section exist;
76 and (2) the insured makes an application for renewal within
77 ninety days of the original expiration date of the policy. If a
78 policy is renewed as provided for in this paragraph, then the
79 coverage afforded shall not be retroactive to the original
80 expiration date of the policy, but shall begin on the reinstate-
81 ment date at the current premium levels offered by the com-
82 pany.

ARTICLE 6B. DECLINATION OF AUTOMOBILE LIABILITY INSURANCE.

§33-6B-3. Declinations; prohibited reasons.

1 The declination of an application for a private passenger
2 policy of automobile liability insurance by an insurer, agent or
3 broker is prohibited if the declination is:

4 (a) Based upon the race, religion, nationality or ethnic
5 group, of the applicant or named insured;

6 (b) Based solely upon the lawful occupation or profession
7 of the applicant or named insured, unless the decision is for a
8 business purpose that is not a mere pretext for unfair discrimi-
9 nation: *Provided*, That this provision does not apply to any
10 insurer, agent or broker that limits its market to one lawful
11 occupation or profession or to several related lawful occupa-
12 tions or professions;

13 (c) Based upon the principal location of the insured motor
14 vehicle unless the decision is for a business purpose which is
15 not a mere pretext for unfair discrimination;

16 (d) Based solely upon the age, sex or marital status of an
17 applicant or an insured, except that this subsection does not
18 prohibit rating differentials based on age, sex or marital status;

19 (e) Based upon the fact that the applicant has previously
20 obtained insurance coverage with a substandard insurance
21 carrier;

22 (f) Based upon the fact that the applicant has not previously
23 been insured;

24 (g) Based upon the fact that the applicant did not have
25 insurance coverage for a period of time prior to the application;

26 (h) Based upon the fact that the applicant or named insured
27 previously obtained insurance coverage through a residual
28 market insurance mechanism;

29 (i) Based upon the fact that another insurer previously
30 declined to insure the applicant or terminated an existing policy
31 in which the applicant was the named insured;

32 (j) Based solely upon an adverse credit report or adverse
33 credit scoring.

34 Nothing in this section may be construed to prohibit an
35 insurer, agent or broker from using legitimate, documented,
36 underwriting data in making their own independent risk
37 assessment of an applicant for insurance.

**ARTICLE 17A. PROPERTY INSURANCE DECLINATION, TERMINATION
AND DISCLOSURE.**

**§33-17A-6. Discriminatory terminations and declinations prohib-
ited.**

1 No insurer may decline to issue or terminate a policy of
2 insurance subject to this article if the declination or termination
3 is:

4 (a) Based upon the race, religion, nationality, ethnic group,
5 age, sex or marital status of the applicant or named insured;

6 (b) Based solely upon the lawful occupation or profession
7 of the applicant or named insured, unless the decision is for a
8 business purpose that is not a mere pretext for unfair discrimi-
9 nation: *Provided*, That this provision does not apply to any
10 insurer, agent or broker that limits its market to one lawful

11 occupation or profession or to several related lawful occupa-
12 tions or professions;

13 (c) Based upon the age or location of the residence of the
14 applicant or named insured unless the decision is for a business
15 purpose that is not a mere pretext for unfair discrimination or
16 unless the age or location materially affects the risk;

17 (d) Based upon the fact that another insurer previously
18 declined to insure the applicant or terminated an existing policy
19 in which the applicant was the named insured;

20 (e) Based upon the fact that the applicant or named insured
21 previously obtained insurance coverage through a residual
22 market insurance mechanism;

23 (f) Based upon the fact that the applicant has not previously
24 been insured;

25 (g) Based upon the fact that the applicant did not have
26 insurance coverage for a period of time prior to the application;
27 or

28 (j) Based solely upon an adverse credit report or adverse
29 credit scoring.

CHAPTER 148

(H. B. 4523 — By Delegates Beane, Mahan, Cann, Mezzatesta,
Facemyer, Faircloth and L. White)

[Passed March 7, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article seven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to assets not considered in determining the financial condition of insurers; excluding as an asset receivables due from affiliates; exception.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. ASSETS AND LIABILITIES.

§33-7-3. Assets not allowed.

1 In addition to assets impliedly excluded by the provisions
2 of section one of this article, the following expressly shall not
3 be allowed as assets in any determination of the financial
4 condition of an insurer:

5 (a) Goodwill, trade names and other like intangible assets.

6 (b) Advances to officers (other than policy loans) whether
7 secured or not, and advances to employees, agents, and other
8 persons on personal security only.

9 (c) Stock of the insurer, owned by it, or any equity therein
10 or loans secured thereby, or any proportionate interest in the
11 stock acquired or held through the ownership by the insurer of
12 an interest in another firm, corporation or business unit.

13 (d) Furniture, fixtures, furnishings, safes, vehicles, libraries,
14 stationery, literature and supplies, and except, in the case of any
15 insurer, personal property the insurer is permitted to hold
16 pursuant to article eight of this chapter, or which is acquired
17 through foreclosure of chattel mortgages acquired pursuant to
18 article eight of this chapter, or which is reasonably necessary
19 for the maintenance and operation of real estate lawfully
20 acquired and held by the insurer other than real estate used by
21 it for home office, branch office and similar purposes.

22 (e) The amount, if any, by which the aggregate book value
23 of investments as carried in the ledger assets of the insurer
24 exceeds the aggregate value thereof as determined under this
25 chapter.

26 (f) Receivables due from affiliates, unless the receivables
27 are already in transit and under the control of the insurer.

CHAPTER 149

(H. B. 4479 — By Delegates Beane, Mahan, Hutchins, H. White and Paxton)

[Passed March 8, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to authorizing the insurance commissioner to grant provisional licensure to an applicant for an insurance agent's license pending the applicant's appointment by a licensed insurer.

Be it enacted by the Legislature of West Virginia:

That sections two and three, article twelve, 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 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

§33-12-2. Qualifications.

§33-12-3. Application.

§33-12-2. Qualifications.

1 For the protection of the people of West Virginia, the
2 commissioner shall not issue, renew or permit to exist any
3 agent's, broker's or solicitor's license except to an individual
4 who:

5 (a) Is eighteen years of age or more.

6 (b) Is a resident of West Virginia, except that a broker's
7 license shall be issued only to nonresidents, and except for
8 nonresident life and accident and sickness agents as provided in
9 section eight of this article.

10 Effective the first day of June, one thousand nine hundred
11 ninety-one, brokers' licenses shall cease to exist. Licensing of
12 nonresidents for property casualty will be made pursuant to
13 section eight-a of this article.

14 (c) Is, in the case of an agent applicant, appointed as agent
15 by a licensed insurer for the kind or kinds of insurance for
16 which application is made, subject to issuance of license, or, in
17 the case of a solicitor applicant, appointed as solicitor by a
18 licensed resident agent, subject to issuance of license, except
19 that on or after the first day of June, one thousand nine hundred
20 ninety, no solicitor's license will be issued which is not a
21 renewal of an existing license.

22 (d) Does not intend to use the license principally for the
23 purpose, in the case of life or accident and sickness insurance,
24 of procuring insurance on himself or herself, members of his or
25 her family or his or her relatives; or, as to insurance other than
26 life and accident and sickness, upon his or her property or
27 insurable interests of those of his or her family or his or her
28 relatives or those of his or her employer, employees or firm, or
29 corporation in which he or she owns a substantial interest, or of
30 the employees of the firm or corporation, or on property or
31 insurable interests for which the applicant or any relative,
32 employer, firm or corporation is the trustee, bailee or receiver.
33 For the purposes of this provision, a vendor's or lender's
34 interest in property sold or being sold under contract or which
35 is the security for any loan, shall not be deemed to constitute
36 property or an insurable interest of the vendor or lender.

37 (e) Satisfies the commissioner that he or she is trustworthy
38 and competent. The commissioner may test the competency of
39 an applicant for a license under this section by examination.
40 Each examinee shall pay a twenty-five dollar examination fee
41 for each examination to the commissioner who shall deposit
42 said examination fee into the state treasury for the benefit of the
43 state fund, general revenue. The commissioner may, at his or

44 her discretion, designate an independent testing service to
45 prepare and administer the examination subject to direction and
46 approval by the commissioner, and examination fees charged
47 by the service shall be paid by the applicant.

48 (f) For new agents first licensed on or after the first day of
49 July, one thousand nine hundred eighty-nine, completes a
50 program of insurance education as established below: *Provided,*
51 That a written waiver from the insurance education require-
52 ments for life, accident and sickness, or property and casualty
53 insurance may be granted to any person who can demonstrate
54 to the satisfaction of the commissioner that he or she has been
55 licensed as a resident agent in good standing in another state
56 within the sixty-day period immediately preceding his or her
57 application for a resident license in West Virginia. The waiver,
58 if granted, does not exempt the applicant from an examination
59 pertaining to the laws of this state for each kind of insurance for
60 which application is made.

61 There is hereby created the board of insurance agent
62 education. The board of insurance agent education shall consist
63 of the commissioner of insurance and six members appointed
64 by the commissioner. The members appointed by the commis-
65 sioner shall be two licensed property and casualty insurance
66 agents, one licensed life insurance agent, one licensed health
67 and accident insurance agent, one representative of a domestic
68 insurance company, and one representative of a foreign
69 insurance company: *Provided,* That no board shall be appointed
70 that fails to include companies or agents for companies repre-
71 senting at least two thirds of the net written insurance premiums
72 in the state. Each member shall serve a term of three years and
73 shall be eligible for reappointment.

74 (1) The board of insurance agent education shall establish
75 the criteria for a program of insurance education and submit the
76 proposal for the approval of the commissioner on or before the
77 thirty-first day of December of each year.

78 (2) The commissioner and the board, under standards
79 established by the board, may approve any course or program
80 of instruction developed or sponsored by an authorized insurer,
81 accredited college or university, agents association, insurance
82 trade association, or independent program of instruction that
83 presents the criteria and the number of hours that the board and
84 commissioner determine appropriate for the purpose of this
85 article.

86 (g) The commissioner may issue a provisional license to
87 any agent applicant meeting the qualifications set forth in
88 section two of this article, but who has not been appointed as
89 agent by a licensed insurer.

90 (1) Notwithstanding other provisions of the code to the
91 contrary, an individual so licensed:

92 (A) May not solicit, negotiate, effect or countersign
93 insurance contracts or otherwise transact insurance;

94 (B) Is not subject to the continuing education requirements
95 set forth in section two-a of this article; and

96 (C) May hold the provisional license for a period of one
97 year from the date of issuance.

98 (2) A provisional license may be upgraded to an agent's
99 license upon the appointment of the applicant as agent by a
100 licensed insurer subject to the same requirements for licensing
101 of agents in general.

102 (3) The commissioner may suspend, revoke or refuse to
103 upgrade a provisional license for any of the same causes and
104 pursuant to the same procedures as are applicable to suspension
105 or revocation of licenses of agents in general under article
106 twelve of this chapter.

107 (4) There shall be no fee for a provisional license.

§33-12-3. Application.

1 (a) Application for an agent's, broker's or solicitor's license
2 or renewal thereof shall be made to the commissioner upon a
3 form prescribed by him or her and shall contain the applicant's

4 name, social security number and the information and support-
5 ing documents as the commissioner may require, and the
6 commissioner may require the application to be made under the
7 applicant's oath.

8 (b) If for an agent's license, other than for a provisional
9 license, the application shall show the kinds of insurance to be
10 transacted, and shall be accompanied by the written appoint-
11 ment of the applicant as agent by at least one licensed insurer
12 for each kind of insurance for which application is made.

13 (c) If for a solicitor's license, the application shall be
14 accompanied by written appointment of the applicant as
15 solicitor by a licensed agent.

16 (d) If for a broker's license, the application shall be
17 accompanied by a statement upon a form prescribed by the
18 commissioner as to the trustworthiness and competency of the
19 applicant, signed by at least three licensed resident agents of
20 this state.

21 (e) Willful misrepresentation of any fact in any application
22 or any documents in support thereof is a violation of this
23 chapter.

CHAPTER 150

(H. B. 4705 — By Delegates H. White, Dempsey,
L. White, Kominar, Cann and Romine)

[Passed March 9, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing education requirements for insurance agents.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

§33-12-2a. Continuing education required.

1 The purpose of this provision is to provide continuing
2 education under guidelines set up under the insurance commis-
3 sioner's office, with the guidelines to be set up under the board
4 of insurance agent education. Nothing in this section prohibits
5 an individual from receiving commissions which have been
6 vested and earned while that individual maintained an approved
7 insurance agent's license.

8 (a) This section applies to persons licensed to engage in the
9 sale of the following types of insurance:

10 (1) Life insurance, annuity contracts, variable annuity
11 contracts and variable life insurance;

12 (2) Sickness, accident and health insurance;

13 (3) All lines of property and casualty insurance; and

14 (4) All other lines of insurance for which an examination is
15 required for licensing.

16 (b) This section does not apply to:

17 (1) Persons holding resident licenses for any kind or kinds
18 of insurance offered in connection with loans or other credit
19 transactions or insurance for which an examination is not
20 required by the commissioner, nor does it apply to any limited
21 or restricted license the commissioner may exempt; and

22 (2) Individuals selling credit life or credit accident and
23 health insurance.

24 (c)(1) The board of insurance agent education as established
25 by section two of this article shall develop a program of
26 continuing insurance education and submit the proposal for the

27 approval of the commissioner on or before the thirty-first day
28 of December of each year. Each year after the first day of July,
29 two thousand one, the program shall contain a requirement that
30 any person appointed to be an agent on behalf of a licensed
31 health maintenance organization at any time during the relevant
32 triennium must, as a component of his or her mandatory
33 continuing insurance education, complete a minimum of six
34 hours of continuing insurance education during the triennium
35 which is on topics specific to health maintenance organizations.

36 No program may be approved by the commissioner that
37 includes a requirement that any agent complete more than
38 twenty-four hours of continuing insurance education triennially.
39 No program may be approved by the commissioner that
40 includes a requirement that any of the following individuals
41 complete more than six hours of continuing insurance education
42 triennially:

43 (A) Insurance agents who sell only preneed burial insurance
44 contracts; and

45 (B) Insurance agents who engage solely in telemarketing
46 insurance products by a scripted presentation which scripted
47 presentation has been filed with and approved by the commis-
48 sioner.

49 (2) The commissioner and the board, under standards
50 established by the board, may approve any course or program
51 of instruction developed or sponsored by an authorized insurer,
52 accredited college or university, agents' association, insurance
53 trade association or independent program of instruction that
54 presents the criteria and the number of hours that the board and
55 commissioner determine appropriate for the purpose of this
56 section.

57 (d) Persons licensed to sell insurance and who are not
58 otherwise exempt shall satisfactorily complete the courses or
59 programs of instructions the commissioner may prescribe.

60 (e) Every person, subject to the continuing education
61 requirements shall furnish, at intervals and on forms as may be
62 prescribed by the commissioner, written certification listing the
63 courses, programs or seminars of instruction successfully
64 completed by the person. The certification shall be executed by,
65 or on behalf of, the organization sponsoring the courses,
66 programs or seminars of instruction.

67 (f) Any person, failing to meet the requirements mandated
68 in this section, and who has not been granted an extension of
69 time, with respect to the requirements, or who has submitted to
70 the commissioner a false or fraudulent certificate of compliance
71 shall have his or her license automatically suspended and no
72 further license may be issued to the person for any kind or kinds
73 of insurance until the person demonstrates to the satisfaction of
74 the commissioner that he or she has complied with all of the
75 requirements mandated by this section and all other applicable
76 laws or rules.

77 (g) The commissioner shall notify the person of his or her
78 suspension pursuant to subsection (f) of this section by certified
79 mail, return receipt requested, to the last address on file with the
80 commissioner pursuant to section twenty-nine of this article.
81 Any person who has had a suspension order entered against him
82 or her pursuant to this section may, within thirty calendar days
83 of receipt of the order, file with the commissioner a request for
84 a hearing for reconsideration of the matter.

85 (h) Any person who does not satisfactorily demonstrate
86 compliance with this section and all other laws applicable
87 thereto as of the last day of the triennium following his or her
88 suspension shall have his or her license automatically canceled
89 and is subject to the education and examination requirements of
90 section two of this article.

91 (i) The commissioner is authorized to hire personnel and
92 make reasonable expenditures considered necessary for
93 purposes of establishing and maintaining a system of continuing
94 education for insurers.