

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2000
First Extraordinary Session, 2000

Volume II
Chapters 151 – 289
Chapters 1 – 5

**COMPILED AND PUBLISHED
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OF
GREGORY M. GRAY**
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CHAPTER 151

(H. B. 4776— By Delegates Douglas, Kuhn, Flanigan,
Angotti, Manchin, Azinger and Stalnaker)

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

AN ACT to amend and reenact sections one, two, three and four, article fifteen-b, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections five and six, all relating to uniform health care administration, the transfer of responsibilities to develop standard forms and procedures regarding health care claims and all other requirements and procedures under this article from the authority of the insurance commissioner to the West Virginia health care authority; and establishing penalties for violation of the uniform health care administration act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15B. UNIFORM HEALTH CARE ADMINISTRATION ACT.

- §33-15B-1. Legislative findings; purpose.
- §33-15B-2. Scope of article.
- §33-15B-3. Health care authority to promulgate rules; use of standardized forms and classifications; advisory group.
- §33-15B-4. Compliance period; reservation of right to additional information.
- §33-15B-5. Penalties for violation.
- §33-15B-6. Citation of article.

§33-15B-1. Legislative findings; purpose.

1 The Legislature hereby finds that there is a need to provide
2 guidelines regarding uniform health care administration in order
3 to best serve consumers, health care providers and insurers and
4 to organize and streamline the claims process. The purpose of
5 this article is to require the transfer of the authority of the
6 insurance commissioner to develop standard forms and proce-
7 dures regarding health care claims and to require that all
8 insurers, third party providers, and health care providers
9 implement and use such standards in a uniform manner to the
10 West Virginia health care authority. The West Virginia health
11 care authority is responsible for coordinating and overseeing the
12 health data collection in West Virginia and coordinating
13 database development, analysis and reporting to facilitate cost
14 management, utilization review, and quality assurance efforts
15 by state payors and regulatory agencies, insurers, consumers,
16 providers, and other interested parties. The Legislature finds
17 that the West Virginia health care authority is the appropriate
18 agency to oversee the development of standard forms and
19 procedures regarding health care claims. Thus, the Legislature
20 hereby transfers the responsibilities to develop standard forms
21 and procedures regarding health care claims and all other
22 requirements and procedures under this article to the West
23 Virginia health care authority.

§33-15B-2. Scope of article.

1 The provisions of this article apply to all health care
2 providers in the state, including but not limited to, all insurers
3 writing or issuing accident and sickness policies; hospital
4 service corporations; health service corporations; medical
5 service corporations; dental service corporations; all third party
6 providers; all state agencies and departments, including, but not
7 limited to, the public employees insurance agency, workers'
8 compensation insurance, and providers of services under
9 medicare and medicaid.

§33-15B-3. Health care authority to promulgate rules; use of standardized forms and classifications; advisory group.

1 (a) The West Virginia health care authority shall promul-
2 gate legislative rules in accordance with the provisions of
3 chapter twenty-nine-a of this code regarding the implementa-
4 tion and use of uniform health care administrative forms. Such
5 rules shall establish, where practicable, the acceptance and use
6 throughout the health care system of standard administrative
7 forms, terms or procedures, including, but not limited to, the
8 following:

9 (1) The standard health care financing administration
10 fifteen hundred (HCFA 1500) health insurance claim form, as
11 amended, or other similar forms, terms, and definitions to be
12 used which are consistent with health care and insurance
13 industry standards.

14 (2) International classification of disease, ninth clinical
15 modifications (ICD-9-CM) and common procedural terminol-
16 ogy (CPT) codes, as amended, or other similar forms, terms,
17 and definitions to be used which are consistent with health care
18 and insurance industry standards.

19 (3) National uniform billing data element specifications
20 (UB-92), as amended, and as supplemented by the West
21 Virginia uniform billing committee, or other similar forms,
22 terms, and definitions to be used which are consistent with
23 health care and insurance industry standards.

24 (4) Consideration of current practices involving reimburse-
25 ment of claims and explanation of benefits, and the implemen-
26 tation of standards and guidelines regarding explanation of
27 benefits, including, but not limited to, consideration of line item
28 explanations of payments or denial of payments.

29 (b) The legislative rules required herein shall be developed
30 by the West Virginia health care authority with the advice of an
31 advisory group to be appointed by the board of the West
32 Virginia health care authority. Such advisory group shall
33 consist of representatives of consumers, providers, payors, and
34 regulatory agencies, including representatives from the follow-
35 ing: The office of the insurance commissioner; the West
36 Virginia health care authority; West Virginia dental association;
37 West Virginia pharmacists association; the West Virginia
38 hospital association; commercial health insurers; third party
39 administrators; the West Virginia state medical association; the
40 West Virginia nurses association; public employees insurance
41 agency; workers' compensation commission; and consumers.
42 The West Virginia health care authority shall form such
43 advisory group after the effective date of this section.

44 (c) The West Virginia health care authority and the advi-
45 sory group shall review the legislative rules effected pursuant
46 to this section as necessary and update the same in a timely
47 manner in order to conform to current legislation and health
48 care and insurance industry standards and trends.

§33-15B-4. Compliance period; reservation of right to additional information.

1 (a) All health care providers, insurers, third party providers
2 and state agencies or departments shall have one year from the
3 date the West Virginia health care authority establishes the
4 legislative rules required by this article to comply with the
5 requirements of the same.

6 (b) This section shall not limit the right of any insurer, third
7 party provider, state agency or department to require additional
8 information on any claim.

§33-15B-5. Penalties for violation.

1 Any person, partnership, corporation, limited liability
2 company, professional corporation, health care provider or
3 other entity violating any provision of this article shall be guilty
4 of a misdemeanor and, upon conviction shall be punished by a
5 fine of not more than one thousand dollars. Each day of
6 continuing violation after conviction shall be considered a
7 separate offense. The West Virginia health care authority is
8 empowered to withhold rate approval or a certificate of need for
9 any health care provider violating any provision of this article.

§33-15B-6. Citation of article.

1 This article may be known as the "Uniform Health Care
2 Administration Act."

CHAPTER 152

(Com. Sub. for H. B. 4502 — By Delegates Beane,
Mahan, Hutchins, Cann, H. White and Paxton)

[Passed March 7, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article twenty-two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to farmers' mutual fire insurance companies; allowing the companies to insure property located outside of this state; and providing minimum capital and surplus requirements for the companies conducting insurance business outside of this state.

Be it enacted by the Legislature of West Virginia:

That section eight, article twenty-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 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.

§33-22-8. Kinds of coverage authorized.

1 (a) Any company subject to the provisions of this article
2 may issue policies of insurance on property, signed by its
3 president and secretary, providing insurance against:

4 (1) Loss or damage to dwelling houses, stores and all kinds
5 of buildings and household furniture, goods, merchandise and
6 chattels of every description, and all other property by fire, and
7 allied coverages, including lightning, aircraft, windstorm,
8 tornado, cyclone, hail, frost or snow, smoke, weather or
9 climatic conditions, including excess or deficiency of moisture,
10 flood, rain or drought, business interruptions, riot attending a
11 strike or civil commotion, riot, vehicle and by explosion
12 whether fire ensues or not;

13 (2) Loss or damage by insects or disease to farm crops or
14 products and loss of rental value of land used in producing
15 those crops or products;

16 (3) Loss or damage by water or other fluid to any goods or
17 premises arising from the breakage or leakage of sprinklers,
18 pumps or other apparatus erected for extinguishing fires, or of
19 other conduits or containers, or by water entering through leaks
20 or openings in buildings and of water pipes, and against
21 accidental injury to such sprinklers, pumps, apparatus, conduits,
22 containers or water pipes;

23 (4) Loss or damage to domestic farm animals by dogs or
24 wild animals.

25 (b) The commissioner may, for good cause shown or on
26 application of the company, limit the license of a company to
27 make insurance to any one or more of the perils or coverages
28 set forth in subsection (a) of this section.

29 (c) In addition any such company may apply to the commis-
30 sioner for an extension of its license, and upon complying with
31 reasonable standards established by the commissioner to assure
32 the solvency of the company and the protection of its policy-
33 holders, may in the discretion of the commissioner be granted
34 an extension of its license to permit the company to issue

35 policies of insurance on risks insuring against one or more of
36 the following:

37 (1) Legal liability for the death, injury, or disability of any
38 human being, or for damage to property, excluding liability
39 resulting from the ownership, maintenance, or use of vehicles
40 or aircraft; and provisions for medical, hospital, surgical and
41 disability benefits to injured persons and funeral and death
42 benefits to dependents, beneficiaries or personal representatives
43 of persons killed, irrespective of legal liability of the insured,
44 when issued as an incidental coverage with or supplemental to
45 the liability coverage.

46 (2) Loss or damage to property by burglary, theft, larceny,
47 robbery, vandalism, malicious mischief, or wrongful conver-
48 sion, or any attempt at any of the foregoing.

49 (3) Personal property floater insurance.

50 (d) A company insuring property located outside this state
51 must meet the capital and surplus requirements of section five-
52 b, article three of this chapter.

CHAPTER 153

(H. B. 4742 — By Delegates Beane, Facemyer, L. White and Stalnaker)

[Passed March 8, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article twenty-four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to investment of funds by hospital service, medical service, dental service and health service corporations; approving repurchase agreements allowable investments.

Be it enacted by the Legislature of West Virginia:

That section ten, article twenty-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 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

§33-24-10. Investments; bonds of corporate officers and employees, minimum statutory surplus.

1 (a) The funds of any such corporation shall be invested only
2 as follows:

3 (1) Fifty percent of such funds shall be in cash or govern-
4 ment securities of the type described in section seven of article
5 eight of this chapter.

6 (2) The balance of such funds may be in cash or invested in
7 the classes of investments described in the following sections
8 of article eight of this chapter: Section nine (certificates of
9 deposit of federally insured institutions), section eleven
10 (corporate obligations), section twelve (building and savings
11 and loan shares, international bank), section thirteen (preferred
12 or guaranteed stock), section fourteen (common stock), section
13 sixteen (real property), section eighteen (revenue bonds), and
14 section twenty-three (repurchase agreements). All such invest-
15 ments shall be subject to all the restrictions and conditions
16 contained in said article eight as applying to similar investments
17 of insurers generally.

18 (b) Every officer or employee of any such corporation, who
19 is entrusted with the handling of its funds, shall furnish, in such
20 amount as may with the approval of the commissioner be fixed
21 by the board of directors of the corporation, a bond with
22 corporate surety, conditioned upon the faithful performance of
23 all his or her duties.

24 (c) A corporation shall have and maintain statutory surplus
25 funds of at least two million dollars: *Provided*, That any such
26 corporation duly licensed under this article in West Virginia
27 prior to the effective date of this section whose surplus require-
28 ments are increased by virtue of this section shall be required to
29 maintain statutory surplus funds of at least five hundred
30 thousand dollars after the effective date of this section, and any
31 such corporation shall then be subject to the full two million
32 dollar statutory surplus requirement after the first day of
33 October, one thousand nine hundred ninety-one.

CHAPTER 154

(Com. Sub. for S. B. 630 — By Senators Helmick, Ross,
Craig, Fanning, Plymale, Dawson and Unger)

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

AN ACT to amend and reenact sections two, three, four, five, six, nine and sixteen, article seven, chapter twelve 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 eight-a, all relating to the jobs investment trust fund; adding legislative findings; changing definitions and board composition; addressing the management and control of the trust; expanding the jobs investment trust board's corporate powers; establishing a new venture capital funding pool, nonincentive tax credits and guarantees; and prohibiting the granting and pledging of the credit of the state.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, six, nine and sixteen, article seven, chapter twelve 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 eight-a, all to read as follows:

ARTICLE 7. JOBS INVESTMENT TRUST FUND.

§12-7-2. Legislative findings.

§12-7-3. Definitions.

§12-7-4. Jobs investment trust board; composition; appointment, term of private members; chairman; quorum.

§12-7-5. Management and control of jobs investment trust vested in board; officers; liability; authority of executive director to act on behalf of board; relationship to higher education institutions.

§12-7-6. Corporate powers.

§12-7-8a. New millennium fund; new millennium fund promissory notes; nonincentive tax credits; rule making.

§12-7-9. Applications for investment priority; investment package.

§12-7-16. Credit of state not pledged.

§12-7-2. Legislative findings.

1 (a) The Legislature finds that the creation of a public body
2 corporate to make investment funds available to eligible
3 businesses would stimulate economic growth and provide or
4 retain jobs within the state. Accordingly, it is declared to be the
5 public policy of the state to create an investment program to
6 inject needed capital into the business community, sustain or
7 improve business profitability and provide jobs to the citizens
8 of the state.

9 (b) The Legislature further finds that:

10 (1) The availability of financial assistance through the
11 creation of the jobs investment trust will promote economic
12 development in the state and will serve the public purposes of
13 the state;

14 (2) The public policy of the state will be served through
15 financing projects, extending loans, providing financing or
16 credit for working capital, creating innovative investment plans

17 and options, and providing equity financing or the refinancing
18 of existing debt of an enterprise;

19 (3) It is in the public interest, in order to address the needs
20 of the business community and the citizens of the state, that a
21 public body corporate be created with full power to accept
22 grants, gifts and appropriations; to generate revenues to furnish
23 money and credit to approved businesses or enterprises; to
24 promote the establishment of new and innovative projects; and
25 to upgrade, expand and retain existing projects; and

26 (4) Fundamental changes are occurring in national and
27 international markets that increase the need for debt financing,
28 equity capital and near-equity capital for emerging, expanding
29 and restructuring business opportunities in the state.

30 (c) The Legislature further finds:

31 (1) That due to the creation of the jobs investment trust,
32 moneys will be available for venture capital in this state;

33 (2) That the implementation of this innovative program
34 may supplant the need for the state to otherwise assist private
35 venture capital concerns through other tax credits;

36 (3) That due to the availability of venture capital funds
37 through this program the granting of venture capital company
38 credits under the capital company act should be reduced for
39 three fiscal years pending the full implementation of the jobs
40 investment trust program;

41 (4) That due to this reduction in the certification of tax
42 credits, additional general revenue may become available for
43 new economic development programs;

44 (5) These economic development programs may be funded
45 from general revenue in an amount appropriate to effectuate the
46 purposes of these programs; and

47 (6) Due to the foregoing findings there shall be an annual
48 line item appropriation, in an amount determined by the
49 Legislature, to the West Virginia development office for a
50 matching grant program for regional economic development
51 corporations or authorities.

§12-7-3. Definitions.

1 For purposes of this article:

2 (a) "Board" means the jobs investment trust board estab-
3 lished pursuant to section four of this article.

4 (b) "Eligible business" means any business, including, but
5 not limited to, a business licensed or seeking licensure by the
6 small business administration as a small business investment
7 company under the small business investment act, which is
8 qualified to do business in West Virginia and is in good
9 standing with all applicable laws affecting the conduct of such
10 business.

11 (c) "Nonincentive Tax Credits" means the nonincentive tax
12 credits issued by the state to the jobs investment trust board and
13 authorized for sale and transfer by the jobs investment trust
14 board pursuant to section eight-a of this article.

15 (d) "Securities" means all bonds, notes, stocks, units of
16 ownership, debentures or any other form of negotiable or
17 nonnegotiable evidence of indebtedness or ownership.

**§12-7-4. Jobs investment trust board; composition; appointment,
term of private members; chairman; quorum.**

1 (a) The jobs investment trust board is continued. The board
2 is a public body corporate and established to improve and
3 otherwise promote economic development in this state.

4 (b) The board consists of thirteen members, five of whom
5 serve by virtue of their respective positions. These five are the
6 president of West Virginia university or his or her designee; the

7 president of Marshall university or his or her designee; the
8 chancellor of the board of directors of the state college system
9 or his or her designee; the executive director of the West
10 Virginia housing development fund; and the executive director
11 of the West Virginia development office. Two members shall
12 be appointed by the governor from a list of four names submit-
13 ted by the board of directors of the housing development fund.
14 The other six members shall be appointed from the general
15 public by the governor. Of the members of the general public
16 appointed by the governor, one shall be an attorney with
17 experience in finance and investment matters, one shall be a
18 certified public accountant, one shall be a representative of
19 labor, one shall be experienced or involved in innovative
20 business development, two shall be present or past executive
21 officers of companies listed on a major stock exchange or large
22 privately held companies.

23 (c) A vacancy on the board shall be filled by appointment
24 by the governor for the unexpired term in the same manner as
25 the original appointment. Any person appointed to fill a
26 vacancy serves only for the unexpired term.

27 (d) The governor may remove any appointed member in
28 case of incompetency, neglect of duty, moral turpitude or
29 malfeasance in office and the governor may declare the office
30 vacant and fill the vacancy as provided in other cases of
31 vacancy.

32 (e) The chairman of the board shall be elected by the board
33 from among the members of the board.

34 (f) Seven members of the board is a quorum. No action may
35 be taken by the board except upon the affirmative vote of at
36 least a majority of those members present, but in no event fewer
37 than six of the members serving on the board.

38 (g) The members of the board, including the chairman, may
39 receive no compensation for their services as members of the

40 board but are entitled to their reasonable and necessary ex-
41 penses actually incurred in discharging their duties under this
42 article.

43 (h) The board shall meet on a quarterly basis or more often
44 if necessary.

45 (i) The terms of the board members appointed by the
46 governor first taking office on or after the one thousand nine
47 hundred ninety-two effective date of the jobs investment trust
48 act expired as designated by the governor at the time of the
49 nomination, two at the end of the first year, two at the end of
50 the second year, two at the end of the third year and two at the
51 end of the fourth year. These original appointments were for
52 and each subsequent appointment was and shall be for a full
53 four-year term. Any member whose term has expired serves
54 until his or her successor has been duly appointed and qualified.
55 Any member is eligible for reappointment.

56 (j) Additionally, one member of the West Virginia House
57 of Delegates and one member of the West Virginia Senate shall
58 serve as advisory members of the jobs investment trust board
59 and, as advisory members, shall be ex officio, nonvoting
60 advisory members. The governor shall appoint the two legisla-
61 tive ex officio advisory members who shall serve for four years
62 or such shorter time as he or she continues to be a West
63 Virginia legislator.

**§12-7-5. Management and control of jobs investment trust vested
in board; officers; liability; authority of executive
director to act on behalf of board; relationship to
higher education institutions.**

1 (a) It is the duty of the board to manage and control the jobs
2 investment trust. In order to carry out the day-to-day manage-
3 ment and control of the trust and effectuate the purposes of this
4 article, the board shall appoint an executive director who is or
5 has been a senior executive of a major financial institution,

6 brokerage firm, investment firm or similar institution, with
7 extensive experience in capital market development. The board
8 shall fix the executive director's duties. The board shall fix the
9 compensation of the executive director and the compensation
10 shall, at least in part, be incentive based. The executive director
11 serves at the will and pleasure of the board.

12 (b) The board shall elect a secretary annually, who need not
13 be a member of the board, to keep a record of the proceedings
14 of the board.

15 (c) The members and officers of the board are not liable
16 personally, either jointly or severally, for any debt or obligation
17 created by the board.

18 (d) The acts of the board are solely the acts of its corpora-
19 tion and are not those of an agent of the state. No debt or
20 obligation of the board is a debt or obligation of the state.

21 (e) Upon the affirmative vote of at least a majority of those
22 members in attendance or participating in a meeting of the
23 board, but in no event fewer than six of the members serving on
24 the board, the board may approve any action to be taken and
25 authorize the executive director for and on behalf of the board
26 to execute and deliver all instruments, agreements or other
27 documents that are required or are reasonably necessary to
28 effectuate the decisions or acts of the board.

29 (f) The West Virginia housing development fund shall
30 provide office space and staff support services for the director
31 and the board shall act as fiscal agent for the board and, as such,
32 shall provide accounting services for the board, invest all funds
33 as directed by the board, service all investment activities of the
34 board and shall make the disbursements of all funds as directed
35 by the board, for which the West Virginia housing development
36 fund shall be reasonably compensated, as determined by the
37 board.

38 (g) The board and the executive director shall involve
39 students and faculty members of state institutions of higher
40 education in the board's activities, in order to enhance the
41 opportunities at the institutions for learning, and for participa-
42 tion in the board's investment activities and in the economic
43 development of the state, whether in research, financial
44 analysis, management participation, or in such other ways as
45 the board and the executive director may, in their discretion,
46 find appropriate.

§12-7-6. Corporate powers.

1 The board has the power:

2 (1) (a) To make loans to eligible businesses with or without
3 interest secured if and as required by the board; and (b) to
4 acquire ownership interests in eligible businesses. These
5 investments may be made in eligible businesses that stimulate
6 economic growth and provide or retain jobs in this state, and
7 shall be made only upon the determination by the board that the
8 investments are prudent and meet the criteria established by the
9 board;

10 (2) To accept appropriations, gifts, grants, bequests and
11 devises and to use or dispose of them to carry out its corporate
12 purposes;

13 (3) To make and execute contracts, releases, compromises,
14 agreements and other instruments necessary or convenient for
15 the exercise of its powers or to carry out its corporate purposes;

16 (4) To collect reasonable fees and charges in connection
17 with making and servicing loans, notes, bonds, obligations,
18 commitments and other evidences of indebtedness, in connec-
19 tion with making equity investments and in connection with
20 providing technical, consultative and project assistance ser-
21 vices;

22 (5) To sue and be sued;

23 (6) To make, amend and repeal bylaws and rules consistent
24 with the provisions of this article;

25 (7) To hire its own employees, whom shall be employees of
26 the state of West Virginia for purposes of articles ten and
27 sixteen, chapter five of this code, and to appoint officers and
28 consultants , and to fix their compensation and prescribe their
29 duties;

30 (8) To acquire, hold and dispose of real and personal
31 property for its corporate purposes;

32 (9) To enter into agreements or other transactions with any
33 federal or state agency, college or university, any person and
34 any domestic or foreign partnership, corporation, association or
35 organization;

36 (10) To acquire real property, or an interest in real or
37 personal property, in its own name, by purchase or foreclosure
38 when acquisition is necessary or appropriate to protect any loan
39 in which the board has an interest; to sell, transfer and convey
40 any real or personal property to a buyer; and, in the event a sale,
41 transfer or conveyance cannot be effected with reasonable
42 promptness or at a reasonable price, to lease real or personal
43 property to a tenant;

44 (11) To purchase, sell, own, hold, negotiate, transfer or
45 assign: (i) Any mortgage, instrument, note, credit, debenture,
46 guarantee, bond or other negotiable instrument or obligation
47 securing a loan, or any part of a loan; (ii) any security or other
48 instrument evidencing ownership or indebtedness; or (iii) equity
49 or other ownership interest. An offering of one of the above
50 instruments shall include the representation and qualification
51 that the board is a public body corporate managing a venture
52 capital fund that includes high-risk investments and, that in any
53 transfer, sale or assignment of any interest, the transferee,
54 purchaser or assignee accepts any risk without recourse to the
55 jobs investment trust or to the state;

56 (12) To procure insurance against losses to its property in
57 amounts, and from insurers, as is prudent;

58 (13) To consent, when prudent, to the modification of the
59 rate of interest, time of maturity, time of payment of install-
60 ments of principal or interest, or any other terms of the invest-
61 ment, loan, contract or agreement in which the board is a party;

62 (14) To establish training and educational programs to
63 further the purposes of this article;

64 (15) To file its own travel rules;

65 (16) To borrow money to carry out its corporate purpose in
66 principal amounts and upon terms as are necessary to provide
67 sufficient funds for achieving its corporate purpose;

68 (17) To take options in or warrants for, subscribe to,
69 acquire, purchase, own, hold, transfer, sell, vote, employ,
70 mortgage, pledge, assign, pool or syndicate: (i) Any loans,
71 notes, mortgages or securities; (ii) debt instruments, ownership
72 certificates or other instruments evidencing loans or equity; or
73 (iii) securities or other ownership interests of or in domestic or
74 foreign corporations, associations, partnerships, limited
75 partnerships, limited liability partnerships, limited liability
76 companies, joint ventures or other private enterprise to foster
77 economic growth, jobs preservation and creation in the state of
78 West Virginia, and all other acts that carry out the board's
79 purpose;

80 (18) To contract with either Marshall university or West
81 Virginia university, or both, for the purpose of retaining the
82 services of, and paying the reasonable cost of, services per-
83 formed by the institution for the board in order to effectuate the
84 purposes of this article;

85 (19) To enter into collaborative arrangements or contracts
86 with private venture capital companies when considered
87 advisable by the board;

88 (20) To provide equity financing for any eligible business
89 that will stimulate economic growth and provide or retain jobs
90 in this state, and to hold, transfer, sell, assign, pool or syndicate,
91 or participate in the syndication of, any loans, notes, mortgages,
92 securities, debt instruments or other instruments evidencing
93 loans or equity interest in furtherance of the board's corporate
94 purposes;

95 (21) To form partnerships, create subsidiaries or take all
96 other actions necessary to qualify as a small business invest-
97 ment company under the United States Public Law (85-699)
98 Small Business Investment Act, as amended; and

99 (22) To provide for staff payroll and make purchases in the
100 same manner as the housing development fund.

§12-7-8a. New millennium fund; new millennium fund promissory notes; nonincentive tax credits; rule making.

1 (a) The new millennium fund is established to permit the
2 board to better fulfill its mission to mobilize financing and
3 capital for emerging, expanding and restructuring businesses in
4 the state. New millennium fund moneys are to consist of all
5 appropriations for use by the jobs investment trust board made
6 by the Legislature subsequent to the thirty-first day of Decem-
7 ber, one thousand nine hundred ninety-nine, and funds bor-
8 rowed from private or institutional lenders by the board through
9 the issuance of promissory notes. Fund moneys may be held in
10 a separate account or accounts by or at the West Virginia
11 housing development fund for the board until the board
12 disburses any portion of the funds. Fund moneys that are not set
13 aside or otherwise designated for paying interest on the
14 promissory notes may be used by the board in accordance with
15 and to effectuate the purposes of this article. The board may
16 impose reasonable fees and charges associated with its invest-
17 ment of funds from the new millennium fund in eligible
18 businesses to be paid in any combination of money, warrants or
19 equity interests.

20 (b) Without limiting the powers otherwise enumerated in
21 this article, the board has the power to: (1) Sell and transfer
22 portions of the nonincentive tax credits created, issued and
23 transferred to the board pursuant to the provisions of this
24 section to contracting taxpayers and/or their assigns in return
25 for the payments described in subsection (f) of this section; (2)
26 issue or provide promissory notes on loans made to the board
27 having terms of up to ten years on a zero-coupon basis or
28 otherwise; (3) enter into put options or similar commitment
29 contracts with taxpayers that would be for terms of up to ten
30 years committing, at the board's option, to sell and transfer to
31 the contracting taxpayers or their assigns at the end of the term
32 and as soon after the term as is reasonable under the circum-
33 stances portions of the nonincentive tax credits created, issued
34 and transferred to the board pursuant to this section; (4) grant,
35 transfer and assign the benefits of the put options or similar
36 commitment contracts as collateral to secure the board's
37 obligations pursuant to its promissory notes; and (5) satisfy the
38 board's payment obligations under its promissory notes from
39 assets of the board, other than the benefits of the put options or
40 similar commitment contracts, then to effect a corresponding
41 cancellation of the board's related nonincentive tax credit
42 commitment. The terms and conditions of the promissory notes,
43 put options or similar commitment contracts shall be consistent
44 with the purposes of this section, and approved by board
45 resolution, and may be different for separate transactions.

46 (c) Without limiting the powers otherwise enumerated in
47 this article and with regard to the new millennium fund, the
48 board has and may exercise all powers necessary to further the
49 purposes of this section, including, but not limited to, the power
50 to commit, sell and transfer nonincentive tax credits up to the
51 total amount of thirty million dollars.

52 (d) The board may issue its promissory notes pursuant to
53 this section in amounts totaling no more than six million dollars
54 in each of the fiscal years ending in two thousand one, two

55 thousand two, two thousand three, two thousand four and two
56 thousand five, and may issue its nonincentive tax credit
57 commitments in amounts totaling no more than six million
58 dollars in each of the fiscal years ending in two thousand one,
59 two thousand two, two thousand three, two thousand four and
60 two thousand five. The board may agree to sell and transfer at
61 its option, nonincentive tax credits to taxpayers ten years after
62 the date of its commitments, and as soon thereafter as it is
63 reasonable under the circumstances.

64 (e) Prior to committing to the sale and transfer of any
65 nonincentive tax credits, the board shall first determine that:

66 (1) The new millennium fund moneys to be received in
67 relationship to the commitment shall be used for the develop-
68 ment, promotion and expansion of the economy of the state;
69 and

70 (2) The existence and pledge of a put option or similar
71 commitment contract that is supported by the nonincentive tax
72 credits that are committed by the board is a material induce-
73 ment to the private or institutional lender transferring moneys
74 to the board to be placed in the new millennium fund.

75 (f) The board may sell and transfer nonincentive tax credits
76 only in conjunction with the satisfaction of its obligations under
77 its promissory notes issued pursuant to this section. Each
78 original sale and transfer of nonincentive tax credits by the
79 board shall be consummated upon payment to the board, or for
80 its benefits, of an amount equal to the dollar amount of the
81 nonincentive tax credits sold and transferred minus the amount
82 of any federal tax deduction lost by the purchasing taxpayer, if
83 any, resulting from the purchase and projected use of the
84 nonincentive tax credit in satisfying state tax obligations. The
85 nonincentive tax credits sold and transferred by the board
86 pursuant to this section shall be claimed as a credit on the tax
87 returns for the year or years in which the nonincentive tax
88 credits are sold and transferred by the board. The amount of the

89 nonincentive tax credit that exceeds the taxpayer's tax liability
90 for the taxable year in the year of the purchase may be carried
91 to succeeding taxable years until used in full up to two years
92 after the year of purchase, and may not be carried back to prior
93 taxable years. Any nonincentive tax credit sold and transferred
94 by the board that remains outstanding after the third taxable
95 year subsequent to and including the year of the transfer is
96 forfeited.

97 (g) Nonincentive tax credits are created, issued and
98 transferred by the state to the board in a total amount of thirty
99 million dollars to be used by taxpayers, including persons,
100 firms, corporations and all other business entities, to reduce the
101 tax liabilities imposed upon them pursuant to articles twelve-a,
102 thirteen, thirteen-a, thirteen-b, twenty-one, twenty-three and
103 twenty-four, chapter eleven of this code. The total amount of
104 nonincentive tax credits that are created, issued and transferred
105 to the board is thirty million dollars. The nonincentive tax
106 credits are freely transferable to subsequent transferees. The
107 board shall immediately notify the president of the Senate, the
108 speaker of the House of Delegates and the governor in writing
109 if and when any nonincentive tax credits are sold and trans-
110 ferred by the board.

111 (h) In conjunction with the department of tax and revenue,
112 the board shall develop a system for: (i) Registering
113 nonincentive tax credits, commitments for the sale and transfer
114 of nonincentive tax credits, the assignments of the commit-
115 ments and the assignments of the nonincentive tax credits; and
116 (ii) certifying nonincentive tax credits so that when
117 nonincentive tax credits are claimed on a tax return, they may
118 be verified as validly issued by the board, properly taken in the
119 year of claim and in accordance with the requirements of this
120 section.

121 (i) The board may promulgate, repeal, amend and change
122 rules consistent with the provisions of this article to carry out

123 the purposes of this section. These rules are not subject to the
124 provisions of chapter twenty-nine-a of this code, but shall be
125 filed with the secretary of state.

§12-7-9. Applications for investment priority; investment package.

1 (a) The board shall accept and review applications from
2 eligible businesses and shall determine the investment worthi-
3 ness, the benefits to the West Virginia economy, the leverage
4 potential for investments in a small business investment
5 companies, the jobs creation potential and the economic
6 circumstances of the region or regions of the state that would
7 benefit from each proposal. The board shall attempt to balance
8 its investments, as nearly as is practicable, among the geo-
9 graphic regions of the state.

10 (b) Any faculty or students of a public or private institution
11 of higher education in the state may present for the board's
12 consideration proposals relating to innovative projects or
13 investment opportunities.

14 (c) An annual audit shall be conducted by an independent
15 firm of certified public accountants and shall be made available
16 to the Legislature annually.

17 (d) The board shall forward to the West Virginia housing
18 development fund for its review and information approved
19 investment packages containing information as is necessary to
20 permit the West Virginia housing development fund to carry
21 out its duties under this article. The board shall determine
22 whether each applicant is an eligible business.

§12-7-16. Credit of state not pledged.

1 The provisions of this article do not and shall not be
2 construed to authorize the jobs investment trust board at any
3 time or in any manner to grant or pledge the credit or taxing
4 power of the state. None of the obligations or debts created by

5 the jobs investment trust board under the authority granted in
6 this article are or are to be construed to be obligations of the
7 state.

CHAPTER 155

(Com. Sub. for S. B. 103 — By Senator Fanning)

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

AN ACT to amend and reenact sections four and fourteen, article eleven, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the West Virginia contractor licensing board; the composition and residency requirements of the board; disciplinary powers of the board; board administrative appeal hearings; and legislative rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§21-11-4. West Virginia contractor licensing board created; members; appointment; terms; vacancies; qualifications; quorum.

§21-11-14. Disciplinary powers of the board.

§21-11-4. West Virginia contractor licensing board created; members; appointment; terms; vacancies; qualifications; quorum.

1 (a) There is hereby created the West Virginia contractor
2 licensing board. The board shall consist of ten members
3 appointed by the governor by and with the advice and consent

4 of the Senate for terms of four years. Such members shall serve
5 until their successors are appointed and have qualified. Eight of
6 the appointed members shall be owners of businesses engaged
7 in the various contracting industries, with at least one member
8 appointed from each of the following contractor classes: One
9 electrical contractor, one general building contractor, one
10 general engineering contractor, one heating, ventilating and
11 cooling contractor, one multifamily contractor, one piping
12 contractor, one plumbing contractor and one residential
13 contractor, as defined in section three hereof. Two of the
14 appointed members shall be building code officials who are not
15 members of any contracting industry. At least three members of
16 the board shall reside at the time of their appointment in each
17 congressional district as existing on the first day of January, one
18 thousand nine hundred ninety-eight. The commissioner of
19 labor, the secretary of the department of tax and revenue or his
20 designee, and the commissioner of the bureau of employment
21 programs or his designee shall be ex officio nonvoting members
22 of the board.

23 (b) Terms of the members first appointed shall be two
24 members for one year, two members for two years, three
25 members for three years and three members for four years, as
26 designated by the governor at the time of appointment. Thereaf-
27 ter, terms shall be for four years. A member who has served all
28 or part of two consecutive terms shall not be subject to reap-
29 pointment unless four years have elapsed since the member last
30 served. Vacancies shall be filled by appointment by the
31 governor for the unexpired term of any member whose office is
32 vacant and shall be made within sixty days of the occurrence of
33 the vacancy. A vacancy on the board shall not impair the right
34 of the remaining members to exercise all the powers of the
35 board.

36 (c) The board shall elect a chair from one of the voting
37 members of the board. The board shall meet at least once

38 annually and at such other times as called by the chair or a
39 majority of the board. Board members shall receive no remuneration
40 for their service, but shall be reimbursed for their actual expenses
41 incurred in the performance of their duties as such. A majority of the
42 membership of the board shall constitute a quorum of the board.
43

§21-11-14. Disciplinary powers of the board.

1 (a) The board has the power and authority to impose the
2 following disciplinary actions:

3 (1) Permanently revoke a license;

4 (2) Suspend a license for a specified period;

5 (3) Censure or reprimand a licensee;

6 (4) Impose limitations or conditions on the professional
7 practice of a licensee;

8 (5) Impose requirements for remedial professional education to correct
9 deficiencies in the education, training and skill of a licensee; and
10

11 (6) Impose a probationary period requiring a licensee to
12 report regularly to the board on matters related to the grounds
13 for probation; the board may withdraw probationary status if
14 the deficiencies that require the sanction are remedied.

15 (b) The board may summarily suspend a licensee pending
16 a hearing or pending an appeal after hearing upon a determination
17 that the licensee poses a clear, significant and immediate
18 danger to the public health and safety.

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

23 (d) The board may accept the voluntary surrender of a
24 license: *Provided*, That such license may not be reissued unless
25 the board determines that the licensee is competent to resume
26 practice and the licensee pays the appropriate renewal fee.

27 (e) A person or contractor adversely affected by disciplin-
28 ary action may appeal to the board within sixty days of the date
29 such disciplinary action is taken. The board shall hear the
30 appeal within thirty days from receipt of notice of appeal in
31 accordance with the provisions of chapter twenty-nine-a of this
32 code. Hearings shall be held in Charleston. The board may
33 retain a hearing examiner to conduct the hearings and present
34 proposed findings of fact and conclusions of law to the board
35 for its action.

36 (f) Any party adversely affected by any action of the board
37 may appeal such action pursuant to the provisions of chapter
38 twenty-nine-a of this code.

39 (g) The following are causes for disciplinary action:

40 (1) Abandonment, without legal excuse, of any construction
41 project or operation engaged in or undertaken by the licensee;

42 (2) Willful failure or refusal to complete a construction
43 project or operation with reasonable diligence, thereby causing
44 material injury to another;

45 (3) Willful departure from or disregard of plans or specifi-
46 cations in any material respect without the consent of the
47 parties to the contract;

48 (4) Willful or deliberate violation of the building laws or
49 regulations of the state or of any political subdivision thereof;

50 (5) Willful or deliberate failure to pay any moneys when
51 due for any materials free from defect, or services rendered in
52 connection with such person's operations as a contractor when

53 such person has the capacity to pay or when such person has
54 received sufficient funds under the contract as payment for the
55 particular construction work for which the services or materials
56 were rendered or purchased, or the fraudulent denial of any
57 amount with intent to injure, delay or defraud the person to
58 whom the debt is owed;

59 (6) Willful or deliberate misrepresentation of a material fact
60 by an applicant or licensee in obtaining a license, or in connec-
61 tion with official licensing matters;

62 (7) Willful or deliberate failure to comply in any material
63 respect with the provisions of this article or the rules of the
64 board;

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

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

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

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

84 (h) In all disciplinary hearings the board has the burden of
85 proof as to all matters in contention. No disciplinary action
86 shall be taken by the board except on the affirmative vote of at
87 least six members thereof. Except for violations of section
88 thirteen of this article, no disciplinary action shall be taken by
89 the board for any such cause as is set out herein unless the
90 licensee has been finally adjudicated as having perpetrated such
91 act in a court of record: *Provided*, That, after the effective date
92 of the legislative rules required by subsection (i) of this section,
93 no disciplinary action may be taken by the board for any cause
94 except under the same procedures applicable to all other state
95 boards of examination or registration set forth in section eight,
96 article one, chapter thirty of this code. Other than as specifically
97 set out herein, the board shall have no power or authority to
98 impose or assess damages.

99 (i) On or before the first day of January, two thousand one,
100 the board shall propose rules for legislative approval in accor-
101 dance with the provisions of article three, chapter twenty-nine-a
102 of this code, which shall specify a procedure for the investiga-
103 tion and resolution of all complaints against persons licensed
104 under this chapter.

CHAPTER 156

(H. B. 4801 — By Delegates Smirl, Givens, Coleman and Dalton)

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

AN ACT to amend and reenact section eleven, article sixteen, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the date a permittee of a landfill must submit an application for closure assistance.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.

§22-16-11. Application for closure assistance.

1 (a) The director shall provide an application and application
2 procedure for all permittees of solid waste landfills desiring to
3 receive closure assistance under this article. At a minimum the
4 procedure shall require that:

5 (1) The permittee of a landfill that does not have a liner
6 system must submit its application no later than the fifteenth
7 day of September, one thousand nine hundred ninety-two,
8 except the permittee of a landfill that has been allowed to
9 accept solid waste pursuant to the provisions of section seven-
10 teen, article fifteen of this chapter must submit its application
11 no later than the eleven months following the expiration of the
12 extension;

13 (2) The permittee of a landfill that has only a single liner
14 system must submit its application no later than eleven months
15 following the date of closure of the landfill; and

16 (3) The permittee of a landfill as provided for in subsection
17 (g), section twelve, article sixteen of this chapter must submit
18 its application for assistance on or before the last day of
19 December, two thousand: *Provided*, That no landfill is eligible
20 for closure assistance if any portion of the landfill remains open
21 or application is made for reopening with the division of
22 environmental protection or the public service commission.

23 (b) The director shall, within a reasonable time after receipt
24 of a complete application, notify the applicant of the acceptance
25 or rejection of the application. If the application is rejected the
26 notice shall contain the reasons for the rejection.

CHAPTER 157

(H. B. 4035 — By Delegate Stemple)

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

AN ACT to amend and reenact section seven, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article fourteen of said chapter by adding thereto a new section, designated section seventeen-e, all relating to compensating deputy sheriffs for required work during holidays.

Be it enacted by the Legislature of West Virginia:

That section seven, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article fourteen of said chapter be amended by adding thereto a new section, designated section seventeen-e, to read as follows:

Article

7. Training Programs for County Employees, Etc.; Compensation of Elected County Officials; County Assistants, Deputies and Employees, Their Number and Compensation.

14. Civil Service for Deputy Sheriffs.

ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES, ETC.;
COMPENSATION OF ELECTED COUNTY OFFICIALS;
COUNTY ASSISTANTS, DEPUTIES AND EMPLOYEES,
THEIR NUMBER AND COMPENSATION.

§7-7-7. County assistants, deputies and employees; their number and compensation; county budget.

- 1 The county clerk, circuit clerk, joint clerk of the county
- 2 commission and circuit court, if any, sheriff, county assessor

3 and prosecuting attorney, by and with the advice and consent of
4 the county commission, may appoint and employ, to assist them
5 in the discharge of their official duties for and during their
6 respective terms of office, assistants, deputies and employees.
7 The county clerk may designate one or more of his or her
8 assistants as responsible for all probate matters.

9 The county clerk, circuit clerk, joint clerk of the county
10 commission and circuit court, if any, sheriff, county assessor
11 and prosecuting attorney shall, prior to the second day of March
12 of each year, file with the county commission a detailed request
13 for appropriations for anticipated or expected expenditures for
14 their respective offices, including the compensation for their
15 assistants, deputies and employees, for the ensuing fiscal year.

16 The county commission shall, prior to the twenty-ninth day
17 of March of each year by order fix the total amount of money
18 to be expended by the county for the ensuing fiscal year, which
19 amount shall include the compensation of county assistants,
20 deputies and employees. Each county commission shall enter its
21 order upon its county commission record.

22 The county clerk, circuit clerk, joint clerk of the county
23 commission and circuit court, if any, sheriff, county assessor
24 and prosecuting attorney shall then fix the compensation of
25 their assistants, deputies and employees based on the total
26 amount of money designated for expenditure by their respective
27 offices by the county commission and the amount expended
28 shall not exceed the total expenditure designated by the county
29 commission for each office.

30 The county officials, in fixing the individual compensation
31 of their assistants, deputies and employees and the county
32 commission in fixing the total amount of money to be expended
33 by the county, shall give due consideration to the duties,
34 responsibilities and work required of the assistants, deputies
35 and employees and their compensation shall be reasonable and
36 proper.

37 After the county commission has fixed the total amount of
38 money to be expended by the county for the ensuing fiscal year
39 and after each county official has fixed the compensation of
40 each of his or her assistants, deputies and employees, as
41 provided in this section, each county official shall file prior to
42 the thirtieth day of June, with the clerk of the county commis-
43 sion, a budget statement for the ensuing fiscal year setting forth
44 the name, or the position designation if then vacant, of each of
45 his or her assistants, deputies and employees, the period of time
46 for which each is employed, or to be employed if the position
47 is then vacant, and his or her monthly or semimonthly compen-
48 sation.

49 All budget statements required to be filed by this section
50 shall be verified by an affidavit by the county official making
51 them. Among other things contained in the affidavit shall be the
52 statement that the amounts shown in the budget statement are
53 the amounts actually paid or intended to be paid to the assis-
54 tants, deputies and employees without rebate, and without any
55 agreement, understanding or expectation that any part thereof
56 shall be repaid to him or her, and that, prior to the time the
57 affidavit is made, nothing has been paid or promised him or her
58 on that account, and that if he or she shall thereafter receive any
59 money, or thing of value, on account thereof, he or she will
60 account for and pay the same to the county. Until the statements
61 required by this section have been filed, no allowance or
62 payments shall be made to any county official or their assis-
63 tants, deputies and employees.

64 Each county official named in this section shall have the
65 authority to discharge any of his or her assistants, deputies or
66 employees by filing with the clerk of the county commission a
67 discharge statement specifying the discharge action: *Provided,*
68 That no deputy sheriff appointed pursuant to the provisions of
69 article fourteen, chapter seven of this code, shall be discharged
70 contrary to the provisions of that article.

ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.**§7-14-17e. Deputy sheriffs who are required to work during holidays; how compensated.**

1 From the effective date of this section, if any deputy sheriff
2 is required to work during a legal holiday as specified in section
3 one, article two, chapter two of this code, or if a legal holiday
4 falls on the deputy sheriff's regular scheduled day off, the
5 sheriff shall decide either that, the deputy sheriff shall be
6 allowed equal time off at a time approved by the sheriff under
7 whom the deputy sheriff serves, or in the alternative, shall be
8 paid at a rate not less than one and one-half times the deputy
9 sheriff's regular rate of pay.

CHAPTER 158

(H. B. 4129 — By Delegates Davis, Pettit, Stemple, Williams and Fletcher)

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

AN ACT to amend and reenact section fourteen, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to sheriffs authorizing persons who were previously certified law-enforcement officers to carry deadly weapons in the duties of service of process for magistrate courts; and providing requirement of yearly weapons qualification and bonding by sheriff.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COURTS AND OFFICERS.

§50-1-14. Duties of sheriff; service of process; bailiff.

1 (a) It shall be the duty of each sheriff to execute all civil
2 and criminal process from any magistrate court which may be
3 directed to such sheriff. Process shall be served in the same
4 manner as provided by law for process from circuit courts.

5 Subject to the supervision of the chief justice of the
6 supreme court of appeals or of the judge of the circuit court, or
7 the chief judge thereof if there is more than one judge of the
8 circuit court, it shall be the duty of the sheriff, or his or her
9 designated deputy, to serve as bailiff of a magistrate court upon
10 the request of the magistrate. Such service shall also be subject
11 to such administrative rules as may be promulgated by the
12 supreme court of appeals. A writ of mandamus shall lie on
13 behalf of a magistrate to enforce the provisions of this section.

14 (b) The sheriff of any county may employ, by and with the
15 consent of the county commission, one or more persons whose
16 sole duties shall be the service of civil process and the service
17 of subpoenas and subpoenas duces tecum. Any such person
18 shall not be considered a deputy or deputy sheriff within the
19 meaning of subdivision (2), subsection (a), section two, article
20 fourteen, chapter seven of this code, nor shall any such person
21 be authorized to carry deadly weapons in the performance of his
22 or her duties: *Provided*, That the sheriff may authorize previ-
23 ously certified West Virginia law-enforcement officers to carry
24 a deadly weapon in the performance of the duties of the officers
25 under the provisions of this section: *Provided, however*, That
26 these officers maintain yearly weapons qualifications and are
27 bonded through the office of the sheriff.

CHAPTER 159

(S. B. 82 — By Senators Dittmar, Jackson, Kessler, Mitchell, Ball and Ross)

[Passed February 23, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to adding probation officers to the list of officials exempt from prohibitions against carrying deadly weapons.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-6. Exceptions as to prohibitions against carrying concealed deadly weapons.

1 The licensure provisions set forth in this article do not
2 apply to:

3 (1) Any person carrying a deadly weapon upon his or her
4 own premises; nor shall anything herein prevent a person from
5 carrying any firearm, unloaded, from the place of purchase to
6 his or her home, residence or place of business or to a place of
7 repair and back to his or her home, residence or place of
8 business, nor shall anything herein prohibit a person from
9 possessing a firearm while hunting in a lawful manner or while
10 traveling from his or her home, residence or place of business

11 to a hunting site and returning to his or her home, residence or
12 place of business;

13 (2) Any person who is a member of a properly organized
14 target-shooting club authorized by law to obtain firearms by
15 purchase or requisition from this state, or from the United
16 States for the purpose of target practice, from carrying any
17 pistol, as defined in this article, unloaded, from his or her home,
18 residence or place of business to a place of target practice and
19 from any place of target practice back to his or her home,
20 residence or place of business, for using any such weapon at a
21 place of target practice in training and improving his or her skill
22 in the use of the weapons;

23 (3) Any law-enforcement officer or law-enforcement
24 official as defined in section one, article twenty-nine, chapter
25 thirty of this code;

26 (4) Any employee of the West Virginia division of correc-
27 tions duly appointed pursuant to the provisions of section five,
28 article five, chapter twenty-eight of this code while the em-
29 ployee is on duty;

30 (5) Any member of the armed forces of the United States or
31 the militia of this state while the member is on duty;

32 (6) Any circuit judge, including any retired circuit judge
33 designated senior status by the supreme court of appeals of
34 West Virginia, prosecuting attorney, assistant prosecuting
35 attorney or a duly appointed investigator employed by a
36 prosecuting attorney;

37 (7) Any probation officer appointed under the provisions of
38 section five, article twelve, chapter sixty-two of this code;

39 (8) Any resident of another state who has been issued a
40 license to carry a concealed weapon by a state or a political
41 subdivision which has entered into a reciprocity agreement with

42 this state shall be exempt from the licensing requirements of
43 section four of this article. The governor may execute reciproc-
44 ity agreements on behalf of the state of West Virginia with
45 states or political subdivisions which have similar gun permit-
46 ting laws and which recognize and honor West Virginia licenses
47 issued pursuant to section four of this article.

CHAPTER 160

(Com. Sub. for S. B. 235 — By Senators Ross,
Anderson, Minard, Snyder, Unger and Minear)

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

AN ACT to amend and reenact section one, article one, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact article two of said chapter, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; continuing rules previously promulgated by state agencies and boards; legislative mandate or authorization for the promulgation of certain legislative rules; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the legislature; authorizing the department of administration and the

auditor to promulgate a legislative rule relating to purchasing card program; authorizing the division of personnel to promulgate a legislative rule relating to the administration of the division; authorizing the division of personnel to promulgate a legislative rule relating to workers' compensation temporary total disability; authorizing the consolidated public retirement board to promulgate a legislative rule relating to general provisions; authorizing the consolidated public retirement board to promulgate a legislative rule relating to the teachers' defined contribution system; authorizing the consolidated public retirement board to promulgate a legislative rule relating to the teachers defined benefit plan; authorizing the consolidated public retirement board to promulgate a legislative rule relating to the public employees retirement system; authorizing the consolidated public retirement board to promulgate a legislative rule relating to refund, reinstatement and loan interest factors; and authorizing the board of risk and insurance management to promulgate a legislative rule relating to the filing of written notification concerning incidents which could potentially result in liability to the board.

Be it enacted by the Legislature of West Virginia:

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

Article

1. **General Legislative Authorization.**
2. **Authorization for Department of Administration to Promulgate Legislative Rules.**

ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.

§64-1-1. Legislative authorization.

- 1 Under the provisions of article three, chapter twenty-nine-a
- 2 of the code of West Virginia, the Legislature expressly autho-
- 3 rizes the promulgation of the rules described in articles two

4 through eleven of this chapter, subject only to the limitations set
5 forth with respect to each such rule in the section or sections of
6 this chapter authorizing its promulgation. The Legislature
7 declares that all rules authorized under articles two through
8 eleven of this chapter are within the legislative intent of the
9 statute which the rule is intended to implement, extend, apply
10 or interpret. Legislative rules promulgated pursuant to the
11 provisions of articles one through eleven of this chapter in
12 effect at the effective date of this section shall continue in full
13 force and effect until reauthorized in this chapter by legislative
14 enactment, or until amended by emergency rule pursuant to the
15 provisions of article three, chapter twenty-nine-a of this code.

16 All proposed legislative rules for which bills of authoriza-
17 tion have been introduced in the Legislature not specifically
18 authorized under articles two through eleven of this chapter are
19 disapproved by the Legislature.

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

§64-2-1. Department of Administration and the Auditor.

§64-2-2. Division of personnel.

§64-2-3. Consolidated public retirement board.

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

§64-2-1. Department of Administration and the Auditor.

1 The legislative rule filed in the state register on the first day
2 of November, one thousand nine hundred ninety-nine, under the
3 authority of section ten-a, article three, chapter twelve of this
4 code, modified by the department of administration and the
5 auditor to meet the objections of the legislative rule-making
6 review committee and refiled in the state register on the
7 twentieth day of December, one thousand nine hundred ninety-
8 nine, relating to the department of administration and the
9 auditor (state purchasing card program, 148 CSR 7), is autho-
10 rized.

§64-2-2. Division of personnel.

1 (a) The legislative rule filed in the state register on the sixth
2 day of August, one thousand nine hundred ninety-nine, under
3 the authority of section ten, article six, chapter twenty-nine of
4 this code, modified by the division of personnel to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the twenty-seventh day of
7 October, one thousand nine hundred ninety-nine, relating to the
8 division of personnel (administrative rule of the West Virginia
9 division of personnel, 143 CSR 1), is authorized with the
10 following amendment:

11 On page eight, subdivision 4.4(b), line two, following the
12 words 'whole. The', by striking out the word 'Board' and
13 inserting in lieu thereof the word 'Director'."

14 (b) The legislative rule filed in the state register on the sixth
15 day of August, one thousand nine hundred ninety-nine, under
16 the authority of section four, article five-a, chapter twenty-three
17 of this code, modified by the division of personnel to meet the
18 objections of the legislative rule-making review committee and
19 refiled in the state register on the twenty-seventh day of
20 October, one thousand nine hundred ninety-nine, relating to the
21 division of personnel (workers' compensation temporary total
22 disability, 143 CSR 3), is authorized.

§64-2-3. Consolidated public retirement board.

1 (a) The legislative rule filed in the state register on the
2 twenty-second day of July, one thousand nine hundred
3 ninety-nine, under the authority of section one, article ten-d,
4 chapter five of this code, modified by the consolidated public
5 retirement board to meet the objections of the legislative
6 rule-making review committee and refiled in the state register
7 on the twenty-eighth day of October, one thousand nine

8 hundred ninety-nine, relating to the consolidated public
9 retirement board (general provisions, 162 CSR 1), is authorized.

10 (b) The legislative rule filed in the state register on the
11 twenty-second day of July, one thousand nine hundred
12 ninety-nine, under the authority of section one, article ten-d,
13 chapter five of this code, modified by the consolidated public
14 retirement board to meet the objections of the legislative
15 rule-making review committee and refiled in the state register
16 on the twenty-eighth day of October, one thousand nine
17 hundred ninety-nine, relating to the consolidated public
18 retirement board (teachers' defined contribution system, 162
19 CSR 3), is authorized.

20 (c) The legislative rule filed in the state register on the
21 twenty-second day of July, one thousand nine hundred
22 ninety-nine, under the authority of section one, article ten-d,
23 chapter five of this code, modified by the consolidated public
24 retirement board to meet the objections of the legislative
25 rule-making review committee and refiled in the state register
26 on the twenty-eighth day of October, one thousand nine
27 hundred ninety-nine, relating to the consolidated public
28 retirement board (teachers defined benefit plan, 162 CSR 4), is
29 authorized.

30 (d) The legislative rule filed in the state register on the
31 twenty-second day of July, one thousand nine hundred
32 ninety-nine, under the authority of section one, article ten-d,
33 chapter five of this code, modified by the consolidated public
34 retirement board to meet the objections of the legislative
35 rule-making review committee and refiled in the state register
36 on the twenty-eighth day of October, one thousand nine
37 hundred ninety-nine, relating to the consolidated public
38 retirement board (public employees retirement system, 162
39 CSR 5), is authorized.

40 (e) The legislative rule filed in the state register on the third
41 day of August, one thousand nine hundred ninety-nine, under
42 the authority of section one, article ten-d, chapter five of this
43 code, modified by the consolidated public retirement board to
44 meet the objections of the legislative rule-making review
45 committee and refiled in the state register on the twenty-eighth
46 day of October, one thousand nine hundred ninety-nine, relating
47 to the consolidated public retirement board (refund, reinstatement
48 and loan interest factors, 162 CSR 7), is authorized.

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

1 The legislative rule filed in the state register on the thir-
2 teenth day of May, one thousand nine hundred ninety-nine,
3 under the authority of section five, article twelve, chapter
4 twenty-nine of this code, modified by the board of risk and
5 insurance management to meet the objections of the legislative
6 rule-making review committee and refiled in the state register
7 on the twenty-third day of July, one thousand nine hundred
8 ninety-nine, relating to the board of risk and insurance manage-
9 ment (filing of written notification concerning incidents which
10 could potentially result in liability to the board, 115 CSR 5), is
11 authorized.

CHAPTER 161

(Com. Sub. for H. B. 4223 — By Delegates Hunt, Linch, Compton,
Jenkins, Faircloth and Riggs)

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

AN ACT to amend and reenact sections one and two, article three,
chapter sixty-four of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, all relating generally to the

promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; disapproving certain legislative rules; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of air pollution from the emission of sulfur oxides; authorizing the division of environmental protection to promulgate a legislative rule relating to the ambient air quality standard for nitrogen dioxide; authorizing the division of environmental protection to promulgate a legislative rule relating to permits for construction, modification, relocation and operation of stationary sources of air pollutants, notification requirements, administrative updates, temporary permits, general permits and procedures for evaluation; authorizing the division of environmental protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of particulate matter air pollution from materials handling, preparation, storage and other sources of fugitive particulate matter; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of particulate air pollution from direct meat-firing devices; authorizing the division of environmental protection to

promulgate a legislative rule relating to the prevention and control of particulate air pollution from the combustion of fuel in indirect heat exchangers; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of emissions from municipal solid waste landfills; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of emissions from hospital/medical/infectious waste incinerators; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of air pollution from hazardous waste treatment, storage or disposal facilities; authorizing the division of environmental protection to promulgate a legislative rule relating to air pollutant emissions banking and trading; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of air pollution from the operation of hot mix asphalt plants; authorizing the division of environmental protection to promulgate a legislative rule relating to acid rain provisions and permits; authorizing the division of environmental protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants pursuant to 40 CFR Part 63; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of air pollution from the operation of coal preparation plants, coal handling operations and coal refuse disposal areas; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of air pollution from the combustion of refuse; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of particulate matter air pollution from manufacturing processes and associated operations; authorizing the division of environmental protection to promulgate a legislative rule relating to ambient air quality standards for sulfur oxides and particulate matter; authorizing the division of environmental protection to promulgate a legislative rule relating

to ambient air quality standards for carbon monoxide and ozone; authorizing the division of environmental protection to promulgate a legislative rule relating to surface mining blasting; authorizing the division of environmental protection to promulgate a legislative rule relating to surface mining and reclamation; disallowing and not authorizing the division of environmental protection to promulgate a legislative rule relating to mining and restoration for sandstone, limestone and sand; disallowing and not authorizing the division of environmental protection to promulgate a legislative rule relating to mining and reclamation of minerals other than coal, limestone, sandstone and sand; authorizing the division of environmental protection to promulgate a legislative rule relating to sewage sludge management; authorizing the division of environmental protection to promulgate a legislative rule relating to hazardous waste management; authorizing the division of environmental protection to promulgate a legislative rule relating to a water pollution control permit fee schedule; authorizing the division of environmental protection to promulgate a legislative rule relating to the state water pollution control revolving fund program; authorizing the division of environmental protection to promulgate a rule relating to water pollution control permit fee schedule; authorizing the division of environmental protection to promulgate a legislative rule relating to groundwater protection standards at steam electric generating facilities; repealing a legislative rule relating to preventing and controlling air pollution from coal refuse disposal areas; and authorizing the environmental quality board to promulgate a legislative rule relating to requirements governing water quality standards.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO
PROMULGATE LEGISLATIVE RULES.**

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

§64-3-2. Environmental quality board.

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

1 (a) The legislative rule filed in the state register on the sixth
2 day of August, one thousand nine hundred ninety-nine, autho-
3 rized under the authority of section four, article five, chapter
4 twenty-two of this code, modified by the division of environ-
5 mental protection to meet the objections of the legislative
6 rule-making review committee and refiled in the state register
7 on the twenty-sixth day of October, one thousand nine hundred
8 ninety-nine, relating to the division of environmental protection
9 (to prevent and control air pollution from the emission of sulfur
10 oxides, 45 CSR 10), is authorized with the following amend-
11 ments:

12 On page nine, paragraph 8.2.c.3., after the word “Director”
13 by striking out the remainder of the sentence;

14 On page nine, subdivision 8.3.a., in the last sentence, by
15 striking out the word “two” and inserting in lieu thereof the
16 word “five”;

17 On page nine, subdivision 8.3.b., after the words “by the
18 Director” by striking out the remainder of the sentence;

19 On page nine, subdivision 8.3.c., after the words “by the
20 Director” by striking out the remainder of the sentence;

21 And;

22 On page nine, by striking out subdivision 8.3.e in its
23 entirety and inserting in lieu thereof a new subdivision 8.3.e to
24 read as follows:

25 8.3.e.1. The Director shall respond within five working
26 days to requests for information generated or required under
27 this rule. Requests for information not in the Director's custody
28 shall be promptly forwarded to the appropriate federal or state
29 agency known to have such information.

30 8.3.e.2. Data regarding the compliance reporting of
31 electric utility SO₂ emissions is available from the U.S.
32 Environmental Protection Agency (EPA). Requests for EPA
33 emissions data should be sent to: EPA Clean Air Marketing
34 Division, 501 3rd Street NW, Washington, D.C. 20001 or online
35 at <http://www.epa.gov/acidrain/edata.html>. Data relating to fuel
36 quality and costs of fuels are available at the Federal Energy
37 Regulatory Commission (FERC) and the West Virginia Public
38 Service Commission. Requests for FERC data should be sent to
39 David P. Boergers, Secretary, Federal Energy Regulatory
40 Commission, 888 First Street NE, Washington, D.C. 20426 or
41 online at <http://www.ferc.fed.us/electric/f423/form423.htm>.
42 Requests for PSC data should be sent to: The West Virginia
43 Public Service Commission, Utility Division, P.O. Box 812,
44 Charleston, W. Va. 25323-0812.

45 (b) The legislative rule filed in the state register on the fifth
46 day of August, one thousand nine hundred ninety-nine, autho-
47 rized under the authority of section four, article five, chapter
48 twenty-two of this code, relating to the division of environmen-
49 tal protection (ambient air quality standard for nitrogen dioxide,
50 45 CSR 12), is authorized.

51 (c) The legislative rule filed in the state register on the
52 seventeenth day of December, one thousand nine hundred
53 ninety-nine, authorized under the authority of section four,
54 article five, chapter twenty-two of this code, modified by the
55 division of environmental protection to meet the objections of
56 the legislative rule-making review committee and refiled in the
57 state register on the twenty-fifth day of January, two thousand,
58 relating to the division of environmental protection (permits for

59 construction, modification, relocation and operation of station-
60 ary sources of air pollutants, notification requirements, adminis-
61 trative updates, temporary permits, general permits and
62 procedures for evaluation, 45 CSR 13), is authorized with the
63 following amendments:

64 On page 5, paragraph 2.17.f.6, by striking out the words
65 “Upon written request, the Director may determine that a
66 physical change results in”;

67 And,

68 On page 5, paragraph 2.17.f.6, at the end of the paragraph,
69 by changing the period to a colon and inserting the words
70 “provided that the owner or operator of the source shall notify
71 the Director of such replacement and the emissions reduction
72 within ten (10) working days of the replacement.”

73 (d) The legislative rule filed in the state register on the fifth
74 day of August, one thousand nine hundred ninety-nine, autho-
75 rized under the authority of section four, article five, chapter
76 twenty-two of this code, relating to the division of environmen-
77 tal protection (standards of performance for new stationary
78 sources, 45 CSR 16), is authorized.

79 (e) The legislative rule filed in the state register on the sixth
80 day of August, one thousand nine hundred ninety-nine, autho-
81 rized under the authority of section four, article five, chapter
82 twenty-two of this code, modified by the division of environ-
83 mental protection to meet the objections of the legislative
84 rule-making review committee and refiled in the state register
85 on the twenty-fourth day of September, one thousand nine
86 hundred ninety-nine, relating to the division of environmental
87 protection (to prevent and control particulate matter air pollu-
88 tion from materials handling, preparation, storage and other
89 sources of fugitive particulate matter, 45 CSR 17), is autho-
90 rized.

91 (f) The legislative rule filed in the state register on the fifth
92 day of August, one thousand nine hundred ninety-nine, autho-
93 rized under the authority of section four, article five, chapter
94 twenty-two of this code, relating to the division of environmen-
95 tal protection (to prevent and control particulate air pollution
96 from direct meat-firing devices, 45 CSR 18), is authorized.

97 (g) The legislative rule filed in the state register on the sixth
98 day of August, one thousand nine hundred ninety-nine, autho-
99 rized under the authority of section four, article five, chapter
100 twenty-two of this code, modified by the division of environ-
101 mental protection to meet the objections of the legislative
102 rule-making review committee and refiled in the state register
103 on the twenty-seventh day of August, one thousand nine
104 hundred ninety-nine, relating to the division of environmental
105 protection (to prevent and control particulate air pollution from
106 combustion of fuel in indirect heat exchangers, 45 CSR 2), is
107 authorized with the following amendments:

108 On page seven, subdivision 8.1.a., in the last sentence, after
109 the words "by the Director" by striking out the remainder of the
110 sentence;

111 On page eight, subdivision 8.3.a, by adding a new sentence
112 at the end of the subdivision to read as follows: Such records
113 shall be retained on-site for a minimum of five years.;

114 On page eight, subdivision 8.3.b, in the first sentence, after
115 the words "by the Director" by striking out the remainder of the
116 sentence;

117 On page eight, subdivision 8.3.c, in the first sentence, after
118 the words "by the Director" by striking out the remainder of the
119 sentence;

120 On page eight, subdivision 8.4.c., after the word "subsec-
121 tion" by striking out the number "8.4" and inserting in lieu
122 thereof the number "8.2";

123 And;

124 On page nine, by striking out subsection 8.5. in its
125 entirety and inserting in lieu thereof a new subsection 8.5. to
126 read as follows:

127 8.5.a. The Director shall respond within five working
128 days to requests for information generated or required under
129 this rule. Requests for information not in the Director's custody
130 shall be promptly forwarded to the appropriate federal or state
131 agency known to have such information.

132 8.5.b. Data relating to electric utilities and fuel quality
133 and costs of fuels are available from the Federal Energy
134 Regulatory Commission (FERC) and the West Virginia Public
135 Service Commission (PSC). Requests for FERC data should be
136 sent to David P. Boergers, Secretary, Federal Energy Regula-
137 tory Commission, 888 First Street NE, Washington, D.C. 20426
138 or online at <http://www.ferc.fed.us/electric/f423/form423.htm>.
139 Requests for PSC data should be sent to: The West Virginia
140 Public Service Commission, Utility Division, P.O. Box 812,
141 Charleston, W. Va. 25323-0812.

142 (h) The legislative rule filed in the state register on the sixth
143 day of August, one thousand nine hundred ninety-nine, autho-
144 rized under the authority of section four, article five, chapter
145 twenty-two of this code, modified by the division of environ-
146 mental protection to meet the objections of the legislative
147 rule-making review committee and refiled in the state register
148 on the twenty-sixth day of October, one thousand nine hundred
149 ninety-nine, relating to the division of environmental protection
150 (to prevent and control emissions from municipal solid waste
151 landfills, 45 CSR 23), is authorized.

152 (i) The legislative ruled filed in the state register on the
153 twenty-second day of December, one thousand nine hundred
154 ninety-nine, authorized under the authority of section four,

155 article five, chapter twenty-two of this code, relating to the
156 division of environmental protection (to prevent and control
157 emissions from hospital, medical, and infectious waste incinera-
158 tors, 45 CSR 24), is authorized.

159 (j) The legislative rule filed in the state register on the fifth
160 day of August, one thousand nine hundred ninety-nine, autho-
161 rized under the authority of section four, article five, chapter
162 twenty-two of this code, relating to the division of environmen-
163 tal protection (to prevent and control air pollution from hazard-
164 ous waste treatment, storage or disposal facilities, 45 CSR 25),
165 is authorized.

166 (k) The legislative rule filed in the state register on the first
167 day of February, one thousand nine hundred ninety-nine,
168 authorized under the authority of section eighteen, article five,
169 chapter twenty-two of this code, modified by the division of
170 environmental protection to meet the objections of the legisla-
171 tive rule-making review committee and refiled in the state
172 register on the twenty-first day of January, two thousand,
173 relating to the division of environmental protection (air
174 pollutant emissions banking and trading, 45 CSR 28), is
175 authorized.

176 (l) The legislative rule filed in the state register on the sixth
177 day of August, one thousand nine hundred ninety-nine, autho-
178 rized under the authority of section four, article five, chapter
179 twenty-two of this code, modified by the division of environ-
180 mental protection to meet the objections of the legislative
181 rule-making review committee and refiled in the state register
182 on the twenty-seventh day of August, one thousand nine
183 hundred ninety-nine, relating to the division of environmental
184 protection (to prevent and control air pollution from the
185 operation of hot mix asphalt plants, 45 CSR 3), is authorized.

186 (m) The legislative rule filed in the state register on the fifth
187 day of August, one thousand nine hundred ninety-nine, autho-

188 rized under the authority of section four, article five, chapter
189 twenty-two of this code, relating to the division of environmen-
190 tal protection (acid rain provisions and permits, 45 CSR 33), is
191 authorized.

192 (n) The legislative rule filed in the state register on the fifth
193 day of August, one thousand nine hundred ninety-nine, autho-
194 rized under the authority of section four, article five, chapter
195 twenty-two of this code, relating to the division of environmen-
196 tal protection (emission standards for hazardous air pollutants
197 pursuant to 40 CFR Part 63, 45 CSR 34), is authorized.

198 (o) The legislative rule filed in the state register on the sixth
199 day of August, one thousand nine hundred ninety-nine, autho-
200 rized under the authority of section four, article five, chapter
201 twenty-two of this code, modified by the division of environ-
202 mental protection to meet the objections of the legislative
203 rule-making review committee and refiled in the state register
204 on the twenty-fourth day of September, one thousand nine
205 hundred ninety-nine, relating to the division of environmental
206 protection (to prevent and control air pollution from the
207 operation of coal preparation plants, coal handling operations
208 and coal refuse disposal areas, 45 CSR 5), is authorized.

209 (p) The legislative rule filed in the state register on the sixth
210 day of August, one thousand nine hundred ninety-nine, autho-
211 rized under the authority of section four, article five, chapter
212 twenty-two of this code, relating to the division of environmen-
213 tal protection (to prevent and control air pollution from com-
214 bustion of refuse, 45 CSR 6), is authorized.

215 (q) The legislative rule filed in the state register on the sixth
216 day of August, one thousand nine hundred ninety-nine, autho-
217 rized under the authority of section four, article five, chapter
218 twenty-two of this code, modified by the division of environ-
219 mental protection to meet the objections of the legislative
220 rule-making review committee and refiled in the state register

221 on the twenty-fourth day of September, one thousand nine
222 hundred ninety-nine, relating to the division of environmental
223 protection (to prevent and control particulate matter air pollu-
224 tion from manufacturing processes and associated operations,
225 45 CSR 7), is authorized.

226 (r) The legislative rule filed in the state register on the
227 twenty-second day of December, one thousand nine hundred
228 ninety-nine, authorized under the authority of section four,
229 article five, chapter twenty-two of this code, modified by the
230 division of environmental protection to meet the objections of
231 the legislative rule-making review committee and refiled in the
232 state register on the twenty-fifth day of January, two thousand,
233 relating to the division of environmental protection (ambient air
234 quality standards for sulfur oxides and particulate matter, 45
235 CSR 8), is authorized.

236 (s) The legislative rule filed in the state register on the
237 twenty-second day of December, one thousand nine hundred
238 ninety-nine, authorized under the authority of section four,
239 article five, chapter twenty-two of this code, modified by the
240 division of environmental protection to meet the objections of
241 the legislative rule-making review committee and refiled in the
242 state register on the twenty-fifth day of January, two thousand,
243 relating to the division of environmental protection (ambient air
244 quality standards for carbon monoxide and ozone, 45 CSR 9),
245 is authorized.

246 (t) The legislative rule filed in the state register on the
247 twenty-fourth day of September, one thousand nine hundred
248 ninety-nine, authorized under the authority of section three,
249 article three-a, chapter twenty-two of this code, modified by the
250 division of environmental protection to meet the objections of
251 the legislative rule-making review committee and refiled in the
252 state register on the twenty-first day of January, two thousand,
253 relating to the division of environmental protection (surface
254 mining blasting, 199 CSR 1), is authorized.

255 (u) The legislative rule filed in the state register on the
256 thirtieth day of July, one thousand nine hundred ninety-nine,
257 authorized under the authority of section three, article one,
258 chapter twenty-two of this code, modified by the division of
259 environmental protection to meet the objections of the legisla-
260 tive rule-making review committee and refiled in the state
261 register on the twenty-first of January, two thousand, relating to
262 the division of environmental protection (surface mining and
263 reclamation rule, 38 CSR 2), is authorized with the following
264 amendments:

265 On page 4, by inserting a new subsection 2.31 to read as
266 follows:

267 '2.31. Commercial Forestry And Forestry.

268 2.31.a. Commercial Forestry, as used in Subsection 7.4
269 of this rule, means a long-term postmining land use designed to
270 accomplish the following: (1) Achieve greater forest productiv-
271 ity than that found on the mine site before mining; (2) Minimize
272 erosion and/or sediment yield and serve the hydrologic func-
273 tions of infiltrating, holding, and yielding water commonly
274 found in undisturbed forests; (3) Result in biodiversity by
275 facilitating rapid recruitment of native species of plants and
276 animals via the process of natural succession; (4) Result in a
277 premium forest that will thrive under stressful conditions; and
278 (5) Result in landscape, vegetation and water resources that
279 create habitat for forest-dwelling wildlife.

280 2.31.b. Forestry, as used in Subsection 7.4 of this rule,
281 means a long-term postmining land use designed to accomplish
282 the following: (1) Achieve forest productivity equal to that
283 found on the mine site before mining; (2) Minimize erosion
284 and/or sediment yield and serve the hydrologic functions of
285 infiltrating, holding, and yielding water commonly found in
286 undisturbed forests; (3) Result in biodiversity by facilitating
287 rapid recruitment of native species of plants and animals via the

288 process of natural succession; and (4) Result in landscape,
289 vegetation and water resources that create habitat for forest-
290 dwelling wildlife.”

291 and renumber the subsequent subsections;

292 On page twelve, by striking subsection 2.136, the definition
293 of ‘woodlands’ in its entirety and renumber the subsequent
294 subsections;

295 On page 68, section 7.2.i, by striking the word ‘Woodland’
296 and inserting in lieu thereof the word ‘Forestry.’

297 On page 68, following section 7.3.c., by inserting the
298 following:

299 ‘7.3.c. A change in postmining land use to grassland uses
300 such as rangeland and/or hayland or pasture is prohibited on
301 operations that obtain an approximate original contour variance
302 described in WV Code §22-3-13(b)(25)(c). Provided, however,
303 That this subdivision is not effective until Sections 7.4 and 7.5
304 of this rule are approved by the federal Office of Surface
305 Mining.

306 7.4. Standards Applicable to Approximate Original Contour
307 Variance Operations With a Postmining Land Use of Commer-
308 cial Forestry and Forestry.

309 7.4.a. Applicability.

310 7.4.a.1. Commercial Forestry and forestry may be
311 approved as a post mining land use for surface mining opera-
312 tions that receive variances from the general requirement to
313 restore the postmining site to its approximate original contour.
314 An applicant may request AOC variance for purposes of this
315 section for the entire permit area or any segment thereof. Either
316 commercial forestry or forestry shall be established on all

317 portions of the permit area. Provided, that the faces of valley
318 fills shall be reclaimed as described in 7.4.b.1.J of this rule.

319 7.4.b. Requirements.

320 7.4.b.1. The Director may authorize commercial
321 forestry and forestry as a postmining use only if the following
322 conditions have been satisfied.

323 7.4.b.1.A. Planting and Management Plan Develop-
324 ment.

325 7.4.b.1.A.1. A registered professional forester
326 shall develop a planting plan and long-term management plan
327 for the permitted area that meets the requirements of the West
328 Virginia Surface Coal Mining and Reclamation Act. These
329 plans shall be made a part of the surface mining permit applica-
330 tion and shall be the basis for determining the capability of the
331 applicant to meet the requirements of this rule. The plans shall
332 be in sufficient detail to demonstrate that the requirements of
333 the commercial forestry and forestry uses can be met. The plans
334 shall contain a signed statement of intent from the landowner
335 demonstrating its commitment to long-term implementation and
336 management in accordance with the plan. Once final bond
337 release is authorized, the permittee's responsibility for imple-
338 menting the long-term management plan ceases. Upon final
339 bond release, the jurisdiction of the Director over the permittee,
340 the operator, the landowner or any other responsible party shall
341 cease. The minimum required content of these plans shall be as
342 follows:

343 7.4.b.1.A.2. The landowner or other responsible
344 party shall submit their objectives for achieving commercial
345 forestry and forestry postmining land uses. The Director may
346 approve the uses only when the planting plan and long term
347 management plan demonstrate that the forest will be managed

348 only for long term forest products, such as sawlogs or veneer,
349 that take 50 to 80 years to mature.

350 7.4.b.1.A.3. A commercial species planting plan
351 and prescription shall be developed by the registered profes-
352 sional forester to achieve the commercial forestry and forestry
353 use. The plan shall include the following:

354 7.4.b.1.A.3.(a) A topographic map of the permit
355 area, 1:12000 or finer, showing the mapped location of
356 premining native soil. A description of each soil mapping unit
357 that includes, at minimum, total depth and volume to bedrock,
358 soil horizons, including the O, A, E, B, C, and Cr horizon
359 depths, soil texture, structure, color, reaction and bedrock type
360 and a site index for common native tree species. An approved
361 certified professional soil scientist shall conduct a detailed on-
362 site survey, create the maps, and provide the written description
363 of the soils. As part of the field survey, the soil scientist shall
364 map and certify the slopes that are 50% or less with a confi-
365 dence level of $\pm 2\%$.

366 7.4.b.1.A.3.(b) An approved geologist shall create
367 a certified geology map showing the location, depth, and
368 volume of all strata in the mined area, the physical and chemi-
369 cal properties of each stratum to include rock texture, pH,
370 potential acidity and alkalinity, total soluble salts, degree of
371 weathering, extractable levels of phosphorus, potassium,
372 calcium, magnesium, manganese, and iron and other properties
373 required by the director to select best available materials for
374 minesoils.

375 7.4.b.1.A.3.(c) A description of the present soils
376 and soil substitutes to be used as the plant medium and the
377 proposed handling, and placement of these materials. The
378 handling plan shall include procedures to:

379 7.4.b.1.A.3.(c)(1) protect native soil organisms
380 and the native seed pool;

381 7.4.b.1.A.3.(c)(2) include organic debris such
382 as litter, branches, small logs, roots, and stumps in the soil;

383 7.4.b.1.A.3.(c)(3) inoculate the minesoil with
384 native soil organisms;

385 7.4.b.1.A.3.(c)(4) increase soil fertility; and

386 7.4.b.1.A.3.(c)(5) encourage plant succession.

387 7.4.b.1.A.3.(d) A surface preparation plan which
388 includes a description of the methods for replacing and grading
389 the soil and other soil substitutes and their preparation for
390 seeding and tree planting.

391 7.4.b.1.A.3.(e) Liming and fertilization plans.

392 7.4.b.1.A.3.(f) Mulching type, rates and
393 procedures.

394 7.4.b.1.A.3.(g) Species seeding rates and
395 procedures for application of perennial and annual herbaceous,
396 shrub, and vine plant materials for ground cover.

397 7.4.b.1.A.3.(h) A tree planting prescription to
398 establish commercial forestry and forestry, to include species,
399 stems per acre, planting mixes, and site-specific planting
400 arrangements to maximize productivity.

401 7.4.b.1.A.4. A long-term management plan shall be
402 developed by a registered professional forester. The plan shall
403 include:

404 7.4.b.1.A.4.(a) A topographic map, with a
405 minimum scale of 1:12000 shall be used to show the boundaries
406 and extent of the proposed surface mining operation, the

407 boundaries of areas being planned for commercial forestry and
408 forestry land uses, and the proposed postmining surface
409 configuration, stream drainages and wetlands, and the plant
410 species mix that will be planted in each area.

411 7.4.b.1.A.4.(b) A proposed schedule of all
412 silvicultural activities necessary to develop the forest resources
413 for commercial forestry and forestry.

414 7.4.b.1.A.4.(c) A description of activities
415 necessary to protect the forest resources from vandalism,
416 wildfire, insects, diseases, exotic organisms and herbivory
417 detrimental to long-term success.

418 7.4.b.1.A.4.(d) A plan to assure forest access for
419 future management, protection, and eventual utilization of the
420 forest resources. The plan shall be developed to minimize
421 adverse environmental impacts, including additional road
422 building and other land disturbances. Forestry best management
423 practices shall be followed.

424 7.4.b.1.A.4.(e) A plan for using forestry best
425 management practices to minimize silvicultural and harvesting
426 impacts on the permit area and on waters of the State. Best
427 Management Practices shall be sufficient to assure compliance
428 with applicable State and Federal water quality standards.

429 7.4.b.1.A.5. A signed statement from the permittee
430 containing financial information and data sufficient to demon-
431 strate:

432 7.4.b.1.A.5.(a) That achieving the commercial
433 forestry use is practicable with respect to the private financial
434 capability necessary to achieve the use; and

435 7.4.b.1.A.5.(b) That the commercial forestry use
436 will be obtainable according to data regarding expected need
437 and market.

438 7.4.b.1.A.6. Two copies of the planting plan,
439 management plan, pertinent maps and statement of intent shall
440 be submitted to the appropriate Division of Forestry District
441 Forester and two copies of each plan shall be submitted to the
442 Director of the Division of Environmental Protection.

443 7.4.b.1.B. Oversight Procedures for Achieving
444 Commercial Forestry and Forestry.

445 7.4.b.1.B.1. Before approving a commercial
446 forestry and forestry reclamation plan, the Director shall assure
447 that the planting plan, long-term management plan, and
448 statement of intent are reviewed and approved by a registered
449 professional forester employed either by the West Virginia
450 Division of Forestry or the Director of the Division of Environ-
451 mental Protection and that a certified professional soil scientist
452 employed by the Director reviews and field verifies the soil
453 slope and sandstone mapping. Before approving the reclamation
454 plan, the Director shall assure that the reviewing forester has
455 made site-specific written findings adequately addressing each
456 of the elements of the plans and statements. The reviewing
457 forester and soil scientist shall make these findings within 45
458 days of receipt of the plans and maps.

459 7.4.b.1.B.2. If after reviewing the plans, the
460 reviewing forester and soil scientist find that the plans and
461 statements comply with the requirements of this land use, they
462 shall prepare written findings stating the basis of approval. A
463 copy of the findings shall be sent to the Director and to the
464 surface mining permit supervisor for the region in which the
465 permit is located. The written findings shall be made part of the
466 facts and findings section of the surface mining permit applica-
467 tion file. The Director shall assure that the plans and statements
468 comply with the requirements of this rule and other provisions
469 of the approved State surface mining program.

470 7.4.b.1.B.3. If the reviewing forester finds the plans
471 to be insufficient, the forester shall either:

472 7.4.b.1.B.3.(a) Contact the preparing forester or
473 the permittee and provide the permittee with an opportunity to
474 make the changes necessary to bring the reclamation plan into
475 compliance with the regulations, or

476 7.4.b.1.B.3.(b) Notify the Director that the
477 reclamation plan does not meet the requirements of the regula-
478 tions. The Director may not approve the surface mining permit
479 until finding that the reclamation plans satisfy all of the
480 requirements of the regulations.

481 7.4.b.1.C. Landscape Criteria.

482 7.4.b.1.C.1. For commercial forestry, the Director
483 shall assure that the postmining landscape is rolling, and
484 diverse. The backfill on the mine bench shall be configured to
485 create a postmining topography that includes the principles of
486 landforming (e.g. the creation of swales) to reflect the
487 premining irregularities in the land. Postmining landform shall
488 provide a rolling topography with slopes of both 5% and 15%
489 with an average slope of 10% to 12.5%. The elevation change
490 between the ridgeline and the valleys shall be varied. The slope
491 lengths shall not exceed 500 feet. The minimum thickness of
492 backfill, including minesoil, placed on the pavement of the
493 basal seam mined in any particular area shall be ten (10) feet.

494 7.4.b.1.C.2. For commercial forestry, the surface
495 drainage pattern shall contain watersheds of various sizes shall
496 exhibit a dendritic drainage pattern that simulates the premining
497 pattern, and shall include the drainage channels, sediment
498 control or other water retention surfaces, which shall remain on
499 the site after bond release.

500 7.4.b.1.C.3. For commercial forestry, in areas
501 where drainage channel design criteria do not mandate erosion

502 control materials, and in other drainage areas where applicable,
503 bioengineering techniques such as fascines, branch packings,
504 live crib walls, and plantings of native herbs and shrubs
505 appropriate for the site shall be used, to the extent possible, to
506 increase the site biodiversity. Only native stone shall be used
507 for erosion control.

508 7.4.b.1.C.4. For commercial forestry, at least 3
509 ponds, permanent impoundments or wetlands totaling at least
510 3.0 acres shall be created on each 200 acres of permitted area.
511 They shall be dispersed throughout the landscape and each
512 water body shall be no smaller than 0.20 acres. All ponds,
513 permanent impoundments or wetlands shall be subject to the
514 requirements of subsection 5.5 of this rule, and shall be left in
515 place after final bond release. The substrate of the ponds and
516 wetlands must be capable of retaining water to support aquatic
517 and littoral vegetation.

518 7.4.b.1.C.5. For forestry, all ponds and impound-
519 ments created during mining shall be left in place after bond
520 release and shall be subject to the requirements of section 5.5
521 of the Rules, except for ponds and impoundments located below
522 the valley fills. The substrate of the ponds and wetlands must be
523 capable of retaining water to support aquatic and littoral
524 vegetation.

525 7.4.b.1.C.6. Before Phase III bond release may be
526 approved, the ponds, permanent impoundments or wetlands
527 used to satisfy parts 7.4.d.1.C.4. and 5. of this rule shall be
528 vegetated on the perimeter with at least six native herbaceous
529 species typical of the region at a density of not less than 1 plant
530 per linear foot of edge, and at least 4 native shrub species at a
531 density of not less than 1 shrub per 6 linear feet of edge. No
532 species of herbaceous or shrub species shall be less than 15%
533 of the total for its life form. This requirement may be met by
534 planted vegetation or that which naturally colonizes the site.

535 7.4.b.1.C.7. The landscape criteria in parts
536 7.4.d.1.C.1., 2., 3., 4., 5., and 6. above, do not apply to valley
537 fills.

538 7.4.b.1.D. Soil and Soil Substitutes.

539 7.4.b.1.D.1. Soil is defined as and shall consist of
540 the O, A, E, B, C and Cr horizons.

541 7.4.b.1.D.2. The Director shall require the
542 operator to recover and use the soil volume equal to the total
543 soil volume on the mined area, as shown on the soil maps and
544 survey except for those areas with a slope of at least 50%. The
545 Director shall assure that all saved soil includes all of the
546 material from the O through Cr horizons.

547 7.4.b.1.D.3. When the soil volume recovered in
548 7.4.b.1.D.2. above, is insufficient to meet the depth require-
549 ments, selected overburden materials may be used as soil
550 substitutes. In such cases, the Director shall require the operator
551 to recover and use all of the weathered, slightly acid brown
552 sandstone from within ten (10) feet of the soil surface on the
553 mined area. This weathered, slightly acid, brown sandstone
554 material may contain or be supplemented with up to 25% by-
555 volume weathered, slightly acid brown shale or siltstone from
556 within ten (10) feet of the soil surface. Material from this layer
557 may be removed with the soil and mixed with the soil in order
558 to meet the depth requirement. Provided, that once the operator
559 has recovered material sufficient to meet the depth require-
560 ments, it may cease recovering such material.

561 7.4.b.1.D.4. When the materials described in
562 7.4.b.1.D.2. and 3. of this rule are insufficient to meet the depth
563 requirements, then the Director shall require the operator to
564 recover and use all of the weathered, slightly acid, brown
565 sandstone from below ten feet of the soil surface on the mined
566 area. Provided, that once the operator has recovered material

567 sufficient to meet the depth requirements, it may cease recover-
568 ing such material.

569 7.4.b.1.D.5. If the applicant affirmatively
570 demonstrates that the materials described in 7.4.b.1.D.2., 3., and
571 4. of this rule within the mined area are insufficient to meet the
572 depth requirements, then up to 2/3 of the minesoil may consist
573 of the best available material or mix of materials.

574 7.4.b.1.D.6. Before approving the use of soil
575 substitutes, the Director shall require the permittee to demon-
576 strate that the selected overburden material is suitable for
577 restoring land capability and productivity. This will be demon-
578 strated by the results of chemical and physical analyses that
579 show that this material is at least 75% sandstone, has at least
580 15% fines (<2mm), has a net acid-base accounting between -3
581 and +3 calcium carbonate equivalent per 1000 tons of material
582 excluding siderite effects, a soluble salt level less than 1.0
583 mmhos/cm, to result in a long-term equilibrium pH of between
584 5.0 and 6.5 and additional analyses as the Director deems
585 necessary. If this spoil is made up of strongly contrasting
586 materials with respect to acid/base accounting these materials
587 shall be blended.

588 7.4.b.1.D.7. The minesoils shall be distributed
589 across the disturbed areas, except the faces of valley fills, in a
590 uniform and consistent mix.

591 7.4.b.1.D.8. For commercial forestry, the final
592 surface material used as the planting and growth medium
593 (hereinafter referred to as commercial forestry minesoil) shall
594 consist of a minimum of four feet, and an average of at least
595 five feet, of soil or a mixture of materials consisting of no less
596 than one-third soil and two-thirds of the materials described in
597 7.4.b.1.D.3. and 4. of this rule.

598 7.4.b.1.D.9. For forestry, the final surface
599 material used as the planting and growth medium (forestry
600 minesoil) shall consist of a minimum of 4 feet of soil, or a
601 mixture of soil and suitable soil substitutes described in
602 7.4.b.1.D.4 through 6 of this rule.

603 7.4.b.1.D.10. Commercial forestry minesoil shall
604 be placed on that portion of the mined area which receives an
605 AOC variance. For a proposed mine permit area or any specifi-
606 cally defined segment of the proposed permit area that does not
607 satisfy the volumetric criteria for AOC, an AOC variance shall
608 be required. In order to define the portion of the permit classi-
609 fied as AOC-compliant or AOC-variant, the permit may be
610 divided into segments. The number of segments shall not
611 exceed the number of excess spoil disposal areas proposed and
612 each segment shall include at least one associated fill. In no
613 event will there be more variance segments than there are
614 excess spoil disposal areas on the permit area. For each
615 segment, the AOC status shall be defined as complying with
616 AOC if that segment meets the backfill volume, valley fill
617 design, backfill inflection point tests and other criteria as
618 described in the AOC policy adopted by the Director.

619 7.4.b.1.D.11. Forestry minesoil shall, at a mini-
620 mum, be placed on all areas achieving AOC.

621 7.4.b.1.D.12. If the applicant does not demonstrate
622 that there is sufficient material available on the permit area to
623 satisfy the requirements of 7.4.d.1.D., then the Director may not
624 authorize this post mining land use.

625 7.4.b.1.D.13. The Director shall require the
626 operator to include, as part of the commercial forestry and
627 forestry minesoil mix, organic debris such as forest litter,
628 branches, small logs, roots and stumps in the soil to help re-
629 seed and resprout the native vegetation, inoculate the minesoil

630 with native soil organisms, increase soil fertility, and encourage
631 plant succession.

632 7.4.b.1.D.14. The Director shall require that soil be
633 removed and re-applied in a manner that minimizes stockpiling
634 to protect seed pools and soil organisms. Only soil removed
635 from the mined area during the one-year period immediately
636 following commencement of soil removal may be placed in a
637 long-term stockpile. Except for soil in a long-term stockpile,
638 soil redistribution shall be done within six months of soil
639 removal. Except for soil in a long-term stockpile, soil shall be
640 stored for less than six months in piles less than six feet high
641 and 24 feet wide in a stable area within the permit area where
642 it will not be disturbed and will be protected from water or wind
643 erosion or contaminants that lessen its capability to support
644 vegetation. Long-term stockpiles shall be seeded with the
645 legumes specified in the ground cover mixes used for reforesta-
646 tion (7.4.d.1.G.1. of this rule).

647 7.4.b.1.E. Soil Placement and Grading.

648 7.4.b.1.E.1. The Director shall require the
649 permittee to place minesoil loosely and in a non-compacted
650 manner while meeting static safety factor requirements.
651 Minesoil shall be graded only when necessary to maintain
652 stability or on slopes greater than 20% unless otherwise
653 approved by the Director. Grading shall be minimized to reduce
654 compaction. When grading is approved by the Director, only
655 light grading equipment may be used to grade the tops off the
656 piles, roughly leveling the area with no more than one or two
657 passes. Tracking in and rubber-tired equipment shall not be
658 used. Non-permanent roads, equipment yards, and other
659 trafficked areas shall be deep-ripped (24" to 36") to mitigate
660 compaction and to allow these areas to be restored to productive
661 commercial forestry. Soil physical quality shall be inadequate
662 if it inhibits water infiltration or prevents root penetration or if
663 their physical properties or water-supplying capacities cause

664 them to restrict root growth of trees common to the area. Slopes
665 greater than 50% shall be compacted no more than is necessary
666 to achieve stability and non-erodability.

667 7.4.b.1.E.2. The Director shall require the
668 permittee to leave soil surfaces rough with random depressions
669 across the entire surface to catch seed and sediment, conserve
670 soil water, and promote revegetation. Organic debris such as
671 forest litter, logs, and stumps shall be left on and in the soil.

672 7.4.b.1.F. Liming and Fertilizing.

673 7.4.b.1.F.1. The Director shall require the
674 permittee to apply lime where the average soil pH is less than
675 5.5. Lime rates will be used to achieve a uniform soil pH of 6.0.
676 An alternate maximum or minimum soil pH may be approved,
677 however, based on the optimum pH for the forest revegetation
678 species. Soil pH may vary from 4.5 to a maximum of 7.0 from
679 place to place across the reclaimed area with no more than 10%
680 of the site below pH 5.0 and/or no more than 10% of the site
681 above pH 6.5. Low and high pH levels may be approved only
682 when tree species tolerant of the pH range have been approved
683 for planting.

684 7.4.b.1.F.2. The Director shall require the
685 permittee to fertilize based on the needs of trees and ground
686 cover vegetation. The permittee shall apply up to 300
687 pounds/acre of diammonium phosphate (18-46-0) and up to 100
688 pounds/acre potassium sulfate (0-0-52) with the ground cover
689 seeding. Other fertilizer materials and rates may be used only
690 if the Director finds that the substitutions are appropriate based
691 on soil tests performed by state certified laboratories.

692 7.4.b.1.G. Ground Cover Vegetation.

693 7.4.b.1.G.1. The Director shall require the
694 permittee to establish a temporary erosion control vegetative
695 cover as contemporaneously as practicable with backfilling and

696 grading until a permanent tree cover can be established. This
697 cover shall consist of a combination of native and domesticated
698 non-competitive and non-invasive cool and warm season
699 grasses and other herbaceous vine or shrub species including
700 legume species and ericaceous shrubs. All species shall be slow
701 growing, tolerant of low pH, and compatible with tree establish-
702 ment and growth. The ground cover vegetation shall be capable
703 of stabilizing the soil from excessive erosion, but it should be
704 minimized to control tree-damaging rodent population, and
705 allow the establishment and unrestricted growth of native
706 herbaceous plants and trees. Seeding rates and composition
707 must be in the planting plan. The following ground cover mix
708 and seeding rates (pounds/acre) shall be used: winter wheat (15
709 lbs/acre, fall seeding), foxtail millet (5 lbs/acre, summer
710 seeding), redtop (2 lbs/acre), perennial ryegrass (2 lbs/acre),
711 orchardgrass (5 lbs/acre), weeping lovegrass (2 lbs/acre) kobe
712 lespedeza (5 lbs/acre), birdsfoot trefoil (10 lbs/acre), and white
713 clover (3 lbs/acre). Kentucky-31 fescue, serecia lespedeza, all
714 vetches, clovers (except ladino and white clover) and other
715 aggressive or invasive species shall not be used. South- and
716 west-facing slopes with a soil pH of 6.0 or greater, the four
717 grasses in the mixture shall be replaced with 20 lbs/acre of
718 warm-season grasses consisting of the following species:
719 Niagara big bluestem (5 lbs/acre), Camper little bluestem (2
720 lbs/acre), Indian grass (2 lbs/acre), and Shelter switch grass (1
721 lb/acre), or other varieties of these species approved by the
722 Director. Also, a selection of at least 3 native shrub species
723 native of the area shall be included in the ground cover mix.
724 Provided, that on slopes less than 20%, the Director may
725 approve lesser or no vegetative cover when tree growth and
726 productivity will be enhanced and excessive sedimentation will
727 not result.

728 7.4.b.1.G.2. All mixes shall be compatible with
729 the plant and animal species of the region and the commercial
730 forestry use. The Director shall require the use of a variety of

731 site-specific ground cover treatments so that different ground
732 cover treatments are used on different parts of the reclamation
733 area to add biodiversity and landscape mosaic to the overall
734 plan.

735 7.4.b.1.G.3. The permittee may regrade and
736 reseed only those rills and gullies that are unstable.

737 7.4.b.1.H.Tree Species and Compositions.

738 7.4.b.1.H.1. Commercial tree and nurse tree
739 species selection shall be based on site-specific characteristics
740 and long-term goals outlined in the forest management plan and
741 approved by a registered professional forester. For commercial
742 forestry, the Director shall assure that all areas suitable for
743 hardwoods are planted with native hardwoods at a rate of 500
744 seedlings per acre in continuous mixtures across the permitted
745 area with at least six (6) species from the following list: white
746 and red oaks, other native oaks, white ash, yellow-poplar, black
747 walnut, sugar maple, black cherry, or native hickories. For
748 forestry, the Director shall assure that all areas suitable for
749 hardwoods are planted with native hardwoods at a rate of 450
750 seedlings per acre in continuous mixtures across the permitted
751 area with at least three (3) or four (4) species from the follow-
752 ing list: white and red oaks, other native oaks, white ash,
753 yellow-poplar, black walnut, sugar maple, black cherry, or
754 native hickories.

755 7.4.b.1.H.2. For commercial forestry, each of the
756 species shall be not less than 10% of the total planted composi-
757 tion and at least 75% of the total planted woody plant composi-
758 tion shall be from the list of species in part 7.4.d.1.H.1. Species
759 shall be selected based on their compatibility and expected site-
760 specific long-term dynamics. For forestry, if only three species
761 from the above list are planted, then each of the species shall be
762 not less than 20% of the total planted composition. If four
763 species from the list in part 7.4.d.1.H.1. are planted, then each

764 of the species shall be not less than 15% of the total planted
765 composition. Species shall be selected based on their compati-
766 bility and expected site-specific long-term dynamics.

767 7.4.b.1.H.3. Between 5% and 10% of the required
768 number of woody plants shall be planted in a continuous mix of
769 three or more nurse tree and shrub species that improve soil
770 quality and habitat for wildlife. They shall consist of black
771 alder, black locust, bristley locust, redbud, or bi-color lespedeza
772 or other non-invasive, native nurse tree or shrub species,
773 approved by the Director. One to five acres within each 100
774 acres of the permit area shall be left unplanted with trees, but
775 left with ponds, wetlands or ground cover vegetation only.
776 These areas may be continuous or divided into 2-4 separate
777 parcels, each at least 0.25 acres large.

778 7.4.b.1.H.4. On areas unsuitable for hardwoods,
779 the Director may authorize the following conifers: Virginia
780 pine, red pine, white pine, pitch pine, or pitch x loblolly hybrid
781 pine. Areas unsuitable for hardwoods shall be limited to
782 southwest-facing slopes greater than 10% or areas where the
783 soil pH is less than 5.5. These conifers shall be planted as
784 single-species stands less than 10 acres in size at the same rate
785 as the hardwood requirements in 7.4.b.1.H.1 of this rule. The
786 Director shall assure that no reclaimed area of the permit area
787 contains a total of more than 15% conifers.

788 7.4.b.1.H.5. The Director shall assure that the
789 specific species and selection of trees and shrubs shall be based
790 on the suitability of the planting site for each species' site
791 requirements based on soil type, degree of compaction, ground
792 cover, competition, topographic position, and aspect.

793 7.4.b.1.H.6. For commercial forestry only, in
794 addition to the trees and shrubs required in the sections above,
795 2-0 white pine seedlings shall be planted across all sites at a

796 rate of 5 to 10 trees per acre. These trees will be used for the
797 productivity check required for Phase III bond release.

798 7.4.b.1.I. Standards of Success.

799 7.4.b.1.I.1. The Director shall assure the ability
800 of the commercial forestry and forestry areas to produce a high-
801 quality commercial forest by confirming, after on-site soil
802 testing, that the minesoil selection, placement, and preparation
803 criteria in 7.4.d.1.D.7 through 11 of this rule are met before
804 Phase I bond release may occur. Before approving Phase I bond
805 release, a certified soil scientist shall certify, and the Director
806 shall make a written finding that the minesoil meets these
807 criteria.

808 7.4.b.1.I.2. The Director shall not authorize
809 Phase II bond release for commercial forestry before the end of
810 the fifth tree growing season. The Director may approve Phase
811 II bond release only if the tree survival is equal to or greater
812 than 300 commercial trees per acre (80% of which must be
813 commercial hardwood species listed in 7.4.b.1.H.1 of this rule)
814 or the rate specified in the forest management plan, whichever
815 is greater. For forestry, Phase II bond release may be granted by
816 the Director at the end of the second growing season only if the
817 tree survival is equal to or greater than 300 trees per acre, 60%
818 of which must be commercial hardwood species listed in part
819 7.4.d.1.H.1. of this rule, or the rate specified in the forest
820 management plan, whichever is greater. Furthermore, for both
821 commercial forestry and forestry, where there is potential for
822 excessive erosion on slopes greater than 20%, there shall be
823 70% ground cover where ground cover includes tree canopy,
824 shrub and herbaceous cover, organic litter, and rock cover, and
825 at least 80% of all trees and shrubs used to determine re-
826 vegetation success must have been in place for at least 60% of
827 the applicable minimum period of responsibility. Trees and
828 shrubs counted in determining such success shall be healthy and

829 shall have been in place for not less than two growing seasons
830 with no evidence of die back.

831 7.4.b.1.I.3. The Director may approve Phase III
832 bond release for commercial forestry and forestry only if all
833 criteria for Phase II bond release in 7.4.b.1.I.2 of this rule are
834 still being met at the time Phase III bond release is considered.
835 For forestry, Phase III bond release may not be authorized until
836 at least five growing seasons have passed since the trees were
837 planted. Additionally, for commercial forestry, Phase III bond
838 release may not be authorized unless commercial forest
839 productivity has been achieved by the end of the twelfth
840 growing season or, if such productivity has not been achieved,
841 if a commercial forestry mitigation plan is submitted to the
842 Director, approved and completed. Commercial forest produc-
843 tivity is achieved only when annual height increments of the
844 white pine indicator species, based on the average of four or
845 more consecutive annual height increments, is equal to or
846 greater than 1.5 feet. The Director shall measure the average
847 four-year growth increment of all trees along two perpendicular
848 transects across the site that will achieve a tree sample size of
849 no less than two trees per acre.

850 7.4.b.1.I.4. A commercial forestry mitigation
851 plan shall require a permittee who has not achieved commercial
852 forestry productivity requirements by the end of the twelfth
853 growing season to either pay to the Special Reclamation Fund
854 an amount equal to twice the remaining bond amount or to
855 perform an equivalent amount of in-kind mitigation. The
856 Director shall use any money collected under this plan to
857 establish forests on bond forfeiture sites. In-kind mitigation
858 requires establishing forests on AML or bond forfeiture sites.
859 After completion of the mitigation plan, Phase III bond release
860 may be approved if the Director finds that the failure to achieve
861 productivity did not result from a failure to follow the provi-
862 sions of this rule and did not result in environmental damage.

863 7.4.b.1.I.5. The Director may release all or part
864 of the bond for the commercial forestry and forestry variance or
865 increment thereof in accordance with this subsection and 38-2-
866 12.2.d. and 12.2.e. of this rule. The Director may release the
867 variance portion if all appropriate standards have been met
868 without regard to the bonding scheme selected for the permit.

869 7.4.b.1.J. Front Faces of Valley Fills.

870 7.4.b.1.J.1. Front faces of valley fills shall be
871 exempt from the requirements of this rule except that:

872 7.4.b.1.J.1.(a) They shall be graded and
873 compacted no more than is necessary to achieve stability and
874 non-erodability;

875 7.4.b.1.J.1.(b) No unweathered shales may be
876 present in the upper four feet of surface material;

877 7.4.b.1.J.1.(c) The upper four feet of surface
878 material shall be composed of soil and the materials described
879 in 7.4.b.1.D. of this rule, when available, unless the Director
880 determines other material is necessary to achieve stability;

881 7.4.b.1.J.1.(d) The groundcover mixes de-
882 scribed in subparagraph 7.4.d.1.G. shall be used unless the
883 Director requires a different mixture;

884 7.4.b.1.J.1.(e) Kentucky 31 fescue, serecia
885 lespedeza, vetches, clovers (except ladino and white clover) or
886 other invasive species may not be used; and

887 7.4.b.1.J.2. Although not required by this rule,
888 native, non-invasive trees may be planted on the faces of fills.

889 7.4.b.1.K. Long-term Monitoring and Adaptive
890 Management. The Director shall under-take, with the assistance
891 of the Division of Forestry or other forestry research units, a
892 performance assessment of all Commercial Forestland permits

893 within 10 years of Phase III bond release. Species composition,
894 biodiversity, productivity, carbon capture, wildlife habitat,
895 stream and wetland biota, and hydrologic function will be
896 assessed. Results will be reported, analyzed, interpreted and
897 used as part of an adaptive management program to improve the
898 regulations and guidelines for Commercial Forestland.

899 7.5. The Homestead land use meets the requirements for
900 a variance from the AOC requirements of the Act (W.Va. Code
901 22-3-13(c)). An appropriately planned Homestead will promote
902 sustainable settlement patterns that protect the environment and
903 support the region's economic development.

904 7.5.a. Operations receiving a variance from AOC for this
905 use shall establish homesteading on at least one-half ($\frac{1}{2}$) of the
906 permit area. The remainder of the permit area shall support an
907 alternate AOC variance use.

908 7.5.b. The following terms are applicable only to this
909 subsection of this rule.

910 7.5.b.1. Building Pad means an accessible, designated,
911 and properly drained area where the soil and/or mine-spoil has
912 been specially placed and compacted to minimize post-mining
913 surface settlement. After the building pad is completed, a
914 registered professional engineer shall certify that the building
915 pad was constructed as designed. This certification shall
916 accompany the deed of conveyance.

917 7.5.b.2. Civic Parcel means a parcel designated in the
918 Land Plan for public use.

919 7.5.b.3. Commercial Parcel means a parcel retained by
920 the Landowner of record and incorporated within the Home-
921 stead Area on which the landowner or its designee may develop
922 commercial uses. The size and location of commercial parcels
923 shall comply with the requirements of this regulation.

924 7.5.b.4. Community Association means an association
925 of all the homesteaders. This association shall receive title to
926 the civic parcels, conservation easements and nurseries at the
927 time of final bond release.

928 7.5.b.5. Conservation Easement means an area,
929 typically a strip no less than 200 feet wide, designated in the
930 land plan for the purpose of establishing a natural habitat for the
931 development and migration of native species of fauna and flora.
932 These easements shall extend through the mined areas of the
933 land, starting and ending in natural, undisturbed land. These
934 areas shall be permanent easements maintained for conservation
935 and not commercial purposes.

936 7.5.b.6. Entity Administering The Civic Parcels means
937 the Community Association or its designee shall administer the
938 civic parcels.

939 7.5.b.7. Escrow Agent means the Attorney General of
940 the State of West Virginia shall be the Escrow Agent.

941 7.5.b.8. Homesteader means a citizen of the State that
942 fulfills the requirements of this regulation and who is selected
943 by lottery to reside on a designated homestead parcel.

944 7.5.b.9. Homestead Area means the entire area desig-
945 nated for homestead use, including roads.

946 7.5.b.10. Homestead Infrastructure means the facilities
947 necessary to sustain residential use, including roads, electricity,
948 telephone, water and sewage or septic systems.

949 7.5.b.11. Homestead Parcel means an individual
950 segment of a homestead area designated as either a rural or
951 village parcel. The permittee shall assure that each parcel has
952 been surveyed by a licensed land surveyor before Phase I bond
953 release.

954 7.5.b.12. Homestead Plan means all the required
955 documentation, engineered drawings, authorizations, agree-
956 ments and schedules which are to be submitted and approved by
957 the Director.

958 7.5.b.13. Homestead Selection Lottery means a lottery
959 sanctioned by the State, operated under rules established and
960 administered by the Director or the Director's designee as soon
961 as practicable after Phase I bond release.

962 7.5.b.14. Landowner Of Record means the surface
963 estate owner at the time the mining permit is submitted to the
964 Director. More than one Landowner of Record may be involved
965 in a Homestead Plan. The Landowner of Record shall transfer
966 the title to the surface estate of the Homestead Area to the
967 Escrow Agent prior to the beginning of mining. The cost of
968 transfer shall be paid by the Landowner of Record.

969 7.5.b.15. Land Plan means the depiction, with support-
970 ing documentation, including surveys and narratives, of the
971 homestead parcels, building pads, roads, easements, civic
972 parcels, commercial parcels, and other features of the Home-
973 stead Area.

974 7.5.b.16. Machine Passable Grade means the maxi-
975 mum grade that can be safely accommodated by commonly
976 used, self-propelled, rubber-tired farming equipment.

977 7.5.b.17. Rural Parcels means homesteading parcels
978 planned to promote rural uses such as farming, orchard grow-
979 ing, timber management, viticulture, and Morret gardening. The
980 rural parcels shall be an appropriate size for the designated use
981 and may be up to 40 acres. Rural homesteaders may receive
982 title only to that portion of the land that they have improved
983 over the five-year period.

984 7.5.b.18. Service Drop means the overhead service
985 conductors from the last pole or other aerial support to and

986 including the splices, if any, connecting to the service-entrance
987 conductors at the building or other structure.

988 7.5.b.19. Service-Entrance Conductors, Overhead
989 System means the service conductors between the terminals of
990 the service equipment and a point usually outside the building,
991 clear of building walls, where joined by tap or splice to the
992 service drop.

993 7.5.b.20. Service-Entrance Conductors, Underground
994 System means the service conductors between the terminals of
995 the service equipment and the point of connection to the service
996 lateral.

997 7.5.b.21. Service Lateral means the underground
998 service conductors between the street main, including any risers
999 at a pole or other structure or from transformers, and the first
1000 point of connection to the service-entrance conductors in a
1001 terminal box or meter or other enclosure with adequate space,
1002 inside or outside the building wall. Where there is no terminal
1003 box, meter, or other enclosure with adequate space, the point of
1004 connection shall be considered to be the point of entrance of the
1005 service conductors into the building.

1006 7.5.b.22. Soil Plan means the maps and descriptions of
1007 premining and postmining soil included in the Homestead Plan.

1008 7.5.b.23. Village Parcels means homesteading parcels
1009 that provide a higher density of residential population than rural
1010 parcels.

1011 7.5.c. Eligibility Requirements And Responsibilities For
1012 Homesteaders.

1013 7.5.c.1. Homesteader shall meet the following eligibil-
1014 ity requirements:

1015 7.5.c.1.A. Be a resident of the State of West
1016 Virginia and be at least 18 years old;

1017 7.5.c.1.B. Apply for a homestead as required by this
1018 rule;

1019 7.5.c.1.C. Abide by the rules of the Homestead
1020 Selection Lottery;

1021 7.5.c.1.D. Reside on the subject parcel within 12
1022 months after the property is certified as ready for use. Provided
1023 that subject to the approval of the Escrow Agent, occupancy
1024 may be delayed up to 6 additional months for good cause
1025 shown.

1026 7.5.d. Rules For The Lottery.

1027 7.5.d.1. The rules for the Lottery are as follows:

1028 7.5.d.1.A. Each household may receive no more
1029 than one homestead.

1030 7.5.d.1.B. Homestead parcels shall be distributed by
1031 anonymous lottery.

1032 7.5.d.1.C. For any given Homestead, the lottery shall
1033 first be opened only to West Virginians living within three (3)
1034 miles of the permitted area within five years of the date of the
1035 filing of the permit application. Provided, however, that if
1036 parcels remain after an initial lottery, subsequent lotteries shall
1037 be held in the following order. The first subsequent lottery shall
1038 be open to any resident of a county (or counties, if more than
1039 one) in which the mine is located. Further, lotteries, if neces-
1040 sary, shall be open to any resident of West Virginia, and shall
1041 be held at six (6) month intervals.

1042 7.5.d.1.D. The lottery shall be held as soon as
1043 practicable after Phase I bond release is approved. Adequate

1044 notice shall be provided at least six (6) months in advance of
1045 the lottery.

1046 7.5.d.1.E. The lottery shall be fair, impartial, and
1047 open to the public.

1048 7.5.d.1.F. A lottery participant who receives a parcel
1049 may decline a parcel, but may not sell the right to homestead on
1050 the parcel.

1051 7.5.d.1.G. The right to participate in the lottery is
1052 not assignable or saleable.

1053 7.5.d.1.H. Each lottery participant shall, before the
1054 lottery, apply for either a rural or a village parcel.

1055 7.5.e. Homestead Plan Development.

1056 7.5.e.1. The Director may authorize Homesteading as
1057 a post-mining use only if the following conditions have been
1058 satisfied.

1059 7.5.e.1.A. The Homestead Plan and any subsequent
1060 modifications shall be prepared under the direction of and
1061 certified by a professional engineer, a soil scientist, and a
1062 design professional that is either a licensed architect, landscape
1063 architect, or AICP certified land planner.

1064 7.5.e.1.B. The Homestead Plan shall identify each
1065 member of a specialty group that contributed to the plan. The
1066 Plan shall be sufficiently detailed to ensure success in achieving
1067 the designated use of each homestead panel and to ensure sound
1068 future management of the homestead.

1069 7.5.e.1.C. Homestead plan may be used alone or in
1070 conjunction with any other alternate land use plan. The
1071 Homesteading area, minus commercial parcels, shall occupy at
1072 least 50% of the permitted area. In the event that the Homestead
1073 use is used in conjunction with another land use, the Landowner

1074 of Record shall provide for the Homestead use at least as much
1075 land on the mining bench as it retains for alternate land use.

1076 7.5.e.1.D. The Permittee shall submit plans pre-
1077 pared at a preferred scale of at least 1 inch = 200 feet, which
1078 include the following:

1079 7.5.e.1.D.1. A Land Plan showing the homestead
1080 boundaries, homestead parcels, building pads, roads, easements,
1081 civic parcels, and commercial parcels, as applicable.

1082 7.5.e.1.D.2. A Site Plan and description of the
1083 following:

1084 7.5.e.1.D.2.(a) waste water and sewage systems,

1085 7.5.e.1.D.2.(b) potable water supply,

1086 7.5.e.1.D.2.(c) non-potable water supply (if
1087 applicable),

1088 7.5.e.1.D.2.(d) electrical service, and

1089 7.5.e.1.D.2.(e) telephone service.

1090 7.5.e.1.D.3. A grading plan showing contours at
1091 an interval appropriate for the map scale and slopes, and
1092 including surface drainage and storm water provisions. The
1093 Director shall require maps at specific scales and contour
1094 intervals to satisfy the designated uses of the homestead parcels
1095 and the land plan.

1096 7.5.e.1.D.4. A map showing all off-bench fill
1097 areas and the outcrop of the lowest coal bed.

1098 7.5.e.1.D.5. A Soil Plan showing soil and
1099 weathered spoil storage areas. The plan shall describe the
1100 methods to be used to distribute, protect, and enhance the stored
1101 material upon final regrading of the disturbed surfaces. The

1102 plan shall identify the proposed depths of soil and subsoil for
1103 each specific use within the Homestead Area. These specific
1104 uses may include, but shall not be limited to, the following:

1105 7.5.e.1.D.5.(a) Haul roads

1106 7.5.e.1.D.5.(b) Conservation Easements

1107 7.5.e.1.D.5.(c) Building Pads

1108 7.5.e.1.D.5.(d) Garden Plots

1109 7.5.e.1.D.5.(e) Waste Water and Sewage
1110 Disposal Facilities

1111 7.5.e.1.D.5.(f) Storm Drainage Facilities

1112 7.5.e.1.D.5.(g) Wetland Facilities

1113 7.5.e.1.D.5.(h) Utility Easements

1114 7.5.e.1.D.5.(i) Civic/Public Facilities

1115 7.5.e.1.D.5.(j) Commercial Areas

1116 7.5.e.1.D.6. Soil maps.

1117 7.5.f. Financial Commitments.

1118 7.5.f.1. A contract between the Permittee and the
1119 Director, binding the Permittee to complete the homestead use
1120 as soon practicable but no later than two years after the comple-
1121 tion of mining, shall be required.

1122 7.5.f.2. The contract between the Permittee and the
1123 Director shall, at a minimum, require the Permittee to follow
1124 the homesteading reclamation plan.

1125 7.5.f.3. To receive approval for a homestead use, the
1126 Permittee shall demonstrate that it has the financial capability
1127 to achieve the use and carry out the reclamation plan. The

1128 Permittee shall submit signed statements containing financial
1129 information and data sufficient to demonstrate that the
1130 Permittee has the financial capability to achieve the
1131 homesteading use.

1132 7.5.f.4. Before approving the Permit, the Director shall
1133 find, in writing, that the Permittee has the financial capability
1134 to achieve the use.

1135 7.5.g. Required Elements For All Homestead Plans.

1136 7.5.g.1. Boundary of the homestead area:

1137 7.5.g.1.A. The Homestead Area shall be defined by
1138 a metes and bounds description prepared and certified by a
1139 Professional Engineer or Licensed Land Surveyor registered
1140 with the State of West Virginia.

1141 7.5.g.1.B. Non-mined areas may be included in the
1142 Homestead Area.

1143 7.5.g.1.C. In the event that any portion of the land
1144 transferred to the Escrow Agent is not mined, that land may
1145 revert to the Landowner of Record.

1146 7.5.g.2. General Requirements of all Parcels:

1147 7.5.g.2.A. Each individual parcel shall be delineated
1148 by metes and bounds description prepared by a Professional
1149 Engineer or Licensed Land Surveyor registered with the State
1150 of West Virginia.

1151 7.5.g.2.B. Parcels shall support their designated
1152 land uses.

1153 7.5.g.2.C. Parcels shall be configured and arranged
1154 to minimize adverse environmental impacts.

1155 7.5.g.2.D. The Permittee shall provide adequate
1156 road frontage for access to each Homestead, Public Nursery,
1157 Civic and Commercial Parcel.

1158 7.5.g.2.E. Houses and appurtenant facilities shall be
1159 no closer than 50 feet from the edge of a designated Conserva-
1160 tion Easement.

1161 7.5.g.3. Homestead parcels:

1162 7.5.g.3.A. Homestead Parcels shall be designated as
1163 either rural or village parcels. All parcels shall contain machine
1164 passable land appropriate to the designated use.

1165 7.5.g.3.B. Each rural homestead parcel shall be
1166 provided with a garden area of at least 5,000 square feet. Each
1167 village homestead parcel shall be provided with a garden area
1168 of at least 600 square feet. The garden areas shall be con-
1169 structed in compliance with the soil requirements set forth in
1170 subdivision 7.5.j. of this rule.

1171 7.5.g.3.C. Each rural and village homestead parcel
1172 shall contain a building pad of a minimum of 2,500 square feet
1173 for a dwelling. Each rural homestead parcel shall also contain
1174 a building pad of a minimum of 2,500 square feet for an
1175 outbuilding.

1176 7.5.g.4. Civic Parcels:

1177 7.5.g.4.A. The Homestead Plan shall delineate one
1178 or more appropriate sites within the total proposed Homestead
1179 area for Civic Parcels. These uses may include, but are not
1180 limited to, the following: park land, playing fields, schools, post
1181 office, and community administrative facilities. This area shall
1182 occupy at least 10% of the post-mining permit area.

1183 7.5.g.4.B. The Civic Parcels may be one contiguous
1184 parcel or appropriately sized non-contiguous parcels.

1185 7.5.g.4.C. The Civic Parcels shall be deeded at no
1186 charge to the duly recognized Community Association.

1187 7.5.g.4.D. The Civic Parcels shall be provided with
1188 an access road and utilities that are consistent with the proposed
1189 civic land use.

1190 7.5.g.5. Commercial Parcels:

1191 7.5.g.5.A. The Landowner of Record may elect to
1192 retain up to 15% of the land in the proposed Homestead Area
1193 for the purpose of commercial development; provided that the
1194 Landowner of Record may retain no more than 50% of the
1195 permitted area.

1196 7.5.g.5.B. The retained commercial area may be
1197 comprised of one or more parcels and shall be indicated on the
1198 Land Plan.

1199 7.5.g.5.C. In the area for the Commercial Parcel the
1200 mine-spoil shall be placed, compacted, and regraded in a
1201 manner consistent with the proposed commercial land use.

1202 7.5.g.6. Approval:

1203 7.5.g.6.A. Before approving a homesteading
1204 reclamation plan, the Director shall assure that Homestead Plan
1205 is reviewed and approved by either a licensed architect,
1206 landscape architect, or AICP certified land planner employed
1207 by or under contract to the Director. In addition, the Director
1208 shall assure that the plans for Rural Parcels are reviewed and
1209 approved by an agronomist employed by or under contract with
1210 the Director. The applicants shall pay for any review under this
1211 subsection.

1212 7.5.h. Construction And Conveyance Of Homestead
1213 Parcels. All construction projects not performed by the home-

1214 steaders on Homestead Areas shall be performed by the
1215 Permittee, using a West Virginia licensed contractor.

1216 7.5.h.1. Stabilization Of The Homestead Area:

1217 7.5.h.1.A. The Homestead Plan shall describe the
1218 methods that will be used during the placement of mine spoil to
1219 minimize mine spoil consolidation and its associated ground
1220 settlement, where such settlement will adversely affect the use
1221 of the homestead. Conditions relating to the placement of
1222 structures on the mine-spoil shall be clearly identified in the
1223 Plan.

1224 7.5.h.1.B. The Plan must delineate the areas on each
1225 parcel where the mine-spoil will be placed in a manner to
1226 minimize post-mining land surface settlement on Building
1227 Pads, roads and other appropriate areas.

1228 7.5.h.1.C. The placement methodology shall be
1229 specified by a qualified engineer. The Plan shall indicate the
1230 type and style of structure appropriate for each building pad.
1231 The Plan shall include the requirement that a professional
1232 engineer will monitor the construction of the building pads to
1233 certify compliance with the specifications of the plan.

1234 7.5.h.2. Construction Of The Building Pad:

1235 7.5.h.2.A. Building Pads shall be designed by a
1236 registered professional engineer.

1237 7.5.h.2.B. The registered professional engineer shall
1238 supervise the placement of the uppermost 20 feet of spoil for
1239 Building Pads to minimize consolidation.

1240 7.5.h.2.C. The engineer shall certify the integrity of
1241 the Building Pad and that the Building Pads will not settle more
1242 than 2 inch after the expected structure is in place.

1243 7.5.h.2.D. Building Pads shall be designed to
1244 accommodate the type of building expected to be placed on the
1245 pad.

1246 7.5.h.2.E. Building Pads shall not be placed on
1247 valley fills.

1248 7.5.h.3. Conveyance Of Homestead Parcels:

1249 7.5.h.3.A. Estimated short and long-term costs to
1250 Homesteaders shall be designated in the Homestead Plan and
1251 presented to Homesteaders immediately after the Lottery on a
1252 parcel specific basis.

1253 7.5.h.3.B. The rights to the surface estate shall be
1254 deeded to each Homesteader free and clear of all liens and
1255 encumbrances as soon after bond release as the Escrow Agent
1256 determines that the property is ready for use. The deeds shall
1257 not retain right of entry onto the homestead parcels to conduct
1258 future surface mining activities.

1259 7.5.h.3.C. Consistent with State and Federal law,
1260 the transfer of the surface to the Escrow Agent may be for
1261 surface rights only and need not include any minerals, oil or gas
1262 and shall be subject to usual and customary mining or extrac-
1263 tion rights.

1264 7.5.h.3.D. Before receiving the Homestead Parcel,
1265 each homesteader shall:

1266 7.5.h.3.D.1 Install and reside in a dwelling whose
1267 structure complies with the Homestead Plan community
1268 association rules, and all applicable local, county and state
1269 laws;

1270 7.5.h.3.D.2 Reside on the parcel for at least
1271 forty-five weeks each year for five (5) consecutive years prior
1272 to receipt of title to the land;

1273 7.5.h.3.D.3. Use and improve the parcel by
1274 completing a dwelling that complies with this rule, installing an
1275 approved septic system and maintaining vegetative cover on all
1276 parts of the homestead parcel and plant trees from the Public
1277 Nursery in accordance with subdivision 7.5.l.4. of this rule.

1278 7.5.h.3.E. In the event extreme hardship causes a
1279 homesteader to be forced to sell his property before the
1280 five-year occupancy period has expired, the Escrow Agent shall
1281 convey title early. The Escrow Agent's determination of
1282 extreme hardship shall be reasonable by the Circuit Court of
1283 County in which the homestead parcel is located.

1284 7.5.i. Required Infrastructure.

1285 7.5.i.1. Roads:

1286 7.5.i.1.A. The Land Plan shall designate an
1287 all-weather road connecting the Homestead Area to a public
1288 road or highway. The road shall meet State Department of
1289 Highways' standards, and shall be certified as safe for passen-
1290 ger car traffic by registered professional engineer.

1291 7.5.i.1.B. The Land Plan shall incorporate adequate
1292 road frontage to all parcels. Such roads shall be designated in
1293 the plan and referred to as "main roads." Main roads shall meet
1294 State Department of Highways standards, and shall be certified
1295 as built as safe for passenger car traffic by registered civil
1296 engineer. Before the Director may approve a surface mining
1297 application for this use, the County or State road authority shall
1298 conditionally agree to accept responsibility for maintaining the
1299 all-weather and main roads after mining is complete.

1300 7.5.i.1.C. The Land Plan shall provide an entrance
1301 from the main road to each parcel, complete with culvert as
1302 needed. The Homesteader shall be responsible for extending the
1303 driveway from the entrance to the building pad.

1304 7.5.i.2. Waste Water And Sewage:

1305 7.5.i.2.A. The Homestead Plan shall incorporate a
1306 waste water and sewage disposal plan conditionally approved
1307 by the Director, the West Virginia Bureau of Public Health or
1308 the public health authority of the county. The waste wa-
1309 ter/sewage disposal system shall be approved by the appropriate
1310 entities before Phase II bond release shall be authorized. No
1311 such approval may be granted unless the system meets local
1312 health department standards.

1313 7.5.i.2.B. A variety of waste water and sewage
1314 disposal systems, including individual septic systems, may be
1315 proposed. Alternative/innovative systems shall be consistent
1316 with all State and federal regulations. The reclamation, topsoil-
1317 ing, grading, and revegetation plan of each parcel shall be
1318 designed to accommodate the proposed waste water/sewage
1319 system.

1320 7.5.i.2.C. The Homestead Plan shall provide a
1321 functional waste water and sewage system for each Civic,
1322 Commercial or Homestead Parcel. The system shall describe an
1323 approved hookup/cleanout point no more than 50 feet from such
1324 homestead and civic Building Pads.

1325 7.5.i.2.D. Each Homesteader shall be responsible for
1326 all costs incurred to connect structures on the Homestead parcel
1327 to the waste water and sewage system. Additionally, if neces-
1328 sary, each homesteader shall be responsible for all costs
1329 incurred to install an individual septic system.

1330 7.5.i.2.E. The entity administering the Civic Parcel
1331 shall be responsible for all costs incurred to connect structures
1332 on the Civic Parcel to the waste water and sewage system.

1333 7.5.i.2.F. The Homestead Plan shall describe the
1334 maintenance and upkeep demands of any proposed sewage
1335 disposal system, and shall designate the entity responsible for

1336 such maintenance. Phase III bond release may not be approved
1337 until the designated entity has accepted responsibility for such
1338 maintenance.

1339 7.5.i.3. Water Supply:

1340 7.5.i.3.A. The Homestead Plan shall include a potable
1341 water supply source or sources adequate for each Homestead
1342 Parcel. The supply of water shall be provided by one of the
1343 following methods in the following order of priority: a) water
1344 piped from an existing public water supply; b) from wells; or c)
1345 from reservoirs with catchment basins adequate to supply the
1346 homestead area. Before authorizing any system of potable water
1347 supply that is not piped from an existing water supply, the
1348 Director shall find, in writing, that the higher order methods of
1349 delivery of potable water are not feasible. The Director may
1350 rely on the sewers if an appropriate Public Health Authority.

1351 7.5.i.3.B. The Permittee shall establish and pay for
1352 the potable water supply system.

1353 7.5.i.3.C. The water shall be delivered at a constant
1354 rate and at water industry accepted pressure and flow.

1355 7.5.i.3.D. The Homestead Plan shall describe the
1356 future maintenance of the water supply system. If the water
1357 system is public, the plan shall designate the entity responsible
1358 for its upkeep. Homesteaders may be required to pay a fair
1359 market price for the water. Homesteaders shall not be charged
1360 for water from their own individual well, although Homestead-
1361 ers shall be responsible for maintenance of their own wells.

1362 7.5.i.3.E. Individual supply systems shall, at a
1363 minimum, meet all applicable health standards, comply with all
1364 state and federal laws, and be approved by the appropriate
1365 public health authority. Appropriate wellhead protection or
1366 watershed protection practices shall be incorporated into the

1367 Homestead Plan, and shall be protect water from potential
1368 vulnerability from future land use.

1369 7.5.i.3.F. The source or sources of potable water
1370 must be identified within the Homesteading Plan, along with a
1371 demonstration of the adequacy of quantity and quality. Upon
1372 completion of the reclamation plan, the Permittee shall install
1373 and demonstrate the quality and adequacy of the supply. If the
1374 originally proposed water supply system proves to be inade-
1375 quate or unsuitable, the Permittee shall immediately make
1376 application with the Director for approval of alternate supplies
1377 or adequate improvements to the water supply system. The
1378 resulting improvements and/or alternate supplies shall comply
1379 with the requirements in this rule and shall be subject to the
1380 approval of the appropriate public health authority. Phase I
1381 bond release may not be approved until the Director finds that
1382 the installed water supply complies with this rule and applicable
1383 State and federal law.

1384 7.5.i.3.G. The Homestead Plan shall describe a water
1385 supply plan that is adequate to meet the needs of the Homestead
1386 Area. The water supply plan shall address the anticipated future
1387 land use of the Homestead Area, and must be reviewed and
1388 approved by the Director and the appropriate public health
1389 authorities.

1390 7.5.i.3.H. The potable water supply sources shall
1391 meet the Federal Primary Drinking Water Maximum Contami-
1392 nant Level standards. (40 CFR 141, Subpart B). Verification of
1393 such quality shall be provided to the appropriate public health
1394 authority.

1395 7.5.i.3.I. The supply source means the contiguous
1396 water body or contiguous aquifer from which supplies are
1397 drawn. If multiple homestead unit supplies are withdrawn from
1398 the same source, determination of water quality of the source

1399 shall be made at points that are representative of the water that
1400 will be withdrawn from the source.

1401 7.5.i.3.J. The potable water supply shall provide for
1402 a minimum quantity of 12,500 gallons per month per homestead
1403 unit. The supply may incorporate one or a combination of
1404 sources and storage facilities demonstrated to provide an
1405 adequate supply for each homestead parcel.

1406 7.5.i.3.K. If a ground water source is to be used, the
1407 plan and the confirmation of the installed ground water supply
1408 system shall be conducted under the direction of a qualified
1409 ground water professional. The locations of drilled wells shall
1410 be consistent with appropriate public health requirements.

1411 7.5.i.3.L. The water supply shall be developed (or
1412 extended as applicable) free of charge to the homesteader to a
1413 point within 50 feet of the designated residence and civic parcel
1414 construction pads for each homestead unit.

1415 7.5.i.3.M. After initial establishment of compliant
1416 water quality and quantity, responsibility for maintenance of the
1417 water supply shall revert to the homesteader or, in the event that
1418 the supply is community- or publicly-controlled, to the appropriate and capable public authority.

1420 7.5.i.3.N. When the potable water supply is insufficient to meet the needs of the proposed use for rural homestead
1421 parcels, the Homestead Plan shall include nonpotable water
1422 supplies for uses that do not require potable water. Before
1423 approving Phase I bond release, the Director shall find that the
1424 non-potable water supply is sufficient in both quality and
1425 quantity for such uses, including agricultural uses. The plan for
1426 the system shall indicate the provisions that will be taken to
1427 assure that the potable water supply shall not be compromised.
1428 The approval of nonpotable water supplies distribution and
1429 handling system shall be consistent with State and federal law.
1430

1431 7.5.i.3.O. Each Homesteader shall be responsible for
1432 costs incurred to connect dwellings to water facilities.

1433 7.5.i.3.P. The entity administering the civic parcel
1434 shall be responsible for costs incurred to connect structures on
1435 the civic parcel to water facilities.

1436 7.5.i.3.Q. If a reservoir is used, a registered profes-
1437 sional engineer shall certify its integrity. The engineer shall also
1438 certify that, taking account of inflow, seepage and evaporation,
1439 the reservoir will provide the amount of water and water
1440 pressure required by the Homestead use.

1441 7.5.i.4. Electrical Utilities:

1442 7.5.i.4.A. The Homestead Plan shall provide access
1443 to electrical power for all Homestead Parcels and for all Civic
1444 Parcels requiring electric power. The quantity of electricity
1445 supplied shall be sufficient to support the proposed use. Phase
1446 II bond release may not be approved until all the necessary
1447 facilities have been rendered operational and extended to a
1448 point where the service drop for the Homestead or Civic Parcel
1449 can be accomplished in no more than one span. If a service
1450 lateral is proposed, access to electrical power shall be deemed
1451 to have been satisfactorily provided when the service lateral is
1452 no more than 50 feet in length. Such electrical power facilities
1453 shall be designated in the plan and referred to as “main electri-
1454 cal power facilities”.

1455 7.5.i.4.B. All line work shall conform to the practices
1456 of the electric power utility servicing the area. The installed
1457 main utilities and associated equipment shall be conveyed to the
1458 electric power utility servicing the area.

1459 7.5.i.4.C. Each Homesteader shall be responsible for
1460 all costs incurred to install a service drop or service lateral the
1461 building pads.

1462 7.5.i.4.D. The entity administering the Civic Parcel
1463 shall be responsible for all costs incurred to install a service
1464 drop or service lateral to structures on the Civic Parcel.

1465 7.5.i.4.E. Each Homesteader shall be responsible for
1466 cost of electrical service.

1467 7.5.i.5. Communication Services:

1468 7.5.i.5.A. The Permittee shall provide access to
1469 telephone service for all Homestead Parcels and for all Civic
1470 Parcels requiring telephone service. Phase II bond release may
1471 not be approved until access to telephone service has been
1472 rendered operational and extended to a point within 50 feet of
1473 the Parcel's building pads. Such telephone or equivalent
1474 utilities shall be designated in the plan and referred to as "main
1475 telephone facilities".

1476 7.5.i.5.B. All service line work shall conform to the
1477 practices of the telephone service provider of the area. All line
1478 work and associated equipment shall be conveyed to the local
1479 telephone service provider.

1480 7.5.i.5.C. Each Homesteader shall be responsible for
1481 all costs incurred to extend and connect main telephone
1482 facilities to the building pads.

1483 7.5.i.5.D. The entity administering the Civic Parcel
1484 shall be responsible for all costs incurred to extend and connect
1485 main telephone facilities to the Civic Parcels.

1486 7.5.i.5.E. Each Homesteader shall be responsible for
1487 the cost of telephone service.

1488 7.5.i.6. Solid Waste:

1489 7.5.i.6.A. The Homestead Plan shall contain a plan
1490 for the off-site disposal of solid waste that is acceptable to the
1491 Director and the appropriate public health authority.

1492 7.5.i.7. Surface Drainage And Storm Water:

1493 7.5.i.7.A. The Homestead Plan shall contain a
1494 detailed surface drainage pattern and storm water runoff
1495 control plan. This plan shall be certified by a registered
1496 professional engineer.

1497 7.5.i.7.B. The surface drainage pattern and storm
1498 water plan shall be consistent with a surface drainage pattern
1499 that would be found on natural topography similar to the
1500 post-mining topography proposed in the Homestead Plan. The
1501 beds of the surface and storm water drainways shall contain
1502 material that is as natural as practicable.

1503 7.5.i.8. Reforested Conservation Easements:

1504 7.5.i.8.A. The Homestead Plan shall identify areas
1505 within the Homestead Area reserved for reforested Conserva-
1506 tion Easements. These areas shall be reforested by the Permittee
1507 at no cost to Homesteaders.

1508 7.5.i.8.B. In the event that an isolated forest patch
1509 exists as a result of mining activities, the Conservation Ease-
1510 ment shall serve as a corridor to establish a wind break and a
1511 forested connection with the isolated forest patch and to
1512 facilitate the adequate movement of fauna out of and into the
1513 isolated forest patch.

1514 7.5.i.8.C. Conservation Easements may serve the
1515 purpose of a storm water management system. In such case, the
1516 technical specifications applicable to the design and construc-
1517 tion of the storm water channels and their associated structures
1518 shall be satisfied.

1519 7.5.i.8.D. Conservation Easement shall compromise
1520 at least 10% of the Homestead Area, including the Commercial
1521 Parcels.

1522 7.5.i.8.E. The Director shall assure that all areas
1523 suitable for hardwoods in the Conservation Easement are
1524 planted with native hardwoods at a rate of 500 seedlings per acre
1525 in continuous mixtures across the conservation easement with
1526 at least six (6) species from the following list: white and red
1527 oaks, other native oaks, white ash, yellow-poplar, black walnut,
1528 sugar maple, black cherry, or native hickories. Plants shall be
1529 a minimum of 3/4" in diameter at breast height at planting.

1530 7.5.i.8.F. Each of the species shall not be less than
1531 10% of the total planted composition and at least 75% of the
1532 total planted woody plant composition shall be from the above
1533 list of species. Species shall be selected based on their compati-
1534 bility and expected site-specific long-term dynamics.

1535 7.5.i.8.G. At least 10% of the required number of
1536 woody plants shall be a planted continuous mix of three or
1537 more nurse tree and shrub species that improve soil quality and
1538 habitat for wildlife. They shall consist of black alder, black
1539 locust, bristley locust, redbud, or bi-color lespedeza.

1540 7.5.i.8.H. On areas unsuitable for hardwoods, the
1541 Director may authorize the following conifers: Virginia pine,
1542 red pine, white pine, pitch pine, or pitch x loblolly hybrid pine.
1543 Areas unsuitable for hardwoods shall be limited to south-
1544 west-facing slopes of greater than 10% or areas where the soil
1545 pH is less than 5.5. These conifers shall be planted as sin-
1546 gle-species stands less than 10 acres in size at the same rate as
1547 the hardwood requirements in this rule. The Director shall
1548 assure that no Conservation Easement area contains a total of
1549 more than 15% conifers.

1550 7.5.i.8.I. The Director shall assure that the specific
1551 species and selection of trees and shrubs shall be based on the
1552 suitability of the planting site for each species site requirements
1553 based on soil type, degree of compaction, ground cover,
1554 competition, topographic position, and aspect.

1555 7.5.i.8.J. The Director shall assure that the total
1556 planting rate of trees and nurse plants is not less than 500 stems
1557 per acre.

1558 7.5.i.9. Perpetual Easements:

1559 7.5.i.9.A. The Homestead Plan shall describe areas
1560 within the Homestead reserved for perpetual easements relating
1561 to storm water management, protection of out slopes and steep
1562 slopes, protection of water sources, public roads of all kinds,
1563 and utilities. These areas shall be included within Home-
1564 steader's deeded parcels and may have permanent development
1565 restrictions included within the Homesteader's deeds of
1566 conveyance.

1567 7.5.i.9.B. Fill faces shall be placed under perpetual
1568 easements that prohibit activities that may lead to instability or
1569 erodability. Trees may be planted on the faces of the fills.

1570 7.5.i.10. Wetlands: Each Homestead Plan may
1571 describe areas within the Homestead Area reserved for created
1572 wetlands. These created wetlands may be ponds, permanent
1573 impoundments or wetlands created during mining. They may be
1574 left in place after final bond release.

1575 7.5.j. Soils, Soil Placement And Grading.

1576 7.5.j.1. General Requirements:

1577 7.5.j.1.A. Phase I bond release shall not be approved
1578 until a soil scientist certifies and the Director finds that the soil
1579 meets the criteria established in this rule and has been placed in
1580 accordance with this rule.

1581 7.5.j.1.B. The Homestead Plan shall include a
1582 topographic map of the permit area, 1:12000 or finer, showing
1583 the location of pre-mining native solids, weathered
1584 slightly-acidic brown sandstone and drainages which includes

1585 site index for common native tree species. A profile description
1586 of each soil mapping unit that includes, at minimum, soil
1587 horizons, including the O. horizon depths, soil texture, struc-
1588 ture, color, reaction and bedrock type. A certified professional
1589 soil scientist shall conduct a detailed on-site survey, create the
1590 maps, and provide the written description of the soils and
1591 sandstones.

1592 7.5.j.1.C. The Homesteading Plan shall include a
1593 description of the present soils and soil substitutes to be used as
1594 the plant medium, and a description of the proposed handling,
1595 and placement of these materials. The handling plan shall
1596 include procedures to:

1597 7.5.j.1.C.1. Protect native soil organisms and the
1598 native seed pool;

1599 7.5.j.1.C.2. Include organic debris such as litter,
1600 branches, small logs, roots and stumps in the soil;

1601 7.5.j.1.C.3. Inoculate the minesoil with native soil
1602 organisms; and

1603 7.5.j.1.C.4. Increase soil fertility.

1604 7.5.j.1.D. A surface preparation plan which includes
1605 a description of the methods for replacing and grading the soil
1606 and other soil substitutes and their preparation for
1607 homesteading.

1608 7.5.j.2. Landscape Criteria:

1609 7.5.j.2.A. The Director shall assure that the
1610 postmining landscape is rolling, and diverse. The backfill on the
1611 mine bench, shall be configured to create a postmining topogra-
1612 phy that includes the principles of landforming to reflect the
1613 premining irregularities in the land. Postmining landform shall
1614 provide a rolling topography with slopes of between 5% and

1615 15%. The elevation change between the ridgeline and the
1616 valleys shall be varied. The slope lengths shall not exceed 500
1617 feet. The minimum thickness of backfill, including minesoil,
1618 placed on the pavement of the basal seam mined in any particu-
1619 lar area shall be 10 feet.

1620 7.5.j.2.B. At least 3 ponds, permanent impoundments
1621 or wetlands totaling at least 3.0 acres shall be created on each
1622 200 acres of permitted area. They shall be dispersed throughout
1623 the landscape and each water body shall be no smaller than 0.20
1624 acres. All ponds, permanent impoundments or wetlands shall
1625 comply with all requirements of this rule, and shall be left in
1626 place after final bond release.

1627 7.5.j.2.C. All ponds and impoundments created
1628 during mining shall be left in place after bond release and shall
1629 comply with all the requirements of this rule.

1630 7.5.j.2.D. The ponds, permanent impoundments,
1631 surface water channels and wetlands on the Permit Area shall
1632 be vegetated on the perimeter with at least six native herba-
1633 ceous species typical of the region at a density of not less than
1634 1 plant per linear foot of edge, and at least 4 native shrub
1635 species at a density of not less than 1 shrub per 6 linear feet of
1636 edge. No species of herbaceous or shrub species shall be less
1637 than 15% of the total for its life form.

1638 7.5.j.2.E. The landscape criteria in this rule do not
1639 apply to valley fills.

1640 7.5.j.3. Soil:

1641 7.5.j.3.A. Soil is defined as and shall consist of the O,
1642 A, B, C, and Cr horizons.

1643 7.5.j.3.B. The Director shall require the operator to
1644 recover and use all the soil on the mined area, as shown on the
1645 soil maps, except for those areas with a slope of at least 50%,

1646 and other areas from which the applicant affirmatively demon-
1647 strates and the Director finds that soil cannot reasonably be
1648 recovered. The Director shall assure that all saved soil includes
1649 all of the material from the O and A horizons.

1650 7.5.j.3.C. When the Director determines that avail-
1651 able soil volume on the permit area is not sufficient to meet the
1652 depth requirements, selected overburden materials may be used
1653 as soil substitutes. Soil substitutes shall consist of weathered,
1654 slightly acid, brown sandstone from within 10 feet of the soil
1655 surface if the Director determines that such material is avail-
1656 able. Material from this layer may be removed with the soil and
1657 mixed with the soil in order to meet the depth requirement.

1658 7.5.j.3.D. If the applicant affirmatively demonstrates
1659 and the Director finds that weathered, slightly acid, brown
1660 sandstone from within 10 feet of the soil surface cannot
1661 reasonably be recovered, weathered, slightly acid, brown
1662 sandstone taken from below 10 feet of the soil surface from
1663 anywhere in the permit area may be substituted. Materials may
1664 be suitable for this purpose only if their bulk pH in water is
1665 between 5.0 and 7.0. Materials with net potential acidity greater
1666 than 5 tons of calcium carbonate equivalence per 1000 tons may
1667 not be used.

1668 7.5.j.3.E. Before approving the use of soil substitutes,
1669 the Director shall require the permittee to demonstrate that the
1670 selected overburden material is suitable for restoring land
1671 capability and productivity. This will be demonstrated by the
1672 results of chemical and physical analyses, including pH, total
1673 soluble salts, phosphorus, potassium, calcium, texture class,
1674 acid-base accounting, and other such analyses as necessary.

1675 7.5.j.3.F. The final surface material used on all parts
1676 of the permit area except roads, building pads, and valley fill
1677 faces shall consist of a minimum of 4 feet of soil, or a mixture
1678 of soil and suitable soil substitutes.

1679 Homesteading soil depth shall contain at least 33% soil. If the
1680 applicant affirmatively demonstrate and the Director finds, that
1681 sufficient weathered slightly acid brown sandstone cannot
1682 reasonably be recovered from the mined area to satisfy the mine
1683 soil depth requirement, then up to one quarter of the total
1684 volume of the minesoil may consist of highly-fractured sand-
1685 stone, as long as it has been demonstrated that the physical and
1686 chemical quality of this material is suitable.

1687 7.5.j.3.G. If the applicant does not demonstrate that
1688 there is sufficient material available on the permit area to
1689 satisfy the requirements of this rule, then the Director may not
1690 authorize a Homesteading variance.

1691 7.5.j.3.H. The Director may require the operator to
1692 include as part of the minesoil mix organic debris such as forest
1693 litter, branches, small logs, roots and stumps in the soil to help
1694 reseed the native vegetation, inoculate the minesoil with native
1695 soil organisms and increase soil fertility.

1696 7.5.j.3.I. The Director shall require that soil be
1697 removed and reapplied in a manner that minimizes stockpiling
1698 such that seed pools and soil organisms remain biological
1699 viable. No more than 10% of the available soil, described in the
1700 Director's findings, may be placed in a long-term stockpile, soil
1701 redistribution shall be done within one month of soil removal.
1702 Except for soil in a long-term stockpile, soil shall be stored for
1703 less than one month in piles less than six feet high and 24 feet
1704 wide in a stable area within the permit area where it will not be
1705 disturbed and will be protected from water or wind erosion or
1706 contaminants that lessen its capability to support vegetation.
1707 Long-term stockpiles shall be seeded with ground cover mixes
1708 used for reforestation.

1709 7.5.j.4. Soil Placement And Grading:

1710 7.5.j.4.A. Except for valley fill faces, building pads,
1711 roads, and other areas that must be compacted, the Director
1712 shall require the Permittee to place minesoil loosely and in a
1713 non-compacted manner while meeting static safety factor
1714 requirements. Grading the final surface shall be minimized to
1715 reduce compaction. Once the material is placed, light grading
1716 equipment shall be used to grade the tops of the piles, roughly
1717 leveling the area with no more than one or two passes. Tracking
1718 in and rubber-tired equipment shall not be used. Non-permanent
1719 roads, equipment yards and other trafficked areas shall be
1720 deep-ripped (24" to 36") to mitigate compaction.

1721 7.5.j.4.B. Soil physical quality shall be inadequate if
1722 it inhibits water infiltration or prevents root penetration or if
1723 their physical properties or water-supplying capacities cause
1724 them to restrict root growth of trees. Slopes greater than 50%
1725 shall be compacted no more than is necessary to achieve
1726 stability and non-erodability.

1727 7.5.j.4.C. The Director shall require the permittee to
1728 leave soil surfaces rough with random depressions across the
1729 entire surface to catch seed and sediment, conserve soil water.
1730 Organic debris such as forest litter, logs, and stumps may be left
1731 on and in the soil.

1732 7.5.j.5. Limiting And Fertilizing: The Permittee shall
1733 submit a liming and fertilizing plan. The Director shall assure
1734 that the liming and fertilizing plan is appropriate for establish-
1735 ing the ground cover vegetation.

1736 7.5.j.6. Ground Cover Vegetation:

1737 7.5.j.6.A. The Director shall require the permittee to
1738 establish a temporary vegetative cover as contemporaneously
1739 as practicable with backfilling and grading. This cover shall
1740 consist of a combination of native and domesticated
1741 non-invasive cool and warm season grasses and other herba-

1742 ceous vine or shrub species including legume species and
1743 ericaceous shrubs. All species shall be slow growing. The
1744 ground cover vegetation shall be capable of stabilizing the soil
1745 from excessive erosion. Seeding rates and composition must be
1746 in the Homestead Plan. The following ground cover mix and
1747 seeding rates (pounds/acre) shall be used: winter wheat (15
1748 lbs/acre, fall seeding), foxtail millet (5 lbs./acre, summer
1749 seeding), redtop (2 lbs/acre), perennial ryegrass (2 lbs/acre),
1750 orchardgrass (5 lbs/acre), weeping lovegrass (2 lbs/acre) kobe
1751 lespedeza (5 lbs/acre), birdsfoot trefoil (10 lbs./acre), and white
1752 clover (3 lbs/acre). Kentucky-31 fescue, seresia lespedeza, all
1753 vetches, clovers (except ladino and white clover) and other
1754 aggressive or invasive species shall not be used. On south- and
1755 west-facing slopes with a soil pH of 6.0 or greater, the four
1756 grasses in the mixture shall be replaced with 20 lbs/acre of
1757 warm-season grasses consisting of the following species:
1758 Niagara big bluestem (95 lbs/acre), Camper little bluestem (2
1759 lbs/acre), Indian grass (2 lbs/acre), and Shelter switch grass (1
1760 lb/acre), or other varieties of these species approved by the
1761 Director. Also, a selection of at least 3 ericaceous shrub species
1762 shall be included in the ground cover mix.

1763 7.5.j.6.B. The Permittee may regrade and reseed only
1764 those rills and gullies that are unstable.

1765 7.5.j.7. Front Faces Of Valley Fills:

1766 7.5.j.7.A. Front faces of valley fills shall be exempt
1767 from the requirements of this rule except that:

1768 7.5.j.7.A.1. They shall be graded and compacted no
1769 more than is necessary to achieve stability and non-erodability.;

1770 7.5.j.7.A.2. No shales may be present in the upper
1771 four feet of surface material;

1772 7.5.j.7.A.3. The upper four feet of surface material
1773 shall be composed of soil and weathered brown sandstone when

1774 available, unless the Director determines other material is
1775 necessary to achieve stability;

1776 7.5.j.7.A.4. The groundcover mixes described in
1777 subparagraph shall be used unless the Director requires a
1778 different mixture.

1779 7.5.j.7.A.5. Kentucky 31 fescue, sercia lespedeza,
1780 vetches, clovers (except ladino and white clover) or other
1781 invasive species may not be used; and

1782 7.5.j.7.B. Although not required by this rule, native,
1783 non-invasive trees may be planted on the faces of fills.

1784 7.5.k. Requirements For Reclamation Maps. An appro-
1785 priately scaled, "as-built" topographic map of the Homestead
1786 Area shall be prepared and submitted as part of the permit
1787 application. An identically scaled *overlay* map showing the
1788 elevation contours at the base of all mined areas as well as the
1789 original ground contour of all excess mine spoil storage areas
1790 shall accompany the as-built map. The overlay map shall
1791 identify all backfilled mine sites and excess mine-spoil storage
1792 areas. The overlay map shall depict the boundaries of all
1793 parcels, areas of mine spoil specifically compacted for the
1794 placement of structures, easements, and areas that the Director
1795 may designate for special or limited uses. All post-reclamation
1796 maps shall be prepared under the direction of and certified by
1797 a registered professional engineer and shall be recorded with
1798 the county within one year following the final reclamation of
1799 the proposed Homestead Area.

1800 7.5.l. Homestead Village.

1801 7.5.l.1. Homestead Village: The Homestead Village
1802 provides for a residential development at a higher density than
1803 in rural Homestead parcels. The Village is intended to:

1804 7.5.1.1.A. Encourage mixed residential and commer-
1805 cial land uses, and

1806 7.5.1.1.B. At least 20% of the Homestead Area shall
1807 be composed of Village parcels.

1808 7.5.1.2. Village Parcel Requirements:

1809 7.5.1.2.A. Each Village homestead parcel shall be no
1810 larger than one acre in size.

1811 7.5.1.2.B. Each parcel shall have a minimum road
1812 frontage of 40 feet. No pipe stem parcel arrangements are
1813 permitted.

1814 7.5.1.2.C. Each parcel shall be graded evenly to 5%
1815 maximum.

1816 7.5.1.3. Common Lands: In addition to the Civic
1817 Parcels and Conservation Easements, each Homestead Area
1818 shall include a reserve of 10% of the land as a common area.
1819 The Common Land shall be conveyed to the Community
1820 Association. The planning and maintenance of the Common
1821 Land shall be the responsibility of the Community Association.

1822 7.5.1.4. Public Nursery: Each Village Homestead
1823 shall designate an area for a Public Nursery constructed and
1824 planted by the Permittee at no cost to the Homesteaders. The
1825 nursery may be located adjacent to the Common Land but shall
1826 not constitute the required Common Land area. The Nursery
1827 shall provide woody plants of high quality and appearance for
1828 the use of the Homesteaders as specified below.

1829 7.5.1.4.A. The nursery shall be 1 acre per 30 acres of
1830 Homestead Area. The Public Nursery shall be a civil parcel.
1831 The Permittee shall plant the nursery with the same species and
1832 to the same standards as required in the Conservation Easement.
1833 Once bond is released, the Community Association shall be

1834 responsible for maintaining the nursery. Success standards shall
1835 be the same as for the conservation easements.

1836 7.5.1.4.B. The nursery plants shall consist of at least
1837 six species from the following list: white oak, red oak, other
1838 native oaks, white ash, yellow poplar, black walnut, sugar
1839 maple, black cherry, or native hickories.

1840 7.5.1.4.C. Adequate water supply shall be provided
1841 for the nursery. This may be achieved through any of the water
1842 supply means specified or through the storm water drainage
1843 system.

1844 7.5.1.4.D. The nursery shall be maintained in manner
1845 consistent with the healthy development of the plants. The
1846 nursery plants shall meet the following criteria upon convey-
1847 ance: 1) in regular form for the species, 2) 80% live branches,
1848 and 3) color consistent with the species. Materials not meeting
1849 the specifications shall be replaced with like species by the
1850 permittee. After final bond release, the nursery shall be con-
1851 veyed to the Community Association.

1852 7.5.1.4.E. Each Homesteader shall be allowed to take
1853 trees from the nursery as determined by the Community
1854 Association. The remainder of the trees shall be for the com-
1855 mon landscapes.

1856 7.5.m. Community Association:

1857 7.5.m.1. At the completion of the lottery, a Community
1858 Association shall be established among the designated Home-
1859 steads for each Homestead Area. The Association shall
1860 maintain and administer the public areas, Conservation Ease-
1861 ments and Civic Parcels of the Homestead and may levy
1862 membership fees.

1863 7.5.m.2. By-laws for the Community Association shall
1864 be developed by the Escrow Agent, working with the Home-
1865 steaders and a qualified design professional as defined by this
1866 rule. The permittee shall pay the qualified land designer for
1867 such services. The by-laws may establish rules for building
1868 standards and other Homestead Area rules, as appropriate.

1869 7.5.m.3. Membership in the association is mandatory
1870 for all Homesteaders and their successors.

1871 7.5.m.4. The association shall obtain liability insur-
1872 ance for its property and shall be responsible for maintenance
1873 of insurance and taxes on undivided open space. The associa-
1874 tion may place liens on the homes or houselots of its members
1875 who fail to pay their association dues in a timely manner. Such
1876 liens may require the imposition of penalty interest charges.

1877 7.5.m.5. The association shall administer common
1878 facilities and pay for maintaining and developing such facilities.

1879 7.5.n. Interim Homestead Management

1880 7.5.n.1. The Director or the Director's designee shall
1881 administer the Homestead Selection Lotteries.

1882 7.5.n.2. The Escrow Agent shall monitor the 5-year
1883 occupancy requirement for each Homestead Parcel and transfer
1884 of the titles of the surface estates to the qualified Homesteaders.

1885 7.5.n.3. The Escrow Agent shall manage and administer
1886 the homestead between final bond release and the time when all
1887 of the titles to the Homestead Parcels have been transferred and
1888 duly recorded with the Clerk of the County.

1889 7.5.n.4. Funding these services shall be guaranteed by
1890 an insured Bank account established by the Permittee.

1891 7.5.n.5. Before approving any Homestead variance, the
1892 Director shall find, in writing, that the funds in the account are
1893 sufficient to pay for these services.

1894 7.5.n.6. After final bond release, this account shall be
1895 administered by the Escrow Agent.

1896 7.5.n.7. The Escrow Agent shall receive the surface
1897 rights to the entire Homestead Area and all-weather and main
1898 roads before mining begins.

1899 7.5.n.8. The Escrow Agent shall be charged with
1900 responsibility for transferring the surface rights in escrow to the
1901 Homesteaders, the Community Association, or the State or
1902 county road authority.

1903 7.5.n.9. Such transfers shall promptly occur upon
1904 certification by the Escrow Agent that the Homesteader has met
1905 the requirements of this rule.

1906 7.5.n.10. Before the homesteader receives title,
1907 property may revert to the Escrow Agent, when after notice and
1908 hearing, the Escrow Agent determines that the homesteader has
1909 not abided by this rule. The Escrow Agent's determination shall
1910 be reviewable by the Circuit Court of the County in which the
1911 homestead parcel is located.

1912 7.5.n.11. If developed property reverts to Escrow, the
1913 Escrow Agent shall promptly sell the property and remit
1914 proceeds, less costs, to the homesteader, up to the value of the
1915 homesteader's investment.

1916 7.5.n.12. Because deeds to Homestead Parcels will not
1917 be transferred to Homesteaders before a Homesteader has lived
1918 on a parcel for five years, lending institutions may be reluctant
1919 to make loans to Homesteaders before the five-year period has
1920 expired. Accordingly, to assure that lending institutions are

1921 willing to make loans to Homesteaders during this period, the
1922 Escrow Agent shall establish a system to provide mortgage
1923 insurance to homesteaders so that lenders will be able to finance
1924 private development of homestead parcels. The Escrow Agent
1925 shall have all powers necessary to structure loans and other
1926 necessary transactions so lenders are reasonably secure.

1927 7.5.o. Bond Release:

1928 7.5.o.1. Before approving Phase I bond release, the
1929 Director shall assure that the soil is in place, the vegetative
1930 cover has been established, that the water system has been
1931 completed, that the roads have been completed and transferred
1932 to the State or county road authority, and that the main electric-
1933 ity transmission line is in place.

1934 7.5.o.2. Phase II bond release may not occur before two
1935 years have passed since Phase I bond release. Before approving
1936 Phase II bond release, the Director shall assure that the vegeta-
1937 tive cover is still in place. The Director shall further assure that
1938 the tree survival on the Conservation Easements and Public
1939 Nurseries are no less than 300 trees per acre (80% of which
1940 must be species from the approved list). Furthermore, in the
1941 Conservation Easement and Public Nursery areas, there shall be
1942 a 70% ground cover where ground cover includes tree canopy,
1943 shrub and herbaceous cover, organic litter, and rock cover.
1944 Trees and shrubs counted in considering success shall be
1945 healthy and shall have been in place at least two years, and no
1946 evidence of inappropriate dieback. Phase II bond release shall
1947 not occur until the service drops for the utilities and communi-
1948 cations have been installed to each Homestead Parcel.

1949 7.5.o.3. The Director may authorize Phase III bond
1950 release only after all parcels in the Homestead Areas are
1951 certified and ready for occupancy.

1952 7.5.o.4. Once final bond release is authorized, the
1953 Permittee's responsibility for implementing the Homestead
1954 Plan shall cease.'

1955 And,

1956 On page 129, subsection 14.12.a.1, by following the words
1957 'industrial, commercial, residential' by striking the word
1958 'woodlands' and inserting in lieu thereof 'commercial
1959 forestry'."

1960 (v) The legislative rule filed in the state register on the sixth
1961 day of August, one thousand nine hundred ninety-nine, autho-
1962 rized under the authority of section two, article four, chapter
1963 twenty-two of this code, modified by the division of environ-
1964 mental protection to meet the objections of the legislative
1965 rule-making review committee and refiled in the state register
1966 on the twenty-fifth day of January, two thousand, relating to the
1967 division of environmental protection (mining and restoration for
1968 sandstone, limestone and sand, 38 CSR 2A), is disallowed and
1969 not authorized.

1970 (w) The legislative rule filed in the state register on the
1971 sixth day of August, one thousand nine hundred ninety-nine,
1972 authorized under the authority of section two, article four,
1973 chapter twenty-two of this code, modified by the division of
1974 environmental protection to meet the objections of the legisla-
1975 tive rule-making review committee and refiled in the state
1976 register on the twenty-fifth day of January, two thousand,
1977 relating to the division of environmental protection (mining and
1978 reclamation of minerals other than coal, limestone, sandstone
1979 and sand, 38 CSR 2B), is disallowed and not authorized.

1980 (x) The legislative rule filed in the state register on the fifth
1981 day of August, one thousand nine hundred ninety-nine, autho-

1982 rized under the authority of section twenty, article fifteen,
1983 chapter twenty-two of this code, modified by the division of
1984 environmental protection to meet the objections of the legisla-
1985 tive rule-making review committee and refiled in the state
1986 register on the twenty-first day of January, two thousand,
1987 relating to the division of environmental protection (sewage
1988 sludge management, 33 CSR 2), is authorized.

1989 (y) The legislative rule filed in the state register on the
1990 fourth day of August, one thousand nine hundred ninety-nine,
1991 authorized under the authority of section six, article eighteen,
1992 chapter twenty-two of this code, modified by the division of
1993 environmental protection to meet the objections of the legisla-
1994 tive rule-making review committee and refiled in the state
1995 register on the twenty-first day of January, two thousand,
1996 relating to the division of environmental protection (hazardous
1997 waste management, 33 CSR 20), is authorized.

1998 (z) The legislative rule filed in the state register on the
1999 twenty-eighth day of July, one thousand nine hundred
2000 ninety-nine, authorized under the authority of section ten,
2001 article eleven, chapter twenty-two of this code, relating to the
2002 division of environmental protection (water pollution control
2003 permit fee schedule, 47 CSR 26), is authorized.

2004 (aa) The legislative rule filed in the state register on the
2005 twenty-eighth day of July, one thousand nine hundred ninety-
2006 nine, authorized under the authority of section three, article two,
2007 chapter twenty-two-c of this code, relating to the division of
2008 environmental protection (state water pollution control revolv-
2009 ing fund program, 47 CSR 31), is authorized.

2010 (bb) The legislative rule filed in the state register on the
2011 third day of August, one thousand nine hundred ninety-nine,
2012 authorized under the authority of section five, article twelve,

2013 chapter twenty-two of this code, relating to the division of
2014 environmental protection (groundwater protection standards at
2015 steam electric generating facilities, 47 CSR 57A), is authorized.

2016 (cc) The legislative rule filed in the state register on the first
2017 day of January, one thousand nine hundred sixty-five, autho-
2018 rized under the authority of section seven, article five, chapter
2019 twenty-two, of this code relating to the division of environmen-
2020 tal protection (to prevent and control air pollution from coal
2021 refuse disposal areas, 45 CSR 1), is repealed.

§64-3-2. Environmental quality board.

1 The emergency rule relating to the environmental quality
2 board (requirements governing water quality standards, 46 CSR
3 1) filed in the state register on the eighteenth day of October,
4 one thousand nine hundred ninety-nine, and subsequently
5 refiled in the state register on the fourteenth day of January, two
6 thousand is repealed and not authorized. The legislative rule
7 filed in the state register on the sixth day of August, one
8 thousand nine hundred ninety-nine, authorized under the
9 authority of section four, article three, chapter twenty-two-b, of
10 this code, modified by the environmental quality board to meet
11 the objections of the legislative rule-making review committee
12 and refiled in the state register on the twenty-first day of
13 January, two thousand, relating to the environmental quality
14 board (requirements governing water quality standards, 46 CSR
15 1), is authorized, with the following amendment:

16 “On page ten, at the end of subdivision 6.2.d by adding a
17 new sentence to read as follows:

18 “The manganese human health criteria shall not apply
19 where the discharge point of the manganese is located more
20 than five miles upstream from a known drinking water source.”

CHAPTER 162

**(Com. Sub. for H. B. 4221 — By Delegates Hunt, Linch,
Compton, Jenkins, Faircloth and Riggs)**

[Passed March 9, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article four, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section two, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing the division of culture and history to promulgate a legislative rule relating to the rehabilitation of certified historic residential structures tax credit; and authorizing the division of rehabilitation services to promulgate a legislative rule relating to the Ron Yost assistance services act board.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 4. AUTHORIZATION FOR DEPARTMENT OF EDUCATION
AND THE ARTS TO PROMULGATE LEGISLATIVE
RULES.**

§64-4-1. Division of culture and history.

§64-4-2. Division of rehabilitation services.

§64-4-1. Division of culture and history.

1 The legislative rule filed in the state register on the fifth day
2 of August, one thousand nine hundred ninety-nine, authorized
3 under the authority of section eight-g, article twenty-one,
4 chapter eleven, of this code, modified by the division of culture
5 and history to meet the objections of the legislative rule-making
6 review committee and refiled in the state register on the fifth
7 day of January, two thousand, relating to the division of culture
8 and history (rehabilitation of certified historic residential
9 structures tax credit, 82 CSR 4), is authorized.

§64-4-2. Division of rehabilitation services.

1 The legislative rule filed in the state register on the sixth
2 day of August, one thousand nine hundred ninety-nine, under
3 the authority of section one, article ten-l, chapter eighteen, of
4 this code, modified by the division of rehabilitation services to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the twenty-first
7 day of September, one thousand nine hundred ninety-nine,
8 relating to the division of rehabilitation services (Ron Yost
9 assistance services act board, 198 CSR 1), is authorized.

CHAPTER 163

(Com. Sub. for H. B. 4250 — By Delegates Hunt, Linch,
Compton, Jenkins, Faircloth and Riggs)

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

AN ACT to amend and reenact article five, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; disapproving certain legislative rules; repealing certain legislative rules; authorizing the health care authority to promulgate a legislative rule relating to certificates of need; authorizing the health care authority to promulgate a legislative rule relating to health services offered by health professionals; authorizing the division of health to promulgate a legislative rule relating to behavioral health centers licensure; disapproving the division of health legislative rule relating to personal care homes; authorizing the division of health to promulgate a legislative rule relating to food establishments;

authorizing the division of health to promulgate a legislative rule relating to fire department rapid response services; authorizing the division of health to promulgate a legislative rule relating to AIDS-related medical testing and confidentiality; authorizing the division of health to promulgate a legislative rule relating to the cancer registry; authorizing the division of health to promulgate a legislative rule relating to behavioral health consumer rights; authorizing the division of health to promulgate a legislative rule relating to public water systems design standards; authorizing the bureau for child support enforcement to promulgate a legislative rule relating to providing information to credit reporting agencies; and authorizing the bureau for child support enforcement to promulgate a legislative rule relating to guidelines for child support awards.

Be it enacted by the Legislature of West Virginia:

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

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

§64-5-1. Health care authority.

§64-5-2. State board of health; division of health.

§64-5-3. Child support enforcement division.

§64-5-1. Health care authority.

1 (a) The legislative rule filed in the state register on the sixth
 2 day of August, one thousand nine hundred ninety-nine, autho-
 3 rized under the authority of section four, article two-d, chapter
 4 sixteen of this code, modified by the health care authority to
 5 meet the objections of the legislative rule-making review
 6 committee and refiled in the state register on the twenty-third
 7 day of September, one thousand nine hundred ninety-nine,

8 relating to the health care authority (certificate of need, 65 CSR
9 7), is authorized.

10 (b) The legislative rule filed in the state register on the sixth
11 day of August, one thousand nine hundred ninety-nine, autho-
12 rized under the authority of section four, article two-d, chapter
13 sixteen of this code, modified by the health care authority to
14 meet the objections of the legislative rule-making review
15 committee and refiled in the state register on the twenty-third
16 day of September, one thousand nine hundred ninety-nine,
17 relating to the health care authority (health services offered by
18 health professionals, 65 CSR 17), is authorized with the
19 following amendments:

20 “On page two, section three, subsection 3.2, following the
21 words ‘regardless of the cost associated with the proposal’, by
22 striking out the remainder of the sentence and inserting in lieu
23 thereof ‘unless cost is a factor for defining a diagnostic center
24 pursuant to subdivision 2.1.a of this rule.’”

§64-5-2. State board of health; division of health.

1 (a) The legislative rule filed in the state register on the sixth
2 day of August, one thousand nine hundred ninety-nine, autho-
3 rized under the authority of section one, article nine, chapter
4 twenty-seven of this code, modified by the division of health to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the twenty-ninth
7 day of December, one thousand nine hundred ninety-nine,
8 relating to the division of health (behavioral health centers
9 licensure, 64 CSR 11), is authorized.

10 (b) The legislative rule filed in the state register on the sixth
11 day of August, one thousand nine hundred ninety-nine, autho-
12 rized under the authority of section five, article five-d, chapter
13 sixteen of this code, modified by the division of health to meet
14 the objections of the legislative rule-making review committee

15 and refiled in the state register on the twenty-second day of
16 October, one thousand nine hundred ninety-nine, relating to the
17 division of health (personal care homes, 64 CSR 14), is
18 disapproved and not authorized for promulgation.

19 (c) The legislative rule filed in the state register on the
20 fourth day of August, one thousand nine hundred ninety-nine,
21 authorized under the authority of section seven, article one,
22 chapter sixteen of this code, modified by the division of health
23 to meet the objections of the legislative rule-making review
24 committee and refiled in the state register on the twentieth day
25 of January, two thousand, relating to the division of health
26 (food establishments, 64 CSR 17), is authorized with the
27 following amendments:

28 “On page one, section 2.1.a., at the end of the sentence, by
29 inserting the words ‘and the definition of “whole-muscle, intact
30 beef” in subparagraph 1-201.10(B)(94)’;

31 On page two, section 2.1.b., after the words ‘Chapter 2’ by
32 inserting a comma and the words “except for paragraph 2-
33 103.11(H), Persons In Charge;”

34 On page two, section 2.1.c. after the word “paragraphs” by
35 inserting “3-201.11(E), Compliance With Food Law,”;

36 On page two, section 2.1.c. after the words “3-
37 401.11(D)(2)” by striking out the words “Cooking of”;

38 On page two, section 2.1.c. after the words “section 3-
39 603.11” by striking out the words “Consumer Advisory” and
40 inserting in lieu thereof the words “Consumption of Animal
41 Foods that are Raw, Undercooked, or Not Otherwise Processed
42 to Eliminate Pathogens”;

43 On page three, section 2.1.i.1.C., after the words ‘in
44 compliance with’, by striking out the words ‘Chapter 6’ and
45 inserting in lieu thereof the words ‘Chapter 16’;

46 On page five, section 5.3, in two places, by striking out the
47 words 'subsection 5.3' and inserting in lieu thereof the words
48 'subsection 5.4'; and,

49 On page six, line three, immediately preceding the words
50 'Food Establishment Advisory Board', by striking out the
51 words '§16-17-6' and inserting in lieu thereof the words '§64-
52 17-6'."

53 (d) The legislative rule filed in the state register on the
54 fourth day of August, one thousand nine hundred ninety-nine,
55 authorized under the authority of section twenty-three, article
56 four-c, chapter sixteen of this code, modified by the division of
57 health to meet the objections of the legislative rule-making
58 review committee and refiled in the state register on the twenty-
59 second day of October, one thousand nine hundred ninety-nine,
60 relating to the division of health (fire department rapid response
61 services, 64 CSR 44), is authorized with the following amend-
62 ment:

63 "On page seven, following subsection 5.9, by inserting a
64 new subsection, designated subsection 5.10, to read as follows:

65 '5.10. Public Access. Each fire department rapid response
66 system shall provide for a publicly listed telephone number to
67 receive calls for service from the public within its regular
68 operating area, except as specified in subdivision 5.10.b of this
69 rule.

70 5.10.a. The number shall be answered on a twenty-four-
71 hour basis.

72 5.10.b. Exception. Any fire department rapid response
73 system that, according to its written policy, does not respond to
74 calls from the general public but responds only to calls from a
75 unique population, such as the population of a state institution,
76 an industrial plant, between specified health care facilities, or
77 a university, is not required to provide a publicly listed tele-

78 phone number. The agency shall provide for a telephone
79 number and shall make that number known to the unique
80 population it services. The number shall be required to be
81 answered during all periods when that population may require
82 service.”

83 (e) The legislative rule filed in the state register on the first
84 day of December, one thousand nine hundred ninety-eight,
85 authorized under the authority of section eight, article three-c,
86 chapter sixteen of this code, modified by the division of health
87 to meet the objections of the legislative rule-making review
88 committee and refiled in the state register on the twenty-ninth
89 day of April, one thousand nine hundred ninety-nine, relating
90 to the division of health (AIDS-related medical testing and
91 confidentiality, 64 CSR 64), is authorized with the following
92 amendment:

93 “On page six, subsection 5.1, following the words ‘initial
94 period of time’, by striking the words ‘not to exceed three (3)
95 months’.”

96 (f) The legislative rule filed in the state register on the
97 fourth day of August, one thousand nine hundred ninety-nine,
98 authorized under the authority of section two-a, article five-a,
99 chapter sixteen of this code, modified by the division of health
100 to meet the objections of the legislative rule-making review
101 committee and refiled in the state register on the twenty-second
102 day of October, one thousand nine hundred ninety-nine, relating
103 to the division of health (cancer registry, 64 CSR 68), is
104 authorized with the following amendment:

105 “On page five, immediately following subsection 5.4, by
106 adding a new subsection, designated subsection 5.5, to read as
107 follows:

108 ‘5.5. The West Virginia Cancer Registry may release case
109 data to cancer researchers for the purposes of cancer prevention,
110 control and research.’”

111 (g) The legislative rule filed in the state register on the
112 fourth day of August, one thousand nine hundred ninety-nine,
113 authorized under the authority of section nine, article one,
114 chapter sixteen of this code, modified by the division of health
115 to meet the objections of the legislative rule-making review
116 committee and refiled in the state register on the twenty-ninth
117 day of December, one thousand nine hundred ninety-nine,
118 relating to the division of health (behavioral health consumer
119 rights, 64 CSR 74), is authorized.

120 (h) The legislative rule filed in the state register on the fifth
121 day of August, one thousand nine hundred ninety-nine, autho-
122 rized under the authority of section nine-a, article one, chapter
123 sixteen of this code, modified by the division of health to meet
124 the objections of the legislative rule-making review committee
125 and refiled in the state register on the nineteenth day of January,
126 two thousand, relating to the division of health (public water
127 systems design standards, 64 CSR 77), is authorized.

§64-5-3. Child support enforcement division.

1 (a) The legislative rule filed in the state register on the sixth
2 day of August, one thousand nine hundred ninety-nine, under
3 the authority of section nine, article two, chapter forty-eight-a
4 of this code, relating to the bureau for child support enforce-
5 ment (providing information to credit reporting agencies, 78
6 CSR 14), is repealed.

7 (b) The legislative rule filed in the state register on the sixth
8 day of August, one thousand nine hundred ninety-nine, under
9 the authority of section nine, article two, chapter forty-eight-a
10 of this code, relating to the bureau for child support enforce-
11 ment (guidelines for child support awards, 78 CSR 16), is
12 repealed.

CHAPTER 164

(Com. Sub. for H. B. 4286 — By Delegates Hunt,
Linch, Compton, Jenkins, Faircloth and Riggs)

[Passed March 9, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article six, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing the division of corrections to promulgate a legislative rule relating to the monitoring of inmate mail; and authorizing the state police to promulgate a legislative rule relating to the West Virginia state police career progression system.

Be it enacted by the Legislature of West Virginia:

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

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

§64-6-1. Division of corrections.

§64-6-2. State police.

§64-6-1. Division of corrections.

1 The legislative rule filed in the state register on the fifth day
2 of August, one thousand nine hundred ninety-nine, under the
3 authority of section eighteen, article one, chapter twenty-five of
4 this code, modified by the division of corrections to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the twenty-first day of October,
7 one thousand nine hundred ninety-nine, relating to the division
8 of corrections (monitoring of inmate mail, 90 CSR 7), is
9 authorized.

§64-6-2. State police.

1 The legislative rule filed in the state register on the thirtieth
2 day of July, one thousand nine hundred ninety-nine, authorized
3 under the authority of section five, article two, chapter fifteen
4 of this code, modified by the state police to meet the objections
5 of the legislative rule-making review committee and refiled in
6 the state register on the thirtieth day of August, one thousand
7 nine hundred ninety-nine, relating to the state police (West
8 Virginia state police career progression system, 81 CSR 3), is
9 authorized.

CHAPTER 165

(Com. Sub. for S. B. 232 — By Senators Ross,
Anderson, Minard, Snyder, Unger and Minear)

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

AN ACT to amend and reenact article seven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative

rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing the alcohol beverage control commissioner to promulgate a legislative rule relating to retail licensee operations; authorizing the alcohol beverage control commissioner to promulgate a legislative rule relating to private club licensing; authorizing the insurance commissioner to promulgate a legislative rule relating to Medicare supplement insurance; authorizing the insurance commissioner to promulgate a legislative rule relating to continuing education for insurance agents; authorizing the insurance commissioner to promulgate a legislative rule relating to quality assurance standards for prepaid limited health service organizations; authorizing the lottery commission to promulgate a legislative rule relating to the state lottery; authorizing the lottery commission to promulgate a legislative rule relating to limited gaming facilities; authorizing the racing commission to promulgate a legislative rule relating to thoroughbred racing; authorizing the racing commission to promulgate a legislative rule relating to greyhound racing; and authorizing the racing commission to promulgate a legislative rule relating to pari-mutual wagering.”

Be it enacted by the Legislature of West Virginia:

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

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

§64-7-1. Alcohol beverage control commissioner.

§64-7-2. Insurance commissioner.

§64-7-3. Lottery commission.

§64-7-4. Racing commission.

§64-7-1. Alcohol beverage control commissioner.

1 (a) The legislative rule filed in the state register on the sixth
2 day of August, one thousand nine hundred ninety-nine, under
3 the authority of section six, article three-a, chapter sixty of this
4 code, modified by the alcohol beverage control commissioner
5 to meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the ninth day of
7 November, one thousand nine hundred ninety-nine, relating to
8 the alcohol beverage control commissioner (retail licensee
9 operations, 175 CSR 1), is authorized.

10 (b) The legislative rule filed in the state register on the sixth
11 day of August, one thousand nine hundred ninety-nine, under
12 the authority of section ten, article seven, chapter sixty of this
13 code, modified by the alcohol beverage control commissioner
14 to meet the objections of the legislative rule-making review
15 committee and refiled in the state register on the twenty-eighth
16 day of December, one thousand nine hundred ninety-nine,
17 relating to the alcohol beverage control commissioner (private
18 club licensing, 175 CSR 2), is authorized, with the following
19 amendments:

20 On page one, section 2.1, line one, following the word
21 “beer”, and the comma, by inserting the words “including
22 barley beer” followed by a comma;

23 On page one, section 2.1, line one, following the word
24 “wine”, by inserting a comma and the words “including barley
25 wine” followed by a comma;

26 Beginning on page five, section 3.2.1.c, line two, by
27 striking out the words “W.Va. Code §60-7-2(a), (1), (2)”, and
28 inserting in lieu thereof the words “W.Va. Code §60-7-2(a)(1)
29 and W.Va. Code §60-7-2(a)(2)”;

30 On page nine, section 3.4.2, beginning on line one, follow-
31 ing the words “specified in”, by striking out the words “W.Va.
32 Code §60-8-6”, and inserting in lieu thereof the words “W.Va.
33 Code §60-7-6(a)”;

34 On page twelve, section 4.11.5, line two, following the
35 words “ten (10:00)”, by striking out the words “p.m. cold”, and
36 inserting in lieu thereof the words “p.m. Cold”;

37 And,

38 On page thirteen, section 4.14.3, line one, following the
39 word “Commissioner” and the comma, by inserting the word
40 “receive”.

§64-7-2. Insurance commissioner.

1 (a) The legislative rule filed in the state register on the
2 fourteenth day of May, one thousand nine hundred ninety-nine,
3 authorized by section ten, article two, chapter thirty-three of
4 this code, relating to the insurance commissioner (Medicare
5 supplement insurance, 114 CSR 24), is authorized.

6 (b) The legislative rule filed in the state register on the
7 twelfth day of July, one thousand nine hundred ninety-nine,
8 authorized by section ten, article two, chapter thirty-three of
9 this code, relating to the insurance commissioner (continuing
10 education for insurance agents, 114 CSR 42), is authorized.

11 (c) The legislative rule filed in the state register on the
12 twelfth day of July, one thousand nine hundred ninety-nine,
13 authorized by section ten, article two, chapter thirty-three of
14 this code, relating to the insurance commissioner (quality
15 assurance standards for prepaid limited health service organiza-
16 tions, 114 CSR 56), is authorized.

§64-7-3. Lottery commission.

1 (a) The legislative rule filed in the state register on the
2 thirtieth day of July, one thousand nine hundred ninety-nine,
3 under the authority of section five, article twenty-two, chapter
4 twenty-nine of this code, modified by the lottery commission to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the seventeenth
7 day of December, one thousand nine hundred ninety-nine,
8 relating to the lottery commission (state lottery rules, 179 CSR
9 1), is authorized.

10 (b) The legislative rule filed in the state register on the sixth
11 day of August, one thousand nine hundred ninety-nine, under
12 the authority of section five, article twenty-five, chapter twenty-
13 nine of this code, modified by the lottery commission to meet
14 the objections of the legislative rule-making review committee
15 and refiled in the state register on the seventeenth day of
16 December, one thousand nine hundred ninety-nine, relating to
17 the lottery commission (limited gaming facilities, 179 CSR 4),
18 is authorized.

§64-7-4. Racing commission.

1 (a) The legislative rule filed in the state register on the
2 fourth day of June, one thousand nine hundred ninety-nine,
3 under the authority of section six, article twenty-three, chapter
4 nineteen of this code, modified by the racing commission to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the tenth day of

7 August, one thousand nine hundred ninety-nine, relating to the
8 racing commission (thoroughbred racing, 178 CSR 1), is
9 authorized.

10 (b) The legislative rule filed in the state register on the
11 fourth day of June, one thousand nine hundred ninety-nine,
12 under the authority of section six, article twenty-three, chapter
13 nineteen of this code, modified by the racing commission to
14 meet the objections of the legislative rule-making review
15 committee and refiled in the state register on the sixth day of
16 August, one thousand nine hundred ninety-nine, relating to the
17 racing commission (greyhound racing, 178 CSR 2), is autho-
18 rized.

19 (c) The legislative rule filed in the state register on the
20 fourth day of June, one thousand nine hundred ninety-nine,
21 under the authority of section six, article twenty-three, chapter
22 nineteen of this code, modified by the racing commission to
23 meet the objections of the legislative rule-making review
24 committee and refiled in the state register on the sixth day of
25 August, one thousand nine hundred ninety-nine, relating to the
26 racing commission (pari-mutual wagering, 178 CSR 5), is
27 authorized.

CHAPTER 166

(Com. Sub. for H. B. 4258 — By Delegates Hunt, Linch,
Compton, Jenkins, Faircloth and Riggs)

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

AN ACT to amend and reenact section one, article eight, chapter
sixty-four of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; and to further amend said

article by adding thereto a new section, designated section two, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing the division of motor vehicles to promulgate a legislative rule relating to administrative due process; authorizing the division of motor vehicles to promulgate a legislative rule relating to motor vehicle dealers, wrecker/dismantler/rebuilders and license services, automobile auctions, vehicle leasing companies, daily passenger rental car businesses and administrative due process; authorizing the division of highways to promulgate a legislative rule relating to the construction and reconstruction of state roads; authorizing the division of highways to promulgate a legislative rule relating to traffic and safety; and authorizing the division of highways to promulgate a legislative rule relating to the transportation of hazardous wastes upon the roads and highways.

Be it enacted by the Legislature of West Virginia:

That section one, article eight, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by

adding thereto a new section, designated section two, all to read as follows:

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

§64-8-1. Division of motor vehicles.

§64-8-2. Division of highways.

§64-8-1. Division of motor vehicles.

1 (a) The legislative rule filed in the state register on the fifth
2 day of August, one thousand nine hundred ninety-nine, autho-
3 rized under the authority of section nine, article two, chapter
4 seventeen-a of this code, modified by the division of motor
5 vehicles to meet the objections of the legislative rule-making
6 review committee and refiled in the state register on the twenty-
7 third day of September, one thousand nine hundred ninety-nine,
8 relating to the division of motor vehicles (administrative due
9 process, 91 CSR 1), is authorized.

10 (b) The legislative rule filed in the state register on the fifth
11 day of August, one thousand nine hundred ninety-nine, autho-
12 rized under the authority of section nine, article two, chapter
13 seventeen-a of this code, modified by the division of motor
14 vehicles to meet the objections of the legislative rule-making
15 review committee and refiled in the state register on the twenty-
16 third day of September, one thousand nine hundred ninety-nine,
17 relating to the division of motor vehicles (motor vehicle
18 dealers, wrecker/dismantler/rebuilders and license services,
19 automobile auctions, vehicle leasing companies, daily passen-
20 ger rental car businesses and administrative due process, 91
21 CSR 6), is authorized.

§64-8-2. Division of highways.

1 (a) The legislative rule filed in the state register on the
2 sixteenth day of November, one thousand nine hundred
3 ninety-eight, under the authority of section eight, article two-a,

4 chapter seventeen of this code, modified by the division of
5 highways to meet the objections of the legislative rule-making
6 review committee and refiled in the state register on the twenty-
7 ninth day of July, one thousand nine hundred ninety-nine,
8 relating to the division of highways (construction and recon-
9 struction of state roads, 157 CSR 3), is authorized with the
10 following amendment:

11 On page one hundred two, at the end of paragraph 11.6.e.4
12 by adding thereto a new subdivision 11.6.f to read as follows:

13 11.6.f. Substitution of Surety Bond for Retainages

14 The contractor may at any time withdraw the amounts
15 retained by the Division in accordance with subdivision 11.6.b
16 and substitute therefore a surety bond, in a form acceptable to
17 the Commissioner, in the amount of two percent of the contract
18 bid amount plus all change order amounts approved as of the
19 time of tender of the surety bond. This surety bond shall be in
20 addition to, or an increase of, the performance bond required in
21 subsection 11.5.5. of this rule. The surety bond shall be
22 conditioned upon the payment by the contractor of all applica-
23 ble taxes imposed by West Virginia Code §11-13-1 et seq.; §11-
24 21-1 et seq. and §11-24-1 et seq. as amended, and any applica-
25 ble county and municipal business and occupation taxes. This
26 surety bond will not be released, nor will final payment be
27 made on the contract, until the Division receives from the
28 Commissioner of Tax and Revenue, and the county commission
29 or municipality, where applicable, a certificate declaring that all
30 taxes levied or accrued have been paid or provided for.

31 (b) The legislative rule filed in the state register on the
32 twenty-third day of September, one thousand nine hundred
33 ninety-eight, under the authority of section eight, article two-a,
34 chapter seventeen of this code, modified by the division of
35 highways to meet the objections of the legislative rule-making
36 review committee and refiled in the state register on the thirty-

37 first day of August, one thousand nine hundred ninety-nine,
38 relating to the division of highways (traffic and safety, 157 CSR
39 5), is authorized.

40 (c) The legislative rule filed in the state register on the sixth
41 day of October, one thousand nine hundred ninety-eight, under
42 the authority of section seven, article eighteen, chapter twenty-
43 two of this code, modified by the division of highways to meet
44 the objections of the legislative rule-making review committee
45 and refiled in the state register on the twenty-ninth day of July,
46 one thousand nine hundred ninety-nine, relating to the division
47 of highways (transportation of hazardous wastes upon the roads
48 and highways, 157 CSR 7), is authorized.

CHAPTER 167

(Com. Sub. for S. B. 333 — By Senators Ross, Anderson,
Minard, Snyder, Unger and Minear)

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

AN ACT to amend and reenact article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by

the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing the commissioner of agriculture to promulgate a legislative rule relating to the marketing of eggs; authorizing the athletic commission to promulgate a legislative rule relating to the commission; authorizing the auditor to promulgate a legislative rule relating to standards for requisitions for payment issued by state officers on the auditor; authorizing the auditor to promulgate a legislative rule relating to the transaction fee and rate structure; authorizing the elections commission to promulgate a legislative rule relating to the regulation of campaign finance; authorizing the family protection services board to promulgate a legislative rule relating to the licensure of domestic violence and perpetrator intervention programs; authorizing the board of registration for foresters to promulgate a legislative rule relating to the registration of foresters; authorizing the governor's committee on crime, delinquency and correction to promulgate a legislative rule relating to law enforcement training standards; authorizing the board of medicine to promulgate a legislative rule relating to fees for services rendered by the board; authorizing the nursing home administrators licensing board to promulgate a legislative rule relating to the board; authorizing the board of physical therapy to promulgate a legislative rule relating to general provisions; authorizing the board of examiners of registered professional nurses to promulgate a legislative rule relating to policies and criteria for the evaluation and accreditation of colleges, departments or schools of nursing; authorizing the board of respiratory care to promulgate a legislative rule relating to continuing education requirements; authorizing the board of respiratory care to promulgate a legislative rule relating to disciplinary action; authorizing the secretary of state to promulgate a legislative rule relating to filing fees for organizations; authorizing the secretary of state to promulgate a legislative rule relating to the elimination

of precinct registration books; authorizing the traumatic brain and spinal cord injury rehabilitation fund board to promulgate a legislative rule relating to the traumatic brain and spinal cord injury rehabilitation fund; authorizing the board of veterinary medicine to promulgate a legislative rule relating to standards of practice; and authorizing the board of barbers and cosmetologists to promulgate a legislative rule relating to procedures, criteria and curricula for examination and licensure of barbers, cosmetologists, manicurists and aestheticians.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND
BOARDS TO PROMULGATE LEGISLATIVE RULES.**

- §64-9-1. Commissioner of agriculture.
- §64-9-2. Athletic commission.
- §64-9-3. Auditor and department of administration.
- §64-9-4. Elections commission.
- §64-9-5. Board of registration for foresters.
- §64-9-6. Family protection services board.
- §64-9-7. Governor's committee on crime, delinquency and correction.
- §64-9-8. Board of medicine.
- §64-9-9. Nursing home administrators licensing board.
- §64-9-10. Board of physical therapy.
- §64-9-11. Board of examiners of registered professional nurses.
- §64-9-12. Board of respiratory care.
- §64-9-13. Secretary of state.
- §64-9-14. Traumatic brain and spinal cord injury rehabilitation fund.
- §64-9-15. Board of veterinary medicine.
- §64-9-16. Board of barbers and cosmetologists.

§64-9-1. Commissioner of agriculture.

- 1 The legislative rule filed in the state register on the thirtieth
- 2 day of June, one thousand nine hundred ninety-nine, authorized
- 3 under the authority of section ten, article ten-a, chapter nineteen

4 of this code, relating to the commissioner of agriculture
5 (marketing of eggs, 61 CSR 7A), is authorized.

§64-9-2. Athletic commission.

1 The legislative rule filed in the state register on the eighth
2 day of July, one thousand nine hundred ninety-nine, under the
3 authority of section twenty-four, article five-a, chapter twenty-
4 nine of this code, modified by the athletic commission to meet
5 the objections of the legislative rule-making review committee
6 and refiled in the state register on the twenty-fourth day of
7 January, two thousand, relating to the athletic commission
8 (administrative rules and regulations of the West Virginia state
9 athletic commission, 177 CSR 1), is authorized.

§64-9-3. Auditor and department of administration.

1 (a) The legislative rule filed in the state register on the third
2 day of August, one thousand nine hundred ninety-nine, under
3 the authority of section ten, article three, chapter twelve of this
4 code, modified by the auditor to meet the objections of the
5 legislative rule-making review committee and refiled in the
6 state register on the thirty-first day of August, one thousand
7 nine hundred ninety-nine, relating to the auditor (standards for
8 requisitions for payment issued by state officers on the auditor,
9 155 CSR 1), is authorized with the following amendments:

10 “On page two, section 3.7, by striking out the words ‘Those
11 invoices which require original certification are’ and inserting
12 in lieu thereof the following:

13 ‘These invoices require two original certifications, one of
14 which must be the Chief Financial Officer, Department/Agency
15 Administrator, or as determined by the Auditor in emergency
16 situations’; and

17 On page two, by striking out all of subsection 3.7.a. and
18 inserting in lieu thereof a new subdivision 3.7.a to read as
19 follows:

20 ‘3.7.a. Electronically reproduced invoices sent by the
21 invoicing vender;’.”

22 (b) The legislative rule filed in the state register on the
23 twenty-seventh day of July, one thousand nine hundred
24 ninety-nine, under the authority of section ten-c, article three,
25 chapter twelve of this code, modified by the auditor to meet the
26 objections of the legislative rule-making review committee and
27 refiled in the state register on the twenty-fourth day of Septem-
28 ber, one thousand nine hundred ninety-nine, relating to the
29 auditor (transaction fee and rate structure, 155 CSR 4), is
30 authorized with the following amendment:

31 “On page two, subsection 3.2, after the last sentence, by
32 adding the following: ‘The fee shall continue in effect until
33 December 31, 2001’.”

§64-9-4. Elections commission.

1 The legislative rule filed in the state register on the sixth
2 day of August, one thousand nine hundred ninety-nine, under
3 the authority of section five, article one-a, chapter three of this
4 code, modified by the elections commission to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the twenty-fourth day of Septem-
7 ber, one thousand nine hundred ninety-nine, relating to the
8 elections commission (regulation of campaign finance, 146
9 CSR 3), is authorized with the following amendments:

10 On page two, after section 2.5 by striking out subsections
11 2.6 through 2.10 inclusive and inserting in lieu thereof the
12 following new subsections to read as follows:

13 2.6. “Contribution” means a gift subscription, assessment,
14 payment for services, dues, advance, donation, pledge, contract,
15 agreement, forbearance or promise of money or other tangible
16 thing of value, whether or not conditional or legally enforce-
17 able, or a transfer of money or other tangible thing of value to

18 a person, made for political purposes, as defined herein. An
19 offer or tender of a contribution is not a contribution if ex-
20 pressly and unconditionally rejected before it is received or
21 returned within thirty (30) days and not used during that time
22 for political purposes. A contribution does not include volunteer
23 personal services provided without compensation.

24 2.7. "Election" means any primary, general or special
25 election conducted under the provisions of this code or under
26 the charter of any municipality.

27 2.8. "Financial agent" means an individual designated to act
28 on behalf of one candidate to conduct financial transactions for
29 political purposes on behalf of that candidate.

30 2.9. "Grossly incomplete or grossly inaccurate" means that
31 a financial statement as defined under West Virginia Code §3-
32 8-5 is missing information required by West Virginia Code §3-
33 8-1 et seq. and State Election Commission, Regulation of
34 Campaign Finance, 146 CSR 3.

35 2.10. "Inaugural committee" includes any person, organiza-
36 tion or group of persons soliciting or receiving contributions for
37 the purpose of funding an inaugural event for an elected state
38 official.

39 2.11. "Inaugural event" means any event or events held
40 between the date of the general election for a state public office
41 and a date ninety days after the date of the general election,
42 whether the event is sponsored by the inaugural committee or
43 the state political party committee representing the party of the
44 elected official and for which the elected official is a prominent
45 participant or for which solicitations of contributions include
46 the name of the elected official in prominent display.

47 2.12. "Independent Expenditure" means an expenditure
48 made by a person other than a candidate or committee for a
49 communication which expressly advocates the election or

50 defeat of a clearly identified candidate but which is made
51 independently of a candidate's campaign and which has not
52 been made with the cooperation or consent of, or in consulta-
53 tion with, or at the request or suggestion of, any candidate or
54 any of his or her agents or authorized committees.

55 2.13. "Necessary traveling and hotel expenses" means
56 mileage at a rate not to exceed the thirty-one cents per mile or
57 direct charges for transportation and itemized food and lodging
58 costs incurred specifically for the purpose of campaigning or
59 conducting the organizational, political or financial business of
60 a political committee or candidate's campaign. The term does
61 not include the purchase cost of any vehicle, or expenditures for
62 traveling and hotel expenses incurred for activities which result
63 primarily in personal benefit and are not directly and specifi-
64 cally undertaken for political purposes.

65 2.14. "Nominal noncash expressions of appreciation"
66 means a token of appreciation, having a cash value of three
67 dollars (\$3.00) or less, given to volunteer or paid campaign
68 workers following the close of the polls or within 30 days
69 thereafter.

70 2.15. "Occupation" means the principal work activity which
71 is described by a general term such as teacher, miner, business
72 executive, homemaker or doctor.

73 2.16. "Person" means an individual, partnership, commit-
74 tee, association, corporation, and any other organization or
75 group of persons.;

76 On page 3, subsection 2.8, the second line of the definition
77 after the words "to exceed the" by striking out the words
78 "current state-mandated reimbursement rate" and inserting in
79 lieu thereof the words "thirty-one cents";

80 And,

81 On page 14, subsection 8.11 by striking out subsection s.11
82 in its entirety and inserting in lieu thereof the following new
83 subsections 8.11 and 8.12 to read as follows:

84 8.11. Persons making independent expenditures shall report
85 those expenditures according to West Virginia Code §3-8-2.

86 8.11.1. Each person who expends money as an independent
87 expenditure for political purposes shall keep records of each
88 expenditure.

89 8.11.2. Each person who expends money as an inde-
90 pendent expenditure for political purposes shall file verified
91 financial statements as public records.

92 8.11.3. The financial statements shall be filed as
93 required by the filing provision for all other campaign financial
94 reporting.

95 8.12. Any independent expenditure made or debt that is
96 incurred for a communication after the eleventh day but more
97 than twelve hours before the day of any election in accordance
98 with the following procedures:

99 8.12.1. The report shall be reported on the West
100 Virginia campaign financial statement for individuals making
101 independent expenditures to support or oppose candidates,
102 political parties, or ballot issues. The forms are available from
103 the secretary of state, county clerks and municipal election
104 officials. The forms are also available on the West Virginia
105 Secretary of State website, www.state.wv.us/SOS/. (The format
106 may be different on the website.)

107 8.12.2. The report shall be made to the proper filing
108 officer.

109 8.12.2.a. For candidates running for statewide, legisla-
110 tive or multi-county offices or committees supporting or

111 opposing candidates or issues on the ballot in more than one
112 county, report is filed with the secretary of state.

113 8.12.2.b. For candidates running for county or single-
114 county offices (except candidates for legislative offices who file
115 with the secretary of state) or committees supporting or
116 opposing candidates or issues on the ballot in only one county,
117 report is filed with the county clerk.

118 8.12.2.c. For candidates running for municipal offices
119 or committees supporting or opposing candidates or issues on
120 the ballot in a municipal election, report is filed with the city
121 clerk/recorder.

122 8.12.3. The report shall be by hand-delivery, facsimile
123 or other means to assure receipt by the proper filing officer
124 within twenty-four hours after the expenditure is made or debt
125 is incurred for a communication.

§64-9-5. Board of registration for foresters.

1 The legislative rule filed in the state register on the fifth day
2 of August, one thousand nine hundred ninety-nine, under the
3 authority of section six, article nineteen, chapter thirty of this
4 code, modified by the board of registration for foresters to meet
5 the objections of the legislative rule-making review committee
6 and refiled in the state register on the twenty-ninth day of
7 September, one thousand nine hundred ninety-nine, relating to
8 the board of registration for foresters (registration of foresters,
9 200 CSR 1), is authorized with the following amendment:

10 “On page one, section 2.1, line two, after the word ‘Forest-
11 ers’ by inserting the words ‘or a master’s degree in forestry
12 from a program accredited by the Society of American Forest-
13 ers’.”

§64-9-6. Family protection services board.

1 The legislative rule filed in the state register on the fifth day
2 of August, one thousand nine hundred ninety-nine, under the
3 authority of section four, article two-c, chapter forty-eight of
4 this code, modified by the family protection services board to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the twenty-second
7 day of December, one thousand nine hundred ninety-nine,
8 relating to the family protection services board (licensure of
9 domestic violence and perpetrator intervention programs, 191
10 CSR 2), is authorized.

§64-9-7. Governor's committee on crime, delinquency and correction.

1 The legislative rule filed in the state register on the fourth
2 day of August, one thousand nine hundred ninety-nine, autho-
3 rized under the authority of section three, article twenty-nine,
4 chapter thirty of this code, modified by the governor's commit-
5 tee on crime, delinquency and correction to meet the objections
6 of the legislative rule-making review committee and refiled in
7 the state register on the twenty-fourth day of January, two
8 thousand, relating to the governor's committee on crime,
9 delinquency and correction (law enforcement training stan-
10 dards, 149 CSR 2), is authorized.

§64-9-8. Board of medicine.

1 The legislative rule filed in the state register on the twenty-
2 first day of July, one thousand nine hundred ninety-nine, under
3 the authority of section seven, article three, chapter thirty of this
4 code, relating to the board of medicine (fees for services
5 rendered by the board of medicine, 11 CSR 4), is authorized.

§64-9-9. Nursing home administrators licensing board.

1 The legislative rule filed in the state register on the twenti-
2 eth day of July, one thousand nine hundred ninety-nine, under
3 the authority of section seven, article twenty-five, chapter thirty

4 of this code, modified by the nursing home administrators
5 licensing board to meet the objections of the legislative
6 rule-making review committee and refiled in the state register
7 on the twenty-third day of August, one thousand nine hundred
8 ninety-nine, relating to the nursing home administrators
9 licensing board (rules of the nursing home administrators
10 licensing board, 21 CSR 1), is authorized with the following
11 amendment:

12 “On page thirteen, subdivision 6.3.2, in the third sentence,
13 following the words ‘to the Board’, by striking out the words
14 ‘within 30 days’ and inserting in lieu thereof the words ‘within
15 20 days’.”

§64-9-10. Board of physical therapy.

1 The legislative rule filed in the state register on the fifth day
2 of August, one thousand nine hundred ninety-nine, under the
3 authority of section five, article twenty, chapter thirty of this
4 code, modified by the board of physical therapy to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the twenty-ninth day of Decem-
7 ber, one thousand nine hundred ninety-nine, relating to the
8 board of physical therapy (general provisions, 16 CSR 1), is
9 authorized.

§64-9-11. Board of examiners of registered professional nurses.

1 The legislative rule filed in the state register on the fifth day
2 of August, one thousand nine hundred ninety-nine, under the
3 authority of section four, article seven, chapter thirty of this
4 code, modified by the board of examiners of registered profes-
5 sional nurses to meet the objections of the legislative
6 rule-making review committee and refiled in the state register
7 on the first day of November, one thousand nine hundred
8 ninety-nine, relating to the board of examiners of registered
9 professional nurses (policies and criteria for the evaluation and

10 accreditation of colleges, departments or schools of nursing, 19
11 CSR 1), is authorized.

§64-9-12. Board of respiratory care.

1 (a) The legislative rule filed in the state register on the
2 fourth day of August, one thousand nine hundred ninety-nine,
3 under the authority of section five, article thirty-four, chapter
4 thirty of this code, modified by the board of respiratory care to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the eighth day of
7 November, one thousand nine hundred ninety-nine, relating to
8 the board of respiratory care (continuing education require-
9 ments, 30 CSR 3), is authorized.

10 (b) The legislative rule filed in the state register on the
11 eighth day of September, one thousand nine hundred
12 ninety-nine, under the authority of section six, article thirty-
13 four, chapter thirty of this code, modified by the board of
14 respiratory care to meet the objections of the legislative
15 rule-making review committee and refiled in the state register
16 on the eighth day of November, one thousand nine hundred
17 ninety-nine, relating to the board of respiratory care (disciplin-
18 ary action, 30 CSR 4), is authorized.

§64-9-13. Secretary of state.

1 (a) The legislative rule filed in the state register on the sixth
2 day of August, one thousand nine hundred ninety-nine, autho-
3 rized under the authority of section five, article six-c, chapter
4 forty-six-a of this code, modified by the secretary of state to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the twenty-first
7 day of December, one thousand nine hundred ninety-nine,
8 relating to the secretary of state (filing fees for organizations,
9 153 CSR 15), is authorized.

10 (b) The legislative rule filed in the state register on the sixth
11 day of August, one thousand nine hundred ninety-nine, autho-
12 rized under the authority of section twenty-one, article two,
13 chapter three of this code, modified by the secretary of state to
14 meet the objections of the legislative rule-making review
15 committee and refiled in the state register on the seventeenth
16 day of December, one thousand nine hundred ninety-nine,
17 relating to the secretary of state (elimination of precinct
18 registration books, 153 CSR 9), is authorized.

§64-9-14. Traumatic brain and spinal cord injury rehabilitation fund.

1 The legislative rule filed in the state register on the twenty-
2 seventh day of April, one thousand nine hundred ninety-nine,
3 under the authority of section three, article ten-k, chapter
4 eighteen of this code, modified by the traumatic brain and
5 spinal cord injury rehabilitation fund board to meet the objec-
6 tions of the legislative rule-making review committee and
7 refiled in the state register on the twenty-second day of July,
8 one thousand nine hundred ninety-nine, relating to the traumatic
9 brain and spinal cord injury rehabilitation fund board (traumatic
10 brain and spinal cord injury rehabilitation fund, 197 CSR 1), is
11 authorized.

§64-9-15. Board of veterinary medicine.

1 The legislative rule filed in the state register on the sixth
2 day of August, one thousand nine hundred ninety-nine, autho-
3 rized under the authority of section four, article ten, chapter
4 thirty of this code, modified by the board of veterinary medi-
5 cine to meet the objections of the legislative rule-making
6 review committee and refiled in the state register on the twenty-
7 eighth day of October, one thousand nine hundred ninety-nine,
8 relating to the board of veterinary medicine (standards of
9 practice, 26 CSR 4), is authorized.

§64-9-16. Board of barbers and cosmetologists.

1 The legislative rule filed in the state register on the twenty-
2 sixth day of March, one thousand nine hundred ninety-nine,
3 authorized under the authority of section one, article twenty-
4 seven, chapter thirty of this code relating to the board of barbers
5 and cosmetologists (procedures, criteria, and curricular for
6 examination and licensure of barbers, cosmetologists, manicur-
7 ists and aestheticians, 3 CSR 1), is reauthorized with the
8 following amendments:

9 On page two, section five, by adding a new subsection, to
10 read as follows:

11 5.3. Every student has the option of completing a course of
12 study for:

13 (a) A one thousand eight hundred hour barbering course,
14 exclusive of permanent waving license; or

15 (b) The existing course of study consisting of at least two
16 thousand clock hours divided as specified in table 3-1A of this
17 rule and subdivided at the discretion of the faculty of the
18 school.

CHAPTER 168

**(Com. Sub. for S. B. 310 — By Senators Ross, Anderson,
Minard, Snyder, Unger and Minear)**

[Passed March 18, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article ten, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or

authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing the development office to promulgate a legislative rule relating to the West Virginia office of coalfield community development; authorizing the development office to promulgate a legislative rule relating to the general administration of the West Virginia capital company act; authorizing the development office to promulgate a legislative rule relating to the workforce development initiative program; authorizing the division of labor to promulgate a legislative rule relating to the amusement rides and amusement attractions safety act; authorizing the division of labor to promulgate a legislative rule relating to steam boiler operation; authorizing the division of natural resources to promulgate a legislative rule relating to the revocation of hunting and fishing licenses; authorizing the division of natural resources to promulgate a legislative rule relating to boating; authorizing the division of natural resources to promulgate a legislative rule relating to special motorboating; authorizing the division of natural resources to promulgate a legislative rule relating to the public use of West Virginia state parks, state forests and wildlife management areas under the division; authorizing the division of natural resources to promulgate a legislative rule relating to prohibitions when hunting and trapping; authorizing the division of natural resources to promulgate a legislative rule relating to special bear hunting; authorizing the division of

natural resources to promulgate a legislative rule relating to the recycling assistance grant program; authorizing the division of natural resources to promulgate a legislative rule relating to general trapping; authorizing the division of natural resources to promulgate a legislative rule relating to the litter control grant program; authorizing the division of natural resources to promulgate a legislative rule relating to special fishing; authorizing the division of natural resources to promulgate a legislative rule relating to lifetime hunting, trapping and fishing licenses; and authorizing the division of natural resources to promulgate a legislative rule relating to the issuance of hunting, trapping and fishing licenses by telephone and/or other electronic methods.

Be it enacted by the Legislature of West Virginia:

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

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

§64-10-1. Development office.

§64-10-2. Division of labor.

§64-10-3. Division of natural resources.

§64-10-1. Development office.

1 (a) The legislative rule filed in the state register on the
2 eighteenth day of October, one thousand nine hundred
3 ninety-nine, under the authority of section twelve, article two-a,
4 chapter five-b of this code, relating to the development office
5 (West Virginia office of coalfield community development, 145
6 CSR 8), is authorized.

7 (b) The legislative rule filed in the state register on the sixth
8 day of August, one thousand nine hundred ninety-nine, under
9 the authority of section five, article one, chapter five-e of this
10 code, modified by the West Virginia development office to

11 meet the objections of the legislative rule-making review
12 committee and refiled in the state register on the seventeenth
13 day of September, one thousand nine hundred ninety-nine,
14 relating to the economic development authority (general
15 administration of the West Virginia capital company act;
16 establishment of the application procedures to implement the
17 act, 117 CSR 1), is authorized.

18 (c) The legislative rule filed in the state register on the
19 thirteenth day of October, one thousand nine hundred ninety-
20 nine, under the authority of section five, article three-d, chapter
21 eighteen-b of this code, relating to the development office
22 (workforce development initiative program, 145 CSR 9), is
23 authorized.

§64-10-2. Division of labor.

1 (a) The legislative rule filed in the state register on the
2 fourth day of August, one thousand nine hundred ninety-nine,
3 authorized under the authority of section three, article ten,
4 chapter twenty-one of this code, modified by the division of
5 labor to meet the objections of the legislative rule-making
6 review committee and refiled in the state register on the third
7 day of December, one thousand nine hundred ninety-nine,
8 relating to the division of labor (amusement rides and amuse-
9 ment attractions safety act, 42 CSR 17), is authorized.

10 (b) The legislative rule filed in the state register on the
11 fourth day of August, one thousand nine hundred ninety-nine,
12 authorized under the authority of section seven, article three,
13 chapter twenty-one of this code, modified by the division of
14 labor to meet the objections of the legislative rule-making
15 review committee and refiled in the state register on the third
16 day of December, one thousand nine hundred ninety-nine,
17 relating to the division of labor (steam boiler inspection, 42
18 CSR 3), is authorized.

§64-10-3. Division of natural resources.

1 (a) The legislative rule filed in the state register on the fifth
2 day of August, one thousand nine hundred ninety-nine, autho-
3 rized under the authority of section seven, article one, chapter
4 twenty of this code, modified by the division of natural re-
5 sources to meet the objections of the legislative rule-making
6 review committee and refiled in the state register on the twenty-
7 eighth day of September, one thousand nine hundred
8 ninety-nine, relating to the division of natural resources
9 (revocation of hunting and fishing licenses, 58 CSR 23), is
10 authorized.

11 (b) The legislative rule filed in the state register on the fifth
12 day of August, one thousand nine hundred ninety-nine, autho-
13 rized under the authority of section twenty-three, article seven,
14 chapter twenty of this code, modified by the division of natural
15 resources to meet the objections of the legislative rule-making
16 review committee and refiled in the state register on the twenty-
17 eighth day of September, one thousand nine hundred
18 ninety-nine, relating to the division of natural resources
19 (boating, 58 CSR 25), is authorized.

20 (c) The legislative rule filed in the state register on the
21 eighth day of September, one thousand nine hundred
22 ninety-eight, authorized under the authority of section twenty-
23 three, article seven, chapter twenty of this code, modified by the
24 division of natural resources to meet the objections of the
25 legislative rule-making review committee and refiled in the
26 state register on the fourth day of May, one thousand nine
27 hundred ninety-nine, relating to the division of natural re-
28 sources (special motorboating, 58 CSR 27), is authorized with
29 the following amendments:

30 "On page two, subdivision 3.1.1 after the word "Engi-
31 neers;" by striking out the word "and";

32 And,

33 On page two, subdivision 3.1.2 at the end of the subdivision
34 by changing the period to a semicolon and adding the word
35 “and” and a new subdivision, designated 3.1.3, to read as
36 follows:

37 3.1.3. Beginning at the mouth of Fishing Creek at its
38 confluence with the Ohio River and extending upstream
39 approximately six-tenths (0.6) of a mile to the Route 2 Bridge.
40 This area is situated entirely within the boundaries of the City
41 of New Martinsville, West Virginia. The city of New Martins-
42 ville, West Virginia, is responsible for purchasing, placing and
43 maintaining the No Wake Zone buoys and informational signs.
44 Signs shall meet the approval of the director. Any buoys or
45 other structures placed in the water shall conform to the U.S.
46 Coast Guard Standards for Inland Rivers and, if they would
47 interfere with commercial river traffic, be approved by the U.S.
48 Army Corps of Engineers.”

49 (d) The legislative rule filed in the state register on the
50 thirtieth day of July, one thousand nine hundred ninety-nine,
51 authorized under the authority of section two, article five,
52 chapter twenty of this code, modified by the division of natural
53 resources to meet the objections of the legislative rule-making
54 review committee and refiled in the state register on the twenty-
55 third day of August, one thousand nine hundred ninety-nine,
56 relating to the division of natural resources (public use of West
57 Virginia state parks, state forests, wildlife management areas
58 under the division of natural resources, 58 CSR 31), is autho-
59 rized, with the following amendment:

60 “On page three, section two, subsection 2.21, following the
61 comma after the words ‘Berkeley Springs,’ by inserting the
62 words ‘Brush Creek Falls day-use area managed by Pipestem
63 State Park,’ followed by a comma.”

64 (e) The legislative rule filed in the state register on the
65 eighth day of September, one thousand nine hundred
66 ninety-eight, authorized under the authority of section seven,

67 article one, chapter twenty of this code, modified by the
68 division of natural resources to meet the objections of the
69 legislative rule-making review committee and refiled in the
70 state register on the fourth day of May, one thousand nine
71 hundred ninety-nine, relating to the division of natural re-
72 sources (prohibitions when hunting and trapping, 58 CSR 47),
73 is authorized.

74 (f) The legislative rule filed in the state register on the
75 fifteenth day of January, one thousand nine hundred
76 ninety-nine, authorized under the authority of section seven,
77 article one, chapter twenty of this code, relating to the division
78 of natural resources (special bear hunting, 58 CSR 48), is
79 authorized.

80 (g) The legislative rule filed in the state register on the sixth
81 day of August, one thousand nine hundred ninety-nine, autho-
82 rized by section five-a, article eleven, chapter twenty of this
83 code, modified by the division of natural resources to meet the
84 objections of the legislative rule-making review committee and
85 refiled in the state register on the twenty-eighth day of Decem-
86 ber, one thousand nine hundred ninety-nine, relating to the
87 division of natural resources (recycling assistance grant
88 program, 58 CSR 5) is authorized, with the following amend-
89 ment:

90 “On page four, subsection 4.1., in the first sentence after the
91 word “through” by striking out the words “consultation with”
92 and inserting in lieu thereof the words “notification of”;

93 On page four, subsection 4.1., in the second sentence after
94 the word “partnerships” by adding the word “corporations”;

95 On page four, subsection 4.1., in the third sentence after the
96 words “for the” by adding the words “applicant to receive
97 priority for a grant”;

98 And,

99 On page fourteen, subsection 9.1., in the first sentence after
100 the word “industry” by adding the words “solid waste industry”.

101 (h) The legislative rule filed in the state register on the
102 twentieth day of July, one thousand nine hundred ninety-nine,
103 authorized by section seven, article one, chapter twenty of this
104 code, relating to the division of natural resources (general
105 trapping regulations, 58 CSR 53), is authorized.

106 (i) The legislative rule filed in the state register on the sixth
107 day of August, one thousand nine hundred ninety-nine, autho-
108 rized under the authority of section twenty-five, article seven,
109 chapter twenty of this code, modified by the division of natural
110 resources to meet the objections of the legislative rule-making
111 review committee and refiled in the state register on the twenty-
112 eighth day of December, one thousand nine hundred
113 ninety-nine, relating to the division of natural resources (litter
114 control grant program, 58 CSR 6), is authorized.

115 (j) The legislative rule filed in the state register on the
116 twentieth day of July, one thousand nine hundred ninety-nine,
117 authorized under the authority of section seven, article one,
118 chapter twenty of this code, modified by the division of natural
119 resources to meet the objections of the legislative rule-making
120 review committee and refiled in the state register on the
121 thirtieth day of August, one thousand nine hundred ninety-nine,
122 relating to the division of natural resources (special fishing, 58
123 CSR 61), is authorized.

124 (k) The legislative rule filed in the state register on the
125 fourteenth day of June, one thousand nine hundred ninety-nine,
126 authorized under the authority of section seven, article one,
127 chapter twenty of this code, modified by the division of natural
128 resources to meet the objections of the legislative rule-making
129 review committee and refiled in the state register on the
130 twentieth day of July, one thousand nine hundred ninety-nine,
131 relating to the division of natural resources (lifetime hunting,
132 trapping and fishing licenses, 58 CSR 67), is authorized.

133 (l) The legislative rule filed in the state register on the
134 twentieth day of July, one thousand nine hundred ninety-nine,
135 authorized under the authority of section seven, article one,
136 chapter twenty of this code, modified by the division of natural
137 resources to meet the objections of the legislative rule-making
138 review committee and refiled in the state register on the
139 thirtieth day of August, one thousand nine hundred ninety-nine,
140 relating to the division of natural resources (issuance of
141 hunting, trapping and fishing licenses by telephone and other
142 electronic methods, 58 CSR 68), is authorized.

CHAPTER 169

(H. B. 4781 — By Delegates Staton, Amores, Wills,
Givens, C. White, Linch and Faircloth)

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

AN ACT to amend and reenact section four, article one, chapter six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing that the president of the Senate shall be additionally designated the title of “lieutenant governor” in acknowledgment of the president’s position as first successor to the governor in the event the governor is unable to discharge the duties of his or her office.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. EXECUTIVE AND JUDICIAL SUCCESSION.

§6A-1-4. Additional successors to office of governor.

- 1 (a) In the event that the governor, for any of the reasons
- 2 specified in the constitution, is not able to exercise the powers

3 and discharge the duties of his or her office, or is unavailable,
4 then the president of the Senate shall act as governor, and if the
5 president of the Senate, for any of the reasons specified in the
6 constitution, is not able to exercise the powers and discharge
7 the duties of the office of governor, or is unavailable, then the
8 speaker of the House of Delegates shall act as governor, and if
9 the speaker of the House of Delegates, for any of the reasons
10 specified in the constitution, is not able to exercise and dis-
11 charge the duties of the office of governor, or is unavailable,
12 then the attorney general, the state auditor, and resident ex-
13 governors of this state, in inverse order of service, shall, in the
14 order named, if the preceding named officers be unavailable,
15 exercise the powers and discharge the duties of the office of
16 governor until a new governor is elected and qualified, or until
17 a preceding named officer becomes available.

18 (b) The Legislature recognizes that pursuant to the provi-
19 sions of subsection (a) of this section, the president of the
20 Senate is charged with the responsibility of first successor to
21 the governor in the event the governor is unable to exercise the
22 powers and discharge the duties of his or her office and in that
23 regard, the president of the Senate is functioning similarly to a
24 lieutenant governor. Therefore, the Legislature determines that
25 the president of the Senate shall be additionally designated the
26 title of "lieutenant governor" in acknowledgment of the
27 president's responsibility as first successor to the governor.

CHAPTER 170

(Com. Sub. for H. B. 2776 — By Delegates Trump, Staton and Willison)

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

AN ACT to amend and reenact section two, article one-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to taxation of real

property; and amending the definitions used in the managed timberland program to render ineligible for the managed timberland tax preference, property which is part an approved or exempted subdivision under a county planning ordinance and also to exclude from managed timberland treatment real estate which is restricted or zoned in a way that it cannot be used for the commercial production of timber.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-2. Definitions.

1 For the purposes of this article, the following words shall
2 have the meanings hereafter ascribed to them unless the context
3 clearly indicates otherwise:

4 (a) "Timberland" means any surface real property except
5 farm woodlots of not less than ten contiguous acres which is
6 primarily in forest and which, in consideration of their size, has
7 sufficient numbers of commercially valuable species of trees to
8 constitute at least forty percent normal stocking of forest trees
9 which are well distributed over the growing site.

10 (b) "Managed timberland" means surface real property,
11 except farm woodlots, of not less than ten contiguous acres
12 which is devoted primarily to forest use and which, in consider-
13 ation of their size, has sufficient numbers of commercially
14 valuable species of trees to constitute at least forty percent
15 normal stocking of forest trees which are well distributed over
16 the growing site, and that is managed pursuant to a plan
17 provided for in section ten of this article. *Provided*, That none

18 of the following may be considered as managed timberland
19 within the meaning of this article:

20 (1) Any tract or parcel of real estate, regardless of its size,
21 which is part of any subdivision that is approved or exempted
22 from approval pursuant to the provisions of a planning ordi-
23 nance adopted under the provisions of article twenty-four of
24 chapter eight of this code; or

25 (2) Any tract or parcel of real estate, regardless of its size,
26 which is subject to a deed restriction, deed covenant or zoning
27 regulation which limits the use of that real estate in a way that
28 precludes the commercial production and harvesting of timber
29 upon it.

30 (c) "Tax commissioner", "commissioner" or "tax depart-
31 ment" means the state tax commissioner or a designee of the
32 state tax commissioner.

33 (d) "Valuation commission" or "commission" means the
34 commission created in section three of this article.

35 (e) "County board of education" or "board" means the duly
36 elected board of education of each county.

37 (f) "Farm woodlot" means that portion of a farm in timber
38 but may not include land used primarily for the growing of
39 timber for commercial purposes except that Christmas trees, or
40 nursery stock and woodland products, such as nuts or fruits
41 harvested for human consumption, shall be considered farm
42 products and not timber products.

43 (g) "Owner" means the person who is possessed of the
44 freehold, whether in fee or for life. A person seized or entitled
45 in fee subject to a mortgage or deed of trust securing a debt or
46 liability is deemed the owner until the mortgagee or trust takes
47 possession, after which such mortgagee or trustee shall be
48 deemed the owner. A person who has an equitable estate of

49 freehold, or is a purchaser of a freehold estate who is in
50 possession before transfer of legal title is also deemed the
51 owner.

52 The definitions in subdivisions (f) and (g) of this section
53 shall apply to tax years beginning on or after the first day of
54 January, two thousand one.

CHAPTER 171

(Com. Sub. for H. B. 4753 — By Delegate Beane)

[Passed March 10, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend article nine, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eleven-a, relating to protection of consumers who purchased manufactured housing; required notification to consumers of inspection services offered by the West Virginia manufactured housing construction and safety board; requirements for written reports to consumers of inspections conducted of manufactured housing; administrative deference to the West Virginia manufactured housing construction and safety board to inspect for defects in response to consumer complaints; providing ninety-day deference period by consumers to the board for alleged defects in manufactured housing; and tolling the statute of limitations during the ninety-day period.

Be it enacted by the Legislature of West Virginia:

That article nine, chapter twenty-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 eleven-a, to read as follows:

ARTICLE 9. MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS.

§21-9-11a. Inspection of manufactured housing; deferral period for inspection and administrative remedies; notification to consumers of rights.

1 (a) *Inspection of manufactured housing.* — When a pur-
2 chaser or owner of a manufactured home files a written
3 complaint with the board alleging defects in the manufacture,
4 construction or installation of the manufactured home, and any
5 additional information the board considers necessary to conduct
6 an investigation, the board shall within sixty days, to the extent
7 feasible, cause an inspection of the manufactured home by one
8 or more of its employees or person authorized and supervised
9 by the board. The board shall provide the consumer a written
10 report indicating whether the defects alleged by the complaint
11 constitute violations of federal or state statutory or regulatory
12 standards or good and customary manufacturing standards in
13 the construction, design, manufacture or installation of the
14 manufactured home. If the report indicates that the alleged
15 defects do constitute any of these violations, the board shall
16 take such further administrative action as provided for in this
17 article including, but not limited to, ordering the manufacturer,
18 dealer or contractor to correct any defects.

19 (b) *Limited period for exclusive administrative remedy.* —
20 The board has a period of ninety days, commencing with the
21 date of filing of the complaint, to investigate and take adminis-
22 trative action to order the correction of any defects in the
23 manufacture or installation of a manufactured home. A pur-
24 chaser or owner of a manufactured home may not file any civil
25 action seeking monetary recovery or damages for claims related
26 to or arising out of the manufacture, acquisition, sale or
27 installation of the manufactured home, until the expiration of
28 ninety days after the consumer or owner has filed a written
29 complaint with the board. This period of exclusive administra-

30 tive authority may not prohibit the purchaser or owner of the
31 manufactured home from seeking equitable relief in any court
32 of competent jurisdiction to prevent or address an immediate
33 risk of personal injury or property damage. The filing of a
34 complaint under this article shall toll any applicable statutes of
35 limitation during the ninety-day period but only if the applica-
36 ble limitation period has not expired prior to the filing of the
37 complaint.

38 (c) *Notice of consumer rights.* -- Every dealer or contractor
39 who moves homes from one place to another shall provide
40 written notification to every purchaser of a manufactured home
41 of the availability of administrative assistance from the board
42 in investigating and ordering corrections of any defect in the
43 manufacture or installation of a manufactured home and the
44 period of exclusive jurisdiction given to the board. The board
45 may prescribe that the notice contain any information the board
46 determines to be beneficial to the purchaser or owner of the
47 manufactured home in exercising that person's rights under this
48 section.

CHAPTER 172

**(Com. Sub. for S. B. 614 — 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 sections three, thirteen and twenty-three, article three, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to surface mining of coal; modifying provisions relating to restoring mined land to its approximate original contour; including commercial forestry as allowable post-mining

land use; and establishing requirements for bonding and release of bonds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-3. Definitions.

§22-3-13. General environmental protection performance standards for surface mining; variances.

§22-3-23. Release of bond or deposits; application; notice; duties of director; public hearings; final maps on grade release.

§22-3-3. Definitions.

1 As used in this article, unless used in a context that clearly
2 requires a different meaning, the term:

3 (a) "Adequate treatment" means treatment of water by
4 physical, chemical or other approved methods in a manner so
5 that the treated water does not violate the effluent limitations or
6 cause a violation of the water quality standards established for
7 the river, stream or drainway into which the water is released.

8 (b) "Affected area" means, when used in the context of
9 surface mining activities, all land and water resources within
10 the permit area which are disturbed or utilized during the term
11 of the permit in the course of surface mining and reclamation
12 activities. "Affected area" means, when used in the context of
13 underground mining activities, all surface land and water
14 resources affected during the term of the permit: (1) By surface
15 operations or facilities incident to underground mining activi-
16 ties; or (2) by underground operations.

17 (c) "Adjacent areas" means, for the purpose of permit
18 application, renewal, revision, review and approval, those land
19 and water resources, contiguous to or near a permit area, upon
20 which surface mining and reclamation operations conducted
21 within a permit area during the life of the operations may have
22 an impact. "Adjacent areas" means, for the purpose of conduct-
23 ing surface mining and reclamation operations, those land and
24 water resources contiguous to or near the affected area upon
25 which surface mining and reclamation operations conducted
26 within a permit area during the life of the operations may have
27 an impact.

28 (d) "Applicant" means any person who has or should have
29 applied for any permit pursuant to this article.

30 (e) "Approximate original contour" means that surface
31 configuration achieved by the backfilling and grading of the
32 mined areas so that the reclaimed area, including any terracing
33 or access roads, closely resembles the general surface configu-
34 ration of the land prior to mining and blends into and comple-
35 ments the drainage pattern of the surrounding terrain, with all
36 highwalls and spoil piles eliminated: *Provided*, That water
37 impoundments may be permitted pursuant to subdivision (8),
38 subsection (b), section thirteen of this article: *Provided*,
39 *however*, That minor deviations may be permitted in order to
40 minimize erosion and sedimentation, retain moisture to assist
41 revegetation, or to direct surface runoff.

42 (f) "Assessment officer" means an employee of the
43 division, other than a surface mining reclamation supervisor,
44 inspector or inspector-in-training, appointed by the director to
45 issue proposed penalty assessments and to conduct informal
46 conferences to review notices, orders and proposed penalty
47 assessments.

48 (g) "Breakthrough" means the release of water which has
49 been trapped or impounded, or the release of air into any

50 underground cavity, pocket or area as a result of surface mining
51 operations.

52 (h) "Coal processing wastes" means earth materials which
53 are or have been combustible, physically unstable or acid-
54 forming or toxic-forming, which are wasted or otherwise
55 separated from product coal, and slurried or otherwise trans-
56 ported from coal processing plants after physical or chemical
57 processing, cleaning or concentrating of coal.

58 (i) "Director" means the director of the division of environ-
59 mental protection or other person to whom the director has
60 delegated authority or duties pursuant to sections six or eight,
61 article one of this chapter.

62 (j) "Disturbed area" means an area where vegetation,
63 topsoil or overburden has been removed or placed by surface
64 mining operations, and reclamation is incomplete.

65 (k) "Division" means the division of environmental
66 protection.

67 (l) "Imminent danger to the health or safety of the public"
68 means the existence of a condition or practice, or any violation
69 of a permit or other requirement of this article, which condition,
70 practice or violation could reasonably be expected to cause
71 substantial physical harm or death to any person outside the
72 permit area before the condition, practice or violation can be
73 abated. A reasonable expectation of death or serious injury
74 before abatement exists if a rational person, subjected to the
75 same conditions or practices giving rise to the peril, would not
76 expose the person to the danger during the time necessary for
77 the abatement.

78 (m) "Minerals" means clay, coal, flagstone, gravel, lime-
79 stone, manganese, sand, sandstone, shale, iron ore and any other
80 metal or metallurgical ore.

81 (n) "Operation" means those activities conducted by an
82 operator who is subject to the jurisdiction of this article.

83 (o) "Operator" means any person who is granted or who
84 should obtain a permit to engage in any activity covered by this
85 article and any rule promulgated under this article and includes
86 any person who engages in surface mining or surface mining
87 and reclamation operations, or both. The term shall also be
88 construed in a manner consistent with the federal program
89 pursuant to the federal Surface Mining Control and Reclama-
90 tion Act of 1977, as amended.

91 (p) "Permit" means a permit to conduct surface mining
92 operations pursuant to this article.

93 (q) "Permit area" means the area of land indicated on the
94 approved proposal map submitted by the operator as part of the
95 operator's application showing the location of perimeter
96 markers and monuments and shall be readily identifiable by
97 appropriate markers on the site.

98 (r) "Permittee" means a person holding a permit issued
99 under this article.

100 (s) "Person" means any individual, partnership, firm,
101 society, association, trust, corporation, other business entity or
102 any agency, unit or instrumentality of federal, state or local
103 government.

104 (t) "Prime farmland" has the same meaning as that pre-
105 scribed by the United States secretary of agriculture on the basis
106 of such factors as moisture availability, temperature regime,
107 chemical balance, permeability, surface layer composition,
108 susceptibility to flooding and erosion characteristics and which
109 historically have been used for intensive agricultural purposes
110 and as published in the federal register.

111 (u) "Surface mine", "surface mining" or "surface mining
112 operations" means:

113 (1) Activities conducted on the surface of lands for the
114 removal of coal, or, subject to the requirements of section
115 fourteen of this article, surface operations and surface impacts
116 incident to an underground coal mine, including the drainage
117 and discharge from the mine. The activities include: Excavation
118 for the purpose of obtaining coal, including, but not limited to,
119 common methods as contour, strip, auger, mountaintop re-
120 moval, box cut, open pit and area mining; the uses of explosives
121 and blasting; reclamation; in situ distillation or retorting,
122 leaching or other chemical or physical processing; the cleaning,
123 concentrating or other processing or preparation and loading of
124 coal for commercial purposes at or near the mine site; and

125 (2) The areas upon which the above activities occur or
126 where the activities disturb the natural land surface. The areas
127 also include any adjacent land, the use of which is incidental to
128 the activities; all lands affected by the construction of new
129 roads or the improvement or use of existing roads to gain access
130 to the site of the activities and for haulage; and excavations,
131 workings, impoundments, dams, ventilation shafts, entryways,
132 refuse banks, dumps, stockpiles, overburden piles, spoil banks,
133 culm banks, tailings, holes or depressions, repair areas, storage
134 areas, processing areas, shipping areas and other areas upon
135 which are sited structures, facilities, or other property or
136 materials on the surface, resulting from or incident to the
137 activities: *Provided*, That the activities do not include the
138 extraction of coal incidental to the extraction of other minerals
139 where coal does not exceed sixteen and two-thirds percent of
140 the tonnage of minerals removed for purposes of commercial
141 use or sale, or coal prospecting subject to section seven of this
142 article. Surface mining does not include any of the following:

143 (i) Coal extraction authorized pursuant to a government-
144 financed reclamation contract;

145 (ii) Coal extraction authorized as an incidental part of
146 development of land for commercial, residential, industrial or
147 civic use; or

148 (iii) The reclamation of an abandoned or forfeited mine by
149 a no cost reclamation contract.

150 (v) "Underground mine" means the surface effects associ-
151 ated with the shaft, slopes, drifts or inclines connected with
152 excavations penetrating coal seams or strata and the equipment
153 connected therewith which contribute directly or indirectly to
154 the mining, preparation or handling of coal.

155 (w) "Significant, imminent environmental harm to land, air
156 or water resources" means the existence of any condition or
157 practice, or any violation of a permit or other requirement of
158 this article, which condition, practice or violation could
159 reasonably be expected to cause significant and imminent
160 environmental harm to land, air or water resources. The term
161 "environmental harm" means any adverse impact on land, air
162 or water resources, including, but not limited to, plant, wildlife
163 and fish, and the environmental harm is imminent if a condition
164 or practice exists which is causing the harm or may reasonably
165 be expected to cause the harm at any time before the end of the
166 abatement time set by the director. An environmental harm is
167 significant if that harm is appreciable and not immediately
168 repairable.

169 (x) "Unanticipated event or condition" as used in section
170 eighteen of this article means an event or condition in a
171 remining operation that was not contemplated by the applicable
172 surface coal mining and reclamation permit.

173 (y) "Lands eligible for remining" means those lands that
174 would be eligible for expenditures under section four, article
175 two of this chapter. Surface mining operations on lands eligible
176 for remining do not affect the eligibility of the lands for
177 reclamation and restoration under article two of this chapter. In

178 event the bond or deposit for lands eligible for remining is
179 forfeited, funds available under article two of this chapter may
180 be used to provide for adequate reclamation or abatement.
181 However, if conditions constitute an emergency as provided in
182 section 410 of the federal Surface Mining Control and Recla-
183 mation Act of 1977, as amended, then those federal provisions
184 apply.

185 (z) "Replacement of water supply" means, with respect to
186 water supplies, contaminated, diminished or interrupted
187 provision of water supply on both a temporary and permanent
188 basis of equivalent quality and quantity. Replacement includes
189 provision of an equivalent water delivery system and payment
190 of operation and maintenance cost in excess of customary and
191 reasonable delivery cost for the replaced water supplies.

192 Upon agreement by the permittee and the water supply
193 owner, the obligation to pay the costs may be satisfied by a one-
194 time payment in an amount which covers the present annual
195 operation and maintenance costs for a period agreed to by the
196 permittee and the water supply owner.

**§22-3-13. General environmental protection performance stan-
dards for surface mining; variances.**

1 (a) Any permit issued by the director pursuant to this article
2 to conduct surface mining operations shall require that the
3 surface mining operations meet all applicable performance
4 standards of this article and other requirements set forth in
5 legislative rules proposed by the director.

6 (b) The following general performance standards are
7 applicable to all surface mines and require the operation, at a
8 minimum to:

9 (1) Maximize the utilization and conservation of the solid
10 fuel resource being recovered to minimize re-affecting the land
11 in the future through surface mining;

12 (2) Restore the land affected to a condition capable of
13 supporting the uses which it was capable of supporting prior to
14 any mining, or higher or better uses of which there is reasonable
15 likelihood so long as the use or uses do not present any actual
16 or probable hazard to public health or safety or pose any actual
17 or probable threat of water diminution or pollution and the
18 permit applicants' declared proposed land use following
19 reclamation is not considered to be impractical or unreasonable,
20 inconsistent with applicable land use policies and plans,
21 involves unreasonable delay in implementation or is violative
22 of federal, state or local law;

23 (3) Except as provided in subsection (c) of this section, with
24 respect to all surface mines, backfill, compact where advisable
25 to ensure stability or to prevent leaching of toxic materials, and
26 grade in order to restore the approximate original contour:
27 *Provided*, That in surface mining which is carried out at the
28 same location over a substantial period of time where the
29 operation transects the coal deposit, and the thickness of the
30 coal deposits relative to the volume of the overburden is large
31 and where the operator demonstrates that the overburden and
32 other spoil and waste materials at a particular point in the
33 permit area or otherwise available from the entire permit area
34 is insufficient, giving due consideration to volumetric expan-
35 sion, to restore the approximate original contour, the operator,
36 at a minimum, shall backfill, grade and compact, where
37 advisable, using all available overburden and other spoil and
38 waste materials to attain the lowest practicable grade, but not
39 more than the angle of repose, to provide adequate drainage and
40 to cover all acid-forming and other toxic materials, in order to
41 achieve an ecologically sound land use compatible with the
42 surrounding region: *Provided, however*, That in surface mining
43 where the volume of overburden is large relative to the thick-
44 ness of the coal deposit and where the operator demonstrates
45 that due to volumetric expansion the amount of overburden and
46 other spoil and waste materials removed in the course of the

47 mining operation is more than sufficient to restore the approxi-
48 mate original contour, the operator shall, after restoring the
49 approximate contour, backfill, grade and compact, where
50 advisable, the excess overburden and other spoil and waste
51 materials to attain the lowest grade, but not more than the angle
52 of repose, and to cover all acid-forming and other toxic
53 materials, in order to achieve an ecologically sound land use
54 compatible with the surrounding region and, the overburden or
55 spoil shall be shaped and graded in a way as to prevent slides,
56 erosion and water pollution and revegetated in accordance with
57 the requirements of this article: *Provided further*, That the
58 director shall propose rules for legislative approval in accor-
59 dance with article three, chapter twenty-nine-a of this code,
60 governing variances to the requirements for return to approxi-
61 mate original contour or highwall elimination and where
62 adequate material is not available from surface mining opera-
63 tions permitted after the effective date of this article for: (A)
64 Underground mining operations existing prior to the third day
65 of August, one thousand nine hundred seventy-seven; or (B) for
66 areas upon which surface mining prior to the first day of July,
67 one thousand nine hundred seventy-seven, created highwalls;

68 (4) Stabilize and protect all surface areas, including spoil
69 piles, affected by the surface mining operation to effectively
70 control erosion and attendant air and water pollution;

71 (5) Remove the topsoil from the land in a separate layer,
72 replace it on the backfill area, or if not utilized immediately,
73 segregate it in a separate pile from other spoil and, when the
74 topsoil is not replaced on a backfill area within a time short
75 enough to avoid deterioration of the topsoil, maintain a success-
76 ful vegetative cover by quick growing plants or by other similar
77 means in order to protect topsoil from wind and water erosion
78 and keep it free of any contamination by other acid or toxic
79 material: *Provided*, That if topsoil is of insufficient quantity or
80 of poor quality for sustaining vegetation, or if other strata can
81 be shown to be more suitable for vegetation requirements, then

82 the operator shall remove, segregate and preserve in a like
83 manner any other strata which is best able to support vegeta-
84 tion;

85 (6) Restore the topsoil or the best available subsoil which
86 is best able to support vegetation;

87 (7) Ensure that all prime farmlands are mined and re-
88 claimed in accordance with the specifications for soil removal,
89 storage, replacement and reconstruction established by the
90 United States secretary of agriculture and the soil conservation
91 service pertaining thereto. The operator, at a minimum, shall:
92 (A) Segregate the A horizon of the natural soil, except where it
93 can be shown that other available soil materials will create a
94 final soil having a greater productive capacity, and if not
95 utilized immediately, stockpile this material separately from
96 other spoil, and provide needed protection from wind and water
97 erosion or contamination by other acid or toxic material; (B)
98 segregate the B horizon of the natural soil, or underlying C
99 horizons or other strata, or a combination of the horizons or
100 other strata that are shown to be both texturally and chemically
101 suitable for plant growth and that can be shown to be equally or
102 more favorable for plant growth than the B horizon, in suffi-
103 cient quantities to create in the regraded final soil a root zone of
104 comparable depth and quality to that which existed in the
105 natural soil, and if not utilized immediately, stockpile this
106 material separately from other spoil and provide needed
107 protection from wind and water erosion or contamination by
108 other acid or toxic material; (C) replace and regrade the root
109 zone material described in paragraph (B) of this subdivision,
110 with proper compaction and uniform depth over the regraded
111 spoil material; and (D) redistribute and grade in a uniform
112 manner the surface soil horizon described in paragraph (A) of
113 this subdivision;

114 (8) Create, if authorized in the approved surface mining and
115 reclamation plan and permit, permanent impoundments of water

116 on mining sites as part of reclamation activities in accordance
117 with rules promulgated by the director;

118 (9) Where augering is the method of recovery, seal all auger
119 holes with an impervious and noncombustible material in order
120 to prevent drainage except where the director determines that
121 the resulting impoundment of water in the auger holes may
122 create a hazard to the environment or the public welfare and
123 safety: *Provided*, That the director may prohibit augering if
124 necessary to maximize the utilization, recoverability or conser-
125 vation of the mineral resources or to protect against adverse
126 water quality impacts;

127 (10) Minimize the disturbances to the prevailing hydrologic
128 balance at the mine site and in associated off-site areas and to
129 the quality and quantity of water in surface and groundwater
130 systems both during and after surface mining operations and
131 during reclamation by: (A) Avoiding acid or other toxic mine
132 drainage by such measures as, but not limited to: (i) Preventing
133 or removing water from contact with toxic producing deposits;
134 (ii) treating drainage to reduce toxic content which adversely
135 affects downstream water upon being released to water courses;
136 and (iii) casing, sealing or otherwise managing boreholes, shafts
137 and wells and keep acid or other toxic drainage from entering
138 ground and surface waters; (B) conducting surface mining
139 operations so as to prevent to the extent possible, using the best
140 technology currently available, additional contributions of
141 suspended solids to streamflow or runoff outside the permit
142 area, but in no event may contributions be in excess of require-
143 ments set by applicable state or federal law; (C) constructing an
144 approved drainage system pursuant to paragraph (B) of this
145 subdivision, prior to commencement of surface mining opera-
146 tions, the system to be certified by a person approved by the
147 director to be constructed as designed and as approved in the
148 reclamation plan; (D) avoiding channel deepening or enlarge-
149 ment in operations requiring the discharge of water from mines;
150 (E) unless otherwise authorized by the director, cleaning out

151 and removing temporary or large settling ponds or other
152 siltation structures after disturbed areas are revegetated and
153 stabilized, and depositing the silt and debris at a site and in a
154 manner approved by the director; (F) restoring recharge
155 capacity of the mined area to approximate premining condi-
156 tions; and (G) any other actions prescribed by the director;

157 (11) With respect to surface disposal of mine wastes,
158 tailings, coal processing wastes and other wastes in areas other
159 than the mine working excavations, stabilize all waste piles in
160 designated areas through construction in compacted layers,
161 including the use of noncombustible and impervious materials
162 if necessary, and assure the final contour of the waste pile will
163 be compatible with natural surroundings and that the site will
164 be stabilized and revegetated according to the provisions of this
165 article;

166 (12) Design, locate, construct, operate, maintain, enlarge,
167 modify and remove or abandon, in accordance with standards
168 and criteria developed pursuant to subsection (f) of this section,
169 all existing and new coal mine waste piles consisting of mine
170 wastes, tailings, coal processing wastes or other liquid and solid
171 wastes, and used either temporarily or permanently as dams or
172 embankments;

173 (13) Refrain from surface mining within five hundred feet
174 of any active and abandoned underground mines in order to
175 prevent breakthroughs and to protect health or safety of miners:
176 *Provided*, That the director shall permit an operator to mine
177 near, through or partially through an abandoned underground
178 mine or closer to an active underground mine if: (A) The
179 nature, timing and sequencing of the approximate coincidence
180 of specific surface mine activities with specific underground
181 mine activities are coordinated jointly by the operators involved
182 and approved by the director; and (B) the operations will result
183 in improved resource recovery, abatement of water pollution or
184 elimination of hazards to the health and safety of the public:

185 *Provided, however,* That any breakthrough which does occur
186 shall be sealed;

187 (14) Ensure that all debris, acid-forming materials, toxic
188 materials or materials constituting a fire hazard are treated or
189 buried and compacted, or otherwise disposed of in a manner
190 designed to prevent contamination of ground or surface waters,
191 and that contingency plans are developed to prevent sustained
192 combustion: *Provided,* That the operator shall remove or bury
193 all metal, lumber, equipment and other debris resulting from the
194 operation before grading release;

195 (15) Ensure that explosives are used only in accordance
196 with existing state and federal law and the rules promulgated by
197 the director, which shall include provisions to:

198 (A) Maintain for a period of at least three years and make
199 available for public inspection, upon written request, a log
200 detailing the location of the blasts, the pattern and depth of the
201 drill holes, the amount of explosives used per hole and the order
202 and length of delay in the blasts; and

203 (B) Require that all blasting operations be conducted by
204 persons certified by the office of explosives and blasting.

205 (16) Ensure that all reclamation efforts proceed in an
206 environmentally sound manner and as contemporaneously as
207 practicable with the surface mining operations. Time limits
208 shall be established by the director requiring backfilling,
209 grading and planting to be kept current: *Provided,* That where
210 surface mining operations and underground mining operations
211 are proposed on the same area, which operations must be
212 conducted under separate permits, the director may grant a
213 variance from the requirement that reclamation efforts proceed
214 as contemporaneously as practicable to permit underground
215 mining operations prior to reclamation:

216 (A) If the director finds in writing that:

217 (i) The applicant has presented, as part of the permit
218 application, specific, feasible plans for the proposed under-
219 ground mining operations;

220 (ii) The proposed underground mining operations are
221 necessary or desirable to assure maximum practical recovery of
222 the mineral resource and will avoid multiple disturbance of the
223 surface;

224 (iii) The applicant has satisfactorily demonstrated that the
225 plan for the underground mining operations conforms to
226 requirements for underground mining in the jurisdiction and
227 that permits necessary for the underground mining operations
228 have been issued by the appropriate authority;

229 (iv) The areas proposed for the variance have been shown
230 by the applicant to be necessary for the implementing of the
231 proposed underground mining operations;

232 (v) No substantial adverse environmental damage, either
233 on-site or off-site, will result from the delay in completion of
234 reclamation as required by this article; and

235 (vi) Provisions for the off-site storage of spoil will comply
236 with subdivision (22), subsection (b) of this section;

237 (B) If the director has promulgated specific rules to govern
238 the granting of the variances in accordance with the provisions
239 of this subparagraph and has imposed any additional require-
240 ments as the director considers necessary;

241 (C) If variances granted under the provisions of this
242 paragraph are reviewed by the director not more than three
243 years from the date of issuance of the permit: *Provided*, That
244 the underground mining permit shall terminate if the under-
245 ground operations have not commenced within three years of
246 the date the permit was issued, unless extended as set forth in
247 subdivision (3), section eight of this article; and

248 (D) If liability under the bond filed by the applicant with
249 the director pursuant to subsection (b), section eleven of this
250 article is for the duration of the underground mining operations
251 and until the requirements of subsection (g), section eleven and
252 section twenty-three of this article have been fully complied
253 with;

254 (17) Ensure that the construction, maintenance and post-
255 mining conditions of access and haul roads into and across the
256 site of operations will control or prevent erosion and siltation,
257 pollution of water, damage to fish or wildlife or their habitat, or
258 public or private property: *Provided*, That access roads con-
259 structed for and used to provide infrequent service to surface
260 facilities, such as ventilators or monitoring devices, are exempt
261 from specific construction criteria provided adequate stabiliza-
262 tion to control erosion is achieved through alternative measures;

263 (18) Refrain from the construction of roads or other access
264 ways up a stream bed or drainage channel or in proximity to the
265 channel so as to significantly alter the normal flow of water;

266 (19) Establish on the regraded areas, and all other lands
267 affected, a diverse, effective and permanent vegetative cover of
268 the same seasonal variety native to the area of land to be
269 affected or of a fruit, grape or berry producing variety suitable
270 for human consumption and capable of self-regeneration and
271 plant succession at least equal in extent of cover to the natural
272 vegetation of the area, except that introduced species may be
273 used in the revegetation process where desirable or when
274 necessary to achieve the approved post-mining land use plan;

275 (20) Assume the responsibility for successful revegetation,
276 as required by subdivision (19) of this subsection, for a period
277 of not less than five growing seasons, as defined by the director,
278 after the last year of augmented seeding, fertilizing, irrigation
279 or other work in order to assure compliance with subdivision
280 (19) of this subsection: *Provided*, That when the director issues

281 a written finding approving a long-term agricultural post-
282 mining land use as a part of the mining and reclamation plan,
283 the director may grant exception to the provisions of subdivi-
284 sion (19) of this subsection: *Provided, however,* That when the
285 director approves an agricultural post-mining land use, the
286 applicable five growing seasons of responsibility for
287 revegetation begins on the date of initial planting for the
288 agricultural post-mining land use;

289 On lands eligible for re-mining assume the responsibility for
290 successful revegetation, as required by subdivision (19) of this
291 subsection, for a period of not less than two growing seasons,
292 as defined by the director after the last year of augmented
293 seeding, fertilizing, irrigation or other work in order to assure
294 compliance with subdivision (19) of this subsection;

295 (21) Protect off-site areas from slides or damage occurring
296 during surface mining operations and not deposit spoil material
297 or locate any part of the operations or waste accumulations
298 outside the permit area: *Provided,* That spoil material may be
299 placed outside the permit area, if approved by the director after
300 a finding that environmental benefits will result from the
301 placing of spoil material outside the permit area;

302 (22) Place all excess spoil material resulting from sur-
303 face-mining activities in a manner that: (A) Spoil is transported
304 and placed in a controlled manner in position for concurrent
305 compaction and in a way as to assure mass stability and to
306 prevent mass movement; (B) the areas of disposal are within the
307 bonded permit areas and all organic matter is removed immedi-
308 ately prior to spoil placements; (C) appropriate surface and
309 internal drainage system or diversion ditches are used to
310 prevent spoil erosion and movement; (D) the disposal area does
311 not contain springs, natural water courses or wet weather seeps,
312 unless lateral drains are constructed from the wet areas to the
313 main under drains in a manner that filtration of the water into
314 the spoil pile will be prevented; (E) if placed on a slope, the

315 spoil is placed upon the most moderate slope among those upon
316 which, in the judgment of the director, the spoil could be placed
317 in compliance with all the requirements of this article, and is
318 placed, where possible, upon, or above, a natural terrace, bench
319 or berm, if placement provides additional stability and prevents
320 mass movement; (F) where the toe of the spoil rests on a
321 downslope, a rock toe buttress, of sufficient size to prevent
322 mass movement, is constructed; (G) the final configuration is
323 compatible with the natural drainage pattern and surroundings
324 and suitable for intended uses; (H) the design of the spoil
325 disposal area is certified by a qualified registered professional
326 engineer in conformance with professional standards; and (I) all
327 other provisions of this article are met: *Provided*, That where
328 the excess spoil material consists of at least eighty percent, by
329 volume, sandstone, limestone or other rocks that do not slake in
330 water and will not degrade to soil material, the director may
331 approve alternate methods for disposal of excess spoil material,
332 including fill placement by dumping in a single lift, on a site
333 specific basis: *Provided, however*, That the services of a
334 qualified registered professional engineer experienced in the
335 design and construction of earth and rockfill embankment are
336 utilized: *Provided further*, That the approval may not be
337 unreasonably withheld if the site is suitable;

338 (23) Meet any other criteria necessary to achieve reclama-
339 tion in accordance with the purposes of this article, taking into
340 consideration the physical, climatological and other characteris-
341 tics of the site;

342 (24) To the extent possible, using the best technology
343 currently available, minimize disturbances and adverse impacts
344 of the operation on fish, wildlife and related environmental
345 values, and achieve enhancement of these resources where
346 practicable; and

347 (25) Retain a natural barrier to inhibit slides and erosion on
348 permit areas where outcrop barriers are required: *Provided*,

349 That constructed barriers may be allowed where: (A) Natural
350 barriers do not provide adequate stability; (B) natural barriers
351 would result in potential future water quality deterioration; and
352 (C) natural barriers would conflict with the goal of maximum
353 utilization of the mineral resource: *Provided, however*, That at
354 a minimum, the constructed barrier shall be of sufficient width
355 and height to provide adequate stability and the stability factor
356 shall equal or exceed that of the natural outcrop barrier:
357 *Provided further*, That where water quality is paramount, the
358 constructed barrier shall be composed of impervious material
359 with controlled discharge points.

360 (c) (1) The director may prescribe procedures pursuant to
361 which he or she may permit surface mining operations for the
362 purposes set forth in subdivision (3) of this subsection.

363 (2) Where an applicant meets the requirements of subdivi-
364 sions (3) and (4) of this subsection, a permit without regard to
365 the requirement to restore to approximate original contour set
366 forth in subsection (b) or (d) of this section may be granted for
367 the surface mining of coal where the mining operation will
368 remove an entire coal seam or seams running through the upper
369 fraction of a mountain, ridge or hill, except as provided in
370 subparagraph (A), subdivision (4) of this subsection, by
371 removing all of the overburden and creating a level plateau or
372 a gently rolling contour with no highwalls remaining, and
373 capable of supporting post-mining uses in accordance with the
374 requirements of this subsection.

375 (3) In cases where an industrial, commercial, agricultural,
376 commercial forestry, residential, or public facility including
377 recreational uses is proposed for the post-mining use of the
378 affected land, the director may grant a permit for a surface
379 mining operation of the nature described in subdivision (2) of
380 this subsection where: (A) The proposed post-mining land use
381 is determined to constitute an equal or better use of the affected
382 land, as compared with premining use; (B) the applicant

383 presents specific plans for the proposed post-mining land use
384 and appropriate assurances that the use will be: (i) Compatible
385 with adjacent land uses; (ii) practicable with respect to achiev-
386 ing the proposed use; (iii) obtainable according to data regard-
387 ing expected need and market; (iv) supported by commitments
388 from public agencies where appropriate; (v) practicable with
389 respect to private financial capability for completion of the
390 proposed use; (vi) planned pursuant to a schedule attached to
391 the reclamation plan so as to integrate the mining operation and
392 reclamation with the post-mining land use; and (vii) designed
393 by a person approved by the director in conformance with
394 standards established to assure the stability, drainage and
395 configuration necessary for the intended use of the site; (C) the
396 proposed use would be compatible with adjacent land uses, and
397 existing state and local land use plans and programs; (D) the
398 director provides the county commission of the county in which
399 the land is located and any state or federal agency which the
400 director, in his or her discretion, determines to have an interest
401 in the proposed use, an opportunity of not more than sixty days
402 to review and comment on the proposed use; and (E) all other
403 requirements of this article will be met.

404 (4) In granting any permit pursuant to this subsection, the
405 director shall require that: (A) A natural barrier be retained to
406 inhibit slides and erosion on permit areas where outcrop
407 barriers are required: *Provided*, That constructed barriers may
408 be allowed where: (i) Natural barriers do not provide adequate
409 stability; (ii) natural barriers would result in potential future
410 water quality deterioration; and (iii) natural barriers would
411 conflict with the goal of maximum utilization of the mineral
412 resource: *Provided, however*, That, at a minimum, the con-
413 structed barrier shall be sufficient in width and height to
414 provide adequate stability and the stability factor shall equal or
415 exceed that of the natural outcrop barrier: *Provided further*,
416 That where water quality is paramount, the constructed barrier
417 shall be composed of impervious material with controlled

418 discharge points; (B) the reclaimed area is stable; (C) the
419 resulting plateau or rolling contour drains inward from the
420 outsoles except at specific points; (D) no damage will be done
421 to natural watercourses; (E) spoil will be placed on the moun-
422 taintop bench as is necessary to achieve the planned post-
423 mining land use: *And provided further*, That all excess spoil
424 material not retained on the mountaintop shall be placed in
425 accordance with the provisions of subdivision (22), subsection
426 (b) of this section; and (F) ensure stability of the spoil retained
427 on the mountaintop and meet the other requirements of this
428 article.

429 (5) All permits granted under the provisions of this subsec-
430 tion shall be reviewed not more than three years from the date
431 of issuance of the permit; unless the applicant affirmatively
432 demonstrates that the proposed development is proceeding in
433 accordance with the terms of the approved schedule and
434 reclamation plan.

435 (d) In addition to those general performance standards
436 required by this section, when surface mining occurs on slopes
437 of twenty degrees or greater, or on lesser slopes as may be
438 defined by rule after consideration of soil and climate, no
439 debris, abandoned or disabled equipment, spoil material or
440 waste mineral matter will be placed on the natural downslope
441 below the initial bench or mining cut: *Provided*, That soil or
442 spoil material from the initial cut of earth in a new surface
443 mining operation may be placed on a limited specified area of
444 the downslope below the initial cut if the permittee can estab-
445 lish to the satisfaction of the director that the soil or spoil will
446 not slide and that the other requirements of this section can still
447 be met.

448 (e) The director may propose rules for legislative approval
449 in accordance with article three, chapter twenty-nine-a of this
450 code, that permit variances from the approximate original
451 contour requirements of this section: *Provided*, That the

452 watershed control of the area is improved: *Provided, however,*
453 That complete backfilling with spoil material is required to
454 completely cover the highwall, which material will maintain
455 stability following mining and reclamation.

456 (f) The director shall propose rules for legislative approval
457 in accordance with article three, chapter twenty-nine-a of this
458 code, for the design, location, construction, maintenance,
459 operation, enlargement, modification, removal and abandon-
460 ment of new and existing coal mine waste piles. In addition to
461 engineering and other technical specifications, the standards
462 and criteria developed pursuant to this subsection shall include
463 provisions for review and approval of plans and specifications
464 prior to construction, enlargement, modification, removal or
465 abandonment; performance of periodic inspections during
466 construction; issuance of certificates of approval upon comple-
467 tion of construction; performance of periodic safety inspections;
468 and issuance of notices and orders for required remedial or
469 maintenance work or affirmative action: *Provided, That*
470 whenever the director finds that any coal processing waste pile
471 constitutes an imminent danger to human life, he or she may, in
472 addition to all other remedies and without the necessity of
473 obtaining the permission of any person prior or present who
474 operated or operates a pile or the landowners involved, enter
475 upon the premises where any coal processing waste pile exists
476 and may take or order to be taken any remedial action that may
477 be necessary or expedient to secure the coal processing waste
478 pile and to abate the conditions which cause the danger to
479 human life: *Provided, however, That* the cost reasonably
480 incurred in any remedial action taken by the director under this
481 subsection may be paid for initially by funds appropriated to the
482 division for these purposes, and the sums expended shall be
483 recovered from any responsible operator or landowner, individ-
484 ually or jointly, by suit initiated by the attorney general at the
485 request of the director. For purposes of this subsection “oper-
486 ates” or “operated” means to enter upon a coal processing waste

487 pile, or part of a coal processing waste pile, for the purpose of
488 disposing, depositing, dumping coal processing wastes on the
489 pile or removing coal processing waste from the pile, or to
490 employ a coal processing waste pile for retarding the flow of or
491 for the impoundment of water.

**§22-3-23. Release of bond or deposits; application; notice; duties
of director; public hearings; final maps on grade
release.**

1 (a) The permittee may file a request with the director for the
2 release of a bond or deposit. The permittee shall publish an
3 advertisement regarding the request for release in the same
4 manner as is required of advertisements for permit applications.
5 A copy of the advertisement shall be submitted to the director
6 as part of any bond release application and shall contain a
7 notification of the precise location of the land affected, the
8 number of acres, the permit and the date approved, the amount
9 of the bond filed and the portion sought to be released, the type
10 and appropriate dates of reclamation work performed and a
11 description of the results achieved as they relate to the
12 permittee's approved reclamation plan. In addition, as part of
13 any bond release application, the permittee shall submit copies
14 of letters which the permittee has sent to adjoining property
15 owners, local government bodies, planning agencies, sewage
16 and water treatment authorities or water companies in the
17 locality in which the surface mining operation is located,
18 notifying them of the permittee's intention to seek release from
19 the bond. Any request for grade release shall also be accompa-
20 nied by final maps.

21 (b) Upon receipt of the application for bond release, the
22 director, within thirty days, taking into consideration existing
23 weather conditions, shall conduct an inspection and evaluation
24 of the reclamation work involved. The evaluation shall con-
25 sider, among other things, the degree of difficulty to complete
26 any remaining reclamation, whether pollution of surface and

27 subsurface water is occurring, the probability of continuance or
28 future occurrence of the pollution and the estimated cost of
29 abating the pollution. The director shall notify the permittee in
30 writing of his or her decision to release or not to release all or
31 part of the bond or deposit within sixty days from the date of
32 the initial publication of the advertisement if no public hearing
33 is requested. If a public hearing is held, the director's decision
34 shall be issued within thirty days thereafter.

35 (c) If the director is satisfied that reclamation covered by
36 the bond or deposit or portion thereof has been accomplished as
37 required by this article, he or she may release the bond or
38 deposit, in whole or in part, according to the following sched-
39 ule:

40 (1) For all operations except those with an approved
41 variance from approximate original contour:

42 (A) When the operator completes the backfilling, regrading
43 and drainage control of a bonded area in accordance with the
44 operator's approved reclamation plan, the release of sixty
45 percent of the bond or collateral for the applicable bonded area:
46 *Provided*, That a minimum bond of ten thousand dollars shall
47 be retained after grade release;

48 (B) Two years after the last augmented seeding, fertilizing,
49 irrigation or other work to ensure compliance with subdivision
50 (19), subsection (b), section thirteen of this article, the release
51 of an additional twenty-five percent of the bond or collateral for
52 the applicable bonded area: *Provided*, That a minimum bond of
53 ten thousand dollars shall be retained after the release provided
54 for in this subdivision; and

55 (C) When the operator has completed successfully all
56 surface mining and reclamation activities, the release of the
57 remaining portion of the bond, but not before the expiration of
58 the period specified in subdivision (20), subsection (b), section
59 thirteen of this article: *Provided*, That the revegetation has been

60 established on the regraded mined lands in accordance with the
61 approved reclamation plan: *Provided, however,* That the release
62 may be made where the quality of the untreated post-mining
63 water discharged is better than or equal to the premining water
64 quality discharged from the mining site.

65 (2) For operations with an approved variance from approxi-
66 mate original contour:

67 (A) When the operator completes the backfilling, regrading
68 and drainage control of a bonded area in accordance with the
69 operator's approved reclamation plan, the release of fifty
70 percent of the bond or collateral for the applicable bonded area:
71 *Provided,* That a minimum bond of ten thousand dollars shall
72 be retained after grade release;

73 (B) Two years after the last augmented seeding, fertilizing,
74 irrigation or other work to ensure compliance with subdivision
75 (19), subsection (b), section thirteen of this article, the release
76 of an additional ten percent of the bond or collateral for the
77 applicable bonded area: *Provided,* That a minimum bond of ten
78 thousand dollars shall be retained after the release provided for
79 in this subdivision; and

80 (C) When the operator has completed successfully all
81 surface mining and reclamation activities, the release of the
82 remaining portion of the bond, but not before the expiration of
83 the period specified in subdivision (20), subsection (b), section
84 thirteen of this article: *Provided,* That the revegetation has been
85 established on the regraded mined lands in accordance with the
86 approved reclamation plan and if applicable the necessary post-
87 mining infrastructure is established and any necessary financing
88 is completed: *Provided, however,* That the release may be made
89 where the quality of the untreated post-mining water discharged
90 is better than or equal to the premining water quality discharged
91 from the mining site.

92 No part of the bond or deposit may be released under this
93 subsection so long as the lands to which the release would be
94 applicable are contributing additional suspended solids to
95 streamflow or runoff outside the permit area in excess of the
96 requirements set by section thirteen of this article, or until soil
97 productivity for prime farmlands has returned to equivalent
98 levels of yield as nonmined land of the same soil type in the
99 surrounding area under equivalent management practices as
100 determined from the soil survey performed pursuant to section
101 nine of this article. Where a sediment dam is to be retained as
102 a permanent impoundment pursuant to section thirteen of this
103 article, or where a road or minor deviation is to be retained for
104 sound future maintenance of the operation, the portion of the
105 bond may be released under this subsection so long as provi-
106 sions for sound future maintenance by the operator or the
107 landowner have been made with the director.

108 Notwithstanding the bond release scheduling provisions of
109 subdivisions (1), (2) and (3) of this subsection, if the operator
110 completes the backfilling and reclamation in accordance with
111 an approved post-mining land use plan that has been approved
112 by the division of environmental protection and accepted by a
113 local or regional economic development or planning agency for
114 the county or region in which the operation is located, provi-
115 sions for sound future maintenance are assured by the local or
116 regional economic development or planning agency, and the
117 quality of any untreated post-mining water discharge complies
118 with applicable water quality criteria for bond release, the
119 director may release the entire amount of the bond or deposit.
120 The director shall propose rules for legislative approval in
121 accordance with the provisions of article three, chapter twenty-
122 nine-a of this code to govern a bond release pursuant to the
123 terms of this paragraph.

124 (d) If the director disapproves the application for release of
125 the bond or portion thereof, the director shall notify the
126 permittee, in writing, stating the reasons for disapproval and

127 recommending corrective actions necessary to secure the
128 release and notifying the operator of the right to a hearing.

129 (e) When any application for total or partial bond release is
130 filed with the director, he or she shall notify the municipality in
131 which a surface-mining operation is located by registered or
132 certified mail at least thirty days prior to the release of all or a
133 portion of the bond.

134 (f) Any person with a valid legal interest which is or may
135 be adversely affected by release of the bond or the responsible
136 officer or head of any federal, state or local governmental
137 agency which has jurisdiction by law or special expertise with
138 respect to any environmental, social or economic impact
139 involved in the operation, or is authorized to develop and
140 enforce environmental standards with respect to the operations,
141 has the right to file written objections to the proposed bond
142 release and request a hearing with the director within thirty days
143 after the last publication of the permittee's advertisement. If
144 written objections are filed and a hearing requested, the director
145 shall inform all of the interested parties of the time and place of
146 the hearing and shall hold a public hearing in the locality of the
147 surface-mining operation proposed for bond release within
148 three weeks after the close of the public comment period. The
149 date, time and location of the public hearing shall also be
150 advertised by the director in a newspaper of general circulation
151 in the same locality.

152 (g) Without prejudice to the rights of the objectors, the
153 applicant, or the responsibilities of the director pursuant to this
154 section, the director may hold an informal conference to resolve
155 any written objections and satisfy the hearing requirements of
156 this section thereby.

157 (h) For the purpose of the hearing, the director has the
158 authority and is hereby empowered to administer oaths,
159 subpoena witnesses and written or printed materials, compel the

160 attendance of witnesses, or production of materials, and take
161 evidence, including, but not limited to, inspections of the land
162 affected and other surface-mining operations carried on by the
163 applicant in the general vicinity. A verbatim record of each
164 public hearing required by this section shall be made and a
165 transcript made available on the motion of any party or by order
166 of the director at the cost of the person requesting the transcript.

CHAPTER 173

(Com. Sub. for H. B. 4055 — By Delegates Linch,
Johnson, Dalton, Webb, Pino, Faircloth and Smirl)

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

AN ACT to amend and reenact article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one and two, article four, chapter twenty-two-b of said code, all relating generally to quarry mining; creating the quarry reclamation act; establishing legislative findings; defining terms; establishing the powers and duties of the director of the division of environmental protection; providing that the quarry reclamation act does not apply to coal mining; authorizing proposal of legislative rules; establishing conditions and requirements for quarry permits; prohibiting quarrying without a permit; establishing five-year term for permits; requiring quarry permit for certain underground quarry operations and requiring performance bond; providing for application review, including public hearing, notice and comment period; providing for approval of quarry permits; authorizing denial of permit application, modification or transfer under certain conditions; authorizing approval of portion of permit area; providing certain requirements for underground mines; providing for reinstatement under certain conditions; prohibiting quarrying

in certain areas; authorizing permit denial in certain situations; allowing permit denial at certain locations; establishing limitations and conditions for permit denials; providing for writ of mandamus to enforce performance of mandatory duty; authorizing permit renewals and revisions; establishing criteria for modification of permits; requiring application for permit modifications; providing for minor permit modifications; requiring public notice but not public hearing for minor modifications; establishing requirements for major permit modifications; requiring applicants for major permit modifications meet same requirements as new permit applicants; authorizing transfer of permits; establishing transfer fee; prohibiting transfer of permits under certain conditions; establishing requirements for pre-blast survey; establishing restrictions on blasting; establishing a blasting formula; requiring pre-blast plan to be filed; establishing site specific blasting requirements; providing penalties; authorizing promulgation of legislative rules for blasting notice; establishing performance standards for quarry operations; establishing applicability of the groundwater protection act to portions of quarry operations; requiring a quarrying and reclamation plan; establishing requirements of quarrying and reclamation plans; establishing land reclamation requirements; providing time period for reclamation; providing that all quarry operations comply with approved quarrying and reclamation plan and this article; requiring blasting insurance; requiring performance bonds for new quarry operations; allowing incremental and other forms of bonding; providing for release of bond; establishing a bond pooling fund; establishing requirements for participation in bond pooling fund; authorizing expenditures from bond pooling fund for reclamation upon forfeiture of bond; creating quarry reclamation fund consisting of forfeited bonds, interest from bond pooling fund, and civil administrative penalties; providing treble damages for certain offenses; providing funds from quarry reclamation fund to be used for reclamation of abandoned quarries; providing for notice of noncompliance; authorizing suspension or revocation of permit for noncompliance; authorizing revocation of bond;

authorizing director to inspect quarry operations; authorizing enforcement actions, civil and criminal penalties; authorizing appeals to surface mine board; assessing fees relating to permits and disposition of those fees; establishing quarry inspection and enforcement fund, requiring permit fees be deposited into fund; providing exceptions for certain existing quarries; declaring certain persons ineligible for permit; exempting certain activities of governmental entities and manufacturers from this article; authorizing quarry mining appeals to surface mining board; adding alternative members to board to hear quarry cases; establishing qualifications and eligibility for alternative surface mine board members; and providing that funds from quarry cases be deposited in the quarry reclamation fund.

Be it enacted by the Legislature of West Virginia:

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

Chapter

22. Environmental Resources.

22B. Environmental Boards.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 4. QUARRY RECLAMATION ACT.

§22-4-1. Short title.

§22-4-2. Legislative findings.

§22-4-3. Definitions.

§22-4-4. Director of the division of environmental protection; powers and duties.

§22-4-5. Quarry permit requirements.

§22-4-6. Application review, public notice and comment, and permit approval.

§22-4-7. Denial of quarry permit.

§22-4-8. Limitations; mandamus.

§22-4-9. Permit renewals and revisions.

§22-4-10. Modification of permits.

§22-4-11. Transfer of permits.

§22-4-12. Pre-blast survey requirements.

§22-4-13. Blasting restrictions; blasting formula; filing preplan; site specific blasting requirements; penalties; notice.

§22-4-14. Performance standards.

§22-4-15. Groundwater protection.

§22-4-16. Water rights and replacement; waiver of replacement.

§22-4-17. Quarrying and reclamation plan.

§22-4-18. Land reclamation requirements.

§22-4-19. Time period for reclamation.

§22-4-20. Fiscal responsibility.

§22-4-21. Release of bonds.

§22-4-22. Bond pooling fund.

§22-4-23. Quarry reclamation fund.

§22-4-24. Orders, inspections and enforcement; permit revocation, damages, civil and criminal penalties.

§22-4-25. Appeals to board.

§22-4-26. Required fees, quarry inspection and enforcement fund.

§22-4-27. Exception for certain existing quarries.

§22-4-28. Persons ineligible for a permit.

§22-4-29. Exemptions.

§22-4-1. Short title.

- 1 This article shall be known and may be cited as the “Quarry
- 2 Reclamation Act.”

§22-4-2. Legislative findings.

- 1 The Legislature finds that:

- 2 The extraction of noncoal minerals by quarrying is a basic,
- 3 essential and vital industry making an important contribution to
- 4 the economic well-being of West Virginia. From the small
- 5 family-owned chert pit to the multinational limestone quarry,
- 6 quarry aggregate production plays a vital role in West Vir-
- 7 ginia’s economy and the quality of life for its residents; it is in
- 8 the public interest to insure the availability and orderly develop-
- 9 ment of mineral resources; aggregate minerals are necessary
- 10 components in many construction activities, without fine and
- 11 coarse aggregates, it would be impossible to build or maintain

12 the state roadways and airports, with every type of significant
13 construction activity being dependant on the availability and
14 reasonable costs of aggregate minerals and aggregate mineral
15 products; it is not practical to extract minerals required by our
16 society without disturbing the surface of the earth and produc-
17 ing waste materials, and the very character of quarry operations
18 precludes complete restoration of the land to its original
19 condition.

20 This article also provides requirements intended to protect
21 wildlife and prevent the pollution to the environment surround-
22 ing quarries, including rivers, streams, groundwater, aquifers
23 and lakes, to prevent and eliminate hazards to health and safety,
24 to protect all property owners' property rights, and to provide
25 for reclamation of quarried areas so as to assure the continued
26 use and enjoyment of these lands after quarrying is completed;

27 Further, certain areas in the state are inappropriate for
28 quarry mining while in most locations of West Virginia,
29 quarrying can be conducted in a fashion to prevent these
30 undesirable conditions, while allowing for mining of valuable
31 minerals.

32 Therefore, the Legislature finds that the quarrying of
33 minerals and reclamation of quarry lands as provided by this
34 article will allow the use of valuable minerals and will provide
35 for the protection of the state's environment and for the
36 subsequent beneficial use of the quarry and reclaimed land.

§22-4-3. Definitions.

1 Unless the context in which it is used clearly requires a
2 different meaning, as used in this article:

3 (1) "Abandoned quarry" or "abandoned quarry lands"
4 means:

5 (A) A quarry which was operated and abandoned without
6 proper reclamation prior to the effective date of this article; or

7 (B) A permitted quarry where no mineral has been pro-
8 duced or overburden removed for a period of at least six months
9 and the permittee has vacated the site covered by the permit
10 without having complied with all of the requirements of the
11 permit.

12 Abandoned quarry lands does not mean a quarry which has
13 been granted inactive status by the director and does not mean
14 a quarry which has ceased operations and is in the process of
15 stabilization and reclamation.

16 (2) "Backfill" means overburden, dirt, rock or other
17 materials that are used as fill material to reduce steepness of
18 slopes or to fill holes, depressions or excavations.

19 (3) "Berm" means a type of fill or pile used for a specific
20 purpose other than excess spoil disposal; such purposes may
21 include, but not necessarily be limited to drainage control,
22 screening for noise control, screening for aesthetic value, or
23 safety barriers; provided, however, that a berm of ten vertical
24 feet or more at any point shall be designed and the construction
25 certified by an approved person and provided further that any
26 berm consisting of greater than twenty percent fines or nondu-
27 rable rock must be protected from wind and water erosion.

28 (4) "Borrow pit" means an area from which soil or other
29 materials are removed to be used, without further processing, as
30 fill for activities such as landscaping, building construction or
31 highway maintenance and construction.

32 (5) "Critical gradient" means the maximum stable inclina-
33 tion of an unsupported slope as measured from a horizontal
34 plane.

35 (6) "Director" means the director of the division of environ-
36 mental protection and his or her authorized agents.

37 (7) "Disturbed area" means the land area from which the
38 mineral is removed by quarrying and all other land area in
39 which the natural land surface has been disturbed as a result of
40 or incidental to quarrying activities of the operator, including
41 private ways and private roads appurtenant to the area, land
42 excavations, workings, refuse piles, product stockpiles, areas
43 grubbed of vegetation, overburden, piles and tailings. The term
44 does not include manufacturing sites or reclaimed quarry areas.

45 (8) "Division" means the division of environmental
46 protection.

47 (9) "Fill" means a side of hill fill or valley fill.

48 (10) "Inactive operation" means either:

49 (A) A permitted site where active work has ceased tempo-
50 rarily due to weather conditions, market conditions or other
51 reasonable cause; or

52 (B) A permitted site where active quarrying has not yet
53 begun.

54 (11) "Manufacturing" means the process of converting raw
55 materials to salable products but does not include crushing or
56 screening of minerals undertaken in close proximity to active
57 quarrying operations.

58 (12) "Manufacturing site" means an area of land on which
59 manufacturing occurs and associated areas.

60 (13) "Minerals" means natural deposits of commercial
61 value found on or in the earth, whether consolidated or loose,
62 including clay, flagstone, gravel, sand, limestone, sandstone,
63 shale, chert, flint, dolomite, manganese, slate, iron ore and any

64 other metal or metallurgical ore. The term does not include coal
65 or topsoil.

66 (14) "Mulch" means any natural or plant residue, organic
67 or inorganic material, applied to the surface of the earth to
68 retain moisture and curtail or limit soil erosion.

69 (15) "Operator" means a person who engages in any
70 activities regulated by this article and any rules promulgated
71 hereunder, who as a result is required to hold a permit pursuant
72 to the provisions herein.

73 (16) "Permit area" means the area of land indicated on the
74 approved map submitted by the permittee and designated in the
75 permit including the location of end strip markers, permit
76 markers and monuments.

77 (17) "Permittee" means any person who holds a valid
78 permit issued by the division to conduct quarrying activities
79 pursuant to this article".

80 (18) "Person" means any individual, partnership, firm,
81 society, association, trust, corporation, other business entity or
82 any agency, unit or instrumentality of federal, state or local
83 government.

84 (19) "Protected structure" means any of the following
85 structures that are situated outside the permit area: a occupied
86 dwelling, a temporarily unoccupied dwelling which has been
87 occupied within the past ninety days, a public building, a
88 structure for commercial purposes, a school, a church, a
89 community or institutional building, a public park, spring box
90 or, water well.

91 (20) "Quarrying" means any breaking of the ground surface
92 in order to facilitate the extraction of minerals. Quarrying also
93 includes any activity constituting all or part of a process for
94 mineral extraction or removal from their original location as

95 well as adjacent areas ancillary to the operation, including
96 preparation and processing activities, storage areas and haulage
97 ways, roads and trails. The term “quarrying” does not apply to
98 manufacturing operations, including those operations adjacent
99 to the permitted area where manufacturing is conducted.

100 (21) “Reclamation” means returning disturbed areas to a
101 stable condition which does not create health or safety hazards
102 or adverse environmental impact, and when appropriate or
103 required by permit, returning disturbed quarry areas to a
104 designated postmining land use.

105 (22) “Side of hill fill” means overburden, dirt or rock that
106 is placed on a natural slope of more than twenty degrees.

107 (23) “Spoil pile” means overburden and waste material
108 displaced by excavating equipment or other methods and placed
109 on natural ground with an original slope of zero degrees to
110 twenty degrees.

111 (24) “Surface of regraded bench” means the top portion or
112 part of any regraded area.

113 (25) “Unreclaimed” means land which has not been
114 stabilized, or if a permit has been issued pursuant to this
115 enactment, land that has not been rehabilitated to a useful
116 purpose in accordance with the quarrying and reclamation plan
117 approved by the division.

118 (26) “Valley fill” means a fill structure consisting of
119 material placed in a valley where the natural side slopes
120 measured at the steepest point are greater than twenty degrees
121 or the average slopes measured at the steepest point are greater
122 than twenty degrees or the average slopes or the profile of the
123 hollow are greater than twenty degrees.

**§22-4-4. Director of the division of environmental protection;
powers and duties.**

1 The director of the division of environmental protection is
2 vested with jurisdiction over all aspects of quarrying and with
3 jurisdiction and control over land, water and soil aspects
4 pertaining to quarry operations, and the restoration and recla-
5 mation of quarries and areas affected thereby. This article does
6 not address coal mining activities unless covered by sub-
7 division (2), subsection (u), section three, article three of this
8 chapter.

9 In addition to any other powers or duties heretofore or
10 hereinafter granted, the director has the following powers and
11 duties:

12 (a) To control and exercise regulatory authority over all
13 quarry operations in this state and enforce the provisions of this
14 article;

15 (b) To employ all necessary personnel to carry out the
16 purposes and requirements of this article;

17 (c) To propose any necessary legislative rules, in accor-
18 dance with the provisions of chapter twenty-nine-a of this code
19 to implement the provisions of this article; and

20 (d) To make investigations and inspections necessary to
21 ensure compliance with the provisions of this article.

22 (e) Nothing in this article may be construed as vesting in
23 the director the jurisdiction to adjudicate property-rights
24 disputes.

§22-4-5. Quarry permit requirements.

1 (a) It is unlawful for any person to engage in quarrying
2 without having first obtained from the division a permit as
3 required by this article. The application shall fully state the
4 information required by the director. Each new quarry permit
5 shall be issued for a term of five years and is renewable for
6 subsequent terms of five years. The director may grant an

7 administrative extension of an existing permit for a period not
8 to exceed one year. The application may be in writing and on a
9 form prepared and furnished by the division, or the application
10 may be submitted electronically. Applicants shall verify
11 electronic submissions by signed affidavit.

12 (b) The application shall include the following information:

13 (1) The names and addresses of the applicant and every
14 officer, partner, director, owner of the applicant;

15 (2) The names and mailing addresses of any person owning
16 of record or beneficially ten percent or more of any class of
17 stock of the applicant;

18 (3) The name of any person listed in subdivision (1) or (2)
19 of this subsection who has ever had a quarry permit revoked or
20 had a quarry bond forfeited;

21 (4) The names and addresses of the owners of the surface
22 of the land to be quarried;

23 (5) The names and addresses of the owners of the mineral
24 to be quarried;

25 (6) The source of the applicant's legal right to conduct
26 quarrying on the land to be covered by the permit;

27 (7) A pre-quarry water assessment to establish the base
28 level quality and quantity as provided in section fourteen of this
29 article;

30 (8) The number of acres to be included in the permit area;

31 (9) A list of other quarrying permits previously or currently
32 held by the applicant, by location and permit number, and any
33 other type of mining permits being applied for or currently held
34 by the applicant;

35 (10) The common name and geologic title, where applica-
36 ble, of the mineral or minerals to be extracted;

37 (11) Provide proof of adequate insurance as required by this
38 article;

39 (12) A quarrying and reclamation plan as is required by
40 section seventeen of this article;

41 (13) Any other information required by the director
42 reasonably necessary to effectuate the purposes of this article.

43 (c) The application for a permit shall be accompanied by
44 copies of an enlarged United States geological survey topo-
45 graphic map meeting the requirements of the subdivisions
46 below. Aerial photographs of the area are acceptable if the plan
47 for reclamation can be shown to the satisfaction of the director.
48 Attendant documentation must include:

49 (1) A map prepared and certified by or under the supervi-
50 sion of a registered professional civil engineer, or a registered
51 professional mining engineer, or a licensed land surveyor, who
52 shall submit to the director a certificate of registration as a
53 qualified engineer or land surveyor, and be in a scale approved
54 by the director;

55 (2) Identify the area to correspond with application;

56 (3) Show probable limits of adjacent underground mining
57 operations, probable limits of adjacent inactive or mined-out
58 areas and the boundaries of surface properties and names of
59 surface and mineral owners of the surface area within five
60 hundred feet of any part of the proposed disturbed area;

61 (4) Show the base of the crop line, including appropriate
62 geologic cross sections, regrading cross sections and attendant
63 narratives;

64 (5) Show the names and locations of streams, creeks,
65 tributaries or bodies of public water, roads, buildings, cemeter-
66 ies, active, abandoned or plugged oil and gas wells, and utility
67 lines on the area of land to be disturbed and within five hundred
68 feet of such area;

69 (6) Show by appropriate markings the boundaries of the
70 area of land to be disturbed and the total number of acres
71 involved in the area of land to be disturbed;

72 (7) The date on which the map was prepared, the north
73 point, and the longitude and latitude of the operation;

74 (8) Show the drainage plan on and away from the area of
75 land to be disturbed. Such plan shall indicate the directional
76 flow of water, constructed drainage systems, natural waterways
77 used for drainage, and the streams or tributaries receiving or to
78 receive this discharge. Upon receipt of such drainage plan, the
79 director may furnish the office of water resources of the
80 division a copy of all information required by this subdivision,
81 as well as the names and locations of streams, creeks, tributar-
82 ies or bodies of public water within five hundred feet of the area
83 to be disturbed;

84 (9) Show the presence of known acid-producing materials
85 which when present in the overburden, may cause spoil with a
86 pH factor below 5.5, preventing effective revegetation. The
87 presence of such materials, wherever occurring in significant
88 quantity, shall be indicated on the map, filed with the applica-
89 tion for permit. The operator shall also indicate the manner in
90 which acid-bearing spoil will be suitably prepared for
91 revegetation and stabilization, whether by application of mulch
92 or suitable soil material to the surface or by some other type of
93 treatment, subject to approval of the director.

94 (10) The operator shall also indicate the manner in which
95 all permanent disposal sites will be stabilized.

96 (11) The certification of the maps shall read as follows: "I,
97 the undersigned, hereby certify that this map is correct, and
98 shows to the best of my knowledge and belief all the informa-
99 tion required by the quarrying laws of this state." The certifica-
100 tion shall be signed and notarized. The director may reject any
101 map as incomplete if its accuracy is not so attested.

102 (d) Each applicant shall secure a performance bond or other
103 appropriate financial assurance and insurance as required by
104 this article.

105 (e) A permit may cover more than one tract of land, if the
106 tracts are adjacent or part of the same quarrying complex, and
107 described in the application.

108 (f) If a permittee has more than one permit at any quarrying
109 site at an adjacent, or the same quarrying complex, and if the
110 director deems appropriate, permits may be consolidated into
111 one permit at the request of the permittee.

112 (g) A permit remains valid until quarrying is completed and
113 the final inspection and report are approved or until the permit
114 is revoked by the director.

115 (h) All underground quarry operations which disturb more
116 than five acres of surface must obtain a quarry permit, including
117 underground quarry operations located on more than one tract
118 of land, if the tracts are adjacent or part of the same mining
119 complex and the total disturbed area exceeds more than five
120 acres. Those underground operations which disturb less than
121 five acres of surface must:

122 (1) File a notice of intent to operate with the director at
123 least sixty days prior to disturbance. The notice of intent to
124 operate shall be made in writing on forms prescribed by the
125 director and shall be signed and verified by the operator. This
126 notice shall include the information required by subdivisions

127 (1) through (11) and subdivision (13), subsection (b) of this
128 section;

129 (2) The applicant shall publish a notice of intent to operate
130 as a Class III legal advertisement in accordance with the
131 provisions of article three, chapter fifty-nine of this code. The
132 notice shall contain, in abbreviated form, the following:

133 (A) The name and address of the operator;

134 (B) The name and addresses of the surface and mineral
135 owners;

136 (C) That written comments on the application will be
137 accepted until a specified date, within thirty days after the first
138 date of publication of the notice;

139 (D) A description of the general area where the quarry will
140 be located;

141 (E) The address of the office of the division to submit
142 written comments.

143 (3) The director shall issue a decision to approve or deny
144 the notice of intent to operate, within thirty days of close of the
145 public comment period, unless the period is extended by the
146 director to receive additional application information. The
147 director may deny or limit permission to operate upon the
148 finding that the underground quarry will cause serious adverse
149 environmental impacts pursuant to section seven or eight of this
150 article.

151 (4) A minimum of a ten thousand dollar performance bond
152 is required for each underground mining intent to operate. This
153 performance bond shall be released if the permittee has
154 complied with all permit requirements and has begun under-
155 ground mining. Underground mining must begin within two
156 years of receipt of a notice of intent to operate.

§22-4-6. Application review, public notice and comment, and permit approval.

1 (a) The director shall, upon receipt of an application for a
2 permit, determine if the application is complete and contains
3 the information required in the application. The director has
4 thirty days to review the application for technical completeness.
5 An application is complete when all required information has
6 been submitted to the director. If the application is determined
7 incomplete, the applicant shall be notified with written com-
8 ments stating the deficiencies. If the director finds the applica-
9 tion has technical deficiencies or other inadequacies which
10 require further information, the thirty-day review period shall
11 be interrupted on the date the notice is mailed to the applicant,
12 and the time period shall resume upon receipt of the corrected
13 and complete application. Should the applicant disagree with a
14 decision of the director, the applicant may, by written notice,
15 request a hearing before the director. The director shall hold the
16 hearing within thirty calendar days of receipt of this notice.
17 When a hearing has been held, the director shall notify the
18 applicant of the decision by certified mail within twenty days
19 of the hearing. An applicant aggrieved by a final order of the
20 director may, after the hearing or without a hearing, appeal the
21 order to the surface mine board. Any appeal to the board shall
22 be taken without prejudice by the director in the final review of
23 a permit application.

24 (b) Upon the director's determination that an application is
25 complete, the applicant shall publish a notice of the application
26 for a permit as a Class III legal advertisement in accordance
27 with the provisions of article three, chapter fifty-nine of this
28 code. The notice shall contain, in abbreviated form, the infor-
29 mation required in the application. The notice shall state that
30 written comments on the application will be accepted until a
31 specified date, within thirty days after the first date of publica-
32 tion of the notice. The notice shall also state that a copy of the
33 complete application including the quarrying and reclamation

34 plans and maps will be available for public inspection during
35 the public comment period at the office of the county clerk in
36 the county or counties in which the proposed permit area is
37 located. The publication area of the notice required by this
38 section is the county or counties in which any portion of the
39 proposed permit area is located. The cost of all publications
40 required by this section shall be the responsibility of the
41 applicant.

42 (c) Prior to approval of any quarry mining permit, the
43 division shall upon receipt of a written request of a person
44 having expressed concern or objections to the proposed permit,
45 cause a public hearing to be held in the locality where the
46 quarry operation is proposed to be located for the purpose of
47 receiving comment regarding the expected or perceived impacts
48 of the quarry operation on the local area: *Provided*, That no
49 public hearing is required for a notice of intent to operate an
50 underground quarry with a surface disturbance less than five
51 acres.

52 (d) The director shall receive and fully consider evidence or
53 comments submitted during the public comment period by any
54 member of the public.

55 (e) Within thirty days of close of the public comment
56 period, upon the determination by the director that proper
57 public notice has been given and comment has been received by
58 the agency, and that the quarrying operation will be conducted
59 consistent with the requirements of this article, then the director
60 shall issue a quarry permit to the applicant.

61 (f) The director, upon receipt of comments expressing
62 substantial new questions regarding the application, may reopen
63 the public comment period.

§22-4-7. Denial of quarry permit.

1 (a) The director may deny a permit application, modifica-
2 tion or transfer for one or more of the following reasons:

3 (1) Any requirement of federal or state environmental law,
4 rule or regulation would be violated by the proposed permit.

5 (2) The proposed quarry operation will be located in an area
6 in the state which the director finds ineligible for a permit
7 pursuant to section eight.

8 (3) The applicant or any person required to be listed on the
9 application pursuant to section five of this article has not
10 corrected all violations of any prior permit issued pursuant to
11 this article which resulted in:

12 (A) Revocation of a permit;

13 (B) Cessation of the operation by order of the director;

14 (C) Forfeiture of all or part of the permit bond or other
15 surety; or

16 (D) A court order issued against the applicant related to
17 mining or quarrying;

18 (E) The applicant or any person required to be listed on the
19 application pursuant to section five of this article has not paid
20 all fines or fees assessed by the agency or by court judgment
21 imposed pursuant to the provisions of this article.

22 (b) An applicant whose application for a permit, modifica-
23 tion or transfer was denied may petition the director for review
24 of the denial decision. The director, in his or her discretion, may
25 approve an application which was previously denied because of
26 a past permit revocation or forfeiture if the person whose permit
27 was revoked or bond forfeited pays into the abandoned quarry
28 reclamation fund an amount determined by the director as
29 adequate to reclaim the area disturbed under the prior permit or
30 completes reclamation of site upon which the permit or bond

31 was revoked or forfeited, and demonstrates to the director's
32 satisfaction that he or she will comply with this article and rules
33 promulgated thereunder.

34 (c) The director may approve a portion of a permit area
35 upon a finding that approval of the entire permit area would
36 otherwise be denied pursuant to the provisions of this section.

§22-4-8. Limitations; mandamus.

1 The Legislature finds that there are certain areas in the state
2 of West Virginia which are impossible to reclaim either by
3 natural growth or by technological activity and that if quarrying
4 is conducted in these certain areas such operations may
5 naturally cause stream pollution, landslides, the accumulation
6 of stagnant water, flooding, the destruction of land for agricul-
7 tural purposes, the destruction of aesthetic values, the destruc-
8 tion of recreational areas and future use of the area and sur-
9 rounding areas, thereby destroying or impairing the health and
10 property rights of others, and in general creating hazards
11 dangerous to life and property so as to constitute an imminent
12 and inordinate peril to the welfare of the state, and that such
13 areas shall not be mined by the surface-mining process.

14 Therefore, authority is hereby vested in the director to
15 delete certain areas from all quarrying operations.

16 No application for a permit shall be approved by the
17 director if there is found on the basis of the information set
18 forth in the application or from information available to the
19 director and made available to the applicant that the require-
20 ments of this article or rules hereafter adopted will not be
21 observed or that there is not probable cause to believe that the
22 proposed method of operation, backfilling, grading or reclama-
23 tion of the affected area can be carried out consistent with the
24 purpose of this article.

25 If the director finds that the overburden on any part of the
26 area of land described in the application for a permit is such

27 that experience in the state of West Virginia with a similar type
28 of operation upon land with similar overburden shows that one
29 or more of the following conditions cannot feasibly be pre-
30 vented: (1) Substantial deposition of sediment in stream beds;
31 (2) landslides; or (3) acid-water pollution, the director may
32 delete such part of the land described in the application upon
33 which such overburden exists.

34 If the director finds that the operation will constitute a
35 hazard to a dwelling house, public building, school, church,
36 cemetery, commercial or institutional building, public road,
37 stream, lake or other public property, then he or she shall delete
38 such areas from the permit application before it can be ap-
39 proved.

40 The director shall not give approval to quarry within one
41 hundred feet of any public road, stream, lake, or state, national
42 or interstate park or other public property, and shall not approve
43 the application for a permit where the quarry operation will
44 cause adverse affects to these locations unless adequate
45 screening and other measures approved by the director are to be
46 utilized and the permit application so provides: *Provided*, That
47 the one-hundred-foot restriction does not include berms,
48 drainage control structures and ways used for ingress and egress
49 to and from the minerals as herein defined and the transporta-
50 tion of the removed minerals, nor does it apply to the dredging
51 and removal of minerals from the streams or watercourses of
52 this state. The one hundred foot limitation may be waived only
53 when the director, upon consideration of local land uses, finds
54 that the land use of and near the permitted area will be signifi-
55 cantly enhanced by an alteration of the topography within the
56 one hundred foot barrier. Mineral removal shall be prohibited
57 within twenty-five feet of all property lines: *Provided, however*,
58 That the twenty-five foot setback area may, where appropriate,
59 be used for tree planting, berms, visual barriers, vegetation,
60 drainage structures, access rights-of-way or any other purposes
61 approved by the director: *Provided further*, That existing berms,

62 barriers, stockpiles, roads and other structures in existence
63 within the twenty-five foot setback prior to the effective date of
64 this section may remain in place. The permittee must provide
65 adequate revegetation within the setback, as is appropriate for
66 the intended use.

67 Whenever the director finds that ongoing quarry operations
68 are causing or are likely to cause any of the conditions set forth
69 in the first paragraph of this section, he or she may order
70 immediate cessation of such operations and he or she shall take
71 such other action or make such changes in the permit as he or
72 she may deem necessary to avoid said described conditions.

73 The failure of the director to discharge the mandatory duty
74 imposed by this section is subject to a writ of mandamus, in any
75 court of competent jurisdiction by any private citizen affected
76 thereby.

§22-4-9. Permit renewals and revisions.

1 (a) Any valid permit issued pursuant to this article carries
2 with it the right of successive renewal upon expiration with
3 respect to areas within the boundaries of the existing permit. All
4 permittees shall publish a Class I legal advertisement in
5 accordance with the provisions of article three, chapter fifty-
6 nine of this code.

7 (b) If an application for renewal of a valid permit includes
8 a proposal to extend the quarry mining operation beyond the
9 boundaries authorized in the existing permit, that portion of the
10 application for renewal which addresses any new land area is
11 subject to the requirements for permit modifications as pro-
12 vided in section ten of this article. Application for permit
13 renewal shall be made at least one hundred twenty days prior to
14 the expiration of the valid permit.

§22-4-10. Modification of permits.

1 (a) Prior to expanding or otherwise altering quarrying
2 operations beyond the activities authorized under an existing
3 quarry permit, a permittee shall obtain approval for modifica-
4 tion from the director. The application shall be in writing on
5 forms provided by the division, or the application may be
6 submitted electronically. Applicants shall verify electronic
7 submissions by signed affidavit. Information that remains
8 unchanged from the initial application is not required to be
9 resubmitted. A permit may be modified in any manner, so long
10 as the director determines that the modification fully meets the
11 requirements of all applicable federal and state law, regulations
12 and rules, and that the modifications would be consistent with
13 the issuance of the original permit.

14 (b) No modification of a permit which has been approved
15 by the director becomes effective until any required changes
16 have been made in the performance bond or other security
17 posted under the provisions of sections twenty or twenty-two of
18 this article to assure the performance of obligations assumed by
19 the permittee under the permit and the quarrying and reclama-
20 tion plan.

21 (c) A minor permit modification is one in which the
22 proposed modification would not cause a significant departure
23 from the terms and conditions of the existing permit and would
24 not result in a significant impact to the environment or to
25 nearby property.

26 (d) An application for a minor permit modification shall
27 require information related to the modification, any impact it
28 may have on the original permit area and adjacent property,
29 quarrying and reclamation plans, and any other information
30 deemed necessary by the director. An application for a minor
31 permit modification requires public notice, but does not require
32 a public hearing.

33 (e) Any application for a permit modification that is not a
34 minor permit modification is a major permit modification. An
35 application for a major permit modification must meet the same
36 requirements as for a new permit application. Modification of
37 a buffer zone of a quarry operation is always a major modifica-
38 tion.

39 (f) The director shall act upon the application for a permit
40 modification pursuant to the provisions of subsection (a) of
41 section six of this article.

42 (g) The director may deny the application for a permit
43 modification for the reasons and under the stated procedure as
44 for new permits set forth in sections seven and eight of this
45 article.

§22-4-11. Transfer of permits.

1 (a) When the interest of a permittee of any quarry operation
2 is sold, leased, assigned, or otherwise disposed of, the director
3 may transfer the permit and shall release the transferor from his
4 or her liabilities imposed by this article or rules issued under
5 this article if both the transferor and transferee have complied
6 with the requirements of this article and the transferee in
7 interest assumes the duties and responsibilities of the permit.
8 The transferee shall provide applicable information as required
9 by this article and shall meet public notice and comments
10 requirements as required for major permit modifications.

11 (b) The proposed transferee shall pay a five hundred dollar
12 fee with the filing of an application for transfer of permit.

13 (c) The director shall act upon the permit transfer as
14 expeditiously as possible but not later than thirty days after the
15 application forms and any supplemental information required
16 are filed with the director.

17 (d) The director may deny the permit transfer for any
18 reasons and under the same procedure set forth in sections
19 seven and eight of this article. If the applicant proposes any
20 change to the permit conditions, the director shall review the
21 application and treat it as a modification as provided in this
22 article.

23 (e) The director, for good cause shown, may allow transfer
24 of a revoked permit if the transferee complies with the require-
25 ments of this article and assumes the duties and responsibilities
26 of the permit.

27 (f) If the director denies an application to transfer a permit,
28 the director shall give the permittee and the proposed transferee
29 written notice of:

30 (1) The director's determination;

31 (2) Any changes in the application which would make it
32 acceptable; and

33 (3) The right of the permittee and the proposed transferee
34 to a hearing before either or both the director or the surface
35 mine board.

36 (g)(1) If a hearing before the director is not requested
37 within fifteen days after receipt of the director's notice of the
38 denial, the denial is the director's final order on the matter
39 appealable to the surface mine board.

40 (2) If a hearing before the director is requested within
41 fifteen days after receipt of the director's notice, the date for the
42 hearing may not be less than fifteen days nor more than thirty
43 days after the date of the request unless the parties mutually
44 agree on another date.

45 (3) The director shall enter a final order granting or denying
46 the transfer application within thirty days after the hearing.

§22-4-12. Pre-blast survey requirements.

1 (a) For all new permits issued after the effective date of this
2 section, at least thirty days prior to commencing blasting, an
3 operator or an operator's designee shall make the following
4 notifications in writing to all owners and occupants of protected
5 structures that the operator or operator's designee will perform
6 pre-blast surveys in accordance with subsection (f) of this
7 section. The required notifications shall be to all owners and
8 occupants of protected structures within one thousand five
9 hundred feet of the blasting area.

10 (b) For quarries in operation as of the effective date of this
11 section, the quarry operator within one year, shall conduct a
12 pre-blast survey of the first protected structure within one
13 thousand feet of the blasting area. Any property owner may, at
14 their own expense, pay for a pre-blast survey meeting the
15 provisions of this article, for his or her protected structure to
16 assess the impact of future blasts to those dwellings or struc-
17 tures by an existing quarry.

18 (c) An occupant or owner of a man-made dwelling or
19 structure within the areas described in subsection (a) of this
20 section, may waive the right to a pre-blast survey in writing. If
21 a dwelling is occupied by a person other than the owner, both
22 the owner and the occupant must waive the right to a pre-blast
23 survey in writing. If an occupant or owner of a man-made
24 dwelling or structure refuses to allow the operator or the
25 operator's designee access to the protected structure and refuses
26 to waive in writing the right to a pre-blast survey or to the
27 extent that access to any portion of the structure, underground
28 water supply or well is impossible or impractical under the
29 circumstances, the pre-blast survey shall indicate that access
30 was refused, impossible or impractical. The operator or the
31 operator's designee shall execute a sworn affidavit explaining
32 the reasons and circumstances surrounding the refusals.

33 (d) If a pre-blast survey was waived by the owner and was
34 within the requisite area and the property is sold, the new owner
35 may request a pre-blast survey from the operator.

36 (e) An owner within the requisite area may request, from
37 the operator, a pre-blast survey on structures constructed after
38 the original pre-blast survey.

39 (f) The pre-blast survey shall include:

40 (1) The names, addresses or description of structure
41 location and telephone numbers of the owner and the residents
42 of the structure being surveyed and the structure number from
43 the permit blasting map;

44 (2) The current home insurer of the owner and the residents
45 of the structure;

46 (3) The names, addresses and telephone numbers of the
47 operator and the permit number;

48 (4) The current general liability insurer of the operator;

49 (5) The name, address and telephone number of the person
50 or firm performing the pre-blast survey;

51 (6) The current general liability insurer of the person or
52 firm performing the pre-blast survey;

53 (7) The date of the pre-blast survey and the date it was
54 mailed or delivered to the director;

55 (8) A general description of the structure and its appurte-
56 nances including, but not limited to: (A) The number of stories;
57 (B) the construction materials for the frame and the exterior and
58 interior finish; (C) the type of construction including any
59 unusual or substandard construction; and (D) the approximate
60 age of the structure;

61 (9) A general description of the survey methods and the
62 direction of progression of the survey, including a key to
63 abbreviations used;

64 (10) Written documentation and drawings, videos or
65 photographs of the pre-blast defects and other physical condi-
66 tions of all structures, appurtenances and water sources which
67 could be affected by blasting;

68 (11) Written documentation and drawings, videos or
69 photographs of the exterior and interior of the structure to
70 indicate pre-blast defects and condition;

71 (12) Written documentation and drawings, videos or
72 photographs of the exterior and interior of any appurtenance of
73 the structure to indicate pre-blast defects and condition;

74 (13) Sufficient exterior and interior photographs or videos,
75 using a variety of angles, of the structure and its appurtenances
76 to indicate pre-blast defects and the condition of the structure
77 and appurtenances;

78 (14) Written documentation and drawings, videos or
79 photographs of any unusual or substandard construction
80 technique and materials used on the structure and/or its appurte-
81 nances;

82 (15) Written documentation relating to the type of water
83 supply, including a description of the type of system and
84 treatment being used, an analysis of untreated water supplies,
85 a water analysis of water supplies other than public utilities, and
86 information relating to the quantity and quality of water;

87 (16) When the water supply is a well, written documenta-
88 tion, where available, relating to the type of well; the well log;
89 the depth, age and type of casing or lining; the static water
90 level; flow data; the pump capacity; the drilling contractor; and
91 the source or sources of the documentation;

92 (17) A description of any portion of the structure and
93 appurtenances not documented or photographed and the
94 reasons;

95 (18) The signature of the person performing the survey; and

96 (19) Any other information required by the director which
97 additional information shall be established by rule in accor-
98 dance with article three, chapter twenty-nine-a of this code.

99 (g) The director may require a pre-blast survey as a
100 condition of a major permit modification, upon a finding that
101 the proposed blasting area will occur within one thousand five
102 hundred feet from a protected structure, and will be of a nature
103 and intensity to potentially cause blasting damage.

**§22-4-13. Blasting restrictions; blasting formula; filing preplan;
site specific blasting requirements; penalties; notice.**

1 (a) Where blasting of overburden or mineral is necessary,
2 the blasting shall be done in accordance with established
3 principles for preventing injury to persons and damage to
4 residences, buildings and communities, and comply with the
5 following:

6 (1) The weight in pounds of explosives to be detonated in
7 any period less than an eight millisecond period without seismic
8 monitoring shall conform to the following scaled distance
9 formula: $W = (D/50)^2$ (to the second power). Where W equals
10 weight in pounds of explosives detonated at any one instant
11 time, then D equals distance in feet from nearest point of blast
12 to nearest residence, building or structure, other than operation
13 facilities of the mine: *Provided*, That the scaled distance
14 formulas need not be used if a seismograph measurement is
15 located at the nearest protected structure is recorded and
16 maintained for every blast. If access to the structure is refused
17 by the owner of the protected structure, the measurement may
18 be taken as close as practicable between the blast site and the

19 protected structure. The peak particle velocity in inches per
 20 second in any one of the three mutually perpendicular direc-
 21 tions shall not exceed the following values at any protected
 22 structure:

23 **Seismograph Measurement Distance to the Nearest Pro-**
 24 **ected Structure**

25	1.25	0 - 300 feet
26	1.00	301 - 5,000 feet
27	0.75	5,001 feet or greater

28 The maximum ground vibration standards do not apply to
 29 the structures owned by the permittee and not leased to another
 30 person and structures owned by the permittee and leased to
 31 another person, if a written waiver by the lessee is submitted to
 32 the director before blasting.

33 (2) Airblast shall not exceed the maximum limits listed
 34 below at the location of any dwelling, public buildings, school
 35 or community or institutional building outside the permit area:

36 **Lower frequency limit of measuring**
 37 **system in Hz(+3dB) Maximum level in db**

38	1Hz or lower-flat response*	134 peak
39	2Hz or lower-flat response	133 peak
40	6Hz or lower-flat response	129 peak
41	c-weighted-slow response*	105 peak dBC

42 * only when approved by the director.

43 (3) Access to the blast area shall be controlled against the
 44 entrance of unauthorized personnel during blasting for a period

45 thereafter until an authorized person has reasonably determined
46 that:

47 (A) No unusual circumstances exist such as imminent slides
48 or undetonated charges, etc.; and

49 (B) Access to and travel in or through the area can be safely
50 resumed.

51 (4) A plan of each operation's methods for compliance with
52 this section (blast delay design) for typical blasts which shall be
53 adhered to in all blasting at each operation, shall be submitted
54 to the division of environmental protection with the application
55 for a permit. It shall be accepted if it meets the scaled distance
56 formula established in subdivision (1) of this section.

57 (5) Records of each blast shall be kept in a log to be
58 maintained for at least three years, which will show for each
59 blast the following information:

60 (A) Date and time of blast;

61 (B) Number of holes;

62 (C) Typical explosive weight per delay period;

63 (D) Total explosives in blast at any one time;

64 (E) Number of delays used;

65 (F) Weather conditions;

66 (G) Signature of operator employee in charge of the blast;

67 (H) Seismograph data; and

68 (I) Date of seismograph calibration.

69 (b) Blasting within one thousand feet of a protected
70 structure shall have a site specific blast design which may vary
71 from the requirements of this section as is approved by the

72 director. The site specific blast plan shall limit the type of
73 explosive and detonating equipment, the size, timing and
74 frequency of blasts to: Prevent injury to persons; prevent
75 damage to public and private property outside the permit area;
76 prevent adverse impacts to any underground mine; and to
77 minimize dust outside the permit area: *Provided*, That for
78 quarries permitted pursuant to section twenty-seven, site
79 specific blasting plan will not be required if not required as part
80 of its existing blasting plan, unless the director determines that
81 based on valid local complaints, the local conditions require a
82 site specific blasting plan.

83 (c) All assessments as set forth in this section shall be
84 assessed by the director, collected by the director and deposited
85 with the treasurer of the state of West Virginia, to the credit of
86 the quarry reclamation fund.

87 (d) The director shall propose legislative rules pursuant to
88 article three, chapter twenty-nine-a of this code which shall
89 provide for a warning of impending blasting to the owners,
90 residents or other persons who may be present on property
91 adjacent to the blasting area.

92 (e) Where inspection by the division of environmental
93 protection establishes that the scaled distance formula or the
94 seismograph results or the approved preplan are not being
95 adhered to, the following penalties shall be imposed:

96 (1) For the first offense in any one permit year under this
97 section, the permit holder shall be assessed not less than five
98 hundred dollars nor more than one thousand dollars;

99 (2) For the second offense in any one permit year under this
100 section, the permit holder shall be assessed not less than one
101 thousand dollars nor more than five thousand dollars;

102 (3) For the third offense in any one permit year under this
103 section or for the failure to pay any assessment herein above set

104 forth within a reasonable time established by the director, the
105 permit shall be revoked.

§22-4-14. Performance standards.

1 Each permit issued by the director pursuant to this article
2 shall require the quarry operation, at a minimum, to meet the
3 following performance standards:

4 (a) The operator shall impound, drain or treat all runoff
5 water so as to reduce soil erosion, damage to agricultural lands
6 and prevent unlawful pollution of streams and other waters. The
7 director shall require as a condition of a new permit, groundwa-
8 ter testing prior to and during quarrying. Tests shall be for both
9 quantity and quality of surrounding groundwaters. Groundwater
10 test sites above and below gradient of the proposed quarry shall
11 be established prior to quarrying to establish a six months
12 baseline for area groundwater. Test wells, seeps and springs
13 may be utilized as is appropriate. Monthly testing shall be done
14 prior to the beginning of quarrying, and quarterly monitoring
15 the first year of quarrying. Annual testing is to be done for an
16 additional four years. If no adverse impact to groundwater is
17 discovered, no further monitoring will be required. However,
18 upon subsequent discovery of possible adverse impact, the
19 director may require monthly monitoring and appropriate
20 remedial actions to be done by the permittee.

21 (b) In the case of storm water accumulations or any
22 breakthrough of water, adequate treatment shall be undertaken
23 by the operator so as to prevent pollution occurring from the
24 release of water. Treatment may include check-dams, settling
25 ponds and chemical or physical treatment. In the case of a
26 breakthrough of water, when it is possible, the water released
27 shall be impounded immediately. All water so impounded shall
28 receive adequate treatment by the operator before it is released
29 into the natural drainway.

30 (c) Water leaving the permit area is subject to the require-
31 ments of article eleven of this chapter.

32 (d) The permittee shall place a monument as prescribed by
33 the division in an approved location near the operation. If a
34 quarry operation is under a single permit and is not geographi-
35 cally continuous, the permittee shall locate additional monu-
36 ments and submit additional maps, as required by section five
37 of this article, before mining other permitted areas.

38 (e) The operator shall remove or properly dispose of all
39 metal, equipment and other refuse resulting from the operation.
40 No permittee may engage in or allow, the throwing, dumping,
41 piling or otherwise placing of any overburden, stones, rocks,
42 coal, mineral, earth, soil, dirt, debris, trees, wood, logs or other
43 materials or substances of any kind or nature beyond or outside
44 the area of land which is under permit for which bond has been
45 posted, unless it is placed on a site which has a permit allowing
46 that activity, nor may any operator place any of the foregoing
47 listed materials in a way that normal erosion or slides brought
48 about by natural physical causes will permit the same to go
49 beyond or outside the area of land which is under permit and for
50 which bond has been posted.

51 (f) Prior to beginning quarrying operations, the operator
52 shall install, certify, and maintain a drainage system in accor-
53 dance with the approved drainage control plan. Lateral drainage
54 ditches connecting to natural or man-made waterways shall be
55 constructed to control water runoff, prevent erosion and provide
56 adequate drainage control. The depth and width of natural
57 drainage ditches and any other diversion ditches may vary
58 depending on the length and degree of slope.

59 (g) When the planting of an area has been completed and
60 full or partial bond release is requested the operator shall file a
61 planting report with the director on a form to be prescribed and
62 furnished by the director providing the following information:

- 63 (1) Identification of the operation;
- 64 (2) The types and rate of application of planting or seeding,
65 including mixtures and amounts;
- 66 (3) Types and rates of fertilizer and any other chemicals
67 used or added to the soil;
- 68 (4) The date of planting or seeding;
- 69 (5) The area of land planted; and
- 70 (6) Other relevant information required by the director.

71 All planting shall be certified by the permittee, or by the
72 party with whom the permittee contracted for planting.

73 (h) All fill and cut slopes of the operation and haulage ways
74 shall be seeded and planted in a manner as prescribed by the
75 quarrying and reclamation plan.

76 (i) After quarrying is completed, the site will be stabilized
77 to prevent erosion. Stabilization may be accomplished by
78 vegetative cover or other means as approved in the quarrying
79 and reclamation plan. Rules proposed pursuant to this article
80 shall contain guidelines for establishing the various types of
81 stabilization.

82 (j) Planting shall be carried out so that it is completed
83 before the end of the first planting season. Vegetative planting
84 may be completed by the operator or the permittee may contract
85 with the local soil conservation district or a private contractor.
86 A revegetation schedule shall be incorporated into the quarrying
87 and reclamation plan.

88 (k) The operator may, where appropriate, use visual
89 screening methods such as berms, plantings, or fences which
90 may be placed within the buffer where conditions allow and
91 where the site is readily visible to the general public.

92 (l) If the permittee or other person desires to conduct
93 underground quarrying upon the premises or use underground
94 quarry surface haulage ways for other lawful purposes, the
95 permittee may designate locations to be used for these purposes
96 where it will not be necessary to backfill if required by the
97 permit, until the underground quarrying or other uses is
98 completed, during which time the bond on file for that portion
99 of that operations may not be released. Locations shall be
100 described on the map required by the provisions of section five
101 of this article.

102 (m) The operator shall also comply with all other permit
103 conditions and requirements of this article and any rules
104 promulgated thereunder.

§22-4-15. Groundwater protection.

1 The Groundwater Protection Act provisions contained in
2 subsection (b), section four, article twelve of this chapter do not
3 apply to mineral extraction areas of quarry mining sites
4 regulated under this article. All other areas of the mine,
5 including groundwater beneath the mineral extraction area, and
6 water discharges from the quarry shall meet the requirements of
7 article twelve of this chapter.

§22-4-16. Water rights and replacement; waiver of replacement.

1 (a) Nothing in this article affects the rights of any person to
2 enforce or protect, under applicable law, that person's interest in
3 water resources affected by removal of mineral resources.

4 (b) Any permittee shall replace the water supply of an owner
5 of interest in real property who obtains all or part of the owner's
6 supply of water for domestic, agricultural, industrial or other
7 legitimate use from an underground or surface source where the
8 supply has been affected by contamination, diminution or
9 interruption proximately caused by the mineral removal and
10 associated activities, unless right of replacement is waived by

11 the owner or unless the water supply is furnished by a public
12 service district, municipality, government entity or some other
13 third party.

14 (c) A public service district, municipality, government
15 entity, or other party may contract with a permittee to obtain
16 water and waive the replacement of water supply if contamina-
17 tion, diminution, or interruption should occur.

18 (d) If the director determines that: (1) Contamination,
19 diminution or damage to an owner's underground water supply
20 exists; and (2) the contamination, diminution, or damage to the

9 (b) The quarrying and reclamation plan is required to be
10 completed by a person approved by the director. It shall include
11 the following information:

12 (1) The purpose for which the land to be permitted was
13 previously used;

14 (2) The proposed useful purposes of the land following
15 completion of quarrying;

16 (3) A general description of the manner in which the land
17 is to be opened for quarrying and how the quarrying activity is
18 to progress across the permitted area and an approximate time
19 frame for reclamation of each area or phase of the quarrying;

20 (4) The manner in which topsoil is to be conserved and
21 used in reclamation and, if conditions do not permit conserva-
22 tion and restoration of all or part of the topsoil, an explanation
23 of the conditions and proposed alternative procedures;

24 (5) The description of the proposed final topography for the
25 applicant's proposed land use after reclamation is completed
26 and the proposed method of accomplishment;

27 (6) The practices to provide public safety for adjacent
28 properties and provisions for fencing, berms or other site
29 improvements reasonably necessary to assure safety at the
30 permitted site after mining and reclamation is completed; and

31 (7) The manner and type of revegetation or other surface
32 treatment of the disturbed area.

33 (c) An application for a permit shall indicate the existence
34 of known, threatened or endangered species located within the
35 proposed permit boundary as defined by federal Endangered
36 Species Act of 1973.

37 (d) The application shall provide the information on slope
38 gradient and fill plans as required in section eighteen of this
39 article.

§22-4-18. Land reclamation requirements.

1 (a) Quarries shall meet the final design requirements for
2 slopes and gradients:

3 (1) Final slope gradients of fill areas shall be designed
4 using recognized standards and certified by a professional
5 engineer or other approved professional specialist, except for
6 backfill within the mineral excavation pit area, where no
7 standard applies.

8 (2) The designed steepness and proposed treatment of the
9 final slopes shall take into consideration the physical properties
10 of the slope material, its probable maximum water content,
11 landscaping requirements and other factors and may range from
12 ninety degrees in a sound limestone or similar hard rock to less
13 than twenty degrees in unconsolidated materials.

14 (3) The quarrying and reclamation plan shall specify slope
15 angles flatter than the critical gradient for the type of material
16 involved.

17 (4) The toe of the proposed fill will rest on natural slopes
18 no steeper than twenty degrees unless a detailed geotechnical
19 study of the toe foundation area is completed. The results of this
20 study and subsequent stability evaluations must assure a static
21 safety factor of at least one and one-half. Engineering designs
22 for fills constructed on natural slopes steeper than twenty
23 degrees may require over excavation of the toe area to rock,
24 incorporation of toe buttresses or other engineered configura-
25 tions to enhance stability. The design and construction of all
26 fills proposed on natural slopes steeper than twenty degrees
27 shall be certified by a registered professional engineer.

28 (5) Constructed slope fills steeper than two horizontal to
29 one vertical must exhibit a static safety factor of one and
30 one-half.

31 (6) Fills may be constructed so that the outer slope shall be
32 no steeper than two horizontal to one vertical. A twenty foot
33 wide bench shall be installed at a maximum of every fifty feet
34 in vertical height of the fill with a one percent to five percent
35 slope toward a constructed protected channel or natural
36 drainway: *Provided*, That constructed fill slopes may be steeper
37 than two horizontal to one vertical if they meet a static safety
38 factor of one point five (1.5) and are certified by a registered
39 professional engineer

59 (c) Backfills, fills, cut slopes or highwalls that exist and are
60 part of a permit area prior to the effective date of this article are
61 not required to comply with subdivisions (1) through (8),
62 subsection (a) of this section. Permits issued prior to the
63 effective date of this section which contain the requirements of
64 subdivisions (1) and (2), subsection (a) or subsection (b) of this
65 section are not exempt unless modified by the division.

66 (d) The final land form shall be graded to provide positive
67 drainage throughout the permit area except areas that are to be
68 inundated in accordance with the quarrying and reclamation
69 plan map.

§22-4-19. Time period for reclamation.

1 (a) The operator shall commence the reclamation of the
2 incremental area of land disturbed by the operator after the
3 completion of all quarrying of that area in accordance with the
4 approved quarrying and reclamation plan. The quarrying and
5 reclamation plan for each operation shall be site specific in
6 describing how the quarrying and reclamation activities are to
7 be coordinated to minimize total land disturbance and to keep
8 reclamation operations as contemporaneous as possible with the
9 advance of the quarry operations. All quarry operations shall be
10 conducted in compliance with the approved quarrying and
11 reclamation plan and the requirements of this article.

12 (b) At the option of the permittee and with the director's
13 concurrence, a quarry permit may be inactive for a time so
14 specified by the director, during which no mineral or overbur-
15 den is removed if the following conditions are met:

16 (1) That economically viable mineral reserves remain in the
17 permitted area;

18 (2) All disturbed areas are reclaimed or stabilized to prevent
19 erosion and sedimentation;

20 (3) All drainage and sediment control structures, such as
21 culverts, ditches, sediment basins and traps are maintained; and

22 (4) All vegetation is maintained and reseeded as necessary.

23 (c) Any permit which is not in operation and has failed to
24 apply for inactive status within six months is deemed an
25 abandoned quarry.

§22-4-20. Fiscal responsibility.

1 (a) Each applicant must provide a certificate of insurance
2 issued by an insurance company authorized to do business in
3 this state for all operators at the site including blasting and

4 quarrying operators. Blasting insurance is not required of
5 quarry operations which do not conduct blasting. The coverage
6 shall include not less than one million dollars for personal
7 injury per occurrence, and not less than five hundred thousand
8 dollars for property damage per occurrence. Proof of continuing
9 insurance coverage shall be required on an annual basis. In
10 addition, the insurance company shall promptly notify the
11 director of any lapses, default, nonrenewal, cancellation, or
12 termination of coverage.

13 (b) Each applicant who makes application for a new permit
14 under section five of this article shall furnish a performance
15 bond after permit approval but before its issuance, on a form to
16 be prescribed and furnished by the director, payable to the state
17 of West Virginia and conditioned that the permittee faithfully
18 performs all of the requirements of this article. The bond or
19 bonds shall cover the entire area disturbed by quarrying plus the
20 estimated number of acres to be disturbed in the upcoming year.
21 As additional areas outside the bonded acreage are needed to
22 facilitate the quarry operation, the permittee shall file an
23 additional bond or bonds to cover the additional acreage with
24 the director. The bond shall be posted and accepted by the
25 director prior to disturbing an area for quarrying.

26 (c) The amount of the bond shall be at least one thousand
27 dollars for each acre or fraction of an acre of land to be dis-
28 turbed. The director shall determine the amount per acre of the
29 bond that is required before a permit is issued. The minimum
30 amount of bond required is ten thousand dollars.

31 (d) In lieu of a performance bond covering the entire
32 permitted area, the director may accept incremental bonding. If
33 incremental bonding is used, as succeeding increments of
34 quarry operations are to be initiated and conducted within the
35 permit area, the permittee shall file with the director an addi-
36 tional bond or bonds to cover the increments in accordance with
37 this section.

38 (e) The applicant may elect to execute the performance,
39 surety bonding, collateral bonding, establishment of an escrow
40 account, performance bonding fund participation, self-bonding
41 or a combination of these methods.

42 (f) If collateral bonding is used, the applicant may elect to
43 deposit cash, or collateral securities or certificates as follows:
44 Bonds of the United States or its possessions, of the federal land
45 bank, or of the homeowners' loan corporation; full faith and
46 credit general obligation bonds of the state of West Virginia, or
47 other states, and of any county, district or municipality of the
48 state of West Virginia or other states; or certificates of deposit

72 perform in the manner set forth in the approved quarrying and
73 reclamation plan or to reclaim the land as provided for in the
74 permit or upon revocation of the permit. The director shall
75 notify the permittee by certified mail, return receipt requested,
76 of its intention to initiate forfeiture proceedings. The permittee
77 has thirty days to request a hearing before the director. The
78 director shall render a decision within thirty days of the hearing.
79 Where the operation has deposited cash or securities as collat-
80 eral in lieu of corporate surety, the director shall declare said
81 collateral forfeited and shall direct the state treasurer to pay said
82 funds into the "quarry reclamation fund" as created in section
83 twenty-three of this article, to be used by the director to effect
84 proper reclamation and to defray the cost of administering this
85 article. Should any corporate surety fail to promptly pay in full
86 the forfeited bond, it is disqualified from writing any further
87 surety bonds under this article.

88 (i) Additional bond procedures shall be provided in
89 legislative rules proposed by the director and promulgated in
90 accordance with the provisions of chapter twenty-nine-a of this
91 code.

92 (j) The liability under the bond is for the duration of the
93 permit and for a period of two years after reclamation unless
94 previously released, in whole or part, as provided in section
95 twenty-one of this article.

§22-4-21. Release of bonds.

1 On completion of the reclamation, and after the require-
2 ments of the permit have been fully complied with, the director
3 shall release the bond. An amount of the bond or cash deposit,
4 proportioned to the reclaimed portion of the disturbed land in
5 ratio to all of the disturbed land covered by the permit, may be
6 released on application by the permittee and inspection and
7 approval by the director. Performance bonds shall be released
8 upon acceptance into the bond pooling fund and payment of the

9 required fees. Performance bonds for the transferor of a permit
10 shall be released after the transferee posts a bond acceptable to
11 the director.

§22-4-22. Bond pooling fund.

1 (a) Quarry operators who have operated for five years
2 without a serious violation under previous West Virginia
3 mining law or the provisions of this article, in lieu of the
4 bonding requirements of section twenty of this article, shall
5 contribute to the "Bond Pooling Fund," as provided in this
6 section.

7 (b) For each quarry, permittees contributing to the pool
8 shall make an initial payment to the fund of fifty dollars for
9 each acre currently disturbed plus each acre estimated to be
10 newly disturbed during the next ensuing year. Thereafter, the
11 permittee shall make an annual payment of twelve dollars and
12 fifty cents for each disturbed acre plus each acre estimated to be
13 newly disturbed during the next ensuing year. The payments
14 shall continue until the permittee has paid into the bond pooling
15 fund a total of one thousand dollars for each disturbed acre.

16 (c) There is hereby created in the state treasury a special
17 revenue fund known as the "Bond Pooling Fund". The fund
18 shall operate as a special fund whereby all deposits and
19 payments thereto do not expire to the general revenue fund, but
20 shall remain in the fund and be available for expenditure in
21 succeeding fiscal years. This fund shall consist of fees collected
22 by the director in accordance with the provisions of this article.
23 Interests of moneys from this fund shall be deposited in the
24 quarry reclamation fund as established in section twenty-three
25 of subsection (b) of this section. Interest earned on moneys in
26 this fund shall be deposited in the quarry reclamation fund as
27 established in section twenty-three of this article.

28 (d) No annual bond pooling fund deposits may be collected
29 from permittees where the permit bond pooling fund deposits

30 divided by the number of disturbed acres bonded is equal to or
31 greater than one thousand per acre.

32 (e) Permittee deposits into the bond pooling fund shall be
33 released under any of the following conditions:

34 (1) On completion of the quarrying and reclamation, and
35 after all permit requirements have been fully complied with, the
36 director shall return all bond pooling fund deposits to the
37 permittee consistent with the bonding release requirements of
38 section twenty-one of this article.

39 (2) When the bond pooling fund balance for a permittee
40 exceeds one thousand dollars for each disturbed acre and each
41 acre estimated to be disturbed during the next ensuing year the
42 director shall return the excess funds to the permittee.

43 (f) The interest transferred to the quarry reclamation fund
44 under subsection (c) of this section shall be used to reclaim
45 abandoned quarry lands as provided in section twenty-three of
46 this article.

47 (g) If a permit is revoked pursuant to this article the
48 payments that the permittee has made to the bond pooling fund
49 for that permit shall be forfeited. The director shall use those
50 forfeited payments for the reclamation of the quarry to which
51 it applied.

52 (h) If the cost of reclamation exceeds the amount of
53 payments the permittee shall be liable for the reclamation costs
54 that exceed the permittee's payments to the bond pooling fund.

§22-4-23. Quarry reclamation fund.

1 (a) All funds received by the division from forfeiture of
2 bonds, civil administrative penalties, or interest from the bond
3 pooling fund shall be deposited into a special interest-bearing
4 account in the state treasury designated the "Quarry Reclama-

5 tion Fund.” The quarry reclamation fund shall be used by the
6 division for reclamation of abandoned quarries.

7 (b) If the forfeiture of a performance bond or bonding pool
8 fund payments exceeds the cost of reclamation for which the
9 liability was charged, any excess amount shall be deposited into
10 the quarry reclamation fund.

11 (c) Reclamation projects that are to be financed by the
12 quarry reclamation fund shall be designed by the division.

13 (d) The director shall administer and approve all expendi-
14 tures from the quarry reclamation fund.

15 (e) The division shall compile a list of abandoned quarries
16 in the state and rank them in order of need for reclamation.

**§22-4-24. Orders, inspections and enforcement; permit revoca-
tion, damages, civil and criminal penalties.**

1 (a) The director may at reasonable times without prior
2 notice and upon presentation of appropriate credentials, enter
3 any quarry and conduct periodic inspections and examine any
4 required documentation to effectively implement and enforce
5 the provisions of this article and rules promulgated thereunder.

6 (b) Whenever the director finds that an ongoing quarry
7 operation is causing or is likely to cause imminent and substan-
8 tial harm to the environment, public safety, or public health, the
9 director may order immediate cessation of such operations, or
10 portions of operations, and shall take other action as is deemed
11 necessary to avoid adverse impact to the area.

12 (c) If the director, upon inspection or investigation ob-
13 serves, discovers or learns of a violation of this article, rules
14 promulgated thereunder, or any permit condition or order issued
15 under this article, he or she shall:

16 (1) Issue an order stating with reasonable specificity the
17 nature of the alleged violation and requiring compliance
18 immediately or within a specified time. An order under this
19 section includes, but is not limited to, any or all of the follow-
20 ing: Notice of noncompliance, orders suspending, revoking or
21 modifying permits, consent agreements which provide opportu-
22 nity for correction without further agency action, orders
23 requiring a permittee to take remedial action within a specified
24 time, and cease and desist orders;

25 (2) Seek an injunction in accordance with subsection (g) of
26 this section;

27 (3) Revoke the permit and pursue an appropriate remedy as
28 provided in this section;

29 (4) Institute a civil action in accordance with subsection (g)
30 of this section; or

31 (5) Request the prosecuting attorney of the county wherein
32 the alleged violation occurred, to bring an appropriate action,
33 either civil or criminal in accordance with subsection (g) or (h)
34 of this section.

35 (d) If the operator has not reached an agreement with the
36 director or has not complied with the requirements set forth in
37 the notice of noncompliance or order of suspension within the
38 time limits set therein, the permit may be revoked by order of
39 the director and the performance bond or contributions to the
40 bonding pooling fund shall then be forfeited. If an agreement
41 satisfactory to the director has not been reached within thirty
42 days after suspension of any permit, any and all suspended
43 permits shall then be declared revoked and the performance
44 bonds or contributions to the bond pooling fund with respect
45 thereto forfeited.

46 (e) Any person who violates any provision of this article,
47 any permit condition or any rule or order issued pursuant to this

48 article is subject to a civil administrative penalty, to be levied
49 by the director, of not more than five thousand dollars for each
50 day of such violation, not to exceed a maximum of twenty
51 thousand dollars. The director may accept in kind assessment
52 by reclamation of an abandoned quarry site in lieu of cash
53 payment of a civil administrative penalty.

54 In assessing any such penalty, the director shall take into
55 account the seriousness of the violation and any good faith
56 efforts to comply with the applicable requirements as well as
57 any other appropriate factors as may be established by rules
58 promulgated pursuant to this article and article three, chapter
59 twenty-nine-a of this code. No assessment shall be levied
60 pursuant to this subsection until after the alleged violator has
61 been notified by certified mail or personal service. The notice
62 shall include a reference to the section of the statute, rule, order
63 or statement of permit conditions that was allegedly violated, a
64 concise statement of the facts alleged to constitute the violation,
65 a statement of the amount of the administrative penalty to be
66 imposed and a statement of the alleged violator's right to an
67 informal hearing. The alleged violator has twenty calendar days
68 from receipt of the notice within which to deliver to the director
69 a written request for an informal hearing. If no hearing is
70 requested, the notice becomes a final order after the expiration
71 of the twenty-day period. If a hearing is requested, the director
72 shall inform the alleged violator of the time and place of the
73 hearing.

74 The director may appoint an assessment officer to conduct
75 the informal hearing and then make a written recommendation
76 to the director concerning the assessment of a civil administra-
77 tive penalty. Within thirty days following the informal hearing,
78 the director shall issue and furnish to the alleged violator a
79 written decision, and the reasons therefor, concerning the
80 assessment of a civil administrative penalty. Within thirty days
81 after notification of the director's decision, the alleged violator
82 may request a formal hearing before the surface mine board.

83 The authority to levy a civil administrative penalty is in
84 addition to all other enforcement provisions of this article and
85 the payment of any assessment does not affect the availability
86 of any other enforcement provision in connection with the
87 violation for which the assessment is levied. No combination
88 of assessments against a violator under this section shall exceed
89 five thousand dollars for each day of such violation: *Provided,*
90 That any violation for which the violator has paid a civil
91 administrative penalty assessed under this section shall not be
92 the subject of a separate civil penalty action under this article
93 to the extent of the amount of the civil administrative penalty
94 paid. All administrative penalties shall be levied in accordance
95 with this article and rules issued pursuant to this article. The net
96 proceeds of assessments collected pursuant to this subsection
97 shall be deposited in the quarry reclamation fund established in
98 section twenty-three of this article. No assessment levied
99 pursuant to this subsection becomes due and payable until the
100 procedures for review of such assessment as set out herein have
101 been completed.

102 (f) Any person who violates any provision of this article,
103 any permit condition, rule or order issued pursuant to this
104 article is subject to a civil penalty not to exceed five thousand
105 dollars for each day of such violation, which penalty shall be
106 recovered in a civil action either in the circuit court wherein the
107 violation occurs or in the circuit court of Kanawha County.

108 (g) The director may seek an injunction, or may institute a
109 civil action against any person in violation of any provisions of
110 this article or any permit condition, rule or order issued
111 pursuant to this article. In seeking an injunction, it is not
112 necessary for the director to post bond nor to allege or prove at
113 any stage of the proceeding that irreparable damage will occur
114 if the injunction is not issued or that the remedy at law is
115 inadequate. An application for injunctive relief or a civil
116 penalty action under this section may be filed and relief granted
117 notwithstanding the fact that all administrative remedies

118 provided for in this article have not been exhausted or invoked
119 against the person or persons against whom such relief is
120 sought.

121 (h) Any person who willfully or negligently violates the
122 provisions of this article, any permit condition or any rule or
123 order issued pursuant to this article is subject to the same
124 criminal penalties as set forth in section twenty-four, article
125 eleven of this chapter.

126 (i) Upon request of the director, the prosecuting attorney of
127 the county in which the violation occurs shall assist the director
128 in any civil or criminal action under this section.

129 (j) In any civil action brought pursuant to the provisions of
130 this section, the state, or any agency of the state which prevails,
131 may be awarded costs, reasonable attorney's fees, and, when a
132 permit has been revoked, any actual costs incurred by the
133 agency to complete reclamation of a permitted site above and
134 beyond moneys received as a result of bond forfeiture.

135 (k) In addition to and notwithstanding any other penalties
136 provided herein, any operator who directly causes damage to
137 the property of others as a result of quarrying is liable to them,
138 in an amount not in excess of three times the provable amount
139 of such damage, if and only if such damage occurs before or
140 within one year after such operator has completed all reclama-
141 tion work with respect to the land on which such quarrying was
142 carried out and all bonds of such operator with respect to such
143 reclamation work are released. Such damages are recoverable
144 in an action at law in any court of competent jurisdiction.

145 (l) The director may reinstate a revoked permit and allow
146 resumption of quarrying upon a finding that the circumstance
147 causing the revocation has been abated and the director has
148 determined that the cause of the revocation will not reoccur
149 upon reinstatement.

150 (m) It is unlawful for the owner or owners of surface rights
151 or the owner or owners of mineral rights to interfere with the
152 operator in the discharge of the operator's obligation to the state
153 for the reclamation of lands disturbed by the operator. The
154 director may initiate an action pursuant to either subsection (g)
155 or (h) of this section, to enforce this prohibition.

§22-4-25. Appeals to board.

1 Any person claiming to be aggrieved or adversely affected
2 by any ruling or order of the director or his or her failure to
3 enter an order may appeal to the surface mine board, pursuant
4 to the provisions of article one, chapter twenty-two-b of this
5 code, for an order vacating or modifying the ruling or order, or
6 for an order that the director should have entered.

§22-4-26. Required fees, quarry inspection and enforcement fund.

1 The permit application fee is one thousand dollars. The fee
2 for the original permit is one thousand dollars. The permit
3 renewal fee of five hundred dollars shall be submitted with the
4 renewal application and a progress report map. The fee for
5 transferring a permit is five hundred dollars. The fee for a
6 minor permit modification is two hundred dollars and for major
7 modifications, five hundred dollars. There is hereby created in
8 the state treasury a special revenue fund known as the "Quarry
9 Inspection and Enforcement Fund". The fund shall operate as
10 a special fund whereby all deposits and payments thereto do not
11 expire to the general revenue fund, but shall remain in the fund
12 and be available for expenditure in succeeding fiscal years. This
13 fund shall consist of fees collected by the director in accordance
14 with the provisions of this section, as well as interest earned on
15 investments made from moneys deposited in the fund. Moneys
16 from this fund shall be expended by the director for the
17 administration, permitting, enforcement, inspection, monitoring
18 and other activities required by this article.

§22-4-27. Exception for certain existing quarries.

1 (a) Quarries that are in operation on or before the effective
2 date of this article, shall comply with the following:

3 (1) Within two years of the effective date of this article, all
4 quarry operations shall submit to the director a quarrying and
5 reclamation plan to bring the facility into compliance with the
6 requirements of this article and any rules promulgated thereun-
7 der. These quarrying and reclamation plans shall include a
8 reasonable schedule, based on site specific conditions and the
9 nature of the quarry operation, to allow a transitional time
10 period to bring the operation into compliance with current
11 reclamation standards. Quarry areas that are disturbed on the
12 effective date of this article are exempt from further reclama-
13 tion requirements. For the purpose of this section, disturbed
14 areas include existing highwalls and all material vertically
15 below the surface of the area disturbed.

16 (2) Pre-blast survey and blasting plan requirements as
17 provided for existing quarries as provided by section twelve of
18 this article.

19 (3) Groundwater protection monitoring required by section
20 fourteen of this article will not be required if the director
21 verifies the operator's certification that no groundwater
22 problems at the quarry have occurred in the previous five years.

23 (b) The exclusions of this section are also applicable to
24 quarries permitted on or before the effective date of this article
25 and consolidated or renewed pursuant to subsection (f) of
26 section five of this article.

27 (c) Quarries in operation as of the effective date of this
28 article for the past five years without a serious permit violation,
29 shall participate in the bond pooling fund created in section
30 twenty-two of this article. All other operations shall comply
31 with the bonding requirements of section twenty of this article.

§22-4-28. Persons ineligible for a permit.

1 No public officer or employee in the division having any
2 responsibility or duty either directly or of a supervisory nature
3 with respect to the administration or enforcement of this article
4 may:

5 (1) Engage in quarrying as a sole proprietor or as a partner;

6 (2) Be an officer, director, stockholder, owner or part owner
7 of any corporation or other business entity engaged in quarry-
8 ing; or

9 (3) Be employed as an attorney, agent or in any other
10 capacity by any person, partnership, firm, association, trust or
11 corporation engaged in quarrying.

12 Any violation of this section by any public officer or
13 employee subject to the prohibitions contained in this section is
14 grounds for removal from office or dismissal from employment,
15 as the case may be.

§22-4-29. Exemptions.

1 (a) The provisions of this article do not apply to activities
2 of the West Virginia department of transportation or any legally
3 constituted public governing entities including municipal
4 corporations or other political subdivisions, including the
5 federal government, or to activities of any person acting under
6 contract with any of these public agencies or entities, on
7 highway rights-of-way or borrow pits owned, operated, or
8 maintained solely in connection with the construction, repair
9 and maintenance of the public roads system of the state or other
10 public facilities. This exemption does not become effective
11 until the public agencies or entities have adopted reclamation
12 standards applying to the activities.

13 (b) The provisions of this article do not apply to quarrying
14 on federal lands when performed under a valid permit from the
15 appropriate federal agency having jurisdiction over the land.

16 (c) The provisions of this article do not apply to the
17 following activities:

18 (1) Operations engaged only in processing minerals;

19 (2) Excavation or grading conducted solely in aid of on-site
20 farming or on-site construction for purposes other than quarry-
21 ing;

22 (3) Removal of overburden and of limited amounts of any
23 mineral when done only for the purpose of prospecting and to
24 the extent necessary to determine the location, quantity or
25 quality of any natural deposit, if no minerals are sold, processed
26 for sale or consumed in the regular operation of business;

27 (4) The handling, processing or storage of minerals on the
28 premises of a manufacturer as a part of any manufacturing
29 process that requires minerals as raw material;

30 (5) The removal or deposit of backfill material associated
31 with construction, farming and noncommercial activities;

32 (6) Noncommercial quarry operations by a landowner if the
33 disturbed area does not exceed one acre in area, upon notice to
34 the director by the owner of his or her intent to establish the
35 quarry.

CHAPTER 22B. ENVIRONMENTAL BOARDS.

ARTICLE 4. SURFACE MINE BOARD.

§22B-4-1. Appointment and organization of surface mine board.

§22B-4-2. Authority to receive money.

§ 22B-4-1. Appointment and organization of surface mine board.

1 (a) On and after the effective date of this article, the
2 “reclamation board of review,” heretofore created, shall
3 continue in existence and hereafter shall be known as the
4 “surface mine board.”

5 (b) The board shall be composed of seven members who
6 shall be appointed by the governor with the advice and consent
7 of the Senate. Not more than four members of the board shall
8 be of the same political party. Each appointed member of the
9 board who is serving in such capacity on the effective date of
10 this article shall continue to serve on the board until his or her
11 term ends or he or she resigns or is otherwise unable to serve.
12 As each member's term ends, or that member is unable to serve,
13 a qualified successor shall be appointed by the governor with
14 the advice and consent of the Senate. One of the appointees to
15 such board shall be a person who, by reason of previous
16 vocation, employment or affiliations, can be classed as one
17 capable and experienced in coal mining. One of the appointees
18 to such board shall be a person who, by reason of training and
19 experience, can be classed as one capable and experienced in
20 the practice of agriculture. One of the appointees to such board
21 shall be a person who by reason of training and experience, can
22 be classed as one capable and experienced in modern forestry
23 practices. One of the appointees to such board shall be a person
24 who, by reason of training and experience, can be classed as
25 one capable and experienced in engineering. One of the
26 appointees to such board shall be a person who, by reason of
27 training and experience, can be classed as one capable and
28 experienced in water pollution control or water conservation
29 problems. One of the appointees to such board shall be a person
30 with significant experience in the advocacy of environmental
31 protection. One of the appointees to such board shall be a
32 person who represents the general public interest: *Provided,*
33 That, in any case brought before the board relating to quarry
34 operations as regulated by article four of chapter twenty-two of
35 this code, two alternate board members will serve on the board
36 who have expertise related to the operation of quarries. These
37 two alternate members will serve in place of the board member
38 appointed due to his or her expertise in coal operations and the
39 board member which has been appointed due to his or her
40 expertise in forestry. Each alternative member shall have the

41 identical term as the member which he or she is replacing. The
42 alternative board member replacing the member with expertise
43 in coal shall be appointed based on his or her expertise in
44 quarry operations. The alternative board member replacing the
45 member with expertise in forestry shall be appointed based on
46 his or her expertise in geology.

47 (c) During his or her tenure on the board, no member shall
48 receive significant direct or indirect financial compensation
49 from or exercise any control over any person or entity which
50 holds or has held, within the two years next preceding the
51 member's appointment, a permit to conduct activity regulated
52 by the division, under the provisions of article three or four,
53 chapter twenty-two of this code, or any similar agency of any
54 other state or of the federal government: *Provided*, That the
55 member classed as experienced in coal mining, the member
56 classed as experienced in engineering, the member classed as
57 experienced in water pollution control or water conservation
58 problems and the two alternative board members serving to
59 hear quarry related cases may receive significant financial
60 compensation from regulated entities for professional services
61 or regular employment so long as the professional or employ-
62 ment relationship is disclosed to the board. No member shall
63 participate in any matter before the board related to a regulated
64 entity from which the member receives or has received, within
65 the preceding two years direct or indirect financial compensa-
66 tion. For purposes of this section, "significant direct or indirect
67 financial compensation" means twenty percent of gross income
68 for a calendar year received by the member, any member of his
69 or her immediate family or the member's primary employer.

70 (d) The members of the board shall be appointed for terms
71 of the same duration as their predecessor under the original
72 appointment of two members appointed to serve a term of two
73 years; two members appointed to serve a term of three years;
74 two members to serve a term of four years; and one member to
75 serve a term of five years. Any member whose term expires

76 may be reappointed by the governor. In the event a board
77 member is unable to complete the term, the governor shall
78 appoint a person with similar qualification to complete the
79 term. The successor of any board member appointed pursuant
80 to this article must possess the qualification as prescribed
81 herein. Each vacancy occurring in the office of a member of the
82 board shall be filled by appointment within sixty days after such
83 vacancy occurs.

§22B-4-2. Authority to receive money.

1 In addition to all other powers and duties of the surface
2 mine board, as prescribed in this chapter or elsewhere by law,
3 the board shall have and may exercise the power and authority
4 to receive any money as a result of the resolution of any case on
5 appeal. Moneys received from cases arising from the Surface
6 Mine Reclamation Act, as provided in article three of chapter
7 twenty-two shall be deposited to the credit of the special
8 reclamation fund created pursuant to section eleven, article
9 three, chapter twenty-two of this code. Moneys received from
10 cases arising from the Quarry Reclamation Act, as provided in
11 article four of chapter twenty-two of this code, shall be depos-
12 ited to the credit of the quarry reclamation fund created
13 pursuant to section twenty-two, article four, chapter twenty-two
14 of this code.

CHAPTER 174

(S. B. 433 — By Senators Anderson, Kessler, Fanning and Ross)

[Passed March 10, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend and reenact section one, article ten, chapter
twenty-two-a of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to emergency medical personnel; requiring emergency medical personnel in coal mines; emergency medical technician-mining certification; and modifying the definitions of emergency medical services personnel.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. EMERGENCY MEDICAL PERSONNEL.

§22A-10-1. Emergency personnel in coal mines.

1 (a) Emergency medical services personnel must be em-
2 ployed on each shift at every mine that:

3 (1) Employs more than ten employees; and

4 (2) Has more than eight persons present on the shift.

5 The emergency medical services personnel must be
6 employed at their regular duties at a central location or, when
7 more than one person is required pursuant to the provisions of
8 subsection (b) of this section, at a location which provides for
9 convenient, quick response to emergency. The emergency
10 medical services personnel must have available to them at all
11 times such equipment prescribed by the director of the office of
12 miners' health, safety and training, in consultation with the
13 commissioner of the bureau of public health.

14 (b) After the first day of July, two thousand, emergency
15 medical services personnel means any person certified by the
16 commissioner of the bureau of public health or authorities
17 recognized and approved by the commissioner, to provide
18 emergency medical services as authorized in article four-c,
19 chapter sixteen of this code and including emergency medical

20 technician-mining. At least one emergency medical services
21 personnel shall be employed at a mine for every fifty employees
22 or any part thereof who are engaged at any time, in the extrac-
23 tion, production or preparation of coal.

24 (c) A training course designed specifically for certification
25 of emergency medical technician-mining, shall be developed at
26 the earliest practicable time by the commissioner of the bureau
27 of public health in consultation with the board of miner
28 training, education and certification. The training course for
29 initial certification as an emergency medical technician-mining
30 shall not be less than sixty hours, which shall include, but is not
31 limited to, basic life support skills and emergency room
32 observation or other equivalent practical exposure to emergen-
33 cies as prescribed by the commissioner of the bureau of public
34 health.

35 (d) The maintenance of a valid emergency medical
36 technician-mining certificate may be accomplished without
37 taking a three-year recertification examination: *Provided*, That
38 the emergency medical technician-mining personnel completes
39 an eight-hour annual retraining and testing program prescribed
40 by the commissioner of the bureau of public health in consulta-
41 tion with the board of miner training, education and certifica-
42 tion.

CHAPTER 175

(H. B. 4139 — By Delegates Thompson and Staton)

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

AN ACT to amend and reenact sections one, two, four, seven, eight,
nine, ten, eleven, twelve, fourteen and seventeen, article seven-

teen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one hundred five, article one, chapter forty-six-a of said code; and to amend and reenact sections one hundred two and one hundred nine, article four of said chapter, all relating to the regulation of residential mortgage lenders and brokers; providing definitional changes; changing reference to secondary mortgage to primary and subordinate mortgages; eliminating the term restrictions on subordinate lien mortgage loans; requiring licenses for primary and subordinate mortgage brokers and lenders; establishing broker and lender licensing requirements, form of licenses, license fees, bonding and net worth requirements; extending present licenses for one year; limiting interest rates on subordinate loans; requiring rebate of unearned finance charges on loan prepayments; restricting charges unless loans made; requiring rebates on refinancing transactions by lenders and their affiliates; defining affiliates; prohibiting loan application fees; providing borrower protection provisions; prohibiting fees not disclosed to borrowers and for products and services not rendered; prohibit intimidation of appraisers; prohibit loans made with the intent of foreclosure; prohibit fees and points in excess of limits; prohibit certain loan practices; allowing compliance with federal disclosures to meet state law disclosure requirements; limiting interest rates on primary and subordinate loans; providing civil remedies for willful violations; providing excuses from inadvertent violations; allowing the commissioner to appoint a hearing examiner in contested cases; and providing similar restrictions and limitations on charges for refinancing transactions by regulated consumer lenders.

Be it enacted by the Legislature of West Virginia:

That sections one, two, four, seven, eight, nine, ten, eleven, twelve, fourteen and seventeen, article seventeen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section one hundred five, article one, chapter forty-six-a of said code be amended and reen-

acted; and that sections one hundred two and one hundred nine, article four of said chapter be amended and reenacted, all to read as follows:

Chapter

31. Corporations.

46A. West Virginia Consumer Credit and Protection Act.

CHAPTER 31. CORPORATIONS.

ARTICLE 17. MORTGAGE LOANS.

- §31-17-1. Definitions and general provisions.
- §31-17-2. License required for lender or broker; exemptions.
- §31-17-4. Applications for licenses; requirements; bonds; fees; renewals.
- §31-17-7. Form of license; posting required; license not transferable or assignable; license may not be franchised; renewal of license.
- §31-17-8. Maximum interest rate on subordinate loans; prepayment rebate; maximum points, fees and charges; overriding of federal limitations; limitations on lien documents; prohibitions on primary and subordinate mortgage loans; civil remedy.
- §31-17-9. Disclosure; closing statements; other records required.
- §31-17-10. Advertising requirements.
- §31-17-11. Records and reports; examination of records; analysis.
- §31-17-12. Grounds for suspension or revocation of license; suspension and revocation generally; reinstatement or new license.
- §31-17-14. Hearing before commissioner; provisions pertaining to hearing.
- §31-17-17. Loans made in violation of this article void; agreements to waive article void.

§31-17-1. Definitions and general provisions.

1 As used in this article:

2 (1) "Primary mortgage loan" means a loan made to an
3 individual which is secured in whole or in part by a primary
4 mortgage or deed of trust upon any interest in real property
5 used as a residential dwelling with accommodations for not
6 more than four families.

7 (2) "Subordinate mortgage loan" means a loan made to an
8 individual which is secured in whole or in part by a mortgage
9 or deed of trust upon any interest in real property used as a

10 residential dwelling with accommodations for not more than
11 four families, which property is subject to the lien of one or
12 more prior recorded mortgages or deeds of trust.

13 (3) "Person" means an individual, partnership, association,
14 trust, corporation or any other legal entity, or any combination
15 thereof.

16 (4) "Lender" means any person who makes or offers to
17 make or accepts or offers to accept or purchases any primary or
18 subordinate mortgage loan in the regular course of business. A
19 person shall be deemed to be acting in the regular course of
20 business if he or she makes or accepts, or offers to make or
21 accept, more than five primary or subordinate mortgage loans
22 in any one calendar year.

23 (5) "Broker" means any person acting in the regular course
24 of business who, for a fee or commission or other consideration,
25 negotiates or arranges, or who offers to negotiate or arrange, a
26 primary or subordinate mortgage loan between a lender and a
27 borrower. A person shall be deemed to be acting in the regular
28 course of business if he or she negotiates or arranges, or offers
29 to negotiate or arrange, more than five primary or subordinate
30 mortgage loans in any one calendar year; or if he or she seeks
31 to charge a borrower or receive from a borrower money or other
32 valuable consideration in any primary or subordinate mortgage
33 transaction before completing performance of all broker
34 services that he or she has agreed to perform for the borrower.

35 (6) "Brokerage fee" means the fee or commission or other
36 consideration charged by a broker for the services described in
37 subdivision (5) of this section.

38 (7) "Additional charges" means every type of charge arising
39 out of the making or acceptance of a primary or subordinate
40 mortgage loan, except finance charges, including, but not
41 limited to, official fees and taxes, reasonable closing costs and
42 certain documentary charges and insurance premiums and other

43 charges which definition is to be read in conjunction with, and
44 permitted by section one hundred nine, article three, chapter
45 forty-six-a of this code.

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

52 (9) "Commissioner" means the commissioner of banking of
53 this state.

54 (10) "Applicant" means a person who has applied for a
55 lender's or broker's license.

56 (11) "Licensee" means any person duly licensed by the
57 commissioner under the provisions of this article as a lender or
58 broker.

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

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

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

67 (c) If not included in the cash price:

68 (i) Any applicable sales, use, privilege, excise or documen-
69 tary stamp taxes;

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

72 (iii) Additional charges permitted by this article.

§31-17-2. License required for lender or broker; exemptions.

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

8 (b) The provisions of this article do not apply to loans made
9 by federally insured depository institutions, regulated consumer
10 lender licensees, insurance companies, or to loans made by any
11 other lender licensed by and under the supervision of any
12 agency of the federal government, or to loans made by, or on
13 behalf of, any agency or instrumentality of this state or federal
14 government or by a nonprofit community development organi-
15 zation which loans are subject to federal or state government
16 supervision and oversight. Loans made subject to this exemp-
17 tion may be assigned, transferred, sold or otherwise securitized
18 to any person and shall remain exempt from the provisions of
19 this article, except as to reporting requirements in the discretion
20 of the commissioner where the person is a licensee under this
21 article. Nothing herein shall prohibit a broker licensed under
22 this article from acting as broker of an exempt loan and
23 receiving compensation as permitted under the provisions of
24 this article.

25 (c) A person or entity designated in subsection (b) of this
26 section may take assignments of a primary or subordinate
27 mortgage loan from a licensed lender, and the assignments of
28 said loans that they themselves could have lawfully made as
29 exempt from the provisions of this article under this section do
30 not make that person or entity subject to the licensing, bonding,
31 reporting or other provisions of this article, except as such

32 defense or claim would be preserved pursuant to section one
33 hundred two, article two, chapter forty-six-a of this code.

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

**§31-17-4. Applications for licenses; requirements; bonds; fees;
renewals.**

1 (a) Application for a lender's or broker's license shall each
2 year be submitted in writing under oath, in the form prescribed
3 by the commissioner, and shall contain the full name and
4 address of the applicant and, if the applicant is a partnership,
5 limited liability company or association, of every member
6 thereof, and, if a corporation, of each officer, director and
7 owner of ten percent or more of the capital stock thereof, and
8 such further information as the commissioner may reasonably
9 require. Any application shall also disclose the location at
10 which the business of lender or broker is to be conducted.

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

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

16 (2) Submit proof that he or she has available for the
17 operation of the business at the location specified in the
18 application net assets of at least two hundred fifty thousand
19 dollars;

20 (3) File with the commissioner a bond in favor of the state
21 in the amount of one hundred thousand dollars, in such form
22 and with such conditions as the commissioner may prescribe,
23 and executed by a surety company authorized to do business in
24 this state;

25 (4) Pay to the commissioner a license fee of one thousand
26 two hundred fifty dollars. If the commissioner shall determine
27 that an investigation outside this state is required to ascertain
28 facts or information relative to the applicant or information set
29 forth in the application, the applicant may be required to
30 advance sufficient funds to pay the estimated cost of the
31 investigation. An itemized statement of the actual cost of the
32 investigation outside this state shall be furnished to the appli-
33 cant by the commissioner, and the applicant shall pay or shall
34 have returned to him or her, as the case may be, the difference
35 between his or her payment in advance of the estimated cost
36 and the actual cost of the investigation; and

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

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

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

48 (2) Submit proof that he or she has available for the
49 operation of the business at the location specified in the
50 application net worth of at least ten thousand dollars;

51 (3) File with the commissioner a bond in favor of the state
52 in the amount of twenty-five thousand dollars, in such form and
53 with such conditions as the commissioner may prescribe, and
54 executed by a surety company authorized to do business in this
55 state;

56 (4) Pay to the commissioner a license fee of one hundred
57 fifty dollars; and

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

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

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

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

1 (a) It shall be stated on the license whether it is a lender's
2 or broker's license, the location at which the business is to be
3 conducted and the full name of the licensee. A broker's license
4 shall be conspicuously posted in the licensee's place of business
5 in this state, and a lender's license shall be conspicuously
6 posted in the licensee's place of business if in this state. No

7 license shall be transferable or assignable. No licensee may
8 offer a franchise under that license to another person. The
9 commissioner may allow licensees to have branch offices
10 without requiring additional licenses provided the location of
11 all branch offices are registered with the division of banking by
12 the licensee. Whenever a licensee changes his place of business
13 to a location other than that set forth in his license and branch
14 registration, he shall give written notice thirty days prior to such
15 change to the commissioner.

16 (b) Every lender's or broker's license shall, unless sooner
17 suspended or revoked, expire on December thirty-first of each
18 year, and any such license may be renewed each year in the
19 same manner, for the same license fee or fees specified above
20 and upon the same basis as an original license is issued in
21 accordance with the provisions of section five of this article. All
22 applications for the renewal of licenses shall be filed with the
23 commissioner at least ninety days before the expiration thereof.

24 (c) The amendments to this article in the year two thousand
25 are effective on and after the first day of July, two thousand.
26 Licenses previously issued and in effect on the first day of July,
27 two thousand, shall be extended for one year and, unless sooner
28 suspended or revoked, shall expire on the thirty-first day of
29 December, two thousand one. Any person, not already licensed,
30 who is operating as a broker or lender on the first day of July,
31 two thousand, and who is registered with the secretary of state
32 to do business in the state, may file an application with the
33 commissioner on or before the first day of August, two thou-
34 sand. If issued, such licenses shall, unless sooner suspended or
35 revoked, expire on the thirty-first day of December, two
36 thousand one.

**§31-17-8. Maximum interest rate on subordinate loans; prepay-
ment rebate; maximum points, fees and charges;
overriding of federal limitations; limitations on**

lien documents; prohibitions on primary and subordinate mortgage loans; civil remedy.

1 (a) The maximum rate of finance charges on or in connec-
2 tion with any subordinate mortgage loan shall not exceed
3 eighteen percent per year on the unpaid balance of the amount
4 financed.

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

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

15 (d) Where loan origination fees, investigation fees, points,
16 have been charged by the licensee, such charges may not be
17 imposed again by the same or affiliated lender in any refinanc-
18 ing of that loan or any additional loan on that property made
19 within twenty-four months thereof, unless these earlier charges
20 have been rebated by payment or credit to the consumer under
21 the actuarial method, or the total of the earlier and current
22 charges does not exceed the limitation specified in subsection
23 (m)(4) of this section. To the extent this subdivision overrides
24 the preemption on limiting points and other charges on first lien
25 residential mortgage loans contained in the United States
26 Depository Institutions Deregulation and Monetary Control Act
27 of 1980, 12 U.S.C. §1735f-7a, the state law limitations con-
28 tained in this section shall apply. "Affiliated" means persons
29 under the same ownership or management control. As to
30 corporations, limited liability companies or partnerships, where
31 common owners manage or control a majority of the stock,

32 membership interests or general partnership interests of one or
33 more such corporations, limited liability companies or partner-
34 ships, those persons shall be deemed affiliated. In addition,
35 persons under the ownership or management control of the
36 members of an immediate family shall be considered affiliated.
37 For purposes of this section "immediate family" means mother,
38 stepmother, father, stepfather, sister, stepsister, brother, step-
39 brother, spouse, child and grandchildren.

40 (e) Notwithstanding other provisions of this section, a
41 delinquent or "late charge" may be charged on any installment
42 made ten or more days after the regularly scheduled due date in
43 accordance with section one hundred twelve or one hundred
44 thirteen, article three, chapter forty-six-a of this code, which-
45 ever is applicable. The charge may be made only once on any
46 one installment during the term of the primary or subordinate
47 mortgage loan.

48 (f) Hazard insurance may be required by the lender, and
49 other types of insurance may be offered, as provided in section
50 one hundred nine, article three, chapter forty-six-a of this code.
51 The charges for any insurance shall not exceed the standard rate
52 approved by the insurance commissioner for such insurance.
53 Proof of all insurance in connection with primary and subordi-
54 nate mortgage loans subject to this article shall be furnished to
55 the borrower within thirty days from and after the date of
56 application therefor by said borrower.

57 (g) Except for fees for services provided by independent
58 third parties for appraisals, inspections, title searches and credit
59 reports, no application fee may be allowed whether or not the
60 mortgage loan is consummated; however, the borrower may be
61 required to reimburse the lender for actual expenses incurred by
62 the lender in a purchase money transaction after acceptance and
63 approval of a mortgage loan proposal made in accordance with
64 the provisions of this article which is not consummated because
65 of:

66 (1) The borrower's willful failure to close said loan; or

67 (2) The borrower's false or fraudulent representation of a
68 material fact which prevents closing of said loan as proposed.

69 (h) No licensee shall make, offer to make, accept or offer to
70 accept, any primary or subordinate mortgage loan except on the
71 terms and conditions authorized in this article.

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

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

80 (1) Any power of attorney to confess judgment;

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

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

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

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

94 (6) Blank or blanks to be filled in after the consummation
95 of the loan.

96 (k) No licensee shall charge a borrower or receive from a
97 borrower money or other valuable consideration as compensa-
98 tion before completing performance of all services the licensee
99 has agreed to perform for the borrower, unless the licensee also
100 registers and complies with all requirements set forth for credit
101 service organizations in article six-c, chapter forty-six-a of this
102 code, including all additional bonding requirements as may be
103 established therein.

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

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

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

123 (2) Compensate, whether directly or indirectly, coerce or
124 intimidate an appraiser for the purpose of influencing the
125 independent judgment of the appraiser with respect to the value
126 of real estate that is to be covered by a deed of trust or is being

127 offered as security according to an application for a primary or
128 subordinate mortgage loan;

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

135 (4) Require the borrower to pay, in addition to any periodic
136 interest, combined fees and points of any kind to the lender and
137 broker to arrange, originate, evaluate, maintain or service a loan
138 secured by any encumbrance on residential property that
139 exceed, in the aggregate, five percent of the loan amount
140 financed: *Provided*, That reasonable closing costs payable to
141 unrelated third parties as permitted under section one hundred
142 nine, article three, chapter forty-six-a of this code shall not be
143 included within this limitation: *Provided, however*, That yield
144 spread premiums or compensation of two points or less paid by
145 the lender to the broker shall not be included in this limitation:
146 *Provided further*, That no yield spread premium shall be
147 permitted for any loan for which the annual percentage rate
148 exceeds eighteen percent per year on the unpaid balance of the
149 amount financed. The financing of the fees and points shall be
150 permissible and, where included as part of the finance charge,
151 does not constitute charging interest on interest. To the extent
152 that this section overrides the preemption on limiting points and
153 other charges on first lien residential mortgage loans contained
154 in the United States Depository Institutions Deregulation and
155 Monetary Control Act of 1980, 12 U.S.C. §1735f-7a, the state
156 law limitations contained in this section shall apply;

157 (5) Secure a primary or subordinate mortgage loan by any
158 security interest in personal property unless the personal
159 property is affixed to the residential dwelling or real estate;

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

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

171 (8) Secure a primary or subordinate mortgage loan in a
172 principal amount, that when added to the aggregate total of the
173 outstanding principal balances of all other primary or subordi-
174 nate mortgage loans secured by the same property, exceeds the
175 fair market value of the property on the date that the latest
176 mortgage loan is made. For purposes of this paragraph, a broker
177 or lender may rely upon a bona fide written appraisal of the
178 property made by an independent third-party appraiser, or other
179 evidence of fair market value, if the broker or lender does not
180 have actual knowledge that the value is incorrect;

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

184 (10) Knowingly violate any provision of any other applica-
185 ble state or federal law regulating primary or subordinate
186 mortgage loans, including, without limitation, chapter forty-six-
187 a of this code.

§31-17-9. Disclosure; closing statements; other records required.

1 (a) Any licensee or person making on his own behalf, or as
2 agent, broker or in other representative capacity on behalf of
3 any other person, a primary or subordinate mortgage loan shall

4 at the time of the closing furnish to the borrower a complete and
5 itemized closing statement which shall show in detail:

6 (1) The amount and date of the note or primary and
7 subordinate mortgage loan contract and the date of maturity;

8 (2) The nature of the security;

9 (3) The finance charge rate per annum and the itemized
10 amount of finance charges and additional charges;

11 (4) The amount financed and total of payments;

12 (5) Disposition of the principal;

13 (6) A description of the payment schedule;

14 (7) The terms on which additional advances, if any, will be
15 made;

16 (8) The charge to be imposed for past-due installments;

17 (9) A description and the cost of insurance required by the
18 lender or purchased by the borrower in connection with the
19 primary or subordinate mortgage loan;

20 (10) The name and address of the borrower and of the
21 lender; and

22 (11) That the borrower may prepay the primary or subordi-
23 nate mortgage loan in whole or in part on any installment date,
24 and that the borrower will receive a rebate in full for any
25 unearned finance charge.

26 Such detailed closing statement shall be signed by the
27 broker, lender or closing representative, and a completed and
28 signed copy thereof shall be retained by the broker or lender
29 and made available at all reasonable times to the borrower, the
30 borrower's successor in interest to the residential property, or
31 the authorized agent of the borrower or the borrower's succes-

32 sor, until the time as the indebtedness shall be satisfied in full.
33 Compliance with residential mortgage disclosures required by
34 federal law shall be deemed to meet the requirements of this
35 subsection.

36 The commissioner may, from time to time, by rules
37 prescribe additional information to be included in a closing
38 statement.

39 (b) Upon written request from the borrower, the holder of
40 a primary or subordinate mortgage loan instrument shall deliver
41 to the borrower, within ten business days from and after receipt
42 of the written request, a statement of the borrower's account as
43 required by subsection two, section one hundred fourteen,
44 article two, chapter forty-six-a of this code.

45 (c) Upon satisfaction of a primary or subordinate mortgage
46 loan obligation in full, the holder of the instrument evidencing
47 or securing the obligation shall comply with the requirements
48 of section one, article twelve, chapter thirty-eight of this code
49 in the prompt release of the lien which had secured the primary
50 or subordinate mortgage loan obligation.

51 (d) Upon written request or authorization from the bor-
52 rower, the holder of a primary or subordinate mortgage loan
53 instrument shall send or otherwise provide to the borrower or
54 his or her designee, within three business days after receipt of
55 the written request or authorization, a payoff statement of the
56 borrower's account. Except as provided by this subsection, no
57 charge may be made for providing the payoff statement.
58 Charges for the actual expenses associated with using a third-
59 party courier delivery or expedited mail delivery service may be
60 assessed when this type of delivery is requested and authorized
61 by the borrower, following disclosure to the borrower of its
62 cost. The payoff information shall be provided by mail,
63 telephone, courier, facsimile, or other transmission as requested
64 by the borrower or his or her designee.

§31-17-10. Advertising requirements.

1 It shall be unlawful and an unfair trade practice for any
2 person to cause to be placed before the public in this state,
3 directly or indirectly, any false, misleading or deceptive
4 advertising matter pertaining to primary or subordinate mort-
5 gage loans or the availability thereof: *Provided*, That this
6 section shall not apply to the owner, publisher, operator or
7 employees of any publication or radio or television station
8 which disseminates such advertising matter without actual
9 knowledge of the false or misleading character thereof.

§31-17-11. Records and reports; examination of records; analysis.

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

13 (b) Each licensee shall file with the commissioner on or
14 before the fifteenth day of March of each year a report under
15 oath or affirmation concerning his or her business and opera-
16 tions in this state for the preceding license year in the form
17 prescribed by the commissioner.

18 (c) The commissioner may, at his or her discretion, make or
19 cause to be made an examination of the books, accounts and
20 records of every licensee pertaining to primary and subordinate
21 mortgage loans made in this state under the provisions of this
22 article, for the purpose of determining whether each licensee is

23 complying with the provisions hereof and for the purpose of
24 verifying each licensee's annual report. If the examination is
25 made outside this state, the licensee shall pay the cost thereof
26 in like manner as applicants are required to pay the cost of
27 investigations outside this state.

28 (d) The commissioner shall publish annually an aggregate
29 analysis of the information furnished in accordance with the
30 provisions of subsection (b) or (c) of this section, but the
31 individual reports shall not be public records and shall not be
32 open to public inspection.

**§31-17-12. Grounds for suspension or revocation of license;
suspension and revocation generally; reinstatement
or new license.**

1 (a) The commissioner may suspend or revoke any license
2 issued hereunder if he or she finds that the licensee and/or any
3 owner, director, officer, member, partner, stockholder, em-
4 ployee or agent of such licensee:

5 (1) Has knowingly violated any provision of this article or
6 any order, decision or rule of the commissioner lawfully made
7 pursuant to the authority of this article; or

8 (2) Has knowingly made any material misstatement in the
9 application for such license; or

10 (3) Does not have available the net worth required by the
11 provisions of section four of this article; or

12 (4) Has failed or refused to keep the bond required by
13 section four of this article in full force and effect; or

14 (5) In the case of a foreign corporation, does not remain
15 qualified to do business in this state; or

16 (6) Has committed any fraud or engaged in any dishonest
17 activities with respect to any mortgage loan business in this

18 state, or failed to disclose any of the material particulars of any
19 mortgage loan transaction in this state to anyone entitled to the
20 information; or

21 (7) Has otherwise demonstrated bad faith, dishonesty or any
22 other quality indicating that the business of the licensee in this
23 state has not been or will not be conducted honestly or fairly
24 within the purpose of this article. It shall be a demonstration of
25 bad faith and an unfair or deceptive act or practice to engage in
26 a pattern of making loans where the consumer has insufficient
27 sources of income to timely repay the debt, and the lender had
28 the primary intent to acquire the property upon default rather
29 than to derive profit from the loan. This section shall not limit
30 any right the consumer may have to bring an action for a
31 violation of section one hundred four, article six, chapter forty-
32 six-a of this code in an individual case.

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

41 (b) The suspension or revocation of the license of any
42 licensee shall not impair or affect the obligation of any preexist-
43 ing lawful mortgage loan between such licensee and any obligor.

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

§31-17-14. Hearing before commissioner; provisions pertaining to hearing.

1 (a) Any applicant or licensee, as the case may be, adversely
2 affected by an order made and entered by the commissioner in
3 accordance with the provisions of section thirteen of this article,
4 if not previously provided the opportunity to a hearing on the
5 matter, may in writing demand a hearing before the commis-
6 sioner. The commissioner may appoint a hearing examiner to
7 conduct the hearing and prepare a recommended decision. The
8 written demand for a hearing must be filed with the commis-
9 sioner within thirty days after the date upon which the applicant
10 or licensee was served with a copy of such order. The timely
11 filing of a written demand for hearing shall stay or suspend
12 execution of the order in question, pending a final determina-
13 tion, except for an order suspending a license for failure of the
14 licensee to maintain the bond required by section four of this
15 article in full force and effect. If a written demand is timely
16 filed as aforesaid, the aggrieved party shall be entitled to a
17 hearing as a matter of right.

18 (b) All of the pertinent provisions of article five, chapter
19 twenty-nine-a of this code shall apply to and govern the hearing
20 and the administrative procedures in connection with and
21 following such hearing, with like effect as if the provisions of
22 said article were set forth in extenso in this subsection.

23 (c) For the purpose of conducting any such hearing hereun-
24 der, the commissioner or appointed hearing examiner shall have
25 the power and authority to issue subpoenas and subpoenas
26 duces tecum, in accordance with the provisions of section one,
27 article five, chapter twenty-nine-a of this code. All subpoenas
28 and subpoenas duces tecum shall be issued and served in the
29 manner, within the time and for the fees and shall be enforced,
30 as specified in said section, and all of the said section provi-
31 sions dealing with subpoenas and subpoenas duces tecum shall

32 apply to subpoenas and subpoenas duces tecum issued for the
33 purpose of a hearing hereunder.

34 (d) Any such hearing shall be held within twenty days after
35 the date upon which the commissioner received the timely
36 written demand therefor, unless there is a postponement or
37 continuance. The commissioner or hearing examiner may
38 postpone or continue any hearing on his or her own motion, or
39 for good cause shown upon the application of the aggrieved
40 party. At any such hearing, the aggrieved party may represent
41 himself or herself or be represented by any attorney-at-law
42 admitted to practice before any circuit court of this state.

43 (e) After such hearing and consideration of all of the
44 testimony, evidence and record in the case, the commissioner
45 shall make and enter an order affirming, modifying or vacating
46 his or her earlier order, or shall make and enter such order as is
47 deemed appropriate, meet and proper. Such order shall be
48 accompanied by findings of fact and conclusions of law as
49 specified in section three, article five, chapter twenty-nine-a of
50 this code, and a copy of such order and accompanying findings
51 and conclusions shall be served upon the aggrieved party and
52 his attorney of record, if any, in person or by certified mail,
53 return receipt requested, or in any other manner in which
54 process in a civil action in this state may be served. The order
55 of the commissioner shall be final unless vacated or modified
56 on judicial review thereof in accordance with the provisions of
57 section fifteen of this article.

**§31-17-17. Loans made in violation of this article void; agree-
ments to waive article void.**

1 (a) If any primary or subordinate mortgage loan is made in
2 willful violation of the provisions of this article, except as a
3 result of a bona fide error, such loan may be canceled by a court
4 of competent jurisdiction.

5 (b) Any agreement whereby the borrower waives the
6 benefits of this article shall be deemed to be against public
7 policy and void.

8 (c) Any residential mortgage loan transaction in violation
9 of this article shall be subject to an action, which may be
10 brought in a circuit court having jurisdiction, by the borrower
11 seeking damages, reasonable attorneys fees and costs.

12 (d) A licensee who, when acting in good faith in a lending
13 transaction, inadvertently and without intention, violates any
14 provision of this article or fails to comply with any provision of
15 this article, will be excused from such violation if within thirty
16 days of becoming aware of such violation, or being notified of
17 such violation, and prior to the institution of any civil action or
18 criminal proceeding against the licensee, the licensee notifies
19 the borrower of the violation, makes full restitution of any
20 overcharges, and makes all other adjustments as are necessary
21 to make the lending transaction comply with this article.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

Article

- 1. Short Title, Definitions and General Provisions.**
- 4. Regulated Consumer Lenders.**

ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS.

§46A-1-105. Exclusions.

- 1 (a) This chapter does not apply to:
 - 2 (1) Extensions of credit to government or governmental
3 agencies or instrumentalities;
 - 4 (2) The sale of insurance by an insurer, except as otherwise
5 provided in this chapter;

6 (3) Transactions under public utility or common carrier
7 tariffs if a subdivision or agency of this state or of the United
8 States regulates the charges for the services involved, the
9 charges for delayed payment, and any discount allowed for
10 early payment; or

11 (4) Licensed pawnbrokers.

12 (b) Mortgage lender and broker licensees are excluded from
13 the provisions of this chapter to the extent those provisions
14 directly conflict with any section of article seventeen, chapter
15 thirty-one of this code.

ARTICLE 4. REGULATED CONSUMER LENDERS.

§46A-4-102. License to make regulated consumer loans.

§46A-4-109. Restrictions on interest in land as security; assignment of earnings to regulated consumer lender prohibited; when security interest on household furniture goods not valid; prohibitions as to renegotiation of loan discharged in bankruptcy; limiting fees on real property loan refinancings; maximum points, fees and charges; overriding of federal limitations; limitations on lien documents prohibitions on residential mortgage loans; providing civil remedy.

§46A-4-102. License to make regulated consumer loans.

1 (1) The commissioner shall receive and act on all applica-
2 tions for licenses to make regulated consumer loans under this
3 chapter. Applications shall be under oath, be filed in the manner
4 prescribed by the commissioner, and contain the information
5 the commissioner requires to make an evaluation of the
6 financial responsibility, experience, character and fitness of the
7 applicant, and the findings required of him before he may issue
8 a license. At the time of the filing of the application, the sum of
9 seven hundred fifty dollars shall be paid to the commissioner as
10 an investigation fee.

11 (2) No license shall be issued to a supervised financial
12 organization other than to one primarily engaged in the business
13 of making consumer loans through offices located within this

14 state, or to one licensed under the provisions of the West
15 Virginia mortgage loan act as contained in article seventeen,
16 chapter thirty-one of this code, or to any banking institution as
17 defined by the provisions of section two, article one, chapter
18 thirty-one-a of this code. No license will be granted to any
19 office located outside this state: *Provided*, That the limitation
20 of licensing contained in this subsection shall not prevent any
21 supervised financial organization from making regulated
22 consumer loans when the applicable state or federal statute,
23 law, rule or regulation permits. No license shall be issued to any
24 person unless the commissioner, upon investigation, finds that
25 the financial responsibility, experience, character and fitness of
26 the applicant, and of the members thereof (if the applicant is a
27 copartnership or association) and of the officers and directors
28 thereof (if the applicant is a corporation), are such as to
29 command the confidence of the community and to warrant
30 belief that the business will be operated honestly, fairly and
31 efficiently, within the purposes of this chapter, and the appli-
32 cant has available for the operation of the business at least ten
33 thousand dollars in capital and has, for each specified location
34 of operation assets of at least two thousand dollars.

35 (3) Upon written request, the applicant is entitled to a
36 hearing on the question of his qualifications for a license if: (a)
37 The commissioner has notified the applicant in writing that his
38 application has been denied; or (b) the commissioner has not
39 issued a license within sixty days after the application for the
40 license was filed. A request for a hearing may not be made
41 more than fifteen days after the commissioner has mailed a
42 writing to the applicant notifying him that the application has
43 been denied and stating in substance the commissioner's
44 findings supporting denial of the application.

45 (4) Not more than one place of business shall be maintained
46 under the same license, but the commissioner may issue more
47 than one license to the same licensee upon compliance with all

48 the provisions of this article governing an original issuance of
49 a license, for each such new license. Each license shall remain
50 in full force and effect until surrendered, forfeited, suspended
51 or revoked.

52 (5) Upon giving the commissioner at least fifteen days'
53 prior written notice, a licensee may: (a) Change the location of
54 any place of business located within a municipality to any other
55 location within that same municipality; or (b) change the
56 location of any place of business located outside of a municipal-
57 ity to a location no more than five miles from the originally
58 licensed location, but in no case may a licensee move any place
59 of business located outside a municipality to a location within
60 a municipality. A licensee may not move the location of any
61 place of business located within a municipality to any other
62 location outside of that municipality.

63 (6) A licensee may conduct the business of making regu-
64 lated consumer loans only at or from a place of business for
65 which he holds a license and not under any other name than that
66 stated in the license.

67 (7) A license issued under the provisions of this section
68 shall not be transferable or assignable.

69 (8) A licensee must be incorporated under the laws of this
70 state. The licensee may, however, be a subsidiary of an out-of-
71 state company or financial institution.

**§46A-4-109. Restrictions on interest in land as security; assign-
ment of earnings to regulated consumer lender prohibited; when security interest on household
furniture goods not valid; prohibitions as to renegotiation of loan discharged in bankruptcy;
limiting fees on real property loan refinancings; maximum points, fees and charges; overriding of
federal limitations; limitations on lien documents**

prohibitions on residential mortgage loans; providing civil remedy.

1 (1) No consumer loan of two thousand dollars or less may
2 be secured by an interest in land, other than a purchase money
3 loan for that land, unless the lender is licensed in this state as a
4 regulated consumer lender or as a mortgage lender, or is a
5 federally insured depository institution permitted to conduct
6 lending in West Virginia. A security interest taken in violation
7 of this subsection is void.

8 (2) Notwithstanding the provisions of section one hundred
9 sixteen, article two of this chapter, no regulated consumer
10 lender shall take any assignment of or order for payment of any
11 earnings to secure any loan made by any regulated consumer
12 lender under this article. An assignment or order taken in
13 violation of this subsection is void. This subsection does not
14 prohibit a court from ordering a garnishment to affect recovery
15 of moneys owed by a borrower to a lender as part of a judgment
16 in favor of said lender.

17 (3) Other than for a purchase money lien, no regulated
18 consumer lender may take a security interest in household
19 goods in the possession and use of the borrower. Where federal
20 law permits a security interest in certain nonpurchase items
21 deemed not to be household goods, the security agreement
22 creating such security interest must be in writing, signed in
23 person by the borrower, and if the borrower is married, signed
24 in person by both husband and wife: *Provided*, That the
25 signature of both husband and wife shall not be required when
26 they have been living separate and apart for a period of at least
27 five months prior to the making of such security agreement. A
28 security interest taken in violation of this subsection is void.

29 (4) A regulated consumer lender may not renegotiate the
30 original loan, or any part thereof, or make a new contract
31 covering the original loan, or any part thereof, with any

32 borrower, who has received a discharge in bankruptcy of the
33 original loan or any balance due thereon at the time of said
34 discharge from any court of the United States of America
35 exercising jurisdiction in insolvency and bankruptcy matters,
36 unless said regulated consumer lender shall pay to and deliver
37 to the borrower the full amount of the loan shown on said note,
38 promise to pay, or security, less any deductions for charges
39 herein specifically authorized.

40 (5) In making any loan secured by any encumbrance on
41 residential property, no lender may, and no such lending
42 transaction may contain terms which:

43 (A) Collect a fee not disclosed to the borrower; collect any
44 attorney fee at closing in excess of the fee that has been or will
45 be remitted to the attorney; collect a duplicate fee or points to
46 act as both broker and lender for the same mortgage loan;
47 collect a fee for a product or service where the product or
48 service is not actually provided; or, misrepresent the amount
49 charged by or paid to a third party for a product or service;

50 (B) Compensate, whether directly or indirectly, coerce or
51 intimidate an appraiser for the purpose of influencing the
52 independent judgment of the appraiser with respect to the value
53 of the real estate that is to be encumbered;

54 (C) Make or assist in making any loan secured by any
55 encumbrance on residential property with the intent that the
56 loan will not be repaid and that the lender will obtain title to the
57 property through foreclosure: *Provided*, That this subdivision
58 shall not apply to reverse mortgages obtained under the
59 provisions of article twenty-four, chapter forty-seven of this
60 code;

61 (D) Allow or require a loan secured by any encumbrance on
62 residential property to be accelerated because of a decrease in
63 the market value of the residential dwelling that is securing the
64 loan;

65 (E) Require or contain terms of repayment which do not
66 result in continuous monthly reduction of the original principal
67 amount of the loan: *Provided*, That the provisions of this
68 subdivision shall not apply to reverse mortgage loans obtained
69 under article twenty-four, chapter forty-seven of this code,
70 home equity, open-end lines of credit, bridge loans used in
71 connection with the purchase or construction of another
72 residential dwelling, or commercial loans for multiple residen-
73 tial purchases;

74 (F) Secure a residential mortgage loan in a principal
75 amount, that when added to the aggregate total of the outstand-
76 ing principal balances of all other residential mortgage loans
77 secured by the same property, exceeds the fair market value of
78 the property on the date that the latest residential mortgage loan
79 is made. For purposes of this paragraph, a lender may rely upon
80 a bona fide written appraisal of the property made by an
81 independent third-party appraiser, or other evidence of fair
82 market value, if the lender does not have actual knowledge that
83 the value is incorrect; or

84 (G) (1) Require compulsory arbitration which does not
85 comply with federal law; (2) contain a document with blank or
86 blanks to be filled in after the consummation of the loan; (3)
87 contain a power of attorney to confess judgment; (4) contain
88 any provision whereby the borrower waives any rights accruing
89 to him or her under the provisions of this article; (5) contain
90 any requirement that more than one installment be payable in
91 any one installment period; or (6) contain any assignment of or
92 order for the payment of any salary, wages, commissions or
93 other compensation for services, or any part thereof, earned or
94 to be earned; or

95 (H) Advise or recommend that the consumer not make
96 timely payments on an existing loan preceding loan closure of
97 a refinancing transaction.

CHAPTER 176

(Com. Sub. for S. B. 651 — By Senators Wooton, Ball, Dawson, Hunter, Kessler, McCabe, Mitchell, Oliverio, Redd, Ross, Snyder and Deem)

[Passed March 11, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend and reenact section four, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-five-a, article six of said chapter; and to further amend said chapter by adding thereto a new article, designated article six-d, all relating to tax on motor vehicle rentals; authorizing commissioner of motor vehicles to establish by rule a rate for motor vehicle daily rental tax; authorizing emergency rule; providing for civil penalties; requiring license certificate for businesses engaged in daily passenger car rental; providing for collection of daily passenger car rental tax; requiring filing of certain forms; authorizing denial, suspension or revocation of license for failure to pay tax; establishing liability of officers of corporation; requiring annual returns; requiring applicants to be bonded; establishing fee for licensure; authorizing investigation of applicants; providing for confidentiality of applicant information; establishing criteria for refusal to issue license; requiring licenses to be renewed annually; requiring license to be displayed; authorizing duplicate license; requiring licensee to notify commissioner of certain changes in the business; providing for issuance of new license upon certain changes in business; authorizing investigation of licensees; providing grounds for denial, suspension or revocation of license; relinquishing license; providing for appeals of commissioner's decision; providing for inspection by commissioner and agents; establishing misdemeanor violations and penalties for violations; providing for injunctive relief; and authorizing promulgation of rules.

Be it enacted by the Legislature of West Virginia:

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

Article

- 3. Original and Renewal of Registration; Issuance of Certificates of Title.**
- 6. Licensing of Dealers and Wreckers, Etc.**
- 6D. Daily Passenger Rental Car Business.**

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

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

1 (a) Certificates of registration of any vehicle or registration
2 plates for the vehicle, whether original issues or duplicates, may
3 not be issued or furnished by the division of motor vehicles or
4 any other officer or agent charged with the duty, unless the
5 applicant therefor already has received, or at the same time
6 makes application for and is granted, an official certificate of
7 title of the vehicle in either an electronic or paper format. The
8 application shall be upon a blank form to be furnished by the
9 division of motor vehicles and shall contain a full description
10 of the vehicle, which description shall contain a manufacturer's
11 serial or identification number or other number as determined
12 by the commissioner and any distinguishing marks, together
13 with a statement of the applicant's title and of any liens or
14 encumbrances upon the vehicle, the names and addresses of the
15 holders of the liens and any other information as the division of
16 motor vehicles may require. The application shall be signed and
17 sworn to by the applicant. A duly certified copy of the divi-
18 sion's electronic record of a certificate of title shall be admissi-

19 ble in any civil, criminal or administrative proceeding in this
20 state as evidence of ownership.

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

25 (1) If the vehicle is new, the actual purchase price or
26 consideration to the purchaser of the vehicle is the value of the
27 vehicle. If the vehicle is a used or secondhand vehicle, the
28 present market value at time of transfer or purchase is the value
29 of the vehicle for the purposes of this section: *Provided*, That
30 so much of the purchase price or consideration as is represented
31 by the exchange of other vehicles on which the tax imposed by
32 this section has been paid by the purchaser shall be deducted
33 from the total actual price or consideration paid for the vehicle,
34 whether the vehicle be new or secondhand. If the vehicle is
35 acquired through gift, or by any manner whatsoever, unless
36 specifically exempted in this section, the present market value
37 of the vehicle at the time of the gift or transfer is the value of
38 the vehicle for the purposes of this section.

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

48 (3) The division of motor vehicles may issue a certificate of
49 registration and title to an applicant if the applicant provides
50 sufficient proof to the division of motor vehicles that the
51 applicant has paid the taxes and fees required by this section to

52 a motor vehicle dealership that has gone out of business or has
53 filed bankruptcy proceedings in the United States bankruptcy
54 court and the taxes and fees so required to be paid by the
55 applicant have not been sent to the division by the motor
56 vehicle dealership or have been impounded due to the bank-
57 ruptcy proceedings: *Provided*, That the applicant makes an
58 affidavit of the same and assigns all rights to claims for money
59 the applicant may have against the motor vehicle dealership to
60 the division of motor vehicles.

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

77 (5) The tax imposed by this section does not apply to
78 vehicles to be registered as Class H vehicles or Class M
79 vehicles, as defined in section one, article ten of this chapter,
80 which are used or to be used in interstate commerce. Nor does
81 the tax imposed by this section apply to the titling of Class B
82 vehicles registered at a gross weight of fifty-five thousand
83 pounds or more, or to the titling of Class C semitrailers, full
84 trailers, pole trailers and converter gear: *Provided*, That if an
85 owner of a vehicle has previously titled the vehicle at a declared
86 gross weight of fifty-five thousand pounds or more and the title

87 was issued without the payment of the tax imposed by this
88 section, then before the owner may obtain registration for the
89 vehicle at a gross weight less than fifty-five thousand pounds,
90 the owner shall surrender to the commissioner the exempted
91 registration, the exempted certificate of title and pay the tax
92 imposed by this section based upon the current market value of
93 the vehicle: *Provided, however,* That notwithstanding the
94 provisions of section nine, article fifteen, chapter eleven of this
95 code, the exemption from tax under this section for Class B
96 vehicles in excess of fifty-five thousand pounds and Class C
97 semitrailers, full trailers, pole trailers and converter gear does
98 not subject the sale or purchase of the vehicles to the consumers
99 sales tax.

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

108 (7) The tax imposed by this section does not apply to titling
109 of vehicles by a registered dealer of this state for resale only,
110 nor does the tax imposed by this section apply to titling of
111 vehicles by this state or any political subdivision thereof, or by
112 any volunteer fire department or duly chartered rescue or
113 ambulance squad organized and incorporated under the laws of
114 the state of West Virginia as a nonprofit corporation for
115 protection of life or property. The total amount of revenue
116 collected by reason of this tax shall be paid into the state road
117 fund and expended by the commissioner of highways for
118 matching federal funds allocated for West Virginia. In addition
119 to the tax, there is a charge of five dollars for each original
120 certificate of title or duplicate certificate of title so issued:
121 *Provided,* That this state or any political subdivision of this

122 state, or any volunteer fire department or duly chartered rescue
123 squad is exempt from payment of the charge.

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

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

132 (10) A person who has paid the tax imposed by this section
133 is not required to pay the tax a second time for the same motor
134 vehicle, but is required to pay a charge of five dollars for the
135 certificate of retitle of that motor vehicle, except that the tax
136 shall be paid by the person when the title to the vehicle has
137 been transferred either in this or another state from the person
138 to another person and transferred back to the person.

139 (11) The tax imposed by this section does not apply to any
140 passenger vehicle offered for rent in the normal course of
141 business by a daily passenger rental car business as licensed
142 under the provisions of article six-d of this chapter. For
143 purposes of this section, a daily passenger car means a Class A
144 motor vehicle having a gross weight of eight thousand pounds
145 or less and is registered in this state or any other state. In lieu of
146 the tax imposed by this section, there is hereby imposed a tax
147 of not less than one dollar nor more than one dollar and fifty
148 cents for each day or part of the rental period. The commis-
149 sioner shall propose an emergency rule in accordance with the
150 provisions of article three, chapter twenty-nine-a of this code to
151 establish this tax.

152 (c) Notwithstanding any provisions of this code to the
153 contrary, the owners of trailers, semitrailers, recreational
154 vehicles and other vehicles not subject to the certificate of title

155 tax prior to the enactment of this chapter are subject to the
156 privilege tax imposed by this section: *Provided*, That the
157 certification of title of any recreational vehicle owned by the
158 applicant on the thirtieth day of June, one thousand nine
159 hundred eighty-nine, is not subject to the tax imposed by this
160 section: *Provided, however*, That mobile homes, manufactured
161 homes, modular homes and similar nonmotive propelled
162 vehicles, except recreational vehicles and house trailers,
163 susceptible of being moved upon the highways but primarily
164 designed for habitation and occupancy, rather than for trans-
165 porting persons or property, or any vehicle operated on a
166 nonprofit basis and used exclusively for the transportation of
167 mentally retarded or physically handicapped children when the
168 application for certificate of registration for the vehicle is
169 accompanied by an affidavit stating that the vehicle will be
170 operated on a nonprofit basis and used exclusively for the
171 transportation of mentally retarded and physically handicapped
172 children, are not subject to the tax imposed by this section, but
173 are taxable under the provisions of articles fifteen and fifteen-a,
174 chapter eleven of this code.

175 (d) Any person making any affidavit required under any
176 provision of this section, who knowingly swears falsely, or any
177 person who counsels, advises, aids or abets another in the
178 commission of false swearing, or any person, while acting as an
179 agent of the division of motor vehicles, issues a vehicle
180 registration without first collecting the fees and taxes or fails to
181 perform any other duty required by this chapter to be performed
182 before a vehicle registration is issued is on the first offense
183 guilty of a misdemeanor and, upon conviction thereof, shall be
184 fined not more than five hundred dollars or be confined in the
185 county or regional jail for a period not to exceed six months or,
186 in the discretion of the court, both fined and confined. For a
187 second or any subsequent conviction within five years, that
188 person is guilty of a felony and, upon conviction thereof, shall

189 be fined not more than five thousand dollars or be imprisoned
190 in the penitentiary for not less than one year nor more than five
191 years or, in the discretion of the court, both fined and impris-
192 oned.

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

200 (f) No person may transfer, purchase or sell a factory-built
201 home without a certificate of title issued by the commissioner
202 in accordance with the provisions of this article:

203 (1) Any person who fails to provide a certificate of title
204 upon the transfer, purchase or sale of a factory-built home is
205 guilty of a misdemeanor and, upon conviction thereof, shall for
206 the first offense be fined not less than one hundred dollars nor
207 more than one thousand dollars, or be confined in the county or
208 regional jail for not more than one year or, both fined and
209 confined. For each subsequent offense, the fine may be in-
210 creased to not more than two thousand dollars, with confine-
211 ment in the county or regional jail not more than one year or,
212 both fined and confined.

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

217 (g) Notwithstanding any other provision to the contrary,
218 whenever reference is made to the application for or issuance
219 of any title or the recordation or release of any lien, it shall be
220 understood to include the application, transmission, recordation,

221 transfer of ownership and storage of information in an elec-
222 tronic format.

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS, ETC.

§17A-6-25a. Civil penalties.

1 (a) In addition to any other remedy or penalty provided by
2 law, the commissioner may levy and collect a civil fine, in an
3 amount not to exceed one thousand dollars for each first
4 violation, against any person who violates the provisions of this
5 article, article six-b, article six-c or article six-d of this chapter,
6 any of the rules or policies implemented to enforce those
7 articles, or any lawful order of the commissioner pursuant to
8 authority set forth in those articles. Every transaction which
9 violates this article, article six-b, article six-c or article six-d of
10 this chapter shall be considered a separate violation. For a
11 second violation, being any violation occurring within three
12 years following any previous violation for which the violator
13 has been disciplined pursuant to section eighteen, article six of
14 this chapter, the commissioner may levy and collect a fine in an
15 amount not to exceed twenty-five hundred dollars and for a
16 third and subsequent violation occurring within the three-year
17 period following the first violation, the commissioner may levy
18 and collect a fine in an amount not to exceed five thousand
19 dollars.

20 (b) A fine assessed under this section shall not take effect
21 until the commissioner sends to the person against whom the
22 penalty is assessed by certified mail, return receipt requested,
23 a notice of violation finding that the person has committed an
24 offense. The notice shall contain:

25 (1) A statement of the offense the person committed;

26 (2) A summary of the facts on which the finding of a
27 violation was made;

28 (3) The amount of the fine which is being levied; and

29 (4) An order that the person:

30 (A) Cease and desist from all future violations and pay the
31 fine; or

32 (B) Protest in writing the findings of the commissioner or
33 the amount of the assessed fine and request a hearing.

34 Any request for a hearing must be received by the commis-
35 sioner within thirty days after the mailing date of the notice of
36 violation. The notice of violation may be sent to any address
37 which the person has used on any title or license application, or
38 other filing or record which the commissioner believes is
39 current. Failure of any person to receive a notice of violation
40 does not preclude the fine from taking effect. However, the
41 commissioner shall accept as timely a request for hearing from
42 any person who, within one year of the date the notice of
43 violation was sent, provides satisfactory proof that he or she did
44 not receive the notice of violation and that good cause exists to
45 excuse his or her failure to receive the notice of violation and
46 that he or she wishes in good faith to assert a protest to the
47 notice of violation. The pendency of the one-year period shall
48 not keep any penalty from taking effect, but the commissioner
49 shall stay enforcement of the fine upon his or her acceptance of
50 any notice filed after the thirty-day period pending the outcome
51 of the appeal.

52 (c) Upon receipt of a timely request, the commissioner shall
53 afford the person a hearing in accordance with the rules of the
54 division of motor vehicles. The commissioner, in addition to
55 considering the evidence relied upon to prove or defend against
56 a finding of a violation, shall also evaluate the appropriateness
57 of the amount of the civil penalty. In making such evaluation,
58 the commissioner shall consider:

59 (1) The severity of the violation and its impact on the
60 public;

- 61 (2) The number of similar or related violations;
- 62 (3) Whether the violations were willful or intentional; and
- 63 (4) Any other facts considered appropriate.

64 (d) In addition to any other findings of fact or conclusions
65 of law, the commissioner may reduce the civil penalty to a
66 stated amount. The appellant may, at any time during the
67 pendency of the appeal, enter into a settlement agreement with
68 the commissioner. The settlement agreement may provide for
69 a reduction in the penalty and may provide that the appellant
70 does not admit a violation. The entry into a settlement agree-
71 ment or the payment of any fine pursuant to a settlement
72 agreement which states that the appellant does not admit a
73 violation shall not amount to an admission of guilt for purposes
74 of any criminal prosecution.

75 (e) Upon the expiration of all periods for protest or appeal
76 of a notice of violation, including judicial review pursuant to
77 section four, article five, chapter twenty-nine-a of this code, the
78 notice of violation shall have the same force and effect and be
79 enforceable as a judgment entered by any court of law of this
80 state.

81 (f) If a corporation is found to have committed a violation
82 against which a penalty may be assessed under this section, any
83 officer of the corporation who is found to have knowingly and
84 intentionally committed the violation, to have knowingly and
85 intentionally directed another to commit the violation or to have
86 knowingly and intentionally failed to take reasonable steps to
87 prevent another from committing the violation, may be individ-
88 ually found to be in violation and assessed a civil penalty as
89 provided by this section.

ARTICLE 6D. DAILY PASSENGER RENTAL CAR BUSINESS.

§17A-6D-1. License certificate required; application.

§17A-6D-2. Collection of daily passenger car rental tax imposed.

- §17A-6D-3. Liability of officers of corporation, etc.
- §17A-6D-4. Annual return; extension of time.
- §17A-6D-5. Applicant must be bonded.
- §17A-6D-6. Fee required for license certificate.
- §17A-6D-7. Investigation prior to issuance of license certificate; information confidential.
- §17A-6D-8. Refusal of license certificate.
- §17A-6D-9. When application to be made; expiration of license certificate; renewal.
- §17A-6D-10. Form and display of license certificate; certified copies of license.
- §17A-6D-11. Changes in business; action required.
- §17A-6D-12. Investigation; grounds for suspending or revoking a license certificate; notice of refusal, suspension or revocation of license certificate; relinquishing license certificate.
- §17A-6D-13. Inspections; violations and penalties.
- §17A-6D-14. Injunctive relief.
- §17A-6D-15. Promulgation of rules.

§17A-6D-1. License certificate required; application.

1 No person may engage in a daily passenger rental car
2 business in West Virginia without a license certificate.

3 Application for a daily passenger rental car license certifi-
4 cate shall be made on a form prescribed by the commissioner
5 and shall disclose any information required by the commis-
6 sioner. The application shall be verified by an oath or affirma-
7 tion of the applicant, if an individual, or if the applicant is a
8 corporation, partnership or limited liability company by a
9 partner or officer thereof.

§17A-6D-2. Collection of daily passenger car rental tax imposed.

1 The tax authorized by section four, article three of this
2 chapter and established by rules promulgated in accordance
3 with the provisions of article three, chapter twenty-nine-a of
4 this code shall be collected by each rental car business. The
5 daily passenger car business shall collect the tax on each
6 vehicle rented regardless of where the vehicle is titled or
7 registered and shall remit all taxes collected to the division of

8 motor vehicles on a monthly basis. All taxes collected pursuant
9 to this section shall be deposited in the state road fund and
10 subject to appropriation by the Legislature. The daily passenger
11 car business shall complete the returns required by the commis-
12 sioner of motor vehicles and submit them monthly with the
13 remittance. In addition, an annual return which summarizes the
14 monthly returns is required. The monthly returns are due no
15 later than the fifteenth day following the last day of the month
16 for which the return applies, and the annual return shall be due
17 no later than the thirtieth day following the close of the year to
18 which it applies. The commissioner of motor vehicles shall
19 promulgate an emergency rule pursuant to the provisions of
20 chapter twenty-nine-a of this code setting forth pertinent
21 information regarding the collection of the tax imposed under
22 this section, the definition of a daily passenger car rental
23 business, and specifying forms. Nonpayment of the tax shall
24 constitute grounds for the commissioner of motor vehicles to
25 deny, suspend or revoke the license certificate set forth in this
26 article. The emergency rule shall be filed on or before the first
27 day of June, two thousand.

§17A-6D-3. Liability of officers of corporation, etc.

1 If the taxpayer is an association, partnership or corporation,
2 the officers thereof shall be personally liable, jointly and
3 severally, for any default on the part of the association, partner-
4 ship or corporation, and payment of the tax and any additions
5 to the tax, penalties and interest on the tax imposed by this
6 article may be enforced against the officers as against the
7 association, partnership or corporation which they represent.
8 Any failure to collect the tax imposed in this article and/or any
9 failure to timely remit to the commissioner of motor vehicles
10 the tax imposed by this article constitutes a default for purposes
11 of this section. Any other failure to comply with the provisions
12 of this article constitutes a default for purposes of this section.

§17A-6D-4. Annual return; extension of time.

1 (a) *Date due.* — On or before thirty days after the end of
2 the tax year, each person liable for the payment of any tax due
3 under this article shall make and file an annual return in such
4 form as may be required by the commissioner of motor vehi-
5 cles, showing:

6 (1) Total gross proceeds of his or her daily passenger car
7 rental business for preceding tax year;

8 (2) Gross proceeds upon which the tax for that year was
9 computed; and

10 (3) Any other information necessary in the computation or
11 collection of the tax that the commissioner of motor vehicles
12 may require.

13 (b) *Payment.* — After deducting the amount of prior
14 payments during the tax year, the taxpayer shall forward the
15 annual return along with payment of any remaining tax, due for
16 the preceding tax year, to the commissioner of motor vehicles.
17 The taxpayer or his duly authorized agent shall verify the return
18 under oath.

19 (c) *Extension of time.* — The commissioner of motor
20 vehicles for good cause shown, may, on written application of
21 a taxpayer, extend the time for making any return required by
22 the provisions of this article.

§17A-6D-5. Applicant must be bonded.

1 An application for a license certificate must be accompa-
2 nied by a bond in the penal sum of twenty-five thousand dollars
3 and have a corporate surety authorized to do business in this
4 state, to ensure that the applicant will not, in the conduct of his
5 or her business, make any fraudulent representation which
6 causes a financial loss to any purchaser, seller, financial
7 institution, agency or the state of West Virginia. The bond shall
8 be effective on the date the license certificate is issued.

9 A licensee shall keep the bond in full force and effect at all
10 times. The surety on the bond may cancel the bond upon giving
11 thirty days' notice to the commissioner and, after notice of
12 cancellation, the surety is relieved of liability for any breach or
13 condition occurring after the effective date of the cancellation.

§17A-6D-6. Fee required for license certificate.

1 The initial application fee for a certificate to engage in a
2 daily passenger rental car business is two hundred and fifty
3 dollars. The annual renewal fee for the certificate is one
4 hundred dollars.

**§17A-6D-7. Investigation prior to issuance of license certificate;
information confidential.**

1 Upon receipt of a completed application, the required bond
2 and the application fee, the commissioner may conduct an
3 investigation if necessary to determine the accuracy of any
4 statements contained in the application and the existence of any
5 other facts relevant in considering the application. To facilitate
6 the investigation, the commissioner may withhold issuance or
7 refusal of the license certificate for a period not to exceed thirty
8 days.

9 Any application for a license certificate under the provi-
10 sions of this article and any information submitted regarding the
11 application shall be confidential for use of the division. No
12 person may divulge any information contained in any applica-
13 tion or any information submitted regarding the application,
14 except in response to a valid subpoena or subpoena duces tecum
15 issued pursuant to law.

§17A-6D-8. Refusal of license certificate.

1 If the commissioner finds that the applicant:

2 (1) Has failed to furnish the required bond;

3 (2) Has knowingly made a false statement of a material fact
4 in the application;

5 (3) Has habitually defaulted on financial obligations;

6 (4) Has been convicted of a felony within five years
7 immediately preceding receipt of the application by the
8 commissioner;

9 (5) Has not complied with the registration and title laws of
10 this state;

11 (6) Has been guilty of any fraudulent act in connection with
12 the business of a daily passenger rental car business;

13 (7) Has done any act or has failed or refused to perform any
14 duty for which the license certificate sought could be suspended
15 or revoked were it then issued and outstanding;

16 (8) Has not attained the age of eighteen years;

17 (9) Has been delinquent in the payment of any taxes owed
18 to a political subdivision of or to the state of West Virginia;

19 (10) Has been denied a license in another state or has been
20 the subject of license revocation or suspension in another state;

21 (11) Has committed any action in another state which, if it
22 had been committed in this state, would be grounds for denial
23 and refusal of the application for a license certificate.

24 Then, upon the basis of the application, such finding and all
25 other information, the commissioner shall make and enter an
26 order denying the application for a license certificate. The
27 denial is final and conclusive subject to appeal. If there is no
28 basis to deny the application, the commissioner shall issue to
29 the applicant the license certificate which shall entitle the
30 licensee to engage in a daily passenger rental car business.

§17A-6D-9. When application to be made; expiration of license certificate; renewal.

1 (a) The initial application for a license certificate to engage
2 in a daily passenger rental car business shall be made at least
3 thirty days prior to the first day of January, two thousand one.
4 This license shall be valid for one year.

5 (b) Any initial application made after the first day of
6 January, two thousand one, and any year thereafter, shall expire
7 on the thirty-first day of December of that year.

8 (c) A license certificate may be renewed by paying the
9 renewal fee and review by the commissioner. Any application
10 for renewal must be received by the commissioner at least thirty
11 days prior to its expiration.

12 (d) A license certificate issued in accordance with the
13 provisions of this article shall not be transferable.

§17A-6D-10. Form and display of license certificate; certified copies of license.

1 (a) The commissioner shall prescribe the form of the license
2 certificate for a daily passenger rental car business. Each
3 license certificate shall have printed on the certificate the seal
4 of the division, the location of each place of business of the
5 licensee, the year for which the license is issued, the license
6 certificate number and any other information the commissioner
7 may prescribe. The license certificate shall be delivered or
8 mailed to the licensee.

9 (b) When a licensee conducts his or her licensed business
10 at more than one location, he or she shall apply to the commis-
11 sion for a certified copy of the license certificate for each place
12 of business. A fee of one dollar shall be paid for each certified
13 copy of the license certificate. The license certificate is to be
14 conspicuously posted at each place of business.

15 (c) In the event of the loss or destruction of a license
16 certificate or a certified copy of the license certificate, the
17 licensee shall immediately make application for a certified copy
18 of the license certificate. A fee of one dollar shall be required
19 for a certified copy.

§17A-6D-11. Changes in business; action required.

1 Every daily passenger rental car business shall notify the
2 commissioner within sixty days from the date on which any of
3 the following changes in the business occur:

4 (1) A change of the location of any place of business;

5 (2) A change of the name or trade name under which the
6 licensee engages or will engage in the business;

7 (3) The death of the licensee or any partner or partners of
8 the licensee;

9 (4) A change in any partners, officers or directors;

10 (5) A change in ownership of the business;

11 (6) A change in the type of legal entity by and through
12 which the licensee engages or will engage in the business; or

13 (7) The appointment of any trustee in bankruptcy, trustee
14 under an assignment for the benefit of creditors, master or
15 receiver.

16 When any change specified in subdivision (1), (2), (3), (4),
17 (5) or (6) occurs, an application for a new license certificate
18 shall immediately be filed with the commissioner: *Provided*,
19 That when a change is made involving subdivision (3) of this
20 section, an application for a new license certificate need not be
21 filed during the balance of the license year if a member of the
22 family of the deceased person succeeds to the interest in the
23 business. Upon receipt and review of the application, a new

24 license certificate shall be issued incorporating the changes. No
25 additional fee for the balance of the license year is required for
26 the issuance of any new license certificate issued as a result of
27 any change specified in this section.

28 No new license certificate is required for any trustee in
29 bankruptcy, trustee under an assignment for the benefit of
30 creditors, receiver or master, appointed pursuant to law, who
31 shall take charge of or operate such business for the purpose of
32 winding up the affairs of the business or protecting the interests
33 of the creditors of the business.

**§17A-6D-12. Investigation; grounds for suspending or revoking
a license certificate; notice of refusal, suspension
or revocation of license certificate; relinquishing
license certificate.**

1 The commissioner may conduct an investigation to deter-
2 mine whether any provisions of this chapter have been violated
3 by a licensee. Any investigation shall be kept in strictest
4 confidence by the commissioner, the division, the licensee, any
5 complainant and all other persons, unless and until the commis-
6 sioner suspends or revokes the license certificate of the license
7 involved.

8 (a) The commissioner may suspend or revoke a license
9 certificate if the commissioner finds that the licensee:

10 (1) Has failed or refused to comply with the laws of this
11 state relating to the registration and titling of vehicles and the
12 giving of notices of transfers;

13 (2) Has failed or refused to comply with the provisions and
14 requirements of this article and the promulgated rules autho-
15 rized in section nine, article two of this chapter which were
16 implemented by the commissioner, in accordance with the
17 provisions of article three, chapter twenty-nine-a of this code,
18 to enforce the provisions of this article; or

19 (b) The commissioner shall suspend or revoke a license
20 certificate if the commissioner finds that the licensee:

21 (1) Has knowingly made a false statement of a material
22 fact in his or her application for the license certificate then
23 issued and outstanding;

24 (2) Has habitually defaulted on financial obligations;

25 (3) Has been guilty of any fraudulent act in connection
26 with the license service business;

27 (4) Has defrauded or is attempting to defraud the state or
28 any political subdivision of the state of any taxes or fees in
29 connection with the sale or transfer of any vehicle;

30 (5) Has committed fraud in the registration of a vehicle;

31 (6) Has knowingly purchased, sold or otherwise dealt in a
32 stolen vehicle or vehicles;

33 (7) Has advertised by any means, with intent to defraud,
34 any material representation or statement of fact which is untrue,
35 misleading or deceptive in any particular, relating to the
36 conduct of the licensed business;

37 (8) Has a license certificate to which he is not lawfully
38 entitled; or

39 (9) The existence of any other ground upon which the
40 license certificate could have been refused, or any ground upon
41 which would be cause for refusing a license certificate to the
42 licensee were he then applying for the same.

43 (c) Whenever a licensee fails or refuses to keep the bond
44 required by section two of this article in full force and effect,
45 the license certificate of the licensee shall automatically be
46 suspended unless and until the required bond is furnished to the
47 commissioner, in which event the suspension shall be vacated.

48 (d) Whenever the commissioner refuses to issue a license
49 certificate, or revokes a license certificate, he or she shall make
50 and enter an order to that effect and shall cause a copy of the
51 order to be served in person or by certified mail, return receipt
52 requested, on the applicant or licensee.

53 (e) Suspensions under this section shall continue until the
54 cause of the suspension has been eliminated or corrected.
55 Whenever a license certificate is suspended or revoked, the
56 commissioner shall, in the order of suspension or revocation,
57 direct the licensee to return to the division his or her license
58 certificate and any other documents specified. It is the duty of
59 the licensee to comply with the order. Whenever a licensee fails
60 or refuses to comply with any order of the commissioner, the
61 commissioner shall proceed as provided in section seven, article
62 nine of this chapter.

63 (f) Any applicant whose request for a license certificate is
64 refused and any licensee whose license is suspended or revoked
65 may appeal that action in accordance with procedures estab-
66 lished by the commissioner. The revocation or suspension of a
67 license certificate does not preclude a person from submitting
68 an application for a new license certificate, to be processed in
69 the same manner. The license certificate shall be issued or
70 refused on the same grounds as any other application for a
71 license certificate, except that any previous suspension and
72 revocation may be considered in deciding whether to issue or
73 refuse the license certificate.

§17A-6D-13. Inspections; violations and penalties.

1 (a) The commissioner and his agents, acting at the com-
2 missioner's request, are hereby authorized to inspect the place
3 of business and pertinent records, documents and papers of any
4 person required to be licensed under the provisions of this
5 article to the extent deemed reasonably necessary to determine
6 compliance with and violations of this article. For the purpose

7 of making an inspection, the commissioner and his agents are
8 authorized, at reasonable times, to enter in and upon the place
9 of business suspected of being in violation of this article.

10 (b) Any person who violates any provision of this article or
11 any final order of the commissioner or board issued pursuant to
12 this article, shall be guilty of a misdemeanor and the provisions
13 of article eleven of this chapter governing violations of this
14 chapter shall be fully applicable to the violation.

§17A-6D-14. Injunctive relief.

1 (a) Whenever it appears to the commissioner that any
2 person or licensee has violated any provision of this article or
3 any final order of the commissioner, the commissioner may
4 petition, in the name of the state, the circuit court of the county
5 in which the violation or violations occurred, for an injunction
6 against the person or licensee. A violation or violations result-
7 ing in prosecution or conviction under the provisions of article
8 eleven of this chapter shall not prohibit injunctive relief.

9 The circuit court may, by mandatory or prohibitory
10 injunction, compel compliance with the provisions of this
11 article and all final orders of the commissioner. The court may
12 also issue temporary injunctions.

13 (b) The judgment by the circuit court shall be final unless
14 reversed, vacated or modified on appeal to the supreme court of
15 appeals. Any such appeal shall be sought in the manner and
16 within the time provided by law for appeals from circuit courts
17 in other civil cases.

§17A-6D-15. Promulgation of rules.

1 The commissioner may promulgate rules in accordance
2 with article three, chapter twenty-nine-a of this code in order to
3 effect the provisions of this article.

CHAPTER 177

(H. B. 4806 — By Delegates Staton, Faircloth, Hunt,
Wills, Linch, Hines and Mahan)

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

AN ACT to amend and reenact sections fourteen and twenty-three, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to registration plates generally; types of plates; issuance of special registration plates for certain state officials; Class G motorcycle plates; limitations; issuance of license plates for use on state vehicles; and authorizing the commissioner of motor vehicles to issue an unlimited number of Class A license plates to the commission on special investigations for state-owned vehicles used for official undercover work.

Be it enacted by the Legislature of West Virginia:

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

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

§17A-3-14. Registration plates generally; description of plates; issuance of special numbers and plates; registration fees; special application fees; exemptions; commissioner to promulgate forms; suspension and nonrenewal.

§17A-3-23. Registration plates to state, county, municipal and other governmental vehicles; use for undercover activities.

***§17A-3-14. Registration plates generally; description of plates; issuance of special numbers and plates; registra-**

***Clerk's Note:** This section was also amended by H. B. 4309 (Chapter 178), which passed subsequent to this act.

tion fees; special application fees; exemptions; commissioner to promulgate forms; suspension and nonrenewal.

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

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

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

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

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

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

21 (1) The governor shall be issued two registration plates, on
22 one of which shall be imprinted the numeral one and on the
23 other the word one.

24 (2) State officials and judges may be issued special registra-
25 tion plates as follows:

26 (A) Upon appropriate application, there shall be issued to
27 the secretary of state, state superintendent of schools, auditor,

28 treasurer, commissioner of agriculture and the attorney general,
29 the members of both houses of the Legislature, including the
30 elected officials thereof, the justices of the supreme court of
31 appeals of West Virginia, the representatives and senators of the
32 state in the Congress of the United States, the judges of the
33 United States district courts for the state of West Virginia and
34 the judges of the United States court of appeals for the fourth
35 circuit, if any of the judges are residents of West Virginia, a
36 special registration plate for a Class A motor vehicle and a
37 special registration plate for a Class G motorcycle owned by the
38 official or his or her spouse: *Provided*, That the division may
39 not issue more than two Class A special registration plates and
40 two Class G special registration plates for each official.

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

48 (C) An annual fee of fifteen dollars shall be charged for
49 every registration plate issued pursuant to this subdivision,
50 which is in addition to all other fees required by this chapter.

51 (3) Members of the national guard forces may be issued
52 special registration plates as follows:

53 (A) Upon receipt of an application on a form prescribed by
54 the division and receipt of written evidence from the chief
55 executive officer of the army national guard or air national
56 guard, as appropriate, or the commanding officer of any United
57 States armed forces reserve unit that the applicant is a member
58 thereof, the division shall issue to any member of the national
59 guard of this state or a member of any reserve unit of the United
60 States armed forces a special registration plate designed by the

61 commissioner for any number of Class A motor vehicles owned
62 by the member.

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

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

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

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

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

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

93 (5) Honorably discharged veterans may be issued special
94 registration plates as follows:

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

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

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

114 (6) Disabled veterans may be issued special registration
115 plates as follows:

116 (A) Upon appropriate application, there shall be issued to
117 any disabled veteran who is exempt from the payment of
118 registration fees under the provisions of this chapter a registra-
119 tion plate for a vehicle titled in the name of the qualified
120 applicant which bears the letters "DV" in red and also the
121 regular identification numerals in red.

122 (B) A surviving spouse may continue to use his or her
123 deceased spouse's disabled veterans license plate until the

124 surviving spouse dies, remarries or does not renew the license
125 plate.

126 (C) A qualified disabled veteran may obtain a second
127 disabled veteran license plate as described in this section for
128 use on a passenger vehicle titled in the name of the qualified
129 applicant. An annual fee of fifteen dollars, in addition to all
130 other fees required by this chapter, shall be charged for the
131 second plate.

132 (7) Recipients of the distinguished purple heart medal may
133 be issued special registration plates as follows:

134 (A) Upon appropriate application, there shall be issued to
135 any armed service person holding the distinguished purple heart
136 medal for persons wounded in combat a registration plate for a
137 vehicle titled in the name of the qualified applicant bearing
138 letters or numbers. The registration plate shall be designed by
139 the commissioner of motor vehicles and shall denote that those
140 individuals who are granted this special registration plate are
141 recipients of the purple heart. All letterings shall be in purple
142 where practical.

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

146 (C) A surviving spouse may continue to use his or her
147 deceased spouse's purple heart medal license plate until the
148 surviving spouse dies, remarries or does not renew the license
149 plate.

150 (D) A recipient of the purple heart medal may obtain a
151 second purple heart medal license plate as described in this
152 section for use on a passenger vehicle titled in the name of the
153 qualified applicant. An annual fee of fifteen dollars, in addition
154 to all other fees required by this chapter, shall be charged for
155 the second plate.

156 (8) Survivors of the attack on Pearl Harbor may be issued
157 special registration plates as follows:

158 (A) Upon appropriate application, the owner of a motor
159 vehicle who was enlisted in any branch of the armed services
160 that participated in and survived the attack on Pearl Harbor on
161 the seventh day of December, one thousand nine hundred forty-
162 one, shall be issued a special registration plate for a vehicle
163 titled in the name of the qualified applicant. The registration
164 plate shall be designed by the commissioner of motor vehicles.

165 (B) Registration plates issued pursuant to this subdivision
166 are exempt from the payment of all registration fees otherwise
167 required by the provisions of this chapter.

168 (C) A surviving spouse may continue to use his or her
169 deceased spouse's survivors of the attack on Pearl Harbor
170 license plate until the surviving spouse dies, remarries or does
171 not renew the license plate.

172 (D) A survivor of the attack on Pearl Harbor may obtain a
173 second survivors of the attack on Pearl Harbor license plate as
174 described in this section for use on a passenger vehicle titled in
175 the name of the qualified applicant. An annual fee of fifteen
176 dollars, in addition to all other fees required by this chapter,
177 shall be charged for the second plate.

178 (9) Nonprofit charitable and educational organizations
179 previously authorized may be issued special registration plates
180 as follows:

181 (A) Nonprofit charitable and educational organizations
182 authorized under the program established under the prior
183 enactment of this subdivision may continue to market the
184 special registration plate previously approved to organization
185 members and the general public. However, after the effective
186 date of the reenactment of this section, the commissioner shall
187 not approve or authorize any additional nonprofit charitable and

188 educational organizations to design or market registration
189 license plates.

190 (B) Approved nonprofit charitable and educational organi-
191 zations authorized under the prior enactment of this subdivision
192 may accept and collect applications for special registration
193 plates from owners of Class A motor vehicles together with a
194 special annual fee of fifteen dollars, which is in addition to all
195 other fees required by this chapter. The applications and fees
196 shall be submitted to the division of motor vehicles with the
197 request that the division issue a registration plate bearing a
198 combination of letters or numbers with the organizations' logo
199 or emblem, with the maximum number of letters or numbers to
200 be determined by the commissioner.

201 (C) The commissioner shall propose rules for legislative
202 approval in accordance with the provisions of chapter
203 twenty-nine-a of this code regarding the procedures for and
204 approval of special registration plates issued pursuant to this
205 subdivision.

206 (D) The commissioner shall set an appropriate fee to defray
207 the administrative costs associated with designing and manufac-
208 turing special registration plates for a nonprofit charitable or
209 educational organization. The nonprofit charitable or educa-
210 tional organization shall collect this fee and forward it to the
211 division for deposit in a special revolving fund to pay the
212 administrative costs. The nonprofit charitable or educational
213 organization may also collect a fee for marketing the special
214 registration plates.

215 (10) Specified emergency or volunteer registration plates
216 may be issued as follows:

217 (A) Any owner of a motor vehicle who is a resident of the
218 state of West Virginia and who is a certified paramedic or
219 emergency medical technician, a member of a volunteer fire

220 company or a paid fire department, a member of the state fire
221 commission, the state fire marshal, the state fire marshal's
222 assistants, the state fire administrator and voluntary rescue
223 squad members may apply for a special license plate for any
224 number of Class A vehicles titled in the name of the qualified
225 applicant which bears the insignia of the profession, group or
226 commission. Any insignia shall be designed by the commis-
227 sioner. License plates issued pursuant to this subdivision shall
228 bear the requested insignia in addition to the registration
229 number issued to the applicant pursuant to the provisions of this
230 article.

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

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

247 (11) Special scenic registration plates:

248 (A) Upon appropriate application, the commissioner shall
249 issue a special registration plate displaying a scenic design of
250 West Virginia no later than the first day of January, one
251 thousand nine hundred ninety-six. This special plate shall
252 display the words "Wild Wonderful" as a slogan.

253 (B) A special one-time initial application fee of ten dollars
254 shall be charged in addition to all other fees required by this
255 chapter. All initial application fees collected by the division
256 shall be deposited into a special revolving fund to be used in the
257 administration of this chapter.

258 (12) Honorably discharged marine corps league members
259 may be issued special registration plates as follows:

260 (A) Upon appropriate application, there shall be issued to
261 any honorably discharged marine corps league member a
262 special registration plate for any number of vehicles titled in the
263 name of the qualified applicant with an insignia designed by the
264 commissioner of the division of motor vehicles.

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

274 (C) A surviving spouse may continue to use his or her
275 deceased spouse's honorably discharged marine corps league
276 license plate until the surviving spouse dies, remarries or does
277 not renew the license plate.

278 (13) Military organization registration plates:

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

284 (B) Upon appropriate application, members of the chartered
285 organization in good standing, as determined by the governing
286 body of the chartered organization, may be issued a special
287 registration plate for any number of vehicles titled in the name
288 of the qualified applicant.

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

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

300 (14) Special nongame wildlife registration plates:

301 (A) Upon appropriate application, the division shall issue
302 a special registration plate displaying a species of West Virginia
303 nongame wildlife no later than the first day of January, one
304 thousand nine hundred ninety-eight. This special plate shall
305 display a species of nongame wildlife native to West Virginia
306 as prescribed and designated by the commissioner and the
307 director of the division of natural resources.

308 (B) An annual fee of fifteen dollars shall be charged for
309 each special nongame wildlife registration plate in addition to
310 all other fees required by this chapter. All annual fees collected
311 for nongame wildlife registration plates shall be deposited in a
312 special revenue account designated the nongame wildlife fund
313 and credited to the division of natural resources.

314 (C) A special one-time initial application fee of ten dollars
315 shall be charged in addition to all other fees required by this

316 chapter. All initial application fees collected by the division
317 shall be deposited in a special revolving fund to be used in the
318 administration of this chapter.

319 (15) Members of the silver haired legislature may be issued
320 special registration plates as follows:

321 (A) Upon appropriate application, there shall be issued to
322 any person who is a duly qualified member of the silver haired
323 legislature a specialized registration plate which bears recogni-
324 tion of the applicant as a member of the silver haired legisla-
325 ture.

326 (B) A qualified member of the silver haired legislature may
327 obtain one registration plate described in this subdivision for
328 use on a passenger vehicle titled in the name of the qualified
329 applicant. An annual fee of fifteen dollars, in addition to all
330 other fees required by this chapter, shall be charged for the
331 plate. All annual fees collected by the division shall be depos-
332 ited in a special revolving fund to be used in the administration
333 of this chapter.

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

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

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

348 (3) Qualified former prisoners of war and recipients of the
349 congressional medal of honor may obtain a second special
350 registration plate for use on a passenger vehicle titled in the
351 name of the qualified applicant. An annual fee of fifteen dollars,
352 in addition to all other fees required by this chapter, shall be
353 charged for the second special plate.

354 (f) Special ten-year registration plates may be issued as
355 follows:

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

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

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

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

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

**§17A-3-23. Registration plates to state, county, municipal and
other governmental vehicles; use for undercover
activities.**

1 Any motor vehicle designed to carry passengers, owned or
2 leased by the state of West Virginia, or any of its departments,
3 bureaus, commissions or institutions, except vehicles used by
4 the governor, treasurer, three plates per elected office of the
5 board of public works, vehicles operated by the state police,
6 vehicles operated by conservation officers of the division of
7 natural resources, not to exceed ten vehicles operated by the
8 arson investigators of the office of state fire marshal and not to
9 exceed sixteen vehicles operated by inspectors of the office of
10 the alcohol beverage control commissioner, may not be
11 operated or driven by any person unless it has displayed and
12 attached to the front thereof, in the same manner as regular
13 motor vehicle registration plates are attached, a plate of the
14 same size as the regular registration plate, with white lettering
15 on a green background bearing the words "West Virginia" in
16 one line and the words "State Car" in another line, and the
17 lettering for the words "State Car" shall be of sufficient size to

18 be plainly readable from a distance of one hundred feet during
19 daylight.

20 The vehicle shall also have attached to the rear a plate
21 bearing a number and any other words and figures as the
22 commissioner of motor vehicles shall prescribe. The rear plate
23 shall also be green with the number in white.

24 On registration plates issued to vehicles owned by counties,
25 the color shall be white on red with the word "County" on top
26 of the plate and the words "West Virginia" on the bottom. On
27 any registration plates issued to a city or municipality, the color
28 shall be white on blue with the word "City" on top, and the
29 words "West Virginia" on the bottom. The colors may not be
30 reversed and shall be of reflectorized material. The registration
31 plates issued to counties, municipalities and other governmental
32 agencies authorized to receive colored plates hereunder shall be
33 affixed to both the front and rear of the vehicles.

34 The commissioner is authorized to designate the colors and
35 design of any other registration plates that are issued without
36 charge to any other agency in accordance with the motor
37 vehicle laws.

38 Upon application and payment of fees, the commissioner is
39 authorized to issue a maximum of five Class A license plates
40 per applicant to be used by county sheriffs and municipalities
41 on law-enforcement vehicles while engaged in undercover
42 investigations.

43 The commissioner is authorized to issue an unlimited
44 number of license plates per applicant to authorized drug and
45 violent crime task forces in the state of West Virginia when the
46 chairperson of the control group of a drug and violent crime
47 task force signs a written affidavit stating that the vehicle or
48 vehicles for which the plates are being requested will be used
49 only for official undercover work conducted by a drug and
50 violent crime task force.

51 The commissioner is authorized to issue twenty Class A
52 license plates to the criminal investigation division of the
53 department of tax and revenue for use by its investigators.

54 The commissioner may issue a maximum of ten Class A
55 license plates to the division of natural resources for use by
56 conservation officers. The commissioner shall designate the
57 color and design of the registration plates to be displayed on the
58 front and the rear of all other state-owned vehicles owned by
59 the division of natural resources and operated by conservation
60 officers.

61 The commissioner is authorized to issue an unlimited
62 number of Class A license plates to the commission on special
63 investigations for state-owned vehicles used for official
64 undercover work conducted by the commission on special
65 investigations.

66 No other registration plate may be issued for, or attached to,
67 any state-owned vehicle.

68 The commissioner of motor vehicles shall have a sufficient
69 number of both front and rear plates produced to attach to all
70 state-owned cars. The numbered registration plates for the
71 vehicles shall start with the number "five hundred" and the
72 commissioner shall issue consecutive numbers for all
73 state-owned cars.

74 It is the duty of each office, department, bureau, commis-
75 sion or institution furnished any vehicle to have plates as
76 described herein affixed thereto prior to the operation of the
77 vehicle by any official or employee.

78 Any person who violates the provisions of this section shall
79 be guilty of a misdemeanor and, upon conviction thereof, shall
80 be fined not less than fifty dollars nor more than one hundred
81 dollars.

82 Magistrates shall have concurrent jurisdiction with circuit
83 and criminal courts for the enforcement of this section.

CHAPTER 178

(Com. Sub. for H. B. 4309 —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 fourteen, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three-a, article ten of said chapter; and to amend and reenact section six, article thirteen, chapter seventeen-c, all relating to motor vehicle and motorcycle registration by authorizing specialized motor vehicle registration plates for classic motor vehicles and motorcycles and by authorizing specialized motorcycle registration plates for United States armed forces veterans and by authorizing special license plates depicting racing themes and by authorizing special license plates for military medal winners and by authorizing special license plates displaying a species of wildlife native to West Virginia and by authorizing specialized motorcycle registration plates and removable windshield placards for the mobility impaired.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section three-a, article ten of said chapter be amended and reenacted; and that section six, article thirteen, chapter seventeen-c of said code be amended and reenacted, all to read as follows:

Chapter

17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.

17C. Traffic Regulations and Laws of the Road.

**CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION,
REGISTRATION, CERTIFICATE OF TITLE, AND
ANTITHEFT PROVISIONS.**

Article

- 3. Original and Renewal of Registration; Issuance of Certificates of Title.**
- 10. Fees for Registration, Licensing, Etc.**

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

***§17A-3-14. Registration plates generally; description of plates;
issuance of special numbers and plates; registra-
tion fees; special application fees; exemptions;
commissioner to promulgate forms; suspension
and nonrenewal.**

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

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

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

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

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

***Clerk's Note:** This section was also amended by H. B. 4806 (Chapter 177), which passed prior to this act.

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

21 (1) The governor shall be issued two registration plates, on
22 one of which shall be imprinted the numeral one and on the
23 other the word one.

24 (2) State officials and judges may be issued special registra-
25 tion plates as follows:

26 (A) Upon appropriate application, the division shall issue
27 to the secretary of state, state superintendent of schools, auditor,
28 treasurer, commissioner of agriculture and the attorney general,
29 the members of both houses of the Legislature, including the
30 elected officials of both houses of the Legislature, the justices
31 of the supreme court of appeals of West Virginia, the represen-
32 tatives and senators of the state in the Congress of the United
33 States, the judges of the United States district courts for the
34 state of West Virginia and the judges of the United States court
35 of appeals for the fourth circuit, if any of the judges are
36 residents of West Virginia, a special registration plate for a
37 Class A motor vehicle and a special registration plate for a
38 Class G motorcycle owned by the official or his or her spouse:
39 *Provided*, That the division may not issue more than two Class
40 A special registration plates and two Class G special registra-
41 tion plates for each official.

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

49 (C) The division shall charge an annual fee of fifteen
50 dollars for every registration plate issued pursuant to this
51 subdivision, which is in addition to all other fees required by
52 this chapter.

53 (3) The division may issue members of the national guard
54 forces special registration plates as follows:

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

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

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

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

81 (A) Upon appropriate application, any owner of a motor
82 vehicle subject to Class A registration, or a motorcycle subject
83 to Class G registration, as defined by this article, may request
84 that the division issue a registration plate bearing specially
85 arranged letters or numbers with the maximum number of
86 letters or numbers to be determined by the commissioner. The

87 division shall attempt to comply with the request wherever
88 possible.

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

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

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

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

107 (B) The division shall charge a special initial application
108 fee of ten dollars in addition to all other fees required by law.
109 This special fee is to compensate the division of motor vehicles
110 for additional costs and services required in the issuing of the
111 special registration and shall be collected by the division and
112 deposited in a special revolving fund to be used for the adminis-
113 tration of this section: *Provided*, That nothing in this section
114 may be construed to exempt any veteran from any other
115 provision of this chapter.

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

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

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

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

132 (C) A qualified disabled veteran may obtain a second
133 disabled veteran license plate as described in this section for
134 use on a passenger vehicle titled in the name of the qualified
135 applicant. The division shall charge an annual fee of fifteen
136 dollars, in addition to all other fees required by this chapter, for
137 the second plate.

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

140 (A) Upon appropriate application, there shall be issued to
141 any armed service person holding the distinguished purple heart
142 medal for persons wounded in combat a registration plate for a
143 vehicle titled in the name of the qualified applicant bearing
144 letters or numbers. The registration plate shall be designed by
145 the commissioner of motor vehicles and shall denote that those
146 individuals who are granted this special registration plate are
147 recipients of the purple heart. All letterings shall be in purple
148 where practical.

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

152 (C) A surviving spouse may continue to use his or her
153 deceased spouse's purple heart medal license plate until the

154 surviving spouse dies, remarries or does not renew the license
155 plate.

156 (D) A recipient of the purple heart medal may obtain a
157 second purple heart medal license plate as described in this
158 section for use on a passenger vehicle titled in the name of the
159 qualified applicant. The division shall charge an annual fee of
160 fifteen dollars, in addition to all other fees required by this
161 chapter, for the second plate.

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

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

172 (B) Registration plates issued pursuant to this subdivision
173 are exempt from the payment of all registration fees otherwise
174 required by the provisions of this chapter.

175 (C) A surviving spouse may continue to use his or her
176 deceased spouse's survivors of the attack on Pearl Harbor
177 license plate until the surviving spouse dies, remarries or does
178 not renew the license plate.

179 (D) A survivor of the attack on Pearl Harbor may obtain a
180 second survivors of the attack on Pearl Harbor license plate as
181 described in this section for use on a passenger vehicle titled in
182 the name of the qualified applicant. The division shall charge an
183 annual fee of fifteen dollars, in addition to all other fees
184 required by this chapter, for the second plate.

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

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

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

202 (C) The commissioner shall set an appropriate fee to defray
203 the administrative costs associated with designing and manufac-
204 turing special registration plates for a nonprofit charitable or
205 educational organization. The nonprofit charitable or educa-
206 tional organization shall collect this fee and forward it to the
207 division for deposit in a special revolving fund to pay the
208 administrative costs. The nonprofit charitable or educational
209 organization may also collect a fee for marketing the special
210 registration plates.

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

213 (A) Any owner of a motor vehicle who is a resident of the
214 state of West Virginia and who is a certified paramedic or
215 emergency medical technician, a member of a volunteer fire
216 company or a paid fire department, a member of the state fire
217 commission, the state fire marshal, the state fire marshal's
218 assistants, the state fire administrator and voluntary rescue
219 squad members may apply for a special license plate for any
220 number of Class A vehicles titled in the name of the qualified
221 applicant which bears the insignia of the profession, group or
222 commission. Any insignia shall be designed by the commis-

223 sioner. License plates issued pursuant to this subdivision shall
224 bear the requested insignia in addition to the registration
225 number issued to the applicant pursuant to the provisions of this
226 article.

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

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

243 (11) The division may issue special scenic registration
244 plates as follows:

245 (A) Upon appropriate application, the commissioner shall
246 issue a special registration plate displaying a scenic design of
247 West Virginia which displays the words "Wild Wonderful" as
248 a slogan.

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

254 (12) The division may issue honorably discharged marine
255 corps league members special registration plates as follows:

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

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

270 (C) A surviving spouse may continue to use his or her
271 deceased spouse's honorably discharged marine corps league
272 license plate until the surviving spouse dies, remarries or does
273 not renew the license plate.

274 (13) The division may issue military organization registra-
275 tion plates as follows:

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

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

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

291 chapter: *Provided*, That nothing in this section may be con-
292 strued to exempt any veteran from any other provision of this
293 chapter.

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

298 (14) The division may issue special nongame wildlife
299 registration plates and special wildlife registration plates as
300 follows:

301 (A) Upon appropriate application, the division shall issue
302 a special registration plate displaying a species of West Virginia
303 wildlife which shall display a species of wildlife native to West
304 Virginia as prescribed and designated by the commissioner and
305 the director of the division of natural resources.

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

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

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

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

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

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

338 (17) Honorably discharged veterans may be issued special
339 registration plates for motorcycles subject to Class G registra-
340 tion as follows:

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

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

356 (C) A surviving spouse may continue to use his or her
357 deceased spouse's honorably discharged veterans license plate

358 until the surviving spouse dies, remarries or does not renew the
359 license plate.

360 (18) Racing theme special registration plates:

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

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

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

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

379 (A) Upon appropriate application, the division shall issue
380 to any recipient of the navy cross, distinguished service cross,
381 distinguished flying cross, air force cross or silver star a
382 registration plate for a vehicle titled in the name of the qualified
383 applicant bearing letters or numbers. A separate registration
384 plate shall be designed by the commissioner of motor vehicles
385 for each award that denotes that those individuals who are
386 granted this special registration plate are recipients of the navy
387 cross, distinguished service cross, distinguished flying cross, air
388 force cross or silver star, as applicable.

389 (B) The division shall charge a special initial application
390 fee of ten dollars in addition to all other fees required by law.
391 This special fee is to compensate the division of motor vehicles

392 for additional costs and services required in the issuing of the
393 special registration and shall be collected by the division and
394 deposited in a special revolving fund to be used for the adminis-
395 tration of this section: *Provided*, That nothing in this section
396 exempts the applicant for a special registration plate under this
397 subdivision from any other provision of this chapter.

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

403 (D) A recipient of a navy cross, distinguished flying cross,
404 distinguished service cross, air force cross or silver star may
405 obtain a second navy cross, distinguished service cross, air
406 force cross or silver star license plate as described in this
407 subdivision for use on a passenger vehicle titled in the name of
408 the qualified applicant. The division shall charge an annual fee
409 of fifteen dollars, in addition to all other fees required by this
410 chapter, for the second plate.

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

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

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

425 (3) Qualified former prisoners of war and recipients of the
426 congressional medal of honor may obtain a second special

427 registration plate for use on a passenger vehicle titled in the
428 name of the qualified applicant. The division shall charge an
429 annual fee of fifteen dollars, in addition to all other fees
430 required by this chapter, for the second special plate.

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

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

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

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

456 (h) The commissioner may, in his or her discretion, issue a
457 registration plate of reflectorized material suitable for perma-
458 nent use on motor vehicles, trailers and semitrailers, together
459 with appropriate devices to be attached to the registration to
460 indicate the year for which the vehicles have been properly
461 registered or the date of expiration of the registration. The

462 design and expiration of the plates shall be determined by the
463 commissioner.

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

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

**§17A-10-3a. Special registration of antique motor vehicles and
motorcycles; definition, registration and use of
classic motor vehicles and classic motorcycles.**

1 (a) The annual registration fee for any antique motor
2 vehicle or motorcycle as defined in this section is two dollars.
3 “Antique motor vehicle” means any motor vehicle which is
4 more than twenty-five years old and is owned solely as a
5 collector’s item. “Antique motorcycle” means any motorcycle
6 which is more than twenty-five years old and is owned solely
7 as a collector’s item.

8 “Classic motor vehicle” means a motor vehicle which is
9 more than twenty-five years old and is registered pursuant to
10 section three of this article and is used for general transporta-
11 tion. “Classic motorcycle” means a motorcycle which is more
12 than twenty-five years old and is registered pursuant to section
13 three of this article and is used for general transportation.

14 (b) Except as otherwise provided in this section, antique
15 motor vehicles or motorcycles may not be used for general
16 transportation but may only be used for:

17 (1) Participation in club activities, exhibits, tours, parades
18 and similar events;

19 (2) The purpose of testing their operation, obtaining repairs
20 or maintenance and transportation to and from events as
21 described in subdivision (1); and

22 (3) Recreational purposes on Saturdays, Sundays and
23 holidays: *Provided*, That a classic motor vehicle or a classic
24 motorcycle as defined in this section may be registered under
25 the applicable class at the applicable registration fee set forth in
26 section three of this article and may be used for general
27 transportation:

28 (c) A West Virginia motor vehicle or motorcycle displaying
29 license plates of the same year of issue as the model year of the
30 antique motor vehicle or motorcycle, as authorized in this
31 section, may be used for general transportation purposes if the
32 following conditions are met:

33 (1) The license plate's physical condition has been in-
34 spected and approved by the division of motor vehicles;

35 (2) The license plate is registered to the specific motor
36 vehicle or motorcycle by the division of motor vehicles;

37 (3) The owner of the motor vehicle or motorcycle annually
38 registers the motor vehicle or motorcycle and pays an annual
39 registration fee for the motor vehicle or motorcycle equal to
40 that charged to obtain regular state license plates;

41 (4) The motor vehicle or motorcycle passes an annual
42 safety inspection; and

43 (5) The motor vehicle or motorcycle displays a sticker
44 attached to the license plate, issued by the division, indicating
45 that the motor vehicle or motorcycle may be used for general
46 transportation.

47 (d) If more than one request is made for license plates
48 having the same number, the division shall accept only the first
49 application.

50 (e) The commissioner may promulgate rules in accordance
51 with the provisions of chapter twenty-nine-a of this code as may
52 be necessary or convenient for the carrying out of the provi-
53 sions of this section.

**CHAPTER 17C. TRAFFIC REGULATIONS
AND LAWS OF THE ROAD.**

ARTICLE 13. STOPPING, STANDING AND PARKING.

§17C-13-6. Stopping, standing or parking privileges for persons with a mobility impairment; definitions; qualification; special registration plates and removable windshield placards; expiration; application; violation; penalties.

1 (a) Any owner of a Class A or Class G motor vehicle
2 subject to registration under the provisions of article three,
3 chapter seventeen-a of this code, who is:

4 (1) A person with a mobility impairment;

5 (2) A relative of a person with a mobility impairment;

6 (3) A person who regularly resides with a person with a
7 mobility impairment; or

8 (4) A person who regularly transports a person who has a
9 mobility impairment, may submit an application for a special
10 registration plate or a removable windshield placard.

11 (b) Any person with a mobility impairment, any relative of
12 a person with a mobility impairment, any person who regularly
13 resides with a person with a mobility impairment or any person
14 who regularly transports a person who has a mobility impair-
15 ment may submit an application for a special registration plate
16 or a removable windshield placard or both for a Class A or a
17 Class G vehicle by submitting to the commissioner:

18 (1) An application on a form prescribed and furnished by
19 the commissioner, specifying whether the applicant desires a
20 special registration plate, a removable windshield placard, or
21 both; and

22 (2) A certificate issued by a licensed physician stating that
23 the applicant or the applicant's relative is a person with a
24 mobility impairment, or that the person regularly residing with
25 the applicant or regularly transported by the applicant is a

26 person with a mobility impairment, as defined in this section,
27 and furthermore, the physician shall specify whether the
28 disability is temporary (not to exceed six months) or permanent
29 (one to five years or more in expected duration).

30 Upon receipt of the completed application, the physician's
31 certificate and the regular registration fee for the applicant's
32 vehicle class, if the commissioner finds that the applicant
33 qualifies for the special registration plate or a removable
34 windshield placard as provided in this section, he or she shall
35 issue to the applicant a special registration plate (upon remit-
36 tance of the regular registration fee), or a removable windshield
37 placard (red for temporary and blue for permanent), or both.
38 Upon request, the commissioner shall also issue to any other-
39 wise qualified applicant one additional placard having the same
40 expiration date as the applicant's original placard. The placard
41 shall be displayed by hanging it from the interior rearview
42 mirror of the motor vehicle so that it is conspicuously visible
43 from outside the vehicle when parked in a designated handi-
44 capped parking space. The placard may be removed from the
45 rearview mirror whenever the vehicle is being operated to
46 ensure clear vision and safe driving. Only in the event that there
47 is no suitable rearview mirror in the vehicle may the placard be
48 displayed on the dashboard of the vehicle.

49 (c) As used in this section, the following terms have the
50 meanings ascribed to them in this subsection:

51 (1) A person with a "mobility impairment" means a person
52 who, as determined by a licensed physician:

53 (A) Cannot walk two hundred feet without stopping to rest;

54 (B) Cannot walk without the use of or assistance from a
55 brace, cane, crutch, prosthetic device, wheelchair, other
56 assistive device or another person;

57 (C) Is restricted by lung disease to such an extent that the
58 person's force (respiratory) expiratory volume for one second,
59 when measured by spirometry, is less than one liter or the

60 arterial oxygen tension is less than sixty mm/hg on room air at
61 rest;

62 (D) Uses portable oxygen;

63 (E) Has a cardiac condition to such an extent that the
64 person's functional limitations are classified in severity as Class
65 III or Class IV according to standards established by the
66 American heart association; or

67 (F) Is severely limited in his or her ability to walk because
68 of an arthritic, neurological, orthopedic or other physical
69 condition;

70 (2) "Special registration plate" means a registration plate
71 that displays the international symbol of access in a color that
72 contrasts with the background, in letters and numbers the same
73 size as those on the plate, and which may be used in lieu of a
74 regular registration plate;

75 (3) "Removable windshield placard" (permanent or
76 temporary) means a two-sided, hanger style placard measuring
77 three inches by nine and one-half inches, with all of the
78 following on each side:

79 (A) The international symbol of access, measuring at least
80 three inches in height, centered on the placard, in white on a
81 blue background for permanent designations and in white on a
82 red background for temporary designations;

83 (B) An identification number measuring one inch in height;

84 (C) An expiration date in numbers measuring one inch in
85 height; and

86 (D) The seal or other identifying symbol of the issuing
87 authority;

88 (4) "Regular registration fee" means the standard registra-
89 tion fee for a vehicle of the same class as the applicant's;

90 (5) "Public entity" means state or local government or any
91 department, agency, special purpose district or other instrumen-
92 tality of a state or local government;

93 (6) "Public facility" means all or any part of any buildings,
94 structures, sites, complexes, roads, parking lots or other real or
95 personal property, including the site where the facility is
96 located;

97 (7) "Place(s) of public accommodation" means a facility or
98 facilities operated by a private entity whose operations affect
99 commerce and fall within at least one of the following catego-
100 ries:

101 (A) Inns, hotels, motels and other places of lodging;

102 (B) Restaurants, bars or other establishments serving food
103 or drink;

104 (C) Motion picture houses, theaters, concert halls, stadiums
105 or other places of exhibition or entertainment;

106 (D) Auditoriums, convention centers, lecture halls or other
107 places of public gatherings;

108 (E) Bakeries, grocery stores, clothing stores, hardware
109 stores, shopping centers or other sales or rental establishments;

110 (F) Laundromats, dry cleaners, banks, barber and beauty
111 shops, travel agencies, shoe repair shops, funeral parlors, gas or
112 service stations, offices of accountants and attorneys, pharma-
113 cies, insurance offices, offices of professional health care
114 providers, hospitals or other service establishments;

115 (G) Terminals, depots or other stations used for public
116 transportation;

117 (H) Museums, libraries, galleries or other places of public
118 display or collection;

119 (I) Parks, zoos, amusement parks or other places of
120 recreation;

121 (J) Public or private nursery, elementary, secondary,
122 undergraduate or post-graduate schools or other places of
123 learning and day care centers, senior citizen centers, homeless
124 shelters, food banks, adoption agencies or other social services
125 establishments; and

126 (K) Gymnasiums, health spas, bowling alleys, golf courses
127 or other places of exercise or recreation;

128 (8) "Commercial facility" means a facility whose opera-
129 tions affect commerce and which are intended for nonresiden-
130 tial use by a private entity.

131 Any person who falsely or fraudulently obtains or seeks to
132 obtain the special plate or the removable windshield placard
133 provided for in this section, and any person who falsely certifies
134 that a person is mobility impaired in order that an applicant may
135 be issued the special registration plate or windshield placard
136 hereunder, is guilty of a misdemeanor and, upon conviction
137 thereof, in addition to any other penalty he or she may other-
138 wise incur, shall be fined one hundred dollars.

139 (d) The commissioner shall set the expiration date for
140 special registration plates and permanent removable windshield
141 placards on the last day of a given month and year, to be valid
142 for a minimum of one year but not more than five years, after
143 which time a new application must be submitted to the commis-
144 sioner. After the commissioner receives the new application,
145 signed by a certified physician, the commissioner shall issue: (i)
146 A new special registration plate or new permanent removable
147 windshield placard; or (ii) official labels imprinted with the new
148 expiration date and designed so as to be placed over the old
149 dates on the original registration plate or windshield placard.

150 (e) The commissioner shall set the expiration date of
151 temporary removable windshield placards to be valid for a
152 period of approximately six months after the application was
153 received and approved by the commissioner.

154 (f) The commissioner shall issue to each applicant who is
155 granted a special registration plate or windshield placard an

156 identification card bearing the applicant's name, assigned
157 identification number and expiration date. The applicant must
158 thereafter carry this identification card on his or her person
159 whenever parking in a handicapped parking space.

160 (g) A handicapped parking space should comply with the
161 provisions of the Americans with Disabilities Act Guidelines,
162 contained in 28 C.F.R. 36, Appendix A, Section 4.6. In particu-
163 lar, the parking space should be a minimum of eight feet wide
164 with an adjacent access aisle for vans having side mounted
165 handicap lifts. Access aisles should be marked using diagonal
166 stripes or other appropriate markings denoting that the space is
167 a no-parking zone. Lines or markings on the pavement or curbs
168 for parking spaces and access aisles may be in any color,
169 although blue is the generally accepted color for handicapped
170 parking.

171 (h) A vehicle from any other state, United States territory
172 or foreign country displaying an officially issued special
173 registration plate, placard or decal bearing the international
174 symbol of access, shall be recognized and accepted as meeting
175 the requirements of this section, regardless of where the plate,
176 placard or decal is mounted or displayed on the vehicle.

177 (i) Free stopping, standing or parking places marked with
178 the international symbol of access shall be designated in close
179 proximity to all public entities, including state, county and
180 municipal buildings and facilities, places of public accommoda-
181 tion and commercial facilities. These parking places shall be
182 reserved solely for persons with a mobility impairment during
183 the hours that those buildings are open for business.

184 (j) Any person whose vehicle properly displays a valid,
185 unexpired special registration plate or removable windshield
186 placard may park the vehicle for unlimited periods of time in
187 parking zones unrestricted as to length of parking time permit-
188 ted: *Provided*, That this privilege does not mean that the vehicle
189 may park in any zone where stopping, standing or parking is
190 prohibited or which creates parking zones for special types of
191 vehicles or which prohibits parking during heavy traffic periods

192 during specified rush hours or where parking would clearly
193 present a traffic hazard. To the extent any provision of any
194 ordinance of any political subdivision of this state is contrary to
195 the provisions of this section, the provisions of this section take
196 precedence and apply.

197 The privileges provided for in this subsection apply only
198 during those times when the vehicle is being used for the
199 transportation of a person with a mobility impairment. Any
200 person who knowingly exercises, or attempts to exercise, these
201 privileges at a time when the vehicle is not being used for the
202 transportation of a person with a mobility impairment is guilty
203 of a misdemeanor and, upon conviction thereof, in addition to
204 any other penalty he or she may otherwise incur, shall be fined
205 one hundred dollars.

206 (k) Any person whose vehicle does not display a valid,
207 special registration plate or removable windshield placard may
208 not stop, stand or park a motor vehicle in an area designated,
209 zoned or marked for handicapped parking with signs or
210 instructions displaying the international symbol of access,
211 either by itself or with explanatory text. Such signs may be
212 mounted on a post or a wall in front of the handicapped parking
213 space and instructions may appear on the ground or pavement,
214 but use of both methods is preferred. Handicapped parking
215 spaces for vans having an eight-foot adjacent access aisle
216 should be designated as "van accessible" but may be used by
217 any vehicle displaying a valid special registration plate or
218 removable windshield placard. These spaces are intended solely
219 for persons with a mobility impairment, as defined in this
220 section: *Provided*, That any person in the act of transporting a
221 person with a mobility impairment as defined in this section,
222 may stop, stand or park a motor vehicle not displaying a special
223 registration plate or removable windshield placard in the area
224 designated for handicapped parking by the international symbol
225 of access for the limited purposes of loading or unloading a
226 passenger with a mobility impairment: *Provided, however*, That
227 the vehicle shall be promptly moved after the completion of this
228 limited purpose.

229 Any person who violates the provisions of this subsection
230 is guilty of a misdemeanor and, upon conviction thereof, shall
231 be fined one hundred dollars.

232 (l) Signs erected in the future that designate areas as
233 "handicapped parking" or that display the international symbol
234 of access shall also include the words "\$100 fine".

235 (m) No person may stop, stand or park a motor vehicle in
236 an area designated or marked off as an access aisle adjacent to
237 a van-accessible parking space or regular handicapped parking
238 space. Any person, including a driver of a vehicle displaying a
239 valid removable windshield placard or special registration plate,
240 who violates the provisions of this subsection is guilty of a
241 misdemeanor and, upon conviction thereof, shall be fined one
242 hundred dollars.

243 (n) Parking enforcement personnel who otherwise enforce
244 parking violations are hereby authorized to issue citations for
245 violations of this section.

246 (o) Law-enforcement agencies may establish a program to
247 utilize trained volunteers to collect information necessary to
248 issue citations to persons who illegally park in designated
249 handicapped parking spaces. Any law-enforcement agency
250 choosing to establish a program shall provide for workers'
251 compensation and liability coverage. The volunteers shall
252 photograph the illegally parked vehicle and complete a form, to
253 be developed by supervising law-enforcement agencies, that
254 includes the vehicle's license plate number, date, time and
255 location of the illegally parked vehicle. The photographs must
256 show the vehicle in the handicapped space and a readable view
257 of the license plate. Within the discretion of the supervising
258 law-enforcement agency, the volunteers may issue citations or
259 the volunteers may submit the photographs of the illegally
260 parked vehicle and the form to the supervising law-enforcement
261 agency, who may issue a citation, which includes the photo-
262 graphs and the form, to the owner of the illegally parked
263 vehicle. Volunteers shall be trained on the requirements for
264 citations for vehicles parked in marked, zoned or designated

265 handicapped parking areas by the supervising law-enforcement
266 agency.

267 (p) The commissioner shall establish a grace period for
268 individuals who, on the effective date of the amendment adding
269 this subsection, hold special registration plates or removable
270 windshield placards bearing no expiration date to submit their
271 applications for newly issued special registration plates and
272 windshield placards, after which time any undated registration
273 plate or windshield placard is invalid and subject to confisca-
274 tion by any duly appointed law-enforcement officer.

275 (q) The commissioner shall adopt and promulgate rules in
276 accordance with the provisions of article three, chapter twenty-
277 nine-a of this code to effectuate the provisions of this section.

CHAPTER 179

(Com. Sub. for H. B. 4153 —By Delegate Warner)

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

AN ACT to amend and reenact section ten, article four, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting an insurance claimant with a total loss which is exclusively cosmetic to choose to retain the vehicle by providing for the issuance of a title with the designation “cosmetic total loss”.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.

§17A-4-10. Salvage certificates for certain wrecked or damaged vehicles; fee; penalty.

1 (a) In the event a motor vehicle is determined to be a total
2 loss or otherwise designated as “totaled” by any insurance
3 company or insurer, and upon payment of an agreed price as a
4 claim settlement to any insured or claimant owner for the
5 purchase of the vehicle, the insurance company or the insurer
6 shall receive the certificate of title and the vehicle except that
7 an insured or claimant owner may choose to retain possession
8 of a cosmetically damaged vehicle, as provided in subdivision
9 (2) of this subsection. The term “total loss” means a motor
10 vehicle which has sustained damages equivalent to seventy-five
11 percent or more of the market value as determined by a
12 nationally accepted used car value guide. The insurance
13 company or insurer shall within ten days determine if the
14 vehicle is repairable, cosmetically damaged or nonrepairable
15 and surrender the certificate of title and a copy of the claim
16 settlement to the division of motor vehicles. If the insurance
17 company or insurer determines that the vehicle is repairable, the
18 division shall issue a “salvage certificate”, on a form prescribed
19 by the commissioner, in the name of the insurance company or
20 the insurer. The certificate shall contain on the reverse thereof
21 spaces for one successive assignment before a new certificate
22 at an additional fee is required.

23 (1) Upon the sale of the vehicle the insurance company or
24 insurer shall endorse the assignment of ownership on the
25 salvage certificate and deliver it to the purchaser. The vehicle
26 shall not be titled or registered for operation on the streets or
27 highways of this state unless there is compliance with subsec-
28 tion (c) of this section. The division shall charge a fee of fifteen
29 dollars for each salvage title issued.

30 (2) If the insurance company or insurer determines the
31 damage to a totaled vehicle is exclusively cosmetic and no
32 repair is necessary in order to legally and safely operate the
33 motor vehicle on the roads and highways of this state, the

34 insurance company or insurer shall upon payment of the claim
35 settlement submit the certificate of title to the division.

36 (A) The division shall, without further inspection, issue a
37 title branded "cosmetic total loss" to the insured or claimant
38 owner if the insured or claimant owner wishes to retain posses-
39 sion of the vehicle, in lieu of a "salvage certificate." A fee of
40 five dollars shall be charged for each "cosmetic total loss" title
41 issued. The terms "cosmetically damaged" and "cosmetic total
42 loss" do not include any vehicle which has been damaged by
43 flood or fire. The designation "cosmetic total loss" on a title
44 cannot be changed.

45 (B) If the insured or claimant owner elects not to take
46 possession of the vehicle and the insurance company or insurer
47 retains possession, the division shall issue a cosmetic total loss
48 salvage certificate to the insurance company or insurer. The
49 division shall charge a fee of fifteen dollars for each cosmetic
50 total loss salvage certificate issued. The division shall, upon
51 surrender of the cosmetic total loss salvage certificate issued
52 under the provisions of this paragraph, and payment of the five
53 percent privilege tax on the fair market value of the vehicle as
54 determined by the commissioner, issue a title branded "cos-
55 metic total loss" without further inspection.

56 (3) If the insurance company or insurer determines that the
57 damage to a totaled vehicle renders it nonrepairable, incapable
58 of safe operation for use on roads and highways and which has
59 no resale value except as a source of parts or scrap, the insur-
60 ance company or vehicle owner shall request that the division
61 issue a nonrepairable motor vehicle certificate in lieu of a
62 salvage certificate. The division shall issue a nonrepairable
63 motor vehicle certificate without charge.

64 (b) Any owner, who scraps, compresses, dismantles or
65 destroys a vehicle for which a certificate of title, nonrepairable
66 motor vehicle certificate or salvage certificate has been issued,
67 shall, within twenty days, surrender the certificate of title,
68 nonrepairable motor vehicle certificate or salvage certificate to

69 the division for cancellation. Any person who purchases or
70 acquires a vehicle as salvage or scrap, to be dismantled,
71 compressed or destroyed, shall within twenty days surrender the
72 certificate to the division.

73 (c) If the motor vehicle is a "reconstructed vehicle" as
74 defined in section one, article one of this chapter, it may not be
75 titled or registered for operation until it has been inspected by
76 an official state inspection station and by a representative of the
77 division of motor vehicles who has been designated by the
78 commissioner as an investigator. Following an approved
79 inspection, an application for a new certificate of title may be
80 submitted to the division; however, the applicant shall be
81 required to retain all receipts for component parts, equipment
82 and materials used in the reconstruction. The salvage certificate
83 must also be surrendered to the division before a certificate of
84 title may be issued.

85 (d) The owner or title holder of any motor vehicle titled in
86 this state which has previously been branded in this state or
87 another state as "salvage," "reconstructed," "cosmetic total
88 loss," "cosmetic total loss salvage," "flood" or "fire" or an
89 equivalent term under another state's laws shall, upon becom-
90 ing aware of the brand, apply for and receive a title from the
91 division of motor vehicles on which the brand "reconstructed,"
92 "salvage," "cosmetic total loss" "cosmetic total loss salvage,"
93 "flood" or "fire" is shown. A fee of five dollars will be charged
94 for each title so issued.

95 (e) If application is made for title to a motor vehicle, the
96 title to which has previously been branded "reconstructed,"
97 "salvage," "cosmetic total loss," cosmetic total loss salvage,"
98 "flood" or "fire" by the division of motor vehicles under this
99 section and said application is accompanied by a title from
100 another state which does not carry the brand, the division shall,
101 before issuing the title, affix the brand "reconstructed,"
102 "cosmetic total loss," "cosmetic total loss salvage," "flood" or
103 "fire" to the title. The privilege tax paid on a motor vehicle

104 titled as “reconstructed” “cosmetic total loss,” “flood” or “fire”
105 under the provisions of this section shall be based on fifty
106 percent of the fair market value of the vehicle as determined by
107 a nationally accepted used car value guide to be used by the
108 commissioner.

109 (f) The division shall charge a fee of fifteen dollars for the
110 issuance of each salvage certificate or cosmetic total loss
111 salvage certificate but shall not require the payment of the five
112 percent privilege tax. However, upon application for a certifi-
113 cate of title for a reconstructed, cosmetic total loss, flood or fire
114 damaged vehicle, the division shall collect the five percent
115 privilege tax on the fair market value of the vehicle as deter-
116 mined by the commissioner unless the applicant is otherwise
117 exempt from the payment of such privilege tax. A
118 wrecker/dismantler/rebuilder is exempt from the five percent
119 privilege tax upon titling a reconstructed vehicle. The division
120 shall collect a fee of thirty-five dollars per vehicle for inspec-
121 tions of reconstructed vehicles. These fees shall be deposited in
122 a special fund created in the state treasurer’s office and may be
123 expended by the division to carry out the provisions of this
124 article. Licensed wreckers/dismantlers/rebuilders may charge
125 a fee not to exceed twenty-five dollars for all vehicles owned by
126 private rebuilders which are inspected at the place of business
127 of a wrecker/dismantler/rebuilder.

128 (g) A certificate of title issued by the division for a recon-
129 structed vehicle shall contain markings in bold print on the face
130 of the title that it is for a reconstructed, flood or fire damaged
131 vehicle.

132 Any person who violates the provisions of this section shall
133 be guilty of a misdemeanor and, upon conviction thereof, shall
134 be fined not less than five hundred dollars nor more than one
135 thousand dollars, or imprisoned in the county jail for not more
136 than one year, or both fined and imprisoned.

CHAPTER 180

(S. B. 384 — By Senators Tomblin, Mr. President, and Wooton, Chafin, Sharpe, Craigo, Jackson, Anderson, Prezioso, Snyder, Unger, Dittmar, Ball, Oliverio, Redd, Bailey, Bowman, Dawson, Deem, Edgell, Fanning, Helmick, Kessler, Love, McCabe, McKenzie, Minard, Minear, Mitchell, Plymale, Ross, Sprouse, Walker, Boley and Hunter)

[Passed February 28, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, seven, eight, eight-a, nine, ten, eleven, twelve, thirteen, fourteen and sixteen, article six-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eighteen, all relating to generally clarifying the relationship between automobile dealers, distributors and manufacturers; modifying definitions; restricting the cancellation of dealer contracts; lengthening certain notification provisions; providing when compensation is due dealer; listing and modifying prohibited practices; addressing the succession of dealers in the case of incapacitation; modifying relocation warranty obligations; modifying acceptance of vehicles and risk of loss provisions; providing for actions for damages and venue; and specifying that West Virginia law applies with regard to franchise agreements, contracts or other agreements between a new motor vehicle dealer and a manufacturer or distributor or any subsidiary, affiliate or partner of a manufacturer or distributor.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, seven, eight, eight-a, nine, ten, eleven, twelve, thirteen, fourteen and sixteen, article six-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said

article be further amended by adding thereto a new section, designated section eighteen, all to read as follows:

ARTICLE 6A. MOTOR VEHICLE DEALERS, DISTRIBUTORS, WHOLE-SALERS AND MANUFACTURERS.

- §17A-6A-2. Governing law.
- §17A-6A-3. Definitions.
- §17A-6A-4. Cancellation of dealer contract; notification.
- §17A-6A-7. Notice provisions.
- §17A-6A-8. Reasonable compensation to dealer.
- §17A-6A-8a. Compensation to dealers for service rendered.
- §17A-6A-9. Payment of compensation.
- §17A-6A-10. Prohibited practices.
- §17A-6A-11. Where motor vehicle dealer deceased or incapacitated.
- §17A-6A-12. Relocation.
- §17A-6A-13. Obligations regarding warranties.
- §17A-6A-14. Acceptance of vehicles; risk of loss or damage.
- §17A-6A-16. Actions at law; damages.
- §17A-6A-18. West Virginia law to apply.

§17A-6A-2. Governing law.

1 In accord with the settled public policy of this state to
2 protect the rights of its citizens, each franchise or agreement
3 between a manufacturer or distributor and a dealer or dealership
4 which is located in West Virginia, or is to be performed in
5 substantial part in West Virginia, shall be construed and
6 governed by the laws of the state of West Virginia, regardless
7 of the state in which it was made or executed and of any
8 provision in the franchise or agreement to the contrary.

9 The provisions of this article apply only to any franchises
10 and agreements entered into, continued, modified or renewed
11 subsequent to the effective date of this article.

§17A-6A-3. Definitions.

1 For the purposes of this article, the words and phrases
2 defined in this section have the meanings ascribed to them,
3 except where the context clearly indicates a different meaning.

4 “Dealer agreement” means the franchise, agreement or
5 contract in writing between a manufacturer, distributor and a
6 new motor vehicle dealer, which purports to establish the legal
7 rights and obligations of the parties to the agreement or contract
8 with regard to the purchase, lease or sale of new motor vehicles,
9 accessories, service and sale of parts for motor vehicles.

10 “Designated family member” means the spouse, child,
11 grandchild, parent, brother or sister of a deceased new motor
12 vehicle dealer who is entitled to inherit the deceased dealer’s
13 ownership interest in the new motor vehicle dealership under
14 the terms of the dealer’s will, or who has otherwise been
15 designated in writing by a deceased dealer to succeed the
16 deceased dealer in the new motor vehicle dealership, or is
17 entitled to inherit under the laws of intestate succession of this
18 state. With respect to an incapacitated new motor vehicle
19 dealer, the term means the person appointed by a court as the
20 legal representative of the new motor vehicle dealer’s property.
21 The term also includes the appointed and qualified personal
22 representative and the testamentary trustee of a deceased new
23 motor vehicle dealer. However, the term means only that
24 designated successor nominated by the new motor vehicle
25 dealer in a written document filed by the dealer with the
26 manufacturer or distributor, if such a document is filed.

27 “Distributor” means any person, resident or nonresident,
28 who, in whole or in part, offers for sale, sells or distributes any
29 new motor vehicle to a new motor vehicle dealer or who
30 maintains a factory representative, resident or nonresident, or
31 who controls any person, resident or nonresident, who, in whole
32 or in part, offers for sale, sells or distributes any new motor
33 vehicle to a new motor vehicle dealer.

34 “Established place of business” means a permanent,
35 enclosed commercial building located within this state easily
36 accessible and open to the public at all reasonable times and at
37 which the business of a new motor vehicle dealer, including the
38 display and repair of motor vehicles, may be lawfully carried on

39 in accordance with the terms of all applicable building codes,
40 zoning and other land-use regulatory ordinances and as licensed
41 by the division of motor vehicles.

42 “Factory branch” means an office maintained by a manu-
43 facturer or distributor for the purpose of selling or offering for
44 sale vehicles to a distributor, wholesaler or new motor vehicle
45 dealer, or for directing or supervising, in whole or in part,
46 factory or distributor representatives. The term includes any
47 sales promotion organization maintained by a manufacturer or
48 distributor which is engaged in promoting the sale of a particu-
49 lar make of new motor vehicles in this state to new motor
50 vehicle dealers.

51 “Factory representative” means an agent or employee of a
52 manufacturer, distributor or factory branch retained or em-
53 ployed for the purpose of making or promoting the sale of new
54 motor vehicles or for supervising or contracting with new motor
55 vehicle dealers or proposed motor vehicle dealers.

56 “Good faith” means honesty in fact and the observation of
57 reasonable commercial standards of fair dealing in the trade.

58 “Manufacturer” means any person who manufactures or
59 assembles new motor vehicles; or any distributor, factory
60 branch or factory representative.

61 “Motor vehicle” means that term as defined in section one,
62 article one of this chapter, including motorcycle and recre-
63 ational vehicle as defined in subsections (c) and (nn), respec-
64 tively, of said section, but not including a tractor or farm
65 equipment.

66 “New motor vehicle” means a motor vehicle which is in the
67 possession of the manufacturer, distributor or wholesaler, or has
68 been sold only to a new motor vehicle dealer and on which the
69 original title has not been issued from the new motor vehicle
70 dealer.

71 “New motor vehicle dealer” means a person who holds a
72 dealer agreement granted by a manufacturer or distributor for
73 the sale of its motor vehicles, who is engaged in the business of
74 purchasing, selling, leasing, exchanging or dealing in new
75 motor vehicles, service of said vehicles, warranty work and sale
76 of parts who has an established place of business in this state
77 and is licensed by the division of motor vehicles.

78 “Person” means a natural person, partnership, corporation,
79 association, trust, estate or other legal entity.

80 “Proposed new motor vehicle dealer” means a person who
81 has an application pending for a new dealer agreement with a
82 manufacturer or distributor. Proposed motor vehicle dealer does
83 not include a person whose dealer agreement is being renewed
84 or continued.

85 “Relevant market area” means the area located within a
86 fifteen air-mile radius around an existing same line-make new
87 motor vehicle dealership.

§17A-6A-4. Cancellation of dealer contract; notification.

1 (1) Notwithstanding any agreement, a manufacturer or
2 distributor shall not cancel, terminate, fail to renew or refuse to
3 continue any dealer agreement with a new motor vehicle dealer
4 unless the manufacturer or distributor has complied with all of
5 the following:

6 (a) Satisfied the notice requirement of section seven of this
7 article;

8 (b) Acted in good faith;

9 (c) Engaged in full and open communication with fran-
10 chised dealer; and

11 (d) Has good cause for the cancellation, termination,
12 nonrenewal or discontinuance.

13 (2) Notwithstanding any agreement, good cause exists for
14 the purposes of a termination, cancellation, nonrenewal or
15 discontinuance under subdivision (d), subsection (1) of this
16 section when both of the following occur:

17 (a) There is a failure by the new motor vehicle dealer to
18 comply with a provision of the dealer agreement and the
19 provision is both reasonable and of material significance to the
20 relationship between the manufacturer or distributor and the
21 new motor vehicle dealer; and

22 (b) The manufacturer or distributor first acquired actual or
23 constructive knowledge of the failure not more than eighteen
24 months prior to the date on which notification was given
25 pursuant to section seven of this article.

26 (3) If the failure by the new motor vehicle dealer to comply
27 with a provision of the dealer agreement relates to the perfor-
28 mance of the new motor vehicle dealer in sales or service, good
29 cause exists for the purposes of a termination, cancellation,
30 nonrenewal or discontinuance under subsection (1) of this
31 section when the new motor vehicle dealer failed to effectively
32 carry out the performance provisions of the dealer agreement if
33 all of the following have occurred:

34 (a) The new motor vehicle dealer was given written notice
35 by the manufacturer or distributor of the failure;

36 (b) The notification stated that the notice of failure of
37 performance was provided pursuant to this article;

38 (c) The new motor vehicle dealer was afforded a reasonable
39 opportunity to exert good faith efforts to carry out the dealer
40 agreement; and

41 (d) The failure continued for more than three hundred sixty
42 days after the date notification was given pursuant to subdivi-
43 sion (a) of this subsection.

§17A-6A-7. Notice provisions.

1 Notwithstanding any agreement, prior to the termination,
2 cancellation, nonrenewal or discontinuance of any dealer
3 agreement, the manufacturer or distributor shall furnish notice
4 of the termination, cancellation, nonrenewal or discontinuance
5 to the new motor vehicle dealer as follows:

6 (a) Except as provided in subdivision (c) or (d) of this
7 subsection, notice shall be made not less than one hundred
8 twenty days prior to the effective date of the termination,
9 cancellation, nonrenewal or discontinuance.

10 (b) Notice shall be by certified mail with restrictive
11 delivery to the new motor vehicle dealer principal and shall
12 contain the following:

13 (i) A statement of intention to terminate, cancel, not renew
14 or discontinue the dealer agreement;

15 (ii) A detailed written statement of all reasons for the
16 termination, cancellation, nonrenewal or discontinuance. The
17 statement shall include, at a minimum, a complete explanation
18 of each reason upon which the manufacturer or distributor relies
19 to support its proposed action, along with all supporting
20 documentation which is material to the proposed action and
21 available to the manufacturer or distributor at the time of
22 termination, cancellation, nonrenewal or discontinuance; and

23 (iii) The date on which the termination, cancellation,
24 nonrenewal or discontinuance takes effect.

25 (c) Notwithstanding subdivision (a) of this subsection,
26 notice shall be made not less than thirty days prior to the
27 effective date of the termination, cancellation, nonrenewal or
28 discontinuance for any of the following reasons:

29 (i) Insolvency of the new motor vehicle dealer or the filing
30 of any petition by or against the new motor vehicle dealer under
31 any bankruptcy or receivership law;

32 (ii) Failure of the new motor vehicle dealer to conduct his
33 or her customary sales and service operations during his or her
34 customary business hours for seven consecutive business days;

35 (iii) Conviction of the new motor vehicle dealer or its
36 principal owners of a crime, but only if the crime is punishable
37 by imprisonment in excess of one year under the law under
38 which the dealer was convicted or the crime involved theft,
39 dishonesty or false statement regardless of the punishment;

40 (iv) Revocation of a motor vehicle dealership license in
41 accordance with section eighteen, article six of this chapter; or

42 (v) A fraudulent misrepresentation by the new motor
43 vehicle dealer to the manufacturer or distributor, which is
44 material to the dealer agreement.

45 (d) Notwithstanding subdivision (a) of this subsection,
46 notice shall be made not less than twelve months prior to the
47 effective date of a termination, cancellation, nonrenewal or
48 discontinuance if a manufacturer or distributor discontinues
49 production of the new motor vehicle dealer's product line or
50 discontinues distribution of the product line in this state.

§17A-6A-8. Reasonable compensation to dealer.

1 (1) Upon the termination, cancellation, nonrenewal or
2 discontinuance of any dealer agreement, the new motor vehicle
3 dealer shall be allowed fair and reasonable compensation by the
4 manufacturer or distributor for the following:

5 (a) Any new motor vehicle inventory, manufactured for sale
6 in the United States, purchased from the manufacturer, distribu-
7 tor or other dealers, which has not been materially altered,
8 substantially damaged or driven for more than seven hundred
9 fifty miles, except that for any new motorcycle inventory
10 purchased from the manufacturer or distributor, that inventory
11 must not have been materially altered, substantially damaged or
12 driven for more than fifty miles;

13 (b) Supplies and parts inventory purchased from the
14 manufacturer or distributor and listed in the manufacturer's or
15 distributor's current parts catalog;

16 (c) Equipment, furnishings and signs purchased from the
17 manufacturer or distributor; and

18 (d) Special computer software, hardware, license fees and
19 other programs mandated by the manufacturer to provide
20 training or communication with the manufacturer.

21 (2) Upon the termination, cancellation, nonrenewal or
22 discontinuance of a dealer agreement by the manufacturer or
23 distributor, the manufacturer or distributor shall also pay to the
24 new motor vehicle dealer a sum equal to the current, fair rental
25 value of his or her established place of business for a period of
26 three years from the effective date of termination, cancellation,
27 nonrenewal or discontinuance, or the remainder of the lease,
28 whichever is less. If the dealer, directly or indirectly, owns the
29 dealership facility, the manufacturer shall pay the dealer a sum
30 equal to the reasonable rental value of the dealership premises
31 for three years. However, the dealer shall have the obligation to
32 mitigate his or her damages, including, but not limited to,
33 listing the facility with a commercial real estate agent and other
34 reasonable steps to sell or lease the property. During this three-
35 year period the manufacturer shall have the right to occupy and
36 use the facilities until such time as the dealer is able to other-
37 wise sell or lease the property to another party. The payment
38 required by this subsection does not apply to any termination,
39 cancellation, nonrenewal or discontinuance made pursuant to
40 subsection (c), section five of this article.

§17A-6A-8a. Compensation to dealers for service rendered.

1 (1) Every motor vehicle manufacturer, distributor or
2 wholesaler, factory branch or distributor branch, or officer,
3 agent or representative thereof, shall:

4 (a) Specify in writing to each of its motor vehicle dealers,
5 the dealer's obligation for delivery, preparation, warranty and
6 factory recall services on its products;

7 (b) Compensate the motor vehicle dealer for warranty and
8 factory recall service required of the dealer by the manufac-
9 turer, distributor or wholesaler, factory branch or distributor
10 branch, or officer, agent or representative thereof; and

11 (c) Provide the dealer the schedule of compensation to be
12 paid the dealer for parts, work and service in connection with
13 warranty and recall services and the time allowance for the
14 performance of the work and service.

15 (2) In no event may:

16 (a) The schedule of compensation fail to compensate the
17 dealers for the work and services they are required to perform
18 in connection with the dealer's delivery and preparation
19 obligations, or fail to adequately and fairly compensate the
20 dealers for labor, parts and other expenses incurred by the
21 dealer to perform under and comply with manufacturer's
22 warranty agreements and factory recalls;

23 (b) Any manufacturer, distributor or wholesaler, or repre-
24 sentative thereof, pay its dealers an amount of money for
25 warranty or recall work that is less than that charged by the
26 dealer to the retail customers of the dealer for nonwarranty and
27 nonrecall work of the like kind; and

28 (c) Any manufacturer, distributor or wholesaler, or repre-
29 sentative thereof, compensate for warranty and recall work
30 based on a flat-rate figure that is less than what the dealer
31 charges for retail work.

32 (3) It is a violation of this section for any manufacturer,
33 distributor, wholesaler or representative to coerce or attempt to
34 coerce any dealer in any manner, either written or verbal, with
35 threats of surcharges, limited allocation, audits, charge backs or

36 other retaliation, if the dealer seeks to recover its nonwarranty
37 retail rate for warranty and recall work.

38 (4) All claims made by motor vehicle dealers pursuant to
39 this section for compensation for delivery, preparation, war-
40 ranty and recall work, including labor, parts and other expenses,
41 shall be paid by the manufacturer within thirty days after
42 approval and shall be approved or disapproved by the manufac-
43 turer within thirty days after receipt. When any claim is
44 disapproved, the dealer shall be notified in writing of the
45 grounds for disapproval. No claim which has been approved
46 and paid may be charged back to the dealer unless it can be
47 shown that the claim was false or fraudulent, that the repairs
48 were not properly made or were unnecessary to correct the
49 defective condition or the dealer failed to reasonably substanti-
50 ate the claim in accordance with the written requirements of the
51 manufacturer or distributor in effect at the time the claim arose.
52 No charge back may be made until the dealer has had notice
53 and an opportunity to support the claim in question. No
54 otherwise valid reimbursement claims may be denied once
55 properly submitted within manufacturers' submission guide-
56 lines due to a clerical error or omission or based on a different
57 level of technician technical certification or the dealer's failure
58 to subscribe to any manufacturer's computerized training
59 programs.

60 (5) Notwithstanding the terms of a franchise agreement or
61 provision of law in conflict with this section, the dealer's
62 delivery, preparation, warranty and recall obligations consti-
63 tutes the dealer's sole responsibility for product liability as
64 between the dealer and manufacturer, and, except for a loss
65 caused by the dealer's failure to adhere to these obligations, a
66 loss caused by the dealer's negligence or intentional miscon-
67 duct, or a loss caused by the dealer's modification of a product
68 without manufacturer authorization, the manufacturer shall
69 reimburse the dealer for all loss incurred by the dealer, includ-
70 ing legal fees, court costs and damages, as a result of the dealer
71 having been named a party in a product liability action.

§17A-6A-9. Payment of compensation.

1 (1) Compensation for new motor vehicle inventory under
2 subdivision (a), subsection (1), section eight of this article shall
3 be paid within sixty days after the effective date of the termina-
4 tion, cancellation, nonrenewal or discontinuance. Compensation
5 for items of personal property required by subdivisions (b), (c)
6 and (d), subsection (1), section eight of this article shall be paid
7 within sixty days after the effective date of the termination,
8 cancellation, nonrenewal or discontinuance if the new motor
9 vehicle dealer has met all reasonable requirements of the dealer
10 agreement with respect to the return of the repurchased personal
11 property, including providing clear title.

12 (2) Reasonable compensation pursuant to subdivision (a),
13 subsection (1), section eight of this article may not be less than
14 the new motor vehicle dealer's net acquisition cost, including
15 any special promotions ordered by the manufacturer, such as
16 advertising charges, and special tools purchased from the
17 manufacturer or distributor within three years of the date of
18 termination, cancellation, nonrenewal or discontinuance.
19 Reasonable compensation pursuant to subdivision (b) of said
20 subsection shall be the amount stated in the manufacturer's or
21 distributor's current parts price list. Reasonable compensation
22 pursuant to subdivisions (c) and (d) of said subsection shall be
23 the fair market value of the personal property.

24 (3) In the event payment is not made within ninety days as
25 provided in subsection (1) of this section, interest accrues on all
26 amounts due the new motor vehicle dealer at a rate of twelve
27 percent per annum.

§17A-6A-10. Prohibited practices.

1 (1) A manufacturer or distributor may not require any new
2 motor vehicle dealer in this state to do any of the following:

3 (a) Order or accept delivery of any new motor vehicle, part
4 or accessory of the vehicle, equipment or any other commodity

5 not required by law which was not voluntarily ordered by the
6 new motor vehicle dealer. This section does not prevent the
7 manufacturer or distributor from requiring that new motor
8 vehicle dealers carry a reasonable inventory of models offered
9 for sale by the manufacturer or distributor;

10 (b) Order or accept delivery of any new motor vehicle with
11 special features, accessories or equipment not included in the
12 list price of the new motor vehicle as publicly advertised by the
13 manufacturer or distributor;

14 (c) Unreasonably participate monetarily in any advertising
15 campaign or contest, or purchase any promotional materials,
16 display devices, display decorations, brand signs and dealer
17 identification, nondiagnostic computer equipment and displays,
18 or other materials at the expense of the new motor vehicle
19 dealer;

20 (d) Enter into any agreement with the manufacturer or
21 distributor or do any other act prejudicial to the new motor
22 vehicle dealer by threatening to terminate a dealer agreement or
23 any contractual agreement or understanding existing between
24 the dealer and the manufacturer or distributor. Notice in good
25 faith to any dealer of the dealer's violation of any terms or
26 provisions of the dealer agreement is not a violation of this
27 article;

28 (e) Change the capital structure of the new motor vehicle
29 dealership or the means by or through which the dealer finances
30 the operation of the dealership if the dealership at all times
31 meets any reasonable capital standards determined by the
32 manufacturer in accordance with uniformly applied criteria;

33 (f) Refrain from participation in the management of,
34 investment in or the acquisition of any other line of new motor
35 vehicle or related products, provided that the dealer maintains
36 a reasonable line of credit for each make or line of vehicle,
37 remains in compliance with reasonable facilities requirements
38 and makes no change in the principal management of the

39 dealer. Notwithstanding the terms of any franchise agreement,
40 a manufacturer or distributor may not enforce any requirements,
41 including facility requirements, that a new motor vehicle dealer
42 establish or maintain exclusive facilities, personnel or display
43 space, when the requirements are unreasonable considering
44 current economic conditions and are not otherwise justified by
45 reasonable business considerations. The burden of proving that
46 current economic conditions or reasonable business consider-
47 ations justify exclusive facilities is on the manufacturer or
48 distributor and must be proven by a preponderance of the
49 evidence;

50 (g) Change the location of the new motor vehicle dealership
51 or make any substantial alterations to the dealership premises,
52 where to do so would be unreasonable; and

53 (h) Prospectively assent to a release, assignment, novation,
54 waiver or estoppel which would relieve any person from
55 liability imposed by this article or require any controversy
56 between a new motor vehicle dealer and a manufacturer or
57 distributor to be referred to a person other than the duly
58 constituted courts of the state or the United States, if the referral
59 would be binding upon the new motor vehicle dealer.

60 (2) A manufacturer or distributor may not do any of the
61 following:

62 (a) Fail to deliver new motor vehicles or new motor vehicle
63 parts or accessories within a reasonable time and in reasonable
64 quantities relative to the new motor vehicle dealer's market area
65 and facilities, unless the failure is caused by acts or occurrences
66 beyond the control of the manufacturer or distributor, or unless
67 the failure results from an order by the new motor vehicle
68 dealer in excess of quantities reasonably and fairly allocated by
69 the manufacturer or distributor. No manufacturer or distributor
70 may penalize a new motor vehicle dealer for an alleged failure
71 to meet sales quotas where the alleged failure is due to actions
72 of the manufacturer or distributor;

73 (b) Refuse to disclose to a new motor vehicle dealer the
74 method and manner of distribution of new motor vehicles by
75 the manufacturer or distributor, including any numerical
76 calculation or formula used, nationally or within the dealers
77 market, to make the allocations;

78 (c) Refuse to disclose to a new motor vehicle dealer the
79 total number of new motor vehicles of a given model, which the
80 manufacturer or distributor has sold during the current model
81 year within the dealer's marketing district, zone or region,
82 whichever geographical area is the smallest;

83 (d) Increase prices of new motor vehicles which the new
84 motor vehicle dealer had ordered and then eventually delivered
85 to the same retail consumer for whom the vehicle was ordered,
86 if the order was made prior to the dealer's receipt of the written
87 official price increase notification. A sales contract signed by
88 a private retail consumer and binding on the dealer is evidence
89 of each order. In the event of manufacturer or distributor price
90 reductions or cash rebates, the amount of any reduction or
91 rebate received by a dealer shall be passed on to the private
92 retail consumer by the dealer. Any price reduction in excess of
93 five dollars shall apply to all vehicles in the dealer's inventory
94 which were subject to the price reduction. A price difference
95 applicable to new model or series motor vehicles at the time of
96 the introduction of the new models or the series is not a price
97 increase or price decrease. This subdivision does not apply to
98 price changes caused by the following:

99 (i) The addition to a motor vehicle of required or optional
100 equipment pursuant to state or federal law;

101 (ii) In the case of foreign made vehicles or components,
102 revaluation of the United States dollar; or

103 (iii) Any increase in transportation charges due to an
104 increase in rates charged by a common carrier and transporters;

105 (e) Offer any refunds or other types of inducements to any
106 dealer for the purchase of new motor vehicles of a certain line
107 make to be sold to this state or any political subdivision of this
108 state without making the same offer available upon request to
109 all other new motor vehicle dealers of the same line make;

110 (f) Release to an outside party, except under subpoena or in
111 an administrative or judicial proceeding to which the new motor
112 vehicle dealer or the manufacturer or distributor are parties, any
113 business, financial or personal information which has been
114 provided by the dealer to the manufacturer or distributor, unless
115 the new motor vehicle dealer gives his or her written consent;

116 (g) Deny a new motor vehicle dealer the right to associate
117 with another new motor vehicle dealer for any lawful purpose;

118 (h) Establish a new motor vehicle dealership which would
119 unfairly compete with a new motor vehicle dealer of the same
120 line make operating under a dealer agreement with the manu-
121 facturer or distributor in the relevant market area. A manufac-
122 turer or distributor shall not be considered to be unfairly
123 competing if the manufacturer or distributor is:

124 (i) Operating a dealership temporarily for a reasonable
125 period.

126 (ii) Operating a dealership which is for sale at a reasonable
127 price.

128 (iii) Operating a dealership with another person who has
129 made a significant investment in the dealership and who will
130 acquire full ownership of the dealership under reasonable terms
131 and conditions.

132 (i) A manufacturer may not, except as provided by this
133 section, directly or indirectly:

134 (i) Own an interest in a dealer or dealership;

135 (ii) Operate a dealership; or

136 (iii) Act in the capacity of a new motor vehicle dealer:
137 *Provided*, That a manufacturer may own an interest, other than
138 stock in a publicly held company, solely for investment
139 purposes.

140 (j) A manufacturer or distributor may own an interest in a
141 franchised dealer, or otherwise control a dealership, for a period
142 not to exceed twelve months from the date the manufacturer or
143 distributor acquires the dealership if:

144 (i) The person from whom the manufacturer or distributor
145 acquired the dealership was a franchised dealer; and

146 (ii) The dealership is for sale by the manufacturer or
147 distributor at a reasonable price and on reasonable terms and
148 conditions;

149 (k) The twelve-month period may be extended for an
150 additional twelve months. Notice of any such extension of the
151 original twelve-month period must be given to any dealer of the
152 same line-make whose dealership is located in the same county,
153 or within fifteen air miles of, the dealership owned or controlled
154 by the manufacturer or distributor prior to the expiration of the
155 original twelve-month period. Any dealer receiving the notice
156 may protest the proposed extension within thirty days of
157 receiving notice by bringing a declaratory judgment action in
158 the circuit court for the county in which the new motor vehicle
159 dealer is located to determine whether good cause exists for the
160 extension;

161 (l) For the purpose of broadening the diversity of its dealer
162 body and enhancing opportunities for qualified persons who are
163 part of a group who have historically been under represented in
164 its dealer body, or other qualified persons who lack the re-
165 sources to purchase a dealership outright, but for no other
166 purpose, a manufacturer or distributor may temporarily own an
167 interest in a dealership if the manufacturer's or distributor's
168 participation in the dealership is in a bona fide relationship with
169 a franchised dealer who:

170 (i) Has made a significant investment in the dealership,
171 subject to loss;

172 (ii) Has an ownership interest in the dealership; and

173 (iii) Operates the dealership under a plan to acquire full
174 ownership of the dealership within a reasonable time and under
175 reasonable terms and conditions;

176 (m) Unreasonably withhold consent to the sale, transfer or
177 exchange of the dealership to a qualified buyer capable of being
178 licensed as a new motor vehicle dealer in this state;

179 (n) Fail to respond in writing to a request for consent to a
180 sale, transfer or exchange of a dealership within sixty days after
181 receipt of a written application from the new motor vehicle
182 dealer on the forms generally utilized by the manufacturer or
183 distributor for such purpose and containing the information
184 required therein. Failure to respond to the request within the
185 sixty days is consent;

186 (o) Unfairly prevent a new motor vehicle dealer from
187 receiving reasonable compensation for the value of the new
188 motor vehicle dealership;

189 (p) Audit any motor vehicle dealer in this state for warranty
190 parts or warranty service compensation, service compensation,
191 service incentives, rebates or other forms of sales incentive
192 compensation more than twelve months after the claim for
193 payment or reimbursement has been made by the automobile
194 dealer: *Provided*, That the provisions of this subsection does not
195 apply where a claim is fraudulent. In addition, the manufacturer
196 or distributor is responsible for reimbursing the audited dealer
197 for all copying, postage and administrative costs incurred by the
198 dealer during the audit. Any charges to a dealer as a result of
199 the audit must be separately billed to the dealer;

200 (q) Unreasonably restrict a dealer's ownership of a dealer-
201 ship through noncompetition covenants, site control, sublease,

202 collateral pledge of lease, right of first refusal, option to
203 purchase, or otherwise. A right of first refusal is created when:

204 (i) A manufacturer has a contractual right of first refusal to
205 acquire the new motor vehicle dealer's assets where the dealer
206 owner receives consideration, terms, and conditions that are
207 either the same as or better than those they have already
208 contracted to receive under the proposed change of more than
209 fifty percent of the dealers's ownership.

210 (ii) The proposed change of the dealership's ownership or
211 the transfer of the new vehicle dealer's assets does not involve
212 the transfer of assets or the transfer or issuance of stock by the
213 dealer or one of the dealer's owners to one of the following:

214 (A) A designated family member of one or more of the
215 dealer owners;

216 (B) A manager employed by the dealer in the dealership
217 during the previous five years and who is otherwise qualified as
218 a dealer operator;

219 (C) A partnership or corporation controlled by a designated
220 family member of one of the dealers;

221 (D) A trust established or to be established:

222 (1) For the purpose of allowing the new vehicle dealer to
223 continue to qualify as such under the manufacturer's or
224 distributor's standards; or

225 (2) To provide for the succession of the franchise agree-
226 ment to designated family members or qualified management
227 in the event of death or incapacity of the dealer or its principle
228 owner or owners.

229 (iii) Upon exercising the right of first refusal by a manufac-
230 turer, it eliminates any requirement under its dealer agreement
231 or other applicable provision of this statute, that the manufac-
232 turer evaluate, process or respond to the underlying proposed

233 transfer by approving or rejecting the proposal, is not subject to
234 challenge as a rejection or denial of the proposed transfer by
235 any party.

236 (iv) Except as otherwise provided in this subsection, the
237 manufacturer or distributor agrees to pay the reasonable
238 expenses, including reasonable attorney's fees that are incurred
239 by the proposed owner or transferee before the manufacturer's
240 or distributor's exercise of its right of first refusal. Payment of
241 the expenses and attorney's fees are not required if the dealer
242 fails to submit an accounting of those expenses and fees within
243 twenty days of the dealer's receipt of the manufacturer's or
244 distributor's written request for such an accounting. Such a
245 written account of fees and expenses may be requested by a
246 manufacturer or distributor before exercising its right of first
247 refusal;

248 (r) Except for experimental low-volume not-for-retail sale
249 vehicles, cause warranty and recall repair work to be performed
250 by any entity other than a new motor vehicle dealer;

251 (s) Make any material change in any franchise agreement
252 without giving the new motor vehicle dealer written notice by
253 certified mail of the change at least sixty days prior to the
254 effective date of the change;

255 (t) Fail to reimburse a new motor vehicle dealer, at the
256 dealers regular rate, or the full and actual cost of providing a
257 loaner vehicle to any customer who is having a vehicle serviced
258 at the dealership if the provision of the loaner vehicle is
259 required by the manufacturer; and

260 (u) Compel a new motor vehicle dealer through its finance
261 subsidiaries to agree to unreasonable operating requirements or
262 to directly or indirectly terminate a franchise through the
263 actions of a finance subsidiary of the franchisor. This subsection
264 does not limit the right of a finance subsidiary to engage in

265 business practices in accordance with the usage of trade in retail
266 or wholesale vehicle financing.

267 (3) A manufacturer or distributor, either directly or through
268 any subsidiary, may not terminate, cancel, fail to renew or
269 discontinue any lease of the new motor vehicle dealer's
270 established place of business except for a material breach of the
271 lease.

272 (4) Except as may otherwise be provided in this article, no
273 manufacturer or franchisor shall sell, directly or indirectly, any
274 new motor vehicle to a consumer in this state, except through
275 a new motor vehicle dealer holding a franchise for the line-
276 make covering such new motor vehicle. This subsection shall
277 not apply to manufacturer or franchisor sales of new motor
278 vehicles to charitable organizations, qualified vendors or
279 employees of the manufacturer or franchisor.

280 (5) Except when prevented by an act of God, labor strike,
281 transportation disruption outside the control of the manufacturer
282 or time of war, a manufacturer or distributor may not refuse or
283 fail to deliver, in reasonable quantities and within a reasonable
284 time, to a dealer having a franchise agreement for the retail sale
285 of any motor vehicle sold or distributed by the manufacturer,
286 any new motor vehicle or parts or accessories to new motor
287 vehicles as are covered by the franchise if the vehicles, parts
288 and accessories are publicly advertised as being available for
289 delivery or are actually being delivered. All models offered for
290 sale by the manufacturer, without any enrollment, surcharge or
291 acquisition fee, shall be available to the franchised dealer at no
292 additional cost for that particular model of vehicle.

§17A-6A-11. Where motor vehicle dealer deceased or incapacitated.

1 (1) Any designated family member of a deceased or
2 incapacitated new motor vehicle dealer may succeed the dealer

3 in the ownership or operation of the dealership under the
4 existing dealer agreement if the designated family member
5 gives the manufacturer or distributor written notice of his or her
6 intention to succeed to the dealership within one hundred
7 twenty days after the dealer's death or incapacity, agrees to be
8 bound by all of the terms and conditions of the dealer agree-
9 ment, and the designated family member meets the current
10 criteria generally applied by the manufacturer or distributor in
11 qualifying new motor vehicle dealers. A manufacturer or
12 distributor may refuse to honor the existing dealer agreement
13 with the designated family member only for good cause. In
14 determining whether good cause exists for refusing to honor the
15 agreement, the manufacturer or distributor has the burden of
16 proving that the designated successor is a person who is not of
17 good moral character or does not meet the manufacturer's
18 existing written, reasonable and uniformly applied standards for
19 business experience and financial qualifications.

20 (2) The manufacturer or distributor may request from a
21 designated family member such personal and financial data as
22 is reasonably necessary to determine whether the existing dealer
23 agreement should be honored. The designated family member
24 shall supply the personal and financial data promptly upon the
25 request.

26 (3) If a manufacturer or distributor believes that good cause
27 exists for refusing to honor the succession, the manufacturer or
28 distributor may, within forty-five days after receipt of the notice
29 of the designated family member's intent to succeed the dealer
30 in the ownership and operation of the dealership, or within
31 forty-five days after the receipt of the requested personal and
32 financial data, serve upon the designated family member notice
33 of its refusal to approve the succession.

34 (4) The notice of the manufacturer or distributor provided
35 in subsection (3) above shall state the specific grounds for the
36 refusal to approve the succession and that discontinuance of the

37 agreement shall take effect not less than ninety days after the
38 date the notice is served.

39 (5) If notice of refusal is not served within the sixty days
40 provided for in subsection (3) of this section, the dealer
41 agreement continues in effect and is subject to termination only
42 as otherwise permitted by this article.

43 (6) This section does not preclude a new motor vehicle
44 dealer from designating any person as his or her successor by
45 will or any other written instrument filed with the manufacturer
46 or distributor, and if such an instrument is filed, it alone
47 determines the succession rights to the management and
48 operation of the dealership.

§17A-6A-12. Relocation.

1 (1) As used in this section, “relocate” and “relocation” do
2 not include the relocation of a new motor vehicle dealer within
3 two miles of its established place of business. The relocation of
4 a new motor vehicle dealer to a site within the area of sales
5 responsibility assigned to that dealer by the manufacturing
6 branch or distributor may not be within six air miles of another
7 dealer of the same line-make.

8 (2) Before a manufacturer or distributor enters into a dealer
9 agreement establishing or relocating a new motor vehicle dealer
10 within a relevant market area where the same line-make is
11 represented, the manufacturer or distributor shall give written
12 notice to each new motor vehicle dealer of the same line-make
13 in the relevant market area of its intention to establish an
14 additional dealer or to relocate an existing dealer within that
15 relevant market area.

16 (3) Within sixty days after receiving the notice provided for
17 in subsection (2) above, or within sixty days after the end of
18 any appeal procedure provided by the manufacturer or distribu-
19 tor, a new motor vehicle dealer of the same line-make within
20 the affected relative market area may bring a declaratory

21 judgment action in the circuit court for the county in which the
22 new motor vehicle dealer is located to determine whether good
23 cause exists for the establishing or relocating of a proposed new
24 motor vehicle dealer. Once an action has been filed, the
25 manufacturer or distributor may not establish or relocate the
26 proposed new motor vehicle dealer until the circuit court has
27 rendered a decision on the matter. An action brought pursuant
28 to this section shall be given precedence over all other civil
29 matters on the court's docket. The manufacturer has the burden
30 of proving that good cause exists for establishing or relocating
31 a proposed new motor vehicle dealer.

32 (4) This section does not apply to the reopening in a
33 relevant market area of a new motor vehicle dealer that has
34 been closed within the preceding two years if the established
35 place of business of the new motor vehicle dealer is within two
36 miles of the established place of business of the closed new
37 motor vehicle dealer.

38 (5) In determining whether good cause exists for establish-
39 ing or relocating an additional new motor vehicle dealer for the
40 same line-make, the court shall take into consideration the
41 existing circumstances, including, but not limited to, the
42 following:

43 (a) Permanency and amount of the investment, including
44 any obligations incurred by the dealer in making the invest-
45 ment;

46 (b) Effect on the retail new motor vehicle business and the
47 consuming public in the relevant market area;

48 (c) Whether it is injurious or beneficial to the public
49 welfare;

50 (d) Whether the new motor vehicle dealers of the same line-
51 make in the relevant market area are providing adequate
52 competition and convenient consumer care for the motor
53 vehicles of that line-make in the market area, including the

54 adequacy of motor vehicle sales and qualified service person-
55 nel;

56 (e) Whether the establishment or relocation of the new
57 motor vehicle dealer would promote competition;

58 (f) Growth or decline of the population and the number of
59 new motor vehicle registrations in the relevant market area; and

60 (g) The effect on the relocating dealer of a denial of its
61 relocation into the relevant market area.

§17A-6A-13. Obligations regarding warranties.

1 (1) Each new motor vehicle manufacturer or distributor
2 shall specify in writing to each of its new motor vehicle dealers
3 licensed in this state the dealer's obligations for preparation,
4 delivery and warranty service on its products. The manufacturer
5 or distributor shall compensate the new motor vehicle dealer for
6 warranty service required of the dealer by the manufacturer or
7 distributor. The manufacturer or distributor shall provide the
8 new motor vehicle dealer with the schedule of compensation to
9 be paid to the dealer for parts, work and service, and the time
10 allowance for the performance of the work and service.

11 (2) The schedule of compensation shall include reasonable
12 compensation for diagnostic work, as well as repair service and
13 labor. Time allowances for the diagnosis and performance of
14 warranty work and service shall be reasonable and adequate for
15 the work to be performed. In the determination of what consti-
16 tutes reasonable compensation under this section, the principal
17 factor to be given consideration shall be the prevailing wage
18 rates being paid by dealers in the community in which the
19 dealer is doing business, and in no event may the compensation
20 of a dealer for warranty labor and parts be less than the rates
21 charged by the dealer for like service to retail customers for
22 nonwarranty service and repairs, provided that the rates are
23 reasonable. However, in the case of a new motor vehicle dealer
24 of motorcycles or recreational vehicles, in no event may the

25 compensation of a dealer for warranty parts be less than the
26 dealer's cost of acquiring the part plus twenty percent.

27 (3) A manufacturer or distributor may not do any of the
28 following:

29 (a) Fail to perform any warranty obligation;

30 (b) Fail to include in written notices of factory recalls to
31 new motor vehicle owners and dealers the expected date by
32 which necessary parts and equipment will be available to
33 dealers for the correction of the defects; or

34 (c) Fail to compensate any of the new motor vehicle dealers
35 licensed in this state for repairs effected by the recall.

36 (4) All claims made by a new motor vehicle dealer pursuant
37 to this section for labor and parts shall be paid within thirty
38 days after their approval. All claims shall be either approved or
39 disapproved by the manufacturer or distributor within thirty
40 days after their receipt on a proper form generally used by the
41 manufacturer or distributor and containing the usually required
42 information therein. Any claim not specifically disapproved in
43 writing within thirty days after the receipt of the form is
44 considered to be approved and payment shall be made within
45 thirty days. The manufacturer has the right to initiate an audit
46 of a claim within twelve months after payment and to charge
47 back to the new motor vehicle dealer the amount of any false,
48 fraudulent or unsubstantiated claim, subject to the requirements
49 of section eight-a of this article.

50 (5) The manufacturer shall accept the return of any new and
51 unused part, component or accessory that was ordered by the
52 dealer, and shall reimburse the dealer for the full cost charged
53 to the dealer for the part, component or accessory if the dealer
54 returns the part and makes a claim for the return of the part
55 within one year of the dealer's receipt of the part, component or
56 accessory and provides reasonable documentation, to include

57 any changed part numbers to match new part numbers, provided
58 that the part was ordered for a warranty repair.

§17A-6A-14. Acceptance of vehicles; risk of loss or damage.

1 (1) Notwithstanding the terms, provisions or conditions of
2 any agreement, a new motor vehicle dealer is solely liable for
3 damages to new motor vehicles after acceptance from the
4 carrier, after a three-day period for proper inspection of the
5 vehicle and before delivery to the ultimate purchaser. Accep-
6 tance by the new motor vehicle dealer shall occur when the new
7 motor vehicle dealer signs a delivery receipt for any motor
8 vehicle.

9 (2) Notwithstanding the terms, provisions or conditions of
10 any agreement, the manufacturer or distributor is liable for all
11 damages or repairs to motor vehicles before delivery to a carrier
12 or transporter and shall indemnify the new motor vehicle dealer
13 for any such damages or repairs.

14 (3) The new motor vehicle dealer is liable for damages to
15 new motor vehicles after delivery to the carrier only if the
16 dealer selects the method of transportation, mode of transporta-
17 tion and the carrier. In all other instances, the manufacturer or
18 distributor is liable for new motor vehicle damage.

19 (4) If the new motor vehicle dealer rejects a new motor
20 vehicle pursuant to this section, the manufacturer or distributor
21 shall credit the dealer's account within ten business days after
22 receipt of the notice of rejection.

§17A-6A-16. Actions at law; damages.

1 (1) If a manufacturer or distributor terminates, cancels, fails
2 to renew or discontinues a dealer agreement for other than good
3 cause as defined in this article, or commits any other violation
4 of this article, the new motor vehicle dealer adversely affected
5 by the actions may bring an action for damages and equitable
6 relief against the manufacturer or distributor. If the new motor
7 vehicle dealer prevails, the dealer may recover, in addition to

8 actual damages, treble damages up to three times the amount of
9 the actual damages awarded, plus reasonable attorney's fees,
10 regardless of the amount in controversy. For the purposes of the
11 award of attorney's fees and costs, whenever the new motor
12 vehicle dealer is seeking injunctive or other relief, the dealer
13 may be considered to have prevailed when a judgment or other
14 final order providing equitable relief is entered in its favor.

15 (2) A manufacturer or distributor who violates this article
16 is liable for all damages sustained by a new motor vehicle
17 dealer as a result of the violation.

18 (3) A manufacturer or distributor or new motor vehicle
19 dealer may bring an action for declaratory judgment for
20 determination of any controversy arising pursuant to this article.

21 (4) Any corporation or association which is primarily
22 owned by or composed of dealers and which primarily repre-
23 sents the interests of dealers has standing to file a petition or
24 cause of action with the court of competent jurisdiction for
25 itself or by, for or on behalf of any, or a group of, new motor
26 vehicle dealers for any violation of this article or for the
27 determination of any rights created by this article.

28 (5) In addition to any county in which venue is proper in
29 accordance with the constitution and laws of this state, in any
30 cause of action brought by a new motor vehicle dealer against
31 a manufacturer or distributor for any violation of this article or
32 for the determination of any rights created by the dealer's
33 franchise agreement, venue is proper in the county in which the
34 dealer is engaged in the business of selling the products or
35 services of the manufacturer or distributor.

§17A-6A-18. West Virginia law to apply.

1 Notwithstanding the terms, provisions or requirements of
2 any franchise agreement, contract or other agreement of any
3 kind between a new motor vehicle dealer and a manufacturer or
4 distributor or any subsidiary, affiliate or partner of a manufac-

5 turer or distributor, the provisions of the code of West Virginia
6 apply to all such agreements and contracts. Any provisions in
7 the agreements and contracts which violate the terms of this
8 section are null and void.

CHAPTER 181

(H. B. 4555 — By Delegate Warner)

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

AN ACT to amend and reenact section one, article seven, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to including those in the business of repossessing motor vehicles among the entities eligible for one-trip registration permits.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. SPECIAL STICKERS.

§17A-7-1. Operation of vehicles by financial institution or wrecker under special stickers; application and fees; expiration.

1 The commissioner may upon application issue to a banking
2 institution, insurance company, entity in the business of
3 repossessing motor vehicles, finance company, or other type of
4 lending or financial institution, or a person engaged exclusively
5 in wrecking or dismantling vehicles, a paper sticker or decal to
6 be affixed to the left side of the rear window of a motor vehicle
7 or at a place on any other type vehicle as designated by the
8 commissioner. The sticker or decal shall be of a size to be

9 designated by the commissioner and shall be serially numbered
 10 and shall have provision thereon to indicate the date of issu-
 11 ance. The division shall charge a fee of one dollar per sticker.
 12 The sticker or decal shall be valid for the operation of a vehicle,
 13 whether under its own power or while being towed, one time
 14 only over the streets or highways of this state, and upon being
 15 once affixed to a vehicle shall become invalid for subsequent
 16 use on that or any other vehicle. The commissioner may
 17 require, as a condition for the issuance of the permit, insurance
 18 as he or she determines appropriate.

CHAPTER 182

(S. B. 558 — By Senators Craigo, Unger, Walker, Minard and Mitchell)

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

AN ACT to amend and reenact section one, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to driver's licenses; and requiring color coding of licenses according to age of driver and authorizing endorsement of appropriate graduated driver license level.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

***§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards.**

***Clerk's Note:** This section was also amended by H. B. 4324 (Chapter 126), which passed prior to this act.

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 twenty-
4 four, chapter eight of this code, when the use of the subdivision
5 street is generally used by the public unless the person has a
6 valid driver's license under the provisions of this code for the
7 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. Licenses shall
18 be issued in different colors for those drivers under age eigh-
19 teen, those drivers age eighteen to twenty-one, and adult
20 drivers. The commissioner is authorized to select and assign
21 colors to the licenses of the various age groups. The commis-
22 sioner shall implement color-coded licenses on or before the
23 first day of January, two thousand one.

24 (c) Driver's licenses issued by the division shall be classi-
25 fied in the following manner:

26 (1) Class A, B or C license shall be issued to those persons
27 eighteen years of age or older with two years driving experience
28 and who have qualified for the commercial driver's license
29 established by chapter seventeen-e of this code and the federal
30 Commercial Motor Vehicle Safety Act of 1986, Title XII of
31 public law 99-570 and subsequent rules, and have paid the
32 required fee.

33 (2) Class D license shall be issued to those persons eighteen
34 years and older with one year driving experience who operate
35 motor vehicles other than those types of vehicles which require

36 the operator to be licensed under the provisions of chapter
37 seventeen-e of this code and federal law and rule and whose
38 primary function or employment is the transportation of persons
39 or property for compensation or wages and have paid the
40 required fee. For the purposes of the regulation of the operation
41 of a motor vehicle, wherever the term chauffeur's license is
42 used in this code, it shall be construed to mean the Class A, B,
43 C or D license described in this section or chapter seventeen-e
44 of this code or federal law or rule: *Provided*, That anyone who
45 is not required to be licensed under the provisions of chapter
46 seventeen-e of this code and federal law or rule and who
47 operates a motor vehicle which is registered or which is
48 required to be registered as a Class A motor vehicle as that term
49 is defined in section one, article ten, chapter seventeen-a of this
50 code with a gross vehicle weight rating of less than eight
51 thousand one pounds, is not required to obtain a Class D
52 license.

53 (3) Class E license shall be issued to those persons who
54 have qualified under the provisions of this chapter and who are
55 not required to obtain a Class A, B, C or D license and who
56 have paid the required fee. The Class E license may be en-
57 dorsed under the provisions of section seven-b of this article for
58 motorcycle operation. The Class E license for any person under
59 the age of eighteen may also be endorsed with the appropriate
60 graduated driver license level in accordance with the provisions
61 of section three-a of this article.

62 (4) Class F license shall be issued to those persons who
63 successfully complete the motorcycle examination procedure
64 provided for by this chapter and have paid the required fee, but
65 who do not possess a Class A, B, C and D or E driver's license.

66 (5) All licenses issued under this section may contain
67 information designating the licensee as a diabetic, if the
68 licensee requests this information on the license.

69 (d) No person, except those hereinafter expressly exempted,
70 shall drive any motorcycle upon a street or highway in this state

71 or upon any subdivision street, as used in article twenty-four,
72 chapter eight of this code, when the use of the subdivision street
73 is generally used by the public unless the person has a valid
74 motorcycle license or a valid license which has been endorsed
75 under section seven-b of this article for motorcycle operation or
76 has a valid motorcycle instruction permit.

77 (e) (1) A nondriver identification card may be issued to any
78 person who:

79 (A) Is a resident of this state in accordance with the
80 provisions of section one-a, article three, chapter seventeen-a of
81 this code;

82 (B) Does not have a valid driver's license;

83 (C) Has reached the age of two years. The division may
84 also issue a nondriver identification card to a person under the
85 age of two years for good cause shown;

86 (D) Has paid the required fee of two dollars and fifty cents
87 per year for each year the identification card is issued to be
88 valid: *Provided*, That the fee is not required if the applicant is
89 sixty-five years or older or is legally blind; and

90 (E) Presents a birth certificate or other proof of age and
91 identity acceptable to the division with a completed application
92 on a form furnished by the division.

93 (2) The nondriver identification card shall contain the same
94 information as a driver's license except that the identification
95 card shall be clearly marked as identification card. However,
96 the division may issue an identification card with less informa-
97 tion to persons under the age of sixteen. It may be renewed on
98 application and payment of the fee required by this section.

99 (A) Every identification card issued to persons who have
100 attained their twenty-first birthday shall expire on the day of the
101 month designated by the commissioner in which the applicant's
102 birthday occurs in those years in which the applicant's age is
103 evenly divisible by five. Except as provided in paragraph (B) of

104 this subdivision, no identification card may be issued for less
105 than three years nor more than seven years and shall be valid
106 for a period of five years expiring in the month in which the
107 applicant's birthday occurs and in a year in which the appli-
108 cant's age is evenly divisible by five.

109 (B) Every identification card issued to persons who have
110 not attained their twenty-first birthday shall expire on the day
111 of the month designated by the commissioner in the year in
112 which the applicant attains the age of twenty-one years.

113 (C) Every identification card issued to persons under the
114 age of sixteen shall expire on the day of the month designated
115 by the commissioner in which the applicant's birthday occurs
116 and shall be issued for a period of two years.

117 (3) The identification card shall be surrendered to the
118 division when the holder is issued a driver's license. The
119 division may issue an identification card to an applicant whose
120 privilege to operate a motor vehicle has been refused, canceled,
121 suspended or revoked under the provisions of this code.

122 (f) Any person violating the provisions of this section is
123 guilty of a misdemeanor and, upon conviction thereof, shall be
124 fined not more than five hundred dollars; and upon a second or
125 subsequent conviction, shall be fined not more than five
126 hundred dollars, or confined in the county or regional jail not
127 more than six months, or both.

CHAPTER 183

(Com. Sub. for H. B. 4389 — By Delegate Warner)

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

AN ACT to amend and reenact section five-a, article two, chapter
seventeen-b of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to requiring applicants for employment as license examiners with department of motor vehicles to submit to a criminal background check.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-5a. Training, certification and monitoring of license examiners.

1 (a) The commissioner shall train, certify and monitor those
2 employees of the division of motor vehicles designated by the
3 commissioner as license examiners regarding the administration
4 of licensing application and testing procedures for the purpose
5 of ensuring compliance with statutory and regulatory require-
6 ments.

7 (b) In order to determine an applicant's suitability for
8 employment, the commissioner shall require every applicant for
9 a license examiner position to furnish a full set of fingerprints
10 to facilitate a criminal background check of the applicant. The
11 commissioner shall submit the fingerprints to the state criminal
12 identification bureau along with the applicant's identifying
13 information. Prior to hiring a prospective applicant the commis-
14 sioner shall request that the state police submit the fingerprints
15 and identifying information to the federal bureau of investiga-
16 tion for a national criminal history record check and that the
17 commissioner may not hire the prospective applicant until the
18 results of the national background check are available for
19 evaluation.

CHAPTER 184

(Com. Sub. for H. B. 4125 — By Delegate Warner)

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

AN ACT to amend and reenact section three, article five-a, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to deleting the present language regarding payment of enrollment fees and substituting a method for collecting and remitting the fees.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND
REVOCATION OF LICENSES FOR DRIVING UNDER
THE INFLUENCE OF ALCOHOL, CONTROLLED
SUBSTANCES OR DRUGS.**

§17C-5A-3. Safety and treatment program; reissuance of license.

1 (a) The division of motor vehicles, in cooperation with the
2 department of health and human resources, the division of
3 alcoholism and drug abuse, shall propose a legislative rule or
4 rules for promulgation in accordance with the provisions of
5 chapter twenty-nine-a of this code, establishing a comprehen-
6 sive safety and treatment program for persons whose licenses
7 have been revoked under the provisions of this article, or
8 section seven, article five of this chapter, or subsection (6),
9 section five, article three, chapter seventeen-b of this code, and
10 shall likewise establish the minimum qualifications for mental
11 health facilities or other public agencies or private entities

12 conducting the safety and treatment program: *Provided*, That
13 the commissioner may establish standards whereby the division
14 will accept or approve participation by violators in another
15 treatment program which provides the same or substantially
16 similar benefits as the safety and treatment program established
17 pursuant to this section. The program shall include, but not be
18 limited to, treatment of alcoholism, alcohol and drug abuse,
19 psychological counseling, educational courses on the dangers
20 of alcohol and drugs as they relate to driving, defensive driving,
21 or other safety driving instruction, and other programs designed
22 to properly educate, train and rehabilitate the offender.

23 (b) (1) The division of motor vehicles, in cooperation with
24 the department of health and human resources, the division of
25 alcoholism and drug abuse, shall provide for the preparation of
26 an educational and treatment program for each person whose
27 license has been revoked under the provisions of this article or
28 section seven, article five of this chapter, or subsection (6),
29 section five, article three, chapter seventeen-b of this code,
30 which shall contain the following: (A) A listing and evaluation
31 of the offender's prior traffic record; (B) characteristics and
32 history of alcohol or drug use, if any; (C) his or her amenability
33 to rehabilitation through the alcohol safety program; and (D) a
34 recommendation as to treatment or rehabilitation, and the terms
35 and conditions of the treatment or rehabilitation. The program
36 shall be prepared by persons knowledgeable in the diagnosis of
37 alcohol or drug abuse and treatment. The cost of the program
38 shall be paid out of fees established by the commissioner of
39 motor vehicles in cooperation with the department of health and
40 human resources, division of alcohol and drug abuse. The
41 program provider shall collect the established fee from each
42 participant upon enrollment. The program provider shall also at
43 the time of enrollment remit to the commissioner a portion of
44 the collected fee established by the commissioner in coopera-
45 tion with the department of health and human resources, which
46 shall be deposited into an account designated the driver's

47 rehabilitation fund, which was created by a prior enactment of
48 this section and which is hereby continued, to be used for the
49 administration of the program.

50 (2) The commissioner, after giving due consideration to the
51 program developed for the offender, shall prescribe the neces-
52 sary terms and conditions for the reissuance of the license to
53 operate a motor vehicle in this state revoked under this article,
54 or section seven, article five of this chapter, or subsection (6),
55 section five, article three, chapter seventeen-b of this code,
56 which shall include successful completion of the educational,
57 treatment or rehabilitation program, subject to the following:

58 (A) When the period of revocation is six months, the
59 license to operate a motor vehicle in this state shall not be
60 reissued until (i) at least ninety days have elapsed from the date
61 of the initial revocation, during which time the revocation was
62 actually in effect, (ii) the offender has successfully completed
63 the program, (iii) all costs of the program and administration
64 have been paid, and (iv) all costs assessed as a result of a
65 revocation hearing have been paid.

66 (B) When the period of revocation is for a period of years,
67 the license to operate a motor vehicle in this state shall not be
68 reissued until (i) at least one half of such time period has
69 elapsed from the date of the initial revocation, during which
70 time the revocation was actually in effect, (ii) the offender has
71 successfully completed the program, (iii) all costs of the
72 program and administration have been paid, and (iv) all costs
73 assessed as a result of a revocation hearing have been paid.

74 (C) When the period of revocation is for life, the license to
75 operate a motor vehicle in this state shall not be reissued until
76 (i) at least ten years have elapsed from the date of the initial
77 revocation, during which time the revocation was actually in
78 effect, (ii) the offender has successfully completed the program,
79 (iii) all costs of the program and administration have been paid,

80 and (iv) all costs assessed as a result of a revocation hearing
81 have been paid.

82 (D) Notwithstanding any provision of this code or any rule,
83 any mental health facilities or other public agencies or private
84 entities conducting the safety and treatment program when
85 certifying that a person has successfully completed a safety and
86 treatment program, shall only have to certify that such person
87 has successfully completed the program.

88 (c) (1) The division of motor vehicles, in cooperation with
89 the department of health and human resources, division of
90 alcoholism and drug abuse, shall provide for the preparation of
91 an educational program for each person whose license has been
92 suspended for sixty days pursuant to the provisions of subsection
93 (1), section two, article five-a of this chapter. The educational
94 program shall consist of not less than twelve nor more
95 than eighteen hours of actual classroom time.

96 (2) When a sixty-day period of suspension has been
97 ordered, the license to operate a motor vehicle shall not be
98 reinstated until (A) at least sixty days have elapsed from the
99 date of the initial suspension, during which time the suspension
100 was actually in effect, (B) the offender has successfully
101 completed the educational program, (C) all costs of the program
102 and administration have been paid, and (D) all costs assessed as
103 a result of a suspension hearing have been paid.

104 (d) A required component of the rehabilitation program
105 provided for in subsection (b) and the education program
106 provided for in subsection (c) shall be participation by the
107 violator with a victim impact panel program providing a forum
108 for victims of alcohol and drug related offenses and offenders
109 to share first-hand experiences on the impact of alcohol and
110 drug related offenses in their lives. The commissioner shall
111 propose legislative rules for promulgation in accordance with
112 the provisions of chapter twenty-nine-a of this code to imple-

113 ment victim impact panels where appropriate numbers of
114 victims are available and willing to participate, and shall
115 establish guidelines for other innovative programs which may
116 be substituted where such victims are not available, so as to
117 assist persons whose licenses have been suspended or revoked
118 for alcohol and drug related offenses to gain a full understand-
119 ing of the severity of their offenses in terms of the impact of
120 such offenses on victims and offenders. The legislative rules
121 proposed for promulgation by the commissioner shall require,
122 at a minimum, discussion and consideration of the following:

123 (A) Economic losses suffered by victims or offenders;

124 (B) Death or physical injuries suffered by victims or
125 offenders;

126 (C) Psychological injuries suffered by victims or offenders;

127 (D) Changes in the personal welfare or familial relation-
128 ships of victims or offenders; and

129 (E) Other information relating to the impact of alcohol and
130 drug related offenses upon victims or offenders.

131 Any rules promulgated pursuant to this subsection shall
132 contain provisions which ensure that any meetings between
133 victims and offenders shall be nonconfrontational and ensure
134 the physical safety of the persons involved.

CHAPTER 185

(Com. Sub. for S. B. 551 — By Senator Hunter)

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

AN ACT to amend and reenact section three, article one, chapter twenty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exempting from the

chapter those motor vehicles designated by the bureau of senior services for use by local county aging programs; and providing that those motor vehicles and the operators follow commission safety rules.”

Be it enacted by the Legislature of West Virginia:

That section three, 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-1-3. Exemptions from chapter.

1 The provisions of this chapter, except where specifically
2 otherwise provided, do not apply to:

3 (1) Motor vehicles operated exclusively in the transporta-
4 tion of United States mail or in the transportation of newspa-
5 pers: *Provided*, That the vehicles and their operators shall be
6 subject to the safety rules promulgated by the commission;

7 (2) Motor vehicles owned and operated by the United States
8 of America, the state of West Virginia or any county, munic-
9 ipality or county board of education, urban mass transportation
10 authority established and maintained pursuant to article twenty-
11 seven, chapter eight of this code, or by any department thereof,
12 and any motor vehicles operated under a contract with a county
13 board of education exclusively for the transportation of children
14 to and from school or other legitimate transportation for the
15 schools as the commission may specifically authorize;

16 (3) Motor vehicles used exclusively in the transportation of
17 agricultural or horticultural products, livestock, poultry and
18 dairy products from the farm or orchard on which they are
19 raised or produced to markets, processing plants, packing
20 houses, canneries, railway shipping points and cold storage
21 plants, and in the transportation of agricultural or horticultural
22 supplies to farms or orchards to be used thereon;

23 (4) Motor vehicles used exclusively in the transportation of
24 human or animal excreta;

25 (5) Motor vehicles used exclusively in ambulance service
26 or duly chartered rescue squad service;

27 (6) Motor vehicles used exclusively for volunteer fire
28 department service;

29 (7) Motor vehicles used exclusively in the transportation of
30 coal from mining operations to loading facilities for further
31 shipment by rail or water carriers: *Provided*, That the vehicles
32 and their operators shall be subject to the safety rules promul-
33 gated by the commission;

34 (8) Motor vehicles used by petroleum commission agents
35 and oil distributors solely for the transportation of petroleum
36 products and related automotive products when the transporta-
37 tion is incidental to the business of selling the products:
38 *Provided*, That the vehicles and their operators shall be subject
39 to the safety rules promulgated by the commission;

40 (9) Motor vehicles owned, leased by or leased to any person
41 and used exclusively for the transportation of processed source-
42 separated recycled materials, generated by commercial,
43 institutional and industrial customers, transported free of charge
44 from the customers to a facility for further processing: *Pro-
45 vided*, That the vehicles and their operators shall be subject to
46 the safety rules promulgated by the commission;

47 (10) Motor vehicles specifically preempted from state
48 economic regulation of intrastate motor carrier operations by
49 the provisions of the federal aviation administration authoriza-
50 tion act of 1994 (Pub. L. 103-305 §601 108 Stat. 1605 (1994)):
51 *Provided*, That the vehicles and their operators shall be subject
52 to the safety rules promulgated by the commission; and

53 (11) Motor vehicles designated by the West Virginia bureau
54 of senior services for use and operation by local county aging
55 programs: *Provided*, That the vehicles and their operators shall
56 be subject to the safety rules promulgated by the commission.

CHAPTER 186

(Com. Sub. for S. B. 458 — By Senators Walker,
McCabe, Mitchell and Sprouse)

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

AN ACT to amend and reenact section three, article one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to excepting Kanawha state forest from among the forests under the supervision and jurisdiction of the division of forestry; and providing for the management of same by the division of natural resources.

Be it enacted by the Legislature of West Virginia:

That section three, article one-a, 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 1A. DIVISION OF FORESTRY.

§19-1A-3. Division of forestry; division director; duties, powers, dedication of certain moneys; creation of a special revenue account.

1 The division of forestry heretofore created is hereby
2 continued. And, except as otherwise provided in this article, all
3 powers and duties previously exercised by the director of
4 natural resources under subsection (13), section seven, article
5 one and article three, chapter twenty of this code, except those
6 powers and duties relating solely to wildlife areas as described
7 in section three, article three, chapter twenty of this code,
8 heretofore transferred to the division of forestry, are hereby
9 continued in the division of forestry, except Kanawha state
10 forest as hereinafter provided. The division of forestry has
11 within its jurisdiction and supervision the state forests, other

12 forests and woodland areas, the protection of forest areas from
13 injury and damage by fire, disease, insects and other pestilences
14 and forces, the management of forest areas for natural re-
15 sources, conservation and undeveloped recreational activities,
16 administration of the southeastern interstate forest fire protec-
17 tion compact and other compacts and agreements relating to
18 forest management and husbandry, and the administration and
19 enforcement of laws relating to the conservation, development,
20 protection, use and enjoyment of all forest land areas of the
21 state consistent with the provisions of sections one and two of
22 this article. All moneys collected from the sale of timber
23 realized through management of the state-owned forests and the
24 sale of seedlings from the tree nurseries shall be paid into the
25 state treasury and shall be credited to a special account within
26 the division of forestry and used exclusively for the purposes of
27 this article and article three, chapter twenty of this code.

28 The division of forestry has jurisdiction to regulate the
29 digging, possession and sale of native, wild or cultivated
30 ginseng as provided in section three-a, article one-a, chapter
31 nineteen of this code.

32 The chief of the division is the director of the division of
33 forestry who shall be appointed and qualified as provided in
34 section five of this article.

35 The director of the division of forestry shall study means
36 and methods of implementing the provisions of section fifty-
37 three, article VI of the constitution of West Virginia, relating to
38 forest lands, and shall prepare and recommend legislation
39 thereon.

40 The division lines within the state forests between im-
41 proved recreation areas under the management of the division
42 of natural resources and the demonstration forests under the
43 management of the division of forestry, heretofore established
44 by agreement, are hereby continued with the exception of
45 Kanawha state forest where the entire forest will be managed by
46 and under the jurisdiction of the division of natural resources

47 for multiple uses and the division of natural resources shall
48 continue to provide recreational opportunities, including, but
49 not limited to, mountain-biking trails, hiking trails, horseback
50 riding trails and hunting, fishing and trapping lands. The forest
51 may not be designated as a state park or state recreation area;
52 however, any sale of timber from Kanawha state forest shall
53 continue to be prohibited.

54 In the event of disagreement over the placement of a
55 division line or dual occupancy of a building, the disposition
56 shall be decided by the Legislature's joint committee on
57 government and finance at a regularly scheduled meeting.

CHAPTER 187

(S. B. 132 — By Senators Dittmar, Minard, Hunter,
Anderson, Dawson, Ross, Craigo, Bowman,
Mitchell, Kessler, Ball and Sharpe)

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

AN ACT to amend and reenact section forty-six-b, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to wildlife resources; Class N special deer hunting license; and eliminating requirement that resident parents possess a license when hunting on the land of resident children.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-46b. Class N special deer hunting license.

1 A Class N license is a special deer hunting license for
2 antlerless deer of either sex and entitles the licensee to hunt for
3 and kill antlerless deer of either sex during the Class N license
4 season. The fee for a Class N license is eight dollars.

5 The Class N license may be issued only for the purpose of
6 removing antlerless deer when the director determines it
7 essential for proper management of wildlife resources. The
8 director shall establish rules governing the issuance of the Class
9 N licenses as he or she determines necessary to limit, on a fair
10 and equitable basis, the number of persons who may hunt for
11 antlerless deer in any county, or any part of a county.

12 When the director determines it essential that Class N
13 license season be held in a particular county or part of a county,
14 that season shall be set by the natural resources commission as
15 provided for in section seventeen, article one of this chapter.

16 Bona fide resident landowners or their resident children, or
17 resident parents, bona fide resident tenants of such land and any
18 bona fide resident stockholder of resident corporations which
19 are formed for the primary purpose of hunting or fishing and
20 which are the fee simple owners of no less than one thousand
21 acres of land upon which the antlerless deer may be hunted are
22 not required to have a Class N license in their possession while
23 hunting antlerless deer on their own land during the Class N
24 license season.

25 A Class N license may be issued only to a resident of this
26 state who holds a valid Class A, Class A-L, Class AB, Class
27 AB-L, Class X or Class XJ license issued for the current
28 calendar year or a resident of West Virginia who is not required
29 to obtain a license or permit to hunt as provided in section
30 twenty-eight, article two of this chapter, except that this
31 requirement shall not apply to persons under the age of fifteen.
32 The director shall require proof of age before issuing a Class N
33 license, and the license shall contain a space for recording the
34 number of the valid Class A, Class A-L, Class AB, Class AB-L,

35 Class X or Class XJ license. If at any time prior to the Class N
36 deer hunting season the director determines that there is a
37 surplus of Class N licenses after the demand for the licenses by
38 residents of this state has been met, the surplus licenses may be
39 issued to nonresidents who hold a valid Class E hunting license.
40 The fee for a Class N license issued to a nonresident shall be
41 twenty-five dollars.

CHAPTER 188

(H. B. 4132 — 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 sixteen, article five, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the division of natural resources; construction of recreational facilities at certain state parks; authorizing contracts with third parties for construction of cabins at any state park or forest; providing that title to the cabins immediately vests in the state and are to be operated by the parks and recreation section; and promulgation of emergency and legislative rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. PARKS AND RECREATION.

§20-5-16. Authority to enter into contracts with third parties to construct recreational facilities and cabins; public comment.

1 (a) Notwithstanding any other provision of this code to the
2 contrary, in addition to all other powers and authority vested in
3 the director, he or she is hereby authorized and empowered to:

4 (1) Enter into contracts with third parties for the construc-
5 tion and operation of recreational facilities at Chief Logan State
6 Park, Beech Fork State Park, Tomlinson Run State Park,
7 Stonewall Jackson Lake State Park and Lost River State Park.
8 The term of the contracts may not exceed a period of twenty-
9 five years, at which time the full title to the recreational
10 facilities shall vest in the state;

11 (2) Enter into contracts with third parties for the construc-
12 tion, but not the operation, of cabins at any state park or forest.
13 Upon completion of the construction of the cabins, full title to
14 the cabins shall immediately vest in the state and the cabins
15 shall be operated by the parks and recreation section;

16 (3) Authorize the construction of at least five cabins by any
17 single third party, in state parks and state forests which do not
18 offer such facilities on the effective date of this subsection; and

19 (4) Propose emergency and legislative rules, in accordance
20 with the provisions of article three, chapter twenty-nine-a of
21 this code, that set the conditions upon which the director may
22 enter into a contract with a single third party proposing to
23 construct cabins.

24 (b) All contracts shall be presented to the joint committee
25 on government and finance for review and comment prior to
26 execution.

27 (c) A contract may provide for renewal for the purpose of
28 permitting continued operation of the facilities at the option of
29 the director for a term or terms not to exceed ten years.

30 (d) No extension or renewal beyond the original twenty-
31 five-year term may be executed by the director absent the
32 approval of the joint committee on government and finance.

CHAPTER 189

(S. B. 522 — By Senators Craigo, Sharpe, Jackson, Chafin,
Prezioso, Love, Walker, Bowman, Helmick, Anderson,
Unger, Edgell, Boley, Minear and Sprouse)

[Passed March 10, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend and reenact section six, article thirteen-j, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the neighborhood investment program; and allowing any taxpayer who makes an eligible contribution to a qualified charitable organization to claim the credit against personal income tax.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13J. NEIGHBORHOOD INVESTMENT PROGRAM.

§11-13J-6. Application of annual credit allowance.

1 (a) *In general.* — The aggregate annual credit allowance for
2 a current tax year is an amount equal to the sum of the follow-
3 ing:

4 (1) The portion allowed under section five of this article for
5 an eligible contribution placed into service or use during a prior
6 tax year; plus

7 (2) The portion allowed under section five of this article for
8 an eligible contribution placed into service or use during the
9 current tax year.

10 (b) *Application of credit allowance.* — The amount
11 determined under subsection (a) of this section shall be allowed
12 as a credit for tax years ending on and after the first day of July,
13 one thousand nine hundred ninety-six, as follows:

14 (1) *Business franchise taxes.* —

15 The amount determined under subsection (a) of this section
16 shall be applied to reduce up to fifty percent of the taxes
17 imposed by article twenty-three of this chapter for the tax year
18 (determined after application of the credits against tax provided
19 in section seventeen of said article, but before application of
20 any other allowable credits against tax).

21 (2) *Corporation net income taxes.* — After application of
22 subdivision (1) of this subsection, any unused credit shall next
23 be applied to reduce up to fifty percent of the taxes imposed by
24 article twenty-four of this chapter, for the tax year (determined
25 before application of allowable credits against tax).

26 (3) *Personal income taxes.* —

27 (A) If the eligible taxpayer is an electing small business
28 corporation (as defined in Section 1361 of the United States
29 Internal Revenue Code), a limited liability company treated as
30 a partnership for purposes of the federal income tax, a partner-
31 ship or a sole proprietorship, then any unused credit (after
32 application of subdivisions (1) and (2) of this subsection) shall
33 be allowed as a credit against up to fifty percent of the taxes
34 imposed by article twenty-one of this chapter on income of
35 proprietors, partners or shareholders, subject to the limitations
36 set forth in paragraphs (B) and (C) of this subdivision.

37 (B) Electing small business corporations, partnerships and
38 other unincorporated organizations shall allocate the credit
39 allowed by this article among the members thereof in the same
40 manner as profits and losses are allocated for the tax year.

41 (C) Any taxpayer subject to the personal income tax under
42 article twenty-one of this chapter, who makes an eligible
43 contribution to a qualified charitable organization, and receives
44 back from that organization a properly completed neighborhood
45 investment program tax credit voucher, is eligible to claim the
46 credit. The credit shall be allowed without regard to the source
47 of that income, whether it is from wages, passive investment or
48 retirement income, income from a trade or business or any other
49 source.

50 (c) *Unused credit forfeited.* — If any credit to an eligible
51 taxpayer remains after application of subsections (a) and (b) of
52 this section, the amount thereof may be carried forward no
53 more than four years from the tax year in which the contribu-
54 tion was made. Unused credits of an eligible taxpayer may not
55 be carried forward beyond the time limits imposed under
56 section five of this article and the total maximum aggregate tax
57 credits certified in any state fiscal year may not exceed two
58 million dollars.

59 (d) *Addition of deductions, decreasing adjustments or*
60 *decreasing modifications taken in determining taxable income*
61 *for which credit is taken.* — Any deduction, decreasing
62 adjustment or decreasing modification taken by any taxpayer in
63 determining federal taxable income which affects West Virginia
64 taxable income or in determining West Virginia taxable income
65 under article twenty-one or twenty-four of this chapter for the
66 taxable year for any charitable contribution, or payment or
67 portion thereof, which qualifies as an eligible contribution
68 under this article and for which credit is claimed, shall be added
69 to West Virginia taxable income in determining the tax liability
70 of the taxpayer under article twenty-one or twenty-four of this
71 chapter, as appropriate, before application of the credit allowed
72 under this article for the taxable year.

73 (e) *Annual limit.* — The aggregate annual credit allowance
74 to any taxpayer may not exceed one hundred thousand dollars
75 in any tax year.

CHAPTER 190

(Com. Sub. for H. B. 4471 — 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 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-s, relating to the establishment of the Older West Virginians Act; declaring purpose and objectives, defining terms, establishing role of bureau of senior services; establishing area agencies, establishing requirements of service providers; requiring support services, nutrition services and other services and programs; and establishing special activities.

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-s, to read as follows:

ARTICLE 5S. OLDER WEST VIRGINIANS ACT.

- §16-5S-1. Short title.
- §16-5S-2. Purpose and objectives.
- §16-5S-3. Definitions.
- §16-5S-4. Powers and duties of the commissioner.
- §16-5S-5. Powers and duties of the bureau of senior services.
- §16-5S-6. Area agencies on aging.
- §16-5S-7. Local service providers.
- §16-5S-8. Supportive services.
- §16-5S-9. Nutrition services.
- §16-5S-10. Other services.
- §16-5S-11. Programs and special activities for older West Virginians.

§16-5S-1. Short title.

1 This article may be cited as the “Older West Virginians Act
2 of 2000.”

§16-5S-2. Purpose and objectives.

1 (a) The purpose of this article is to provide guidance and
2 assistance in the development of new or improved activities and
3 programs to help older West Virginians maintain independence,
4 honor and dignity, within available federal and state funds.

5 (b) This article establishes an array of services which are to
6 be provided at a no cost or at a reasonable cost for senior
7 citizens: *Provided*, That nothing in this article may be construed
8 to require the provision of any service by the bureau. The
9 service packages shall be prioritized first to in-home, commu-
10 nity based clients to enable them to remain independent for as
11 long as possible in local settings. Second level priority services
12 shall be those which are preventive and supportive in nature.

13 (c) Management practice shall integrate programs with
14 service providers and service options through a statewide
15 delivery system.

16 (d) Programs shall recognize the strengths of the older
17 population, especially in the areas of volunteerism and leader-
18 ship, to improve the status of all older individuals in West
19 Virginia.

§16-5S-3. Definitions.

1 For the purpose of this article:

2 (a) “Aging network” means the network of the bureau of
3 senior services, area agencies on aging, and local providers of
4 direct services to older individuals;

5 (b) “Bureau” refers to the bureau of senior services;

6 (c) "Commissioner" refers to the commissioner of the
7 bureau of senior services;

8 (d) "Focal point" means a facility established to encourage
9 the maximum collocation and coordination of services for older
10 individuals;

11 (e) "Older individual" or "older West Virginian" or
12 "senior" or "senior citizen" means an individual who is sixty
13 years of age or older;

14 (f) "State agency" refers to the bureau of senior services.

§16-5S-4. Powers and duties of the commissioner.

1 For purposes of this article, the commissioner shall have the
2 powers and duties set forth in section six, article five-p of this
3 chapter. In addition, the commissioner shall ensure the bureau
4 fulfills the requirements of section twelve, article five-p of this
5 chapter, relating to federal government programs.

§16-5S-5. Powers and duties of the bureau of senior services.

1 The bureau shall be the designated state agency to:

2 (a) Develop and administer the state plan as required by the
3 federal administration on aging;

4 (b) Be the primary agency responsible for the planning,
5 policy development, administration, coordination, priority
6 setting and evaluation of activities related to this article;

7 (c) Serve as an effective and visible advocate for older
8 West Virginians;

9 (d) Divide the state into distinct planning and service areas
10 and designate for each area a public or private nonprofit agency
11 or organization as the area agency on aging as required by the
12 federal administration on aging;

13 (e) Provide technical assistance and information to area
14 agencies on aging and local service providers as appropriate
15 and conduct monitoring of area agencies on aging to ensure
16 compliance with applicable rules, regulations and standards;

17 (f) Maintain client and service data using a standardized
18 computer client tracking system through which all providers
19 shall report required information;

20 (g) Maintain letters of agreement with the state department
21 of health and human resources to provide program operations
22 of the personal care and aged and disabled waiver programs;
23 and

24 (h) Maintain a registry of companies and organizations that
25 provide free medications or provide assistance to persons in
26 securing medications, and make this information available to
27 consumers through all local senior programs.

§16-5S-6. Area agencies on aging.

1 The area agencies on aging designated by the bureau shall
2 be charged with the following:

3 (a) Prepare and develop an area plan in a format provided
4 by the bureau and as required by the federal administration on
5 aging;

6 (b) Enter into agreements and contracts with local service
7 providers for the provision of supportive services and nutrition
8 services funded through the federal administration on aging;

9 (c) Designate, where feasible, a focal point for service
10 delivery in each community;

11 (d) Establish an advisory council in accordance with the
12 requirements of the federal administration on aging;

13 (e) Serve as an effective and visible advocate for older
14 West Virginians; and

15 (f) Provide appropriate technical assistance and information
16 to local service providers and conduct monitoring of local
17 service providers to ensure compliance with applicable rules,
18 regulations and standards.

§16-5S-7. Local service providers.

1 (a) Service providers who offer “Older West Virginians
2 Act” and related services funded through the federal administra-
3 tion on aging shall:

4 (1) Determine the needs of seniors in the particular geo-
5 graphic area covered by gaining input from the seniors them-
6 selves, their families and care givers;

7 (2) Develop a plan of service based on the needs of the
8 seniors in a format provided by the area agency;

9 (3) Provide supportive services, nutrition services and
10 senior centers which shall, within available funding, meet the
11 identified needs of seniors;

12 (4) Serve as an effective and visible advocate for older
13 West Virginians; and

14 (5) Participate in the bureau’s client tracking system.

15 (b) Service providers who offer medicaid reimbursed
16 services shall:

17 (1) Comply with appropriate medicaid regulations and
18 policies including provider agreements, program manuals and
19 program instructions;

20 (2) Maintain client files, provider information and report as
21 required for the determination of compliance with established
22 program standards as determined by the bureau for medical
23 services; and

24 (3) Participate in the bureau’s client tracking system.

§16-5S-8. Supportive services.

1 Supportive services funded through the federal administra-
2 tion on aging for older West Virginians may include, but are not
3 limited to: Adult day care, assessment, assisted transportation,
4 care training, chore, counseling, discount, home repair, housing
5 assistance, information and assistance, instruction/training,
6 legal assistance, letter/writing, reading, material aid, nutrition
7 education, outreach, telephoning, transportation and visiting, all
8 as defined by the bureau and the federal administration on
9 aging.

§16-5S-9. Nutrition services.

1 All congregate meals and home delivered meals shall
2 contain one third of the recommended daily allowance for
3 vitamins and minerals. Congregate meal sites may include
4 senior centers, community buildings, schools, churches and
5 elderly housing complexes. Home delivered meals are to be
6 delivered to eligible individuals, in accordance with guidelines
7 and standards established by the bureau and the federal admin-
8 istration on aging.

§16-5S-10. Other services.

1 The bureau shall also coordinate and provide older West
2 Virginians the following:

3 (a) In-home services for those who are frail or at risk of
4 becoming institutionalized; and

5 (b) Disease prevention and health screening services.

§16-5S-11. Programs and special activities for older West Virginians.

1 (a) The bureau shall continue and maintain its long-term
2 care ombudsman program codified in article five-1, chapter
3 sixteen of this code. The bureau shall also design and imple-

4 ment programs for the benefit of older West Virginians relating
5 to: Elder abuse, neglect and exploitation; elder rights and legal
6 assistance; in-home personal care for medicaid and non-
7 medicaid eligible senior citizens; direct services established by
8 the legislative initiatives for the elderly (LIFE), senior health
9 insurance network as established by the United States health
10 care financing administration and a foster grandparent program
11 as established by the corporation for national and community
12 service.

13 (b) The bureau may sponsor the following special activities
14 for older West Virginians: Governor's golden mountaineer
15 program, a discount program for goods and services at partici-
16 pating merchants, an annual senior citizens conference provid-
17 ing educational and entertainment opportunities, a governor's
18 summit on aging, a silver haired legislature and an annual
19 senior day at the Legislature. The bureau may sponsor addi-
20 tional special activities as necessary.

CHAPTER 191

(Com. Sub. for S. B. 167 — By Senators Bowman,
Kessler, McKenzie, Edgell, Dittmar,
Dawson, Minard and Plymale)

[Passed March 9, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-five-e, relating to creating the patients' eye care act; providing definitions; limitations on coverage; requiring certain disclosures; and other rights.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 25E. PATIENTS' EYE CARE ACT.

§33-25E-1. Short title.

§33-25E-2. Definitions.

§33-25E-3. Limitations on conditions of coverage.

§33-25E-4. Required disclosure.

§33-25E-1. Short title.

1 This article may be referred to as the patients' eye care act.

§33-25E-2. Definitions.

1 For the purposes of this article:

2 (a) "Covered person" means an individual enrolled in a
3 health benefit plan or an eligible dependent of that person.

4 (b) "Eye care provider" means an optometrist or ophthal-
5 mologist licensed by the state of West Virginia.

6 (c) "Eye care benefits" means coverage for the diagnosis,
7 treatment and management of eye disease and injury.

8 (d) "Health benefit policy" means any individual or group
9 plan, policy or contract providing medical, hospital or surgical
10 coverage issued, delivered, issued for delivery or renewed in
11 this state by an insurer, after the first day of January, two
12 thousand one. It does not include credit accident and sickness,
13 long-term care, medicare supplement, champus supplement,
14 disability or limited benefits policies.

15 (e) "Insurer" means any health care corporation, health
16 maintenance organization, accident and sickness insurer,
17 nonprofit hospital service corporation, nonprofit medical
18 service corporation or similar entity.

19 (f) "Vision care benefits" means benefits for the refraction
20 of the eyes and other optical benefits.

§33-25E-3. Limitations on conditions of coverage.

1 (a) Health benefits policies may not require that an
2 optometrist hold hospital staff privileges.

3 (b) When any health benefits policy provides for the
4 payment of eye care benefits or vision care benefits, such policy
5 shall be construed to include payment to all eye care providers
6 who provide benefits within the scope of their providers'
7 licenses.

8 (c) Any limitation or condition placed upon services,
9 diagnosis or treatment by or payment to a particular type of
10 licensed provider shall apply equally to all licensed providers
11 without unfair discrimination as to the usual and customary
12 treatment procedures of an eye care provider.

13 (d) Any health benefits policy that includes eye care
14 benefits, including a diabetic retinal examination, shall provide
15 each covered person diagnosed with diabetes direct access to an
16 eye care provider of their choice from the insurer's panel of
17 providers independent of, and without referral from, any other
18 provider or entity for one annual diabetic retinal examination.
19 The eye care provider shall provide copies of the results of the
20 examination to the covered person's primary care physician. No
21 other services shall be provided to the covered person by the
22 eye care provider without the prior authorization of the insurer
23 or of its designee. This benefit shall be subject to all
24 coinsurance, deductibles, copayments and other policy require-
25 ments. When the diabetic retinal examination reveals the
26 beginning stages of an abnormal condition, access to future
27 examinations shall be subject to prior authorization from a
28 primary care physician.

29 (e) Any health benefits policy that includes eye care
30 benefits or vision care benefits shall include both optometrists
31 and ophthalmologists.

32 (f) This article may not be construed to require any health
33 benefits policy to cover any specific health care service.

34 (g) This article may not be construed to require a health
35 benefit plan or an insurer to include on the insurer's panel of
36 providers all providers willing to meet the terms and conditions
37 of participation as a plan provider.

§33-25E-4. Required disclosure.

1 Every health benefits policy that is issued, delivered, issued
2 for redelivery or renewed in this state on or after the first day of
3 January, two thousand one, that provides for eye care benefits,
4 including a diabetic retinal examination, shall disclose in
5 writing, in clear and accurate language, to enrollees, subscrib-
6 ers, providers and insureds that any covered person diagnosed
7 with diabetes has the right to direct access to an eye care
8 provider of their choice from the insurer's panel of providers
9 for an annual diabetic retinal examination.

CHAPTER 192

(Com. Sub. for S. B. 175 — 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 twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eight, relating to the West Virginia pension liability redemption act; providing for declaration of policy, legislative findings, legislative intent and scope of

provisions; providing for definitions; providing for the redemption of the previous liability of the state consisting of the unfunded actuarial accrued liability of certain pension systems through the issuance of bonds for such purpose; providing for the issuance of such bonds and for the determination of the unfunded actuarial accrued liability; requiring adoption of resolution by Legislature authorizing the issuance of bonds; providing for the method of bond issuance and the manner of sale of bonds; providing for the authority of the department of administration to select, employ and compensate counsel, underwriters, advisors, consultants and agents to carry out the purposes of this article; providing for the authority of the state treasurer to select, employ and compensate special counsel to advise the state treasurer; providing authority to enter into contracts with obligation holders; providing for the terms and provisions of bonds, trust indentures and other agreements; providing for the redemption of the previous liability of the state, which is the unfunded actuarial accrued liability, with proceeds of the sale of bonds; providing for investment planning for the assets of the pension systems after deposit of the bond proceeds; providing for payment of costs of issuing bonds and review committee to review and approve same; limiting amount of bonds that may be issued; creating the pension liability redemption fund; providing for pension liability redemption payments; providing for refunding bonds; providing for state pledges and covenants relating to bonds; providing for legal remedies of obligation holders; providing that bonds are negotiable instruments; providing that bonds are legal investments in the state; providing that bonds and the income therefrom are exempt from taxation in the state; providing for supersedure; requiring a judicial determination prior to the issuance of bonds; and providing for severability of provisions of this article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. PENSION LIABILITY REDEMPTION.

- §12-8-1. Short title.
- §12-8-2. Declaration of policy; legislative findings; legislative intent.
- §12-8-3. Definitions.
- §12-8-4. Issuance of bonds; determination of unfunded actuarial accrued liability.
- §12-8-5. Method of bond issuance; manner of sale of bonds; authority of department of administration.
- §12-8-6. Contracts with obligation holders; provisions of bonds and trust indentures and other agreements.
- §12-8-7. Proceeds from the sale of bonds.
- §12-8-8. Creation of pension liability redemption fund; disbursements to pay pension liability redemption payments.
- §12-8-9. Refunding bonds.
- §12-8-10. State pledges and covenants.
- §12-8-11. Legal remedies of obligation holders.
- §12-8-12. Nature of bonds; legal investments.
- §12-8-13. Exemption from taxation.
- §12-8-14. Supersedure.
- §12-8-15. Judicial determination.
- §12-8-16. Severability.

§12-8-1. Short title.

- 1 This article shall be known and may be cited as the pension
- 2 liability redemption act.

§12-8-2. Declaration of policy; legislative findings; legislative intent.

- 1 The Legislature finds and declares that:
- 2 (a) The Legislature has established a number of pension
- 3 systems, including the death, disability and retirement fund of
- 4 the department of public safety established in article two,
- 5 chapter fifteen of this code; the judges' retirement system
- 6 established in article nine, chapter fifty-one of this code; and
- 7 the teachers retirement system established in article seven-a,
- 8 chapter eighteen of this code, each of which is a trust for the
- 9 benefit of the participating public employees.
- 10 (b) The supreme court of appeals of West Virginia has ruled
- 11 that the Legislature is obligated to fund these pension systems
- 12 on an actuarially sound basis and that pension system obliga-
- 13 tions are legitimate debts of the state.

14 (c) As a result of financial distress that occurred in the state
15 during the 1980s, the death, disability and retirement fund of
16 the department of public safety, the judges' retirement system
17 and the teachers retirement system each has a significant
18 unfunded actuarial accrued liability which is being amortized
19 over a term of years ending no later than two thousand thirty-
20 four through annual appropriations in addition to amounts
21 appropriated annually for the normal cost contribution to these
22 pension systems.

23 (d) The supreme court of appeals has ruled that the un-
24 funded actuarial accrued liability of pension systems is a public
25 debt of the state that must be repaid.

26 (e) The unfunded actuarial accrued liability of each pension
27 system is a previous liability of the state. The supreme court of
28 appeals has held that the Legislature may choose to redeem a
29 previous liability of the state through the issuance of bonds.

30 (f) This article provides for the redemption of the unfunded
31 actuarial accrued liability of each pension system, which is a
32 previous liability of the state, through the issuance of bonds for
33 the purpose of: (i) Providing for the safety and soundness of the
34 pension systems; and (ii) redeeming each such previous liability
35 of the pension systems in order to realize savings over the
36 remaining term of the amortization schedules of the unfunded
37 actuarial accrued liabilities and thereby achieve budgetary
38 savings.

§12-8-3. Definitions.

1 As used in this article, unless the context clearly requires a
2 different meaning:

3 (1) "Bonds" means bonds, notes, refunding notes and
4 bonds, or other obligations of the state issued by the governor
5 pursuant to this article.

6 (2) "Consolidated public retirement board" means the board
7 created to administer all public retirement plans in this state
8 under article ten-d of chapter five of this code and any board or

9 agency that succeeds to the powers and duties of the consoli-
10 dated public retirement board.

11 (3) "Costs" include, but are not limited to, amounts
12 necessary to fund any capitalized interest funds and any reserve
13 funds, any costs relating to the issuance and determination of
14 the validity of the bonds, fees for obtaining bond insurance,
15 credit enhancements or liquidity facilities, administrative costs,
16 fees incurred pursuant to subsection (f), section five of this
17 article and costs attributable to the agreements described in
18 section six of this article.

19 (4) "Death, disability and retirement fund" means the death,
20 disability and retirement fund of the department of public safety
21 created by article two, chapter fifteen of this code.

22 (5) "Department of administration" means the department
23 established pursuant to article one, chapter five-a of this code
24 and any board or agency that succeeds to the powers and duties
25 of the department of administration.

26 (6) "Executive order" means an executive order issued by
27 the governor to authorize the issuance of bonds as provided in
28 this article.

29 (7) "Investment management board" means the board
30 established under article six, chapter twelve of this code, and
31 any board or agency that succeeds to the powers and duties of
32 the investment management board.

33 (8) "Judges' retirement system" means the judicial retire-
34 ment system created under article nine, chapter fifty-one of this
35 code.

36 (9) "Obligation holders" means any holder or owner of any
37 bond, any trustee or other fiduciary for any such holder, or any
38 provider of a letter of credit, policy of bond insurance, surety,
39 or other credit enhancement or liquidity facility or swap relating
40 to any bond.

41 (10) "Pension liability redemption fund" means the special
42 account in the state treasury created pursuant to subsection (a),
43 section eight of this article.

44 (11) "Pension liability redemption payments" means: (a)
45 The principal of, premium, if any, and interest on any outstand-
46 ing bonds issued pursuant to this article; and (b) any other
47 amounts required to be paid pursuant to the terms of any
48 outstanding bonds, any indenture authorized pursuant to this
49 article and any other agreement entered into between the
50 governor and any obligation holder.

51 (12) "Pension systems" means the judges' retirement
52 system, the death, disability and retirement fund and the
53 teachers retirement fund.

54 (13) "Refund" or "refunding" means the issuance and sale
55 of bonds the proceeds of which are used or are to be used for
56 the payment, defeasance or redemption of outstanding bonds
57 upon or prior to maturity.

58 (14) "Refunding bonds" means bonds issued for the
59 payment, defeasance or redemption of outstanding bonds upon
60 or prior to maturity.

61 (15) "Teachers retirement system" means the retirement
62 system established in article seven-a, chapter eighteen of this
63 code.

64 (16) "True interest cost" means the interest rate that, when
65 compounded at time intervals consistent with the structure of
66 the bond issue and used to discount the payments of principal
67 of and interest on the bonds, causes such discounted principal
68 and interest payments to equal the purchase price of the bonds.
69 To ensure that the costs of issuance of the bonds are included in
70 the true interest cost, the costs of issuance shall be deducted
71 from the purchase price of the bonds before calculating the
72 interest rate.

73 (17) "Normal cost" means the value of benefits accruing for
74 the current valuation year under the actuarial cost method.

75 (18) "Actuarial cost method" means a mathematical process
76 in which the cost of benefits projected to be paid after a period
77 of active employment has ended is allocated over the period of
78 active employment during which such benefits are earned.

79 (19) "Unfunded actuarial accrued liability" means the
80 aggregate of the unfunded actuarial accrued liabilities of the
81 pension systems, with the unfunded actuarial accrued liability
82 of each pension system being calculated in an actuarial valua-
83 tion report provided by the consolidated public retirement board
84 to the department of administration pursuant to section four of
85 this article.

**§12-8-4. Issuance of bonds; determination of unfunded actuarial
accrued liability.**

1 (a) Notwithstanding any other provision of this code and
2 pursuant to section four, article ten of the constitution of West
3 Virginia, the governor shall have the power, as provided by this
4 article, to issue the bonds authorized in this section at a time or
5 times as provided by a resolution adopted by the Legislature to
6 redeem a previous liability of the state by funding all or a
7 portion of the unfunded actuarial accrued liability, such bonds
8 to be payable from and secured by moneys deposited in the
9 pension liability redemption fund. Any bonds issued pursuant
10 to this article, other than refunding bonds, shall be issued no
11 later than five years after the date of issuance of the judicial
12 determination referred to in section fifteen of this article.

13 (b) The aggregate principal amount of bonds issued
14 pursuant to the provisions of this article is limited to no more
15 than the lesser of the following: (1) The principal amount
16 necessary, after deduction of costs, underwriter's discount and
17 original issue discount, if any, to fund not in excess of one
18 hundred percent of the unfunded actuarial accrued liability of
19 the death, disability and retirement fund of the department of
20 public safety established in article two, chapter fifteen of this
21 code, one hundred percent of the unfunded actuarial accrued
22 liability of the judges' retirement system established in article
23 nine, chapter fifty-one of this code, and ninety-five percent of

24 the unfunded actuarial accrued liability of the teachers retire-
25 ment system established in article seven-a, chapter eighteen of
26 this code, as certified by the consolidated public retirement
27 board to the department of administration pursuant to subsec-
28 tion (e) of this section; or (2) three billion nine hundred million
29 dollars; but in no event shall the aggregate principal amount of
30 bonds issue exceed the principal amount necessary, after
31 deduction of costs, underwriter's discount and original issue
32 discount, if any, to fund not in excess of the total unfunded
33 actuarial accrued liability, as certified by the consolidated
34 public retirement board to the department of administration
35 pursuant to subsection (e) of this section.

36 (c) The costs of issuance, excluding fees for bond insur-
37 ance, credit enhancements and liquidity facilities, plus under-
38 writer's discount and any other costs associated with the
39 issuance shall not exceed, in the aggregate, the sum of one
40 percent of the aggregate principal amount of bonds issued. All
41 such costs shall be subject to the review and approval of a
42 majority of the members of a review committee. The review
43 committee shall consist of two members appointed by the
44 governor from a list of three persons submitted by the president
45 of the Senate; two members appointed by the governor from a
46 list of three persons submitted by the speaker of the House of
47 Delegates; the state treasurer; and four persons having skill and
48 experience in bond issuance, appointed by the governor.

49 (d) The limitation on the aggregate principal amount of
50 bonds provided in this section shall not preclude the issuance of
51 bonds from time to time or in one or more series.

52 (e) No later than ten days after receipt of a request from the
53 department of administration, the consolidated public retire-
54 ment board shall provide the department of administration with
55 a certified statement of the amount of each pension system's
56 unfunded actuarial accrued liability calculated in an actuarial
57 valuation report that establishes the amount of the unfunded
58 actuarial accrued liability as of a date specified by the depart-

59 ment of administration, based upon each pension system's most
60 recent actuarial valuation.

61 (f) No later than fifteen days after receipt of a request from
62 the governor, the department of administration shall provide the
63 governor with a certification of the maximum aggregate
64 principal amount of bonds that may be issued at that time
65 pursuant to subsection (b) of this section.

**§12-8-5. Method of bond issuance; manner of sale of bonds;
authority of department of administration.**

1 (a) The governor may, by executive message, request the
2 Legislature prepare and consider a resolution authorizing the
3 issuance of bonds described in section four of this article. The
4 executive message shall specify the maximum costs associated
5 with the issue. Upon the adoption of a resolution by the
6 Legislature authorizing the issuance of the bonds in the amount
7 and upon the terms specified in the resolution, the bonds shall
8 be authorized by an executive order issued by the governor. The
9 executive order shall be received by the secretary of state and
10 filed in the state register pursuant to section three, article two,
11 chapter twenty-nine-a of this code. The governor, either in the
12 executive order authorizing the issuance of the bonds or by the
13 execution and delivery by the governor of a trust indenture or
14 agreement authorized in such executive order, shall stipulate the
15 form of the bonds, whether the bonds are to be issued in one or
16 more series, the date or dates of issue, the time or times of
17 maturity, which shall not exceed the longest remaining term of
18 the current amortization schedules for the unfunded actuarial
19 accrued liability, the rate or rates of interest payable on the
20 bonds, which may be at fixed rates or variable rates and which
21 interest may be current interest or may accrue, the denomina-
22 tion or denominations in which the bonds are issued, the
23 conversion or registration privileges applicable to some or all
24 of the bonds, the sources and medium of payment and place or
25 places of payment, the terms of redemption, any privileges of
26 exchangeability or interchangeability applicable to the bonds,
27 and the entitlement of obligation holders to priorities of

28 payment or security in the amounts deposited in the pension
29 liability redemption fund. Bonds shall be signed by the gover-
30 nor and attested by the secretary of state, by either manual or
31 facsimile signatures. The governor shall not sign the bonds
32 unless he shall first make a written finding, which shall be
33 transmitted to the state treasurer, the secretary of state, the
34 speaker of the House of Delegates and the president of the
35 Senate, that: (i) The true interest cost of the bonds is at least
36 thirty basis points less than the assumed actuarial interest rate
37 used to calculate the unfunded actuarial accrued liability; and
38 (ii) that the issuance of the bonds will not in any manner cause
39 a down grade or reduction in the state's general obligation
40 credit rating by standard bond rating agencies.

41 (b) The bonds may be sold at public or private sale at a
42 price or prices determined by the governor. The governor is
43 authorized to enter into any agreements necessary or desirable
44 to effectuate the purposes of this section, including agreements
45 to sell bonds to any person and to comply with the laws of any
46 jurisdiction relating thereto.

47 (c) The governor, in the executive order authorizing the
48 issuance of bonds or by the execution and delivery by the
49 governor of a trust indenture or agreement authorized in such
50 executive order, may covenant as to the use and disposition of
51 or pledge of funds made available for pension liability redemp-
52 tion payments or any reserve funds established pursuant to such
53 executive order or established pursuant to any indenture
54 authorized by such executive order. All costs may be paid by or
55 upon the order of the governor from amounts received from the
56 proceeds of the bonds and from amounts received pursuant to
57 section eight of this article.

58 (d) Bonds may be issued by the governor upon resolution
59 adopted by the Legislature authorizing the same.

60 (e) Neither the governor, the secretary of state, nor any
61 other person executing or attesting the bonds or any agreement
62 authorized in this article shall be personally liable with respect
63 to payment of any pension liability redemption payments.

64 (f) Notwithstanding any other provision of this code, and
65 subject to the approval of the review committee, the department
66 of administration, in the department's discretion: (i) Shall
67 select, employ and compensate one or more persons or firms to
68 serve as bond counsel or cobond counsel who shall be responsi-
69 ble for the issuance of a final approving opinion regarding the
70 legality of the bonds issued pursuant to this article; (ii) may
71 select, employ and compensate one or more persons or firms to
72 serve as underwriter or counderwriter for any issuance of bonds
73 pursuant to this article; and (iii) may select, employ and
74 compensate one or more fiduciaries, financial advisors and
75 experts, other legal counsel, placement agents, appraisers,
76 actuaries and such other advisors, consultants and agents as
77 may be necessary to effectuate the purposes of this article.
78 Notwithstanding the provisions of article three, chapter five of
79 this code, bond counsel may represent the state in court, render
80 advice and provide other legal services as may be requested by
81 the governor or the department of administration regarding any
82 bond issuance pursuant to this article and all other matters
83 relating to the bonds.

84 (g) Notwithstanding any other provision of this code, and
85 subject to the approval of the review committee, the state
86 treasurer, in the state treasurer's discretion shall select, employ
87 and compensate an independent person or firm to serve as
88 special counsel to the state treasurer to advise the state treasurer
89 with respect to the state treasurer's duties pursuant to this
90 article.

**§12-8-6. Contracts with obligation holders; provisions of bonds
and trust indentures and other agreements.**

1 (a) The governor may enter into contracts with obligation
2 holders and the governor shall have the authority to comply
3 fully with the terms and provisions of any contracts made with
4 obligation holders.

5 (b) In addition and not in limitation to the other provisions
6 of this section, in connection with any bonds issued pursuant to
7 this article, the governor may enter into: (i) Commitments to

8 purchase or sell bonds and bond purchase or sale agreements;
9 (ii) agreements providing for credit enhancement or liquidity,
10 including revolving credit agreements, agreements establishing
11 lines of credit or letters of credit, insurance contracts, surety
12 bonds and reimbursement agreements; (iii) agreements to
13 manage interest rate exposure and the return on investments,
14 including interest rate exchange agreements, interest rate cap,
15 collar, corridor, ceiling and floor agreements, option, rate
16 spread or similar exposure agreements, float agreements and
17 forward agreements; (iv) stock exchange listing agreements;
18 and (v) any other commitments, contracts or agreements
19 approved by the governor.

20 (c) The governor may covenant as to the bonds to be issued
21 and as to the issuance of such bonds, in escrow or otherwise,
22 provide for the replacement of lost, destroyed or mutilated
23 bonds, covenant against extending the time for the payment of
24 bonds or interest thereon and covenant for the redemption of
25 bonds and provide the terms and conditions of such redemption.

26 (d) Except as otherwise provided in any executive order or
27 in this article, the terms of the executive order and of this article
28 in effect on the date the bonds are issued shall constitute a
29 contract between the state and obligation holders. Any repre-
30 sentation, warranty or covenant made by the governor in the
31 executive order, any indenture of trust or trust agreement
32 authorized by the executive order, any bond or any other
33 contract entered into pursuant to this article with any obligation
34 holder shall be a representation, warranty or covenant made by
35 the state.

36 (e) The governor may vest in the obligation holders, or any
37 portion of them, the right to enforce the payment of the bonds
38 or agreements authorized in this article or any covenants
39 securing or relating to the bonds or such agreements. The
40 governor may prescribe the procedure, if any, by which the
41 terms of any contract with obligation holders may be supple-
42 mented, amended or abrogated, prescribe which supplements or
43 amendments will require the consent of obligation holders and

44 the portion of obligation holders required to effect such consent
45 and prescribe the manner in which such consent may be given.

§12-8-7. Proceeds from the sale of bonds.

1 (a) The proceeds from the sale of bonds, other than refund-
2 ing bonds, issued pursuant to this article, after payment of any
3 costs payable at time of issuance of such bonds, shall be paid to
4 the consolidated public retirement board to redeem the un-
5 funded actuarial accrued liability, which is a previous liability
6 of the state, by funding the amount of the unfunded actuarial
7 accrued liability provided for by such bonds.

8 (b) From time to time when requested by the department of
9 administration, the investment management board shall prepare
10 and submit to the governor, the speaker of the House of
11 Delegates, the president of the Senate and the department of
12 administration the short-term and long-term investment
13 strategies that the investment management board intends to
14 follow for investment of the plan assets of the pension systems,
15 as adjusted by the deposit of the proceeds of bonds issued
16 pursuant to this article.

17 (c) Commencing with the fiscal year following the fiscal
18 year during which a series of bonds is issued under this article
19 and the proceeds thereof are deposited into the applicable
20 pension systems, annual appropriations by the state into the
21 teachers retirement pension system required under other
22 provisions of this code shall equal the amount necessary to pay
23 the normal cost and the scheduled payment of the remaining
24 unfunded actuarial accrued liability, if any, of such pension
25 system: *Provided*, That if such amount in any one fiscal year is
26 less than the members' required contributions to such plan, as
27 expressed as a percentage of members' payroll, the state shall
28 deposit into the pension liability redemption fund an amount
29 expressed as a percentage of members' payroll, representing the
30 difference between what the state contributes to such plan,
31 expressed as a percentage of members' payroll, and what the
32 members contribute to the plan, expressed as a percent of
33 members' payroll.

§12-8-8. Creation of pension liability redemption fund; disbursements to pay pension liability redemption payments.

1 (a) There is hereby created a special account in the state
2 treasury to be administered by the state treasurer, which shall be
3 designated and known as the “pension liability redemption
4 fund”, into which shall be deposited any and all amounts
5 appropriated by the Legislature or funds from any other source
6 whatsoever which are made available by law for the purpose of
7 making pension liability redemption payments. All funds
8 deposited to the credit of the pension liability redemption fund
9 shall be held in a separate account and all money belonging to
10 the fund shall be deposited in the state treasury to the credit of
11 the pension liability redemption fund.

12 (b) On or before the first day of November of each year, the
13 department of administration shall certify to the governor and
14 the state treasurer and deliver to the speaker of the House of
15 Delegates and the president of the Senate a certification as to
16 the amount of pension liability redemption payments to be
17 appropriated for the next fiscal year in order to pay in full when
18 due all pension liability redemption payments that will become
19 due during the next fiscal year. Such certification shall include
20 the amount and due date of each such pension liability redemp-
21 tion payment. All moneys appropriated by the Legislature in
22 accordance with a certification made pursuant to this subsection
23 shall be deposited into the pension liability redemption fund.

24 (c) The state treasurer shall pay to the trustee under the trust
25 indenture or agreement executed by the governor all pension
26 liability redemption payments as and when due. Such payments
27 shall be transferred by electronic funds transfer, unless some
28 other manner of funds transfer is specified by the governor. No
29 payments shall be required for bonds that are defeased or bonds
30 for which a deposit sufficient to provide for all payments on the
31 bonds has been made.

32 (d) There shall be created within the pension liability
33 redemption fund a subaccount into which there shall be

34 deposited annually by the Legislature an amount not greater
35 than the aggregate amount certified by each system's actuary to
36 represent the difference between the pension liability redemp-
37 tion payments and the annual amortization payments on the
38 unfunded actuarial accrued liability that would have been due
39 for such fiscal year had the bonds issued pursuant to this article
40 not been issued. Upon resolution passed by the Legislature, the
41 governor shall use funds on deposit in the subaccount in the
42 amount and upon the terms specified in the resolution: (1) To
43 reduce any remaining unfunded actuarial accrued liability; or
44 (2) to provide for the early retirement of the bonds if possible.

§12-8-9. Refunding bonds.

1 Subject to the provisions of the outstanding bonds issued
2 under this article and subject to the provisions of this article, the
3 governor shall have the power to refund any outstanding bonds,
4 whether the obligation refunded represents principal or interest,
5 in whole or in part, at any time.

6 Refunding bonds shall mature at such time or times, which
7 shall not exceed the longest original term of the bonds as
8 issued, as the governor shall determine by executive order
9 issued by the governor, which executive order shall be received
10 by the secretary of state and filed in the state register pursuant
11 to section three, article two, chapter twenty-nine-a of this code.

§12-8-10. State pledges and covenants.

1 (a) The state of West Virginia covenants and agrees with
2 the obligation holders, and the indenture shall so state, that the
3 bonds issued pursuant to this article are issued to redeem a
4 previous liability of the state and shall therefore constitute a
5 direct and general obligation of the state of West Virginia; that
6 the pension liability redemption payments will be included in
7 each budget along with all other amounts for payment and
8 discharge of the principal of and interest on state debt; that the
9 full faith and credit of the state is hereby pledged to secure the
10 payment of the principal of and interest on the bonds; and that
11 annual state taxes shall be collected in an amount sufficient to

12 pay the pension liability redemption payments as they become
13 due and payable from the pension liability redemption fund.

14 (b) The state hereby pledges and covenants with the
15 obligation holders, and the indenture shall so state, that the state
16 will not limit or alter the rights, powers or duties vested in any
17 state official, or that state official's successors or assigns, and
18 the obligation holders in a way that will inhibit any state
19 official, or that state official's successors or assigns, from
20 carrying out such state official's rights, powers or duties under
21 this article, nor limit or alter the rights, powers or duties of any
22 state official, or that state official's successors or assigns, in any
23 manner which would jeopardize the interest of any obligation
24 holder, or inhibit or prevent performance or fulfillment by any
25 state official, or that state official's successors or assigns, with
26 respect to the terms of any agreement made with any obligation
27 holder pursuant to section six of this article.

28 (c) The state hereby pledges and covenants with the
29 obligation holders, and the indenture shall so state, that, while
30 any of the bonds are outstanding, should any increase of
31 existing benefits or the creation of new benefits under any of
32 the pension systems, other than an increase in benefits or new
33 benefits effected by operation of law in effect on the effective
34 date of this article, cause any additional unfunded actuarial
35 accrued liability in any of the pension systems (calculated in an
36 actuarially sound manner) during any fiscal year, such addi-
37 tional unfunded actuarial accrued liability of that pension
38 system will be fully amortized over no more than the five
39 consecutive fiscal years following the date the increase in
40 benefits or new benefits become effective.

41 (d) The state hereby pledges and covenants with the
42 obligation holders, and the indenture shall so state, that, while
43 any of the bonds are outstanding, should any additional
44 unfunded actuarial accrued liability in any of the pension
45 systems (calculated in an actuarially sound manner) occur

46 during any fiscal year due to changes in actuarial assumptions,
47 changes in investment performance or increases in benefits or
48 additional benefits occurring by operation of law in effect on
49 the effective date of this article, and such additional unfunded
50 actuarial accrued liability persists for a period of five consecu-
51 tive fiscal years, the governor shall submit to the Legislature a
52 plan to fund such additional unfunded actuarial accrued liability
53 over a reasonable period.

§12-8-11. Legal remedies of obligation holders.

1 Any obligation holder, except to the extent that the rights
2 given by this article may be restricted by the executive order
3 authorizing the issuance of the bonds or by the trust indenture
4 or agreement authorized in such executive order, may by civil
5 action, mandamus or other proceeding, protect and enforce any
6 rights granted under the laws of this state, granted under this
7 article, or granted by the executive order or by the trust inden-
8 ture or agreement authorized in such executive order, and may
9 enforce and compel the performance of all duties required by
10 this article, by the executive order or by the trust indenture or
11 agreement authorized in such executive order.

§12-8-12. Nature of bonds; legal investments.

1 (a) The bonds issued under the provisions of this article
2 shall be and have all the qualities of negotiable instruments
3 under the uniform commercial code of this state and shall not
4 be invalid for any irregularity or defect in the proceedings for
5 the issuance thereof and shall be incontestable in the hands of
6 bona fide purchasers or holders thereof for value.

7 (b) Notwithstanding any other provision of this code, the
8 bonds issued pursuant to this article are securities in which all
9 public officers and bodies of this state, including the investment
10 management board, all municipalities and other political
11 subdivisions of this state, all insurance companies and associa-
12 tions and other persons carrying on an insurance business,

13 including domestic for life and domestic not for life insurance
14 companies, all banks, trust companies, societies for savings,
15 building and loan associations, savings and loan associations,
16 deposit guarantee associations and investment companies, all
17 administrators, guardians, executors, trustees and other fiducia-
18 ries and all other persons whatsoever who are authorized to
19 invest in bonds or other obligations of the state may properly
20 and legally invest funds, including capital, in their control or
21 belonging to them.

§12-8-13. Exemption from taxation.

1 All bonds issued under the provisions of this article and the
2 income therefrom shall be exempt from taxation by the state of
3 West Virginia, or by any county, school district or municipality
4 thereof, except inheritance, estate and transfer taxes.

§12-8-14. Supersedure.

1 It is the intent of the Legislature that in the event of any
2 conflict or inconsistency between the provisions of this article
3 and any other law, to the extent of the conflict or inconsistency,
4 the provisions of this article shall be enforced and the provi-
5 sions of the other law shall be of no effect.

§12-8-15. Judicial determination.

1 No bonds shall be issued under this article until a determi-
2 nation has been rendered by the supreme court of appeals that
3 the issuance of the bonds and the provisions of this article are
4 in compliance with the constitution of West Virginia.

§12-8-16. Severability.

1 If any section, subsection, subdivision, subparagraph,
2 sentence or clause of this article is adjudged to be unconstitu-
3 tional or invalid, such adjudication shall not affect the validity
4 of the remaining portions of this article and, to this end, the
5 provisions of this article are hereby declared to be severable.

CHAPTER 193

(Com. Sub. for S. B. 133 — 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 repeal sections six and seven, article eight-a, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, three, four and five of said article, all relating to the distribution and display of obscene matter to minors; defining terms; creating felony for distributing, offering to distribute or displaying obscene matter to a minor; creating felony for distributing or displaying obscene matter to a minor with intent to seduce; establishing defenses; establishing exemptions from criminal liability; creating felony for using a minor in certain circumstances; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That sections six and seven, article eight-a, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, two, three, four and five of said article be amended and reenacted, all to read as follows:

ARTICLE 8A. PREPARATION, DISTRIBUTION OR DISPLAY OF OBSCENE MATTER TO MINORS.

- §61-8A-1. Definitions.
- §61-8A-2. Distribution and display to minor of obscene matter; penalties; defenses.
- §61-8A-3. Exemptions from criminal liability.
- §61-8A-4. Use of obscene matter with intent to seduce minor.
- §61-8A-5. Employment or use of minor to produce obscene matter or assist in doing sexually explicit conduct; penalties.

§61-8A-1. Definitions.

1 When used in this article, the following words, and any
2 variations thereof required by the context, shall have the
3 meaning ascribed to them in this section:

4 (a) "Adult" means a person eighteen years of age or older.

5 (b) "Computer network" means the interconnection of
6 hardware or wireless communication lines with a computer
7 through remote terminals, or a complex consisting of two or
8 more interconnected computers.

9 (c) "Display" means to show, exhibit or expose matter, in
10 a manner visible to general or invited public, including minors.
11 As used in this article, display shall include the placing or
12 exhibiting of matter on or in a billboard, viewing screen,
13 theater, marquee, newsstand, display rack, window, showcase,
14 display case or similar public place.

15 (d) "Distribute" means to transfer possession, transport,
16 transmit, sell or rent, whether with or without consideration.

17 (e) "Employee" means any individual who renders personal
18 services in the course of a business, who receives compensation
19 and who has no financial interest in the ownership or operation
20 of the business other than his salary or wages.

21 (f) "Internet" means the international computer network of
22 both federal and nonfederal interoperable packet switched data
23 networks.

24 (g) "Knowledge of the character of the matter" means
25 having awareness of or notice of the overall sexual content and
26 character of matter as depicting, representing, or describing
27 obscene matter.

28 (h) "Matter" means any visual, audio, or physical item,
29 article, production transmission, publication, exhibition, or live
30 performance, or reproduction thereof, including any two or
31 three dimensional visual or written material, film, picture,
32 drawing, video, graphic, or computer generated or reproduced
33 image; or any book, magazine, newspaper or other visual or
34 written material; or any motion picture or other pictorial
35 representation; or any statue or other figure; or any recording,
36 transcription, or mechanical, chemical, or electrical reproduc-
37 tion; or any other articles, video laser disc, computer hardware
38 and software, or computer generated images or message

39 recording, transcription, or object, or any public or commercial
40 live exhibition performed for consideration or before an
41 audience of one or more.

42 (i) "Minor" means an unemancipated person under eighteen
43 years of age.

44 (j) "Obscene matter" means matter that:

45 (1) An average person, applying contemporary adult
46 community standards, would find, taken as a whole, appeals to
47 the prurient interest, is intended to appeal to the prurient
48 interest, or is pandered to a prurient interest;

49 (2) An average person, applying community standards,
50 would find depicts or describes, in a patently offensive way,
51 sexually explicit conduct; and

52 (3) A reasonable person would find, taken as a whole, lacks
53 serious literary, artistic, political or scientific value.

54 (k) "Parent" includes a biological or adoptive parent, legal
55 guardian or legal custodian.

56 (l) "Person" means any adult, partnership, firm, association,
57 corporation or other legal entity.

58 (m) "Sexually explicit conduct" means an ultimate sexual
59 act, normal or perverted, actual or simulated, including sexual
60 intercourse, sodomy, oral copulation, sexual bestiality, sexual
61 sadism and masochism, masturbation, excretory functions and
62 lewd exhibition of the genitals.

**§61-8A-2. Distribution and display to minor of obscene matter;
penalties; defenses.**

1 (a) Any adult, with knowledge of the character of the
2 matter, who knowingly and intentionally distributes, offers to
3 distribute, or displays to a minor any obscene matter, is guilty
4 of a felony and, upon conviction thereof, shall be fined not
5 more than twenty-five thousand dollars, or confined in a state
6 correctional facility for not more than five years, or both.

7 (b) It is a defense to a prosecution under the provisions of
8 this section that the obscene matter:

9 (1) Was displayed in an area from which minors are
10 physically excluded and the matter so located cannot be viewed
11 by a minor from nonrestricted areas; or

12 (2) Was covered by a device, commonly known as a
13 "blinder rack," such that the lower two thirds of the cover of the
14 material is not exposed to view; or

15 (3) Was enclosed in an opaque wrapper such that the lower
16 two thirds of the cover of the material was not exposed to view;
17 or

18 (4) Was displayed or distributed after taking reasonable
19 steps to receive, obtain or check an adult identification card,
20 such as a driver's license or other technically or reasonably
21 feasible means of verification of age.

22 (c) It is a defense to an alleged violation under this section
23 that a parent had taken reasonable steps to limit the minor's
24 access to the obscene matter.

§61-8A-3. Exemptions from criminal liability.

1 The criminal provisions of section two of this article do not
2 apply to:

3 (a) A bona fide school, in the presentation of local or state
4 approved curriculum;

5 (b) A public library, or museum, which is displaying or
6 distributing any obscene matter to a minor only when the minor
7 was accompanied by his or her parent;

8 (c) A licensed medical or mental health care provider, or
9 judicial or law-enforcement officer, during the course of
10 medical, psychiatric, or psychological treatment or judicial or
11 law-enforcement activities;

12 (d) A person who did not know or have reason to know, and
13 could not reasonably have learned, that the person to whom the
14 obscene matter was distributed or displayed was a minor and

15 who took reasonable measures to ascertain the identity and age
16 of the minor;

17 (e) A person who routinely distributes obscene matter by
18 the use of telephone, computer network or the internet and who
19 distributes such matter to any minor under the age of eighteen
20 years after the person has taken reasonable measures to prevent
21 access by minors to the obscene matter; or

22 (f) A radio or television station, cable television service or
23 other telecommunications service regulated by the federal
24 communications commission.

§61-8A-4. Use of obscene matter with intent to seduce minor.

1 Any adult, having knowledge of the character of the matter,
2 who knows that a person is a minor and distributes, offers to
3 distribute or displays by any means any obscene matter to the
4 minor, and such distribution, offer to distribute, or display is
5 undertaken with the intent or for the purpose of facilitating the
6 sexual seduction or abuse of the minor, is guilty of a felony and,
7 upon conviction thereof, shall be fined not more than twenty-
8 five thousand dollars, or confined in a state correctional facility
9 for not more than five years, or both. For a second and each
10 subsequent commission of such offense, such person is guilty
11 of a felony and, upon conviction, shall be fined not more than
12 fifty thousand dollars or confined in a state correctional facility
13 for not more than ten years, or both.

§61-8A-5. Employment or use of minor to produce obscene matter or assist in doing sexually explicit conduct; penalties.

1 Any adult who, with knowledge that a person is a minor or
2 who fails to exercise reasonable care in ascertaining the age of
3 a minor, hires, employs or uses such minor to produce obscene
4 matter or to do or assist in doing any sexually explicit conduct,
5 is guilty of a felony and, upon conviction thereof, shall be fined
6 not more than fifty thousand dollars or confined in a state
7 correctional facility for not more than ten years, or both.

CHAPTER 194

(Com. Sub. for S. B. 540 — 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 sections three, four, five, six, seven, eight, nine, ten, ten-a, eleven, twelve, thirteen and fourteen, article twelve, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to postmortem examinations and the office of the chief medical examiner; stating more explicit qualifications for position of chief medical examiner; specifying term of appointment for same; providing independent authority of same for certain purposes; requiring continuous availability for consultation; directing the secretary of the department of health and human resources to propose certain legislative rules; authorizing certain agreements for use of fixtures, facilities and services; specifying additional qualifications and providing for compensation of pathologists performing services for the chief medical examiner; providing for appointment, compensation and removal of county medical examiners and assistant county medical examiners; powers and duties of same; providing for disclosure of certain medical records in death investigations; providing for certain fines and fees; providing for release of certain records under certain circumstances; requiring certain notice in cases of sudden infant death syndrome; and making technical changes and corrections.

Be it enacted by the Legislature of West Virginia:

That sections three, four, five, six, seven, eight, nine, ten, ten-a, eleven, twelve, thirteen and fourteen, article twelve, 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 12. POSTMORTEM EXAMINATIONS.

- §61-12-3. Office of chief medical examiner established; appointment, duties, etc., of chief medical examiner; assistants and employees; promulgation of rules.
- §61-12-4. Central office and laboratory.
- §61-12-5. Certain salaries and expenses paid by state.
- §61-12-6. Chief medical examiner may obtain additional services and facilities.
- §61-12-7. Medical examiners.
- §61-12-8. Certain deaths to be reported to medical examiners; failure to report deaths; investigations and reports; authority of medical examiners to administer oaths, etc., fees.
- §61-12-9. Permits required for cremation; fee.
- §61-12-10. When autopsies made and by whom performed; reports; records of date investigated; copies of records and information.
- §61-12-10a. Costs of transportation of bodies; when state will pay; amount of payment.
- §61-12-11. Exhumation; when ordered.
- §61-12-12. Facilities and services available to medical examiners.
- §61-12-13. Reports and records received as evidence; copies.
- §61-12-14. County coroners; appointment, oath, etc.; duties; fees.

§61-12-3. Office of chief medical examiner established; appointment, duties, etc., of chief medical examiner; assistants and employees; promulgation of rules.

1 (a) The office of chief medical examiner is hereby estab-
2 lished within the division of health in the department of health
3 and human resources. The office shall be directed by a chief
4 medical examiner, who may employ pathologists, toxicologists,
5 other forensic specialists, laboratory technicians, and other staff
6 members, as needed to fulfill the responsibilities set forth in this
7 article.

8 (b) All persons employed by the chief medical examiner
9 shall be responsible to him or her and may be discharged for
10 any reasonable cause. The chief medical examiner shall specify
11 the qualifications required for each position in the office of
12 chief medical examiner, and each position shall be subject to
13 rules prescribed by the secretary of the department of health and
14 human resources.

15 (c) The chief medical examiner shall be a physician
16 licensed to practice medicine or osteopathic medicine in the

17 state of West Virginia, who is a diplomat of the American board
18 of pathology in forensic pathology, and who has experience in
19 forensic medicine. The chief medical examiner shall be
20 appointed by the director of the division of health to serve a
21 five-year term unless sooner removed, but only for cause, by
22 the governor or by the director.

23 (d) The chief medical examiner shall be responsible to the
24 director of the division of health in all matters except that the
25 chief medical examiner shall operate with independent authority
26 for the purposes of:

27 (1) The performance of death investigations conducted
28 pursuant to section eight of this article;

29 (2) The establishment of cause and manner of death; and

30 (3) The formulation of conclusions, opinions or testimony
31 in judicial proceedings.

32 (e) The chief medical examiner, or his or her designee, shall
33 be available at all times for consultation as necessary for
34 carrying out the functions of the office of the chief medical
35 examiner.

36 (f) The secretary of the department of health and human
37 resources is hereby directed to propose legislative rules in
38 accordance with the provisions of article three, chapter
39 twenty-nine-a of this code concerning:

40 (1) The proper conduct of medical examinations into the
41 cause of death;

42 (2) The proper methods and procedures for postmortem
43 inquiries conducted by county medical examiners and coroners;

44 (3) The examination of substances taken from human
45 remains in order to determine the cause and manner of death;
46 and

47 (4) The training and certification of county medical
48 examiners and coroners.

49 (g) The chief medical examiner is authorized to prescribe
50 specific forms for record books and official papers which are
51 necessary to the functions and responsibilities of the office of
52 the chief medical examiner.

53 (h) The chief medical examiner, or his or her designee, is
54 authorized to order and conduct an autopsy in accordance with
55 the provisions of this article and this code. The chief medical
56 examiner, or his or her designee, shall perform an autopsy upon
57 the lawful request of any person authorized by the provisions of
58 this code to request the performance of the autopsy.

59 (i) The salary of the chief medical examiner and the salaries
60 of all assistants and employees of the office of the chief medical
61 examiner shall be fixed by the Legislature from funds appropri-
62 ated for that purpose. The chief medical examiner shall take an
63 oath and provide a bond as required by law. Within the discre-
64 tion of the director of the division of health, the chief medical
65 examiner and his or her assistants shall lecture or instruct in the
66 field of legal medicine and other related subjects to the West
67 Virginia university or Marshall university school of medicine,
68 the West Virginia school of osteopathic medicine, the West
69 Virginia state police, other law-enforcement agencies and other
70 interested groups.

§61-12-4. Central office and laboratory.

1 The office of the chief medical examiner shall establish and
2 maintain a central office and a laboratory having adequate
3 professional and technical personnel and medical and scientific
4 facilities for the performance of the duties imposed by this
5 article. In order to secure facilities sufficient to meet the duties
6 imposed by the provisions of this code, the chief medical
7 examiner is authorized to enter into agreements, subject to the
8 approval of the director of the division of health, with other

9 state agencies or departments, with public or private colleges or
10 universities, schools of medicine or hospitals for the use of
11 laboratories, personnel, equipment and other fixtures, facilities
12 or services.

§61-12-5. Certain salaries and expenses paid by state.

1 The salaries of the chief medical examiner, the salaries of
2 all assistants and employees employed in the central office and
3 laboratory, the expenses of maintaining the central office and
4 laboratory and the cost of pathological, bacteriological and
5 toxicological services rendered by persons other than the chief
6 medical examiner and his assistants shall be paid by the state
7 out of funds appropriated for that purpose.

§61-12-6. Chief medical examiner may obtain additional services and facilities.

1 Subject to the approval of the director of the division of
2 health, the chief medical examiner may, in order to provide for
3 the investigation of the cause of death as authorized in this
4 article, employ and pay qualified pathologists and toxicologists
5 to make autopsies and such pathological and chemical studies
6 and investigations as he or she considers necessary, in the
7 several counties or regions of the state and he or she may
8 arrange for the use of existing laboratory facilities for such
9 purposes. Qualified pathologists shall hold board certification
10 or board eligibility in forensic pathology or have completed an
11 American board of pathology fellowship in forensic pathology.

§61-12-7. Medical examiners.

1 (a) The chief medical examiner shall appoint for each
2 county in the state a county medical examiner to serve for a
3 term of three years under the supervision of the chief medical
4 examiner. A county medical examiner shall be medically
5 trained and licensed by the state of West Virginia as a physi-
6 cian, registered nurse, paramedic, emergency medical techni-

7 cian or a physician assistant, be certified in the practice of
8 medicolegal death investigation and be of good moral character.
9 County medical examiners are authorized to establish the fact
10 of death, and to make investigations into all deaths in their
11 respective counties that come within the provisions of section
12 eight or ten of this article and shall in timely fashion record
13 findings of an investigation using forms prescribed by the chief
14 medical examiner. A county medical examiner may be removed
15 from office for cause at any time by the chief medical examiner.
16 Any vacancy in the office of county medical examiner shall be
17 filled by the chief medical examiner. One person may be
18 appointed to serve as county medical examiner for more than
19 one county, and a county medical examiner need not be a
20 resident of the county which he or she serves. If the chief
21 medical examiner determines that it is necessary, he or she may
22 appoint any person medically trained and licensed by the state
23 of West Virginia as a physician, registered nurse, paramedic,
24 emergency medical technician or a physician assistant and of
25 good moral character to act as an assistant county medical
26 examiner for a term of three years. An assistant shall have the
27 same powers and duties as a county medical examiner and shall
28 perform his or her duties under the supervision of the chief
29 medical examiner.

30 (b) A county medical examiner or his or her assistant
31 county medical examiner shall, at all times, be available to
32 perform the duties required under this article. He or she shall,
33 additionally, be paid a fee, as determined by the chief medical
34 examiner, but only for the actual performance of his or her
35 duties.

36 (c) County medical examiners and assistant county medical
37 examiners are authorized to determine the cause and manner of
38 death in any case falling within the provisions of section eight
39 of this article, subject to the supervision of the chief medical
40 examiner, and may exercise any of the powers attendant to the
41 investigation of deaths.

§61-12-8. Certain deaths to be reported to medical examiners; failure to report deaths; investigations and reports; authority of medical examiners to administer oaths, etc., fees.

1 (a) When any person dies in this state from violence, or by
2 apparent suicide, or suddenly when in apparent good health, or
3 when unattended by a physician, or when an inmate of a public
4 institution, or from some disease which might constitute a threat
5 to public health, or in any suspicious, unusual or unnatural
6 manner, the chief medical examiner, or his or her designee or
7 the county medical examiner, or the coroner of the county in
8 which death occurs shall be immediately notified by the
9 physician in attendance, or if no physician is in attendance, by
10 any law-enforcement officer having knowledge of the death, or
11 by the funeral director, or by any other person present or having
12 knowledge. Any physician or law-enforcement officer, funeral
13 director or embalmer who willfully fails to comply with this
14 notification requirement is guilty of a misdemeanor and, upon
15 conviction, shall be fined not less than one hundred dollars nor
16 more than five hundred dollars. Upon notice of a death under
17 this section, the chief medical examiner, or his or her designee
18 or the county medical examiner, shall take charge of the body
19 and any objects or articles which, in his or her opinion, may be
20 useful in establishing the cause or manner of death, and deliver
21 them to the law-enforcement agency having jurisdiction in the
22 case.

23 In the course of an investigation of a death required to be
24 reported by this section, the chief medical examiner shall, upon
25 written request to any law-enforcement agency or any state or
26 regional correctional facility, be provided with all records of the
27 investigation of decedent's death and all records of decedent's
28 incarceration. Where a decedent received therapeutic, corrective
29 or medical treatment prior to death, the chief medical examiner
30 may request in writing that any person or other entity which
31 rendered the treatment promptly provide all records within its

32 possession or control pertaining to the decedent and the
33 treatment rendered: *Provided*, That nothing contained in this
34 section may be construed as precluding the chief medical
35 examiner from directly inspecting or obtaining investigation
36 records, incarceration records or medical records related to the
37 case. Where records of a decedent become part of the chief
38 medical examiner's file, they are not subject to subpoena or a
39 request for production directed to the chief medical examiner.

40 (b) A county medical examiner, or his or her assistant, shall
41 make inquiries regarding the cause and manner of death, reduce
42 his or her findings to writing, and promptly make a full report
43 thereof to the chief medical examiner on forms prescribed by
44 the chief medical examiner, retaining one copy of the report for
45 his or her own office records and providing one copy to the
46 prosecuting attorney of the county in which the death occurred.

47 (c) A county medical examiner or assistant medical
48 examiner shall receive a fee for each investigation performed
49 under the provisions of this article, including the making of
50 required reports, which fee shall be determined by the chief
51 medical examiner and paid out of funds appropriated therefor.

§61-12-9. Permits required for cremation; fee.

1 It shall be the duty of any person cremating, or causing or
2 requesting the cremation of, the body of any dead person who
3 died in this state, to secure a permit for the cremation from the
4 chief medical examiner, the county medical examiner or county
5 coroner of the county wherein the death occurred, and any
6 person or persons who willfully fail to secure the permit, upon
7 conviction thereof, shall be fined not less than two hundred
8 dollars. A permit for cremation shall be acted upon by the chief
9 medical examiner, the county medical examiner or the county
10 coroner after review of the circumstances surrounding the
11 death, as indicated by the death certificate. The person request-
12 ing issuance of a permit for cremation shall pay a reasonable

13 fee, as determined by the chief medical examiner, to the county
14 medical examiner or coroner or to the office of the chief
15 medical examiner, as appropriate, for issuance of the permit.

**§61-12-10. When autopsies made and by whom performed;
reports; records of date investigated; copies of
records and information.**

1 (a) If in the opinion of the chief medical examiner, or of the
2 county medical examiner of the county in which the death in
3 question occurred, it is advisable and in the public interest that
4 an autopsy be made, or if an autopsy is requested by either the
5 prosecuting attorney or the judge of the circuit court or other
6 court of record having criminal jurisdiction in that county, an
7 autopsy shall be conducted by the chief medical examiner or his
8 or her designee, by a member of his staff, or by a competent
9 pathologist designated and employed by the chief medical
10 examiner under the provisions of this article. For this purpose,
11 the chief medical examiner may employ any county medical
12 examiner who is a pathologist who holds board certification or
13 board eligibility in forensic pathology or has completed an
14 American board of pathology fellowship in forensic pathology
15 to make the autopsies, and the fees to be paid for autopsies
16 under this section shall be in addition to the fee provided for
17 investigations pursuant to section eight of this article. A full
18 record and report of the findings developed by the autopsy shall
19 be filed with the office of the chief medical examiner by the
20 person making the autopsy.

21 (b) Within the discretion of the chief medical examiner, or
22 of the person making the autopsy, or if requested by the
23 prosecuting attorney of the county, or of the county where any
24 injury contributing to or causing the death was sustained, a copy
25 of the report of the autopsy shall be furnished to the prosecuting
26 attorney.

27 (c) The office of the chief medical examiner shall keep full,
28 complete and properly indexed records of all deaths investi-
29 gated, containing all relevant information concerning the death
30 and the autopsy report if such be made. Any prosecuting
31 attorney or law-enforcement officer may secure copies of these
32 records or information necessary for the performance of his or
33 her official duties.

34 (d) Copies of these records or information shall be fur-
35 nished, upon request, to any court of law, or to the parties
36 therein to whom the cause of death is a material issue, except
37 where the court determines that interests in a civil matter
38 conflict with the interests in a criminal proceeding, in which
39 case the interests in the criminal proceeding shall take prece-
40 dence. The office of chief medical examiner shall be reim-
41 bursed a reasonable rate by the requesting party for costs
42 incurred in the production of records under this subsection and
43 subsection (c) of this section.

44 (e) The chief medical examiner is authorized to release
45 investigation records and autopsy reports to the
46 multidisciplinary team authorized by section three, article five-
47 d, chapter forty-nine of this code. At the direction of the
48 secretary of the department of health and human resources the
49 chief medical examiner may release records and information to
50 other state agencies when considered to be in the public interest.

51 (f) Any person performing an autopsy under this section is
52 empowered to keep and retain, for and on behalf of the chief
53 medical examiner, any tissue from the body upon which the
54 autopsy was performed which may be necessary for further
55 study or consideration.

56 (g) In cases of the death of any infant in the state of West
57 Virginia where sudden infant death syndrome is the suspected
58 cause of death and the chief medical examiner or the medical
59 examiner of the county in which the death in question occurred

60 considers it advisable to perform an autopsy, it is the duty of the
61 chief medical examiner or the medical examiner of the county
62 in which the death occurred to notify the sudden infant death
63 syndrome program within the division of maternal and child
64 health and to inform the program of all information to be given
65 to the infant's parents.

§61-12-10a. Costs of transportation of bodies; when state will pay; amount of payment.

1 Whenever an examination of a body is ordered pursuant to
2 section eight or ten of this article and the body of the deceased
3 is transported to the central laboratory or other place of exami-
4 nation, the reasonable cost of the transportation shall be paid by
5 the state out of funds appropriated to or for the use of the office
6 of the chief medical examiner. Transportation at state expense
7 shall be provided from the place where the body is being kept
8 at the time the examination is ordered to the central laboratory
9 or other place of examination, and, upon completion of the
10 examination, to the place designated by the person entitled to
11 possession of the body: *Provided*, That if the body is to be
12 returned a greater distance than it was taken for the examina-
13 tion, the state shall only be obligated for the cost of return of the
14 body equal to or less than that incurred to take the body for the
15 examination. The payment shall be of a reasonable amount set
16 by the office of the chief medical examiner, including, but not
17 limited to, payment of any part of the total cost as the office of
18 the chief medical examiner allows.

§61-12-11. Exhumation; when ordered.

1 If, in any case of sudden, violent or suspicious death, the
2 body is buried without any investigation by the chief medical
3 examiner, or by a county medical examiner or coroner, it is the
4 duty of the chief medical examiner or the county medical
5 examiner or coroner, upon being advised of this fact, to notify
6 the prosecuting attorney of the county, who shall communicate

7 the same to the judge of the circuit court or other court of record
8 having jurisdiction in the county and the judge may order that
9 the body be exhumed and an autopsy performed thereon, as
10 provided in section ten of this article and the pertinent facts
11 disclosed by the autopsy shall be communicated to the prosecut-
12 ing attorney of the county.

§61-12-12. Facilities and services available to medical examiners.

1 Pursuant to rules promulgated by the secretary of the
2 department of health and human resources, the facilities of the
3 office of the chief medical examiner and its laboratory, and the
4 services of its professional staff, shall be made available to the
5 county medical examiners and coroners in their investigations
6 under the provisions of section eight of this article, and to the
7 persons conducting autopsies under the provisions of section ten
8 of this article.

§61-12-13. Reports and records received as evidence; copies.

1 Reports of investigations and autopsies, and the records
2 thereof, on file in the office of the chief medical examiner or in
3 the office of any county medical examiner, shall be received as
4 evidence in any court or other proceeding, and copies of
5 records, photographs, laboratory findings and records on file in
6 the office of the chief medical examiner or in the office of any
7 county medical examiner, when duly attested by the chief
8 medical examiner or by the county medical examiner, assistant
9 county medical examiner or coroner in whose office the same
10 are filed, shall be received as evidence in any court or other
11 proceeding for any purpose for which the original could be
12 received without any proof of the official character of the
13 person whose name is signed thereto unless objected to by
14 counsel: *Provided*, That statements of witnesses or other
15 persons and conclusions upon extraneous matters are not hereby
16 made admissible.

§61-12-14. County coroners; appointment, oath, etc.; duties; fees.

1 It is the duty of the county commission of every county,
2 from time to time, to appoint a coroner for the county, who
3 shall hold the office during the pleasure of the commission and
4 shall take the oath of office prescribed for other county officers.
5 The county coroners shall be certified in medicolegal investiga-
6 tions, be continually available to perform the duties required
7 under this article and shall be paid such fees or amounts for the
8 services as may be fixed by the chief medical examiner.

CHAPTER 195

(H. B. 4062 — By Delegates Douglas, Varner, Kuhn, Perdue,
Caputo, Modesitt and Willison)

[Passed February 15, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two-a, eight and twelve, article one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the duties of professional licensing boards; orientation session; requiring legislative rules for complaint procedures; and filing of annual reports.

Be it enacted by the Legislature of West Virginia:

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

§30-1-2a. Required orientation session.

§30-1-8. Denial, suspension or revocation of a license or registration; probation; proceedings; effect of suspension or revocation; transcript; report; judicial review.

§30-1-12. Record of proceedings; register of applicants; certified copies of records prima facie evidence; report to governor and Legislature; public access.

§30-1-2a. Required orientation session.

1 (a) After the first day of April and not later than the first
2 day of December of each year, the auditor shall provide at least
3 one orientation session on relevant state law and rules govern-
4 ing state boards and commissions. All state agencies shall
5 cooperate with and assist in providing the orientation session if
6 the auditor requests.

7 (b) After the effective date of this section, all chairs or chief
8 financial officers of state boards and commissions newly
9 created by the Legislature shall attend an orientation session
10 designed to inform the state boards and commissions of the
11 duties and requirements imposed on state boards and commis-
12 sions by state law and rules. The chair or chief financial officer
13 of the newly created board or commission shall attend an
14 orientation session at the earliest possible date following the
15 creation of the board or commission.

16 (c) The orientation session shall include a minimum of
17 thirty minutes of instructional time dedicated to the statutory
18 duty of boards to investigate and resolve complaints, including
19 procedures for investigations, administrative hearings and
20 remedies, due process protections, and the duty to provide
21 public access to records of the disposition of complaints, as set
22 forth in section five of this article.

23 (d) Topics for the orientation session may include, but are
24 not limited to: The official conduct of members, state budgeting
25 and financial procedures, purchasing requirements, open
26 meetings requirements, ethics, rule-making procedures, records
27 management, annual reports and any other topics the auditor
28 determines to be essential in the fulfillment of the duties of the
29 members of state boards and commissions.

30 (e) The orientation session shall be open to any member of
31 new or existing boards and commissions and each board or
32 commission may approve expense reimbursement for the
33 attendance of one or more of its members. The chair or chief
34 financial officer of each existing board or commission shall
35 attend an orientation session within two years following the
36 effective date of this section.

37 (f) No later than the thirty-first day of December of each
38 year, the auditor shall provide to the chairs of the joint standing
39 committee on government operations a list of the names of
40 board or commission members attending, together with the
41 names of the boards and commissions represented, the orienta-
42 tion session or sessions offered by the auditor during the
43 previous year.

44 (g) The auditor may charge a registration fee for the
45 orientation session to cover the cost of providing the orientation
46 session. The fee may be paid from funds available to a board or
47 commission.

48 (h) Notwithstanding the member's normal rate of compen-
49 sation for serving on a board, a member attending the orienta-
50 tion session may be reimbursed for necessary and actual
51 expenses, as long as the member attends the complete orienta-
52 tion session.

53 (i) Ex officio members who are elected or appointed state
54 officers or employees, and members of boards or commissions
55 that have purely advisory functions with respect to a department
56 or agency of the state, are exempt from the requirements of this
57 section.

**§30-1-8. Denial, suspension or revocation of a license or registra-
tion; probation; proceedings; effect of suspension or
revocation; transcript; report; judicial review.**

1 (a) Every board referred to in this chapter is authorized to
2 suspend or revoke the license of any person who has been
3 convicted of a felony or who has been found to have engaged
4 in conduct, practices or acts constituting professional negli-
5 gence or a willful departure from accepted standards of profes-
6 sional conduct. Where any person has been so convicted of a
7 felony or has been found to have engaged in such conduct,
8 practices or acts, every board referred to in this chapter is
9 further authorized to enter into consent decrees, to reprimand,
10 to enter into probation orders, to levy fines not to exceed one
11 thousand dollars per day per violation, or any of these, singly or
12 in combination. Each board is also authorized to assess admin-
13 istrative costs. Any costs which are assessed shall be placed in
14 the special account of the board, and any fine which is levied
15 shall be deposited in the state treasury's general revenue fund.
16 For purposes of this section, the word "felony" means a felony
17 or crime punishable as a felony under the laws of this state, any
18 other state, or the United States. Every board referred to in this
19 chapter is authorized to promulgate rules in accordance with the
20 provisions of chapter twenty-nine-a of this code to delineate
21 conduct, practices or acts which, in the judgment of the board,
22 constitute professional negligence, a willful departure from
23 accepted standards of professional conduct or which may render
24 an individual unqualified or unfit for licensure, registration or
25 other authorization to practice.

26 (b) Notwithstanding any other provision of law to the
27 contrary, no certificate, license, registration or authority issued
28 under the provisions of this chapter may be suspended or
29 revoked without a prior hearing before the board or court which
30 issued the certificate, license, registration or authority. How-
31 ever, this does not apply in cases where a board is authorized to
32 suspend or revoke a certificate, license, registration or authority
33 prior to a hearing if the individual's continuation in practice
34 constitutes an immediate danger to the public.

35 (c) In all proceedings before a board or court for the
36 suspension or revocation of any certificate, license, registration
37 or authority issued under the provisions of this chapter, a
38 statement of the charges against the holder thereof and a notice
39 of the time and place of hearing shall be served upon the person
40 as a notice is served under section one, article two, chapter
41 fifty-six of this code, at least thirty days prior to the hearing,
42 and he or she may appear with witnesses and be heard in
43 person, by counsel, or both. The board may take oral or written
44 proof, for or against the accused, as it may deem advisable. If
45 upon hearing the board finds that the charges are true, it may
46 suspend or revoke the certificate, license, registration or
47 authority, and suspension or revocation shall take from the
48 person all rights and privileges acquired thereby.

49 (d) Pursuant to the provisions of section one, article five,
50 chapter twenty-nine-a of this code, informal disposition may
51 also be made by the board of any contested case by stipulation,
52 agreed settlement, consent order or default. Further, the board
53 may suspend its decision and place a licensee found by the
54 board to be in violation of the applicable practice on probation.

55 (e) Any person denied a license, certificate, registration or
56 authority who believes the denial was in violation of this article
57 or the article under which the license, certificate, registration or
58 authority is authorized shall be entitled to a hearing on the
59 action denying the license, certificate, registration or authority.
60 Hearings under this subsection shall be in accordance with the
61 provisions for hearings which are set forth in this section.

62 (f) A stenographic report of each proceeding on the denial,
63 suspension or revocation of a certificate, license, registration or
64 authority shall be made at the expense of the board and a
65 transcript thereof retained in its files. The board shall make a
66 written report of its findings, which shall constitute part of the
67 record.

68 (g) All proceedings under the provisions of this section are
69 subject to review by the supreme court of appeals.

70 (h) On or before the first day of July, two thousand, every
71 board referred to in this chapter shall propose rules for legisla-
72 tive approval in accordance with the provisions of article three,
73 chapter twenty-nine-a of this code, which shall specify a
74 procedure for the investigation and resolution of all complaints
75 against persons licensed under this chapter.

**§30-1-12. Record of proceedings; register of applicants; certified
copies of records prima facie evidence; report to
governor and Legislature; public access.**

1 (a) The secretary of every board shall keep a record of its
2 proceedings and a register of all applicants for license or
3 registration, showing for each the date of his or her application,
4 his or her name, age, educational and other qualifications, place
5 of residence, whether an examination was required, whether the
6 applicant was rejected or a certificate of license or registration
7 granted, the date of this action, the license or registration
8 number, all renewals of the license or registration, if required,
9 and any suspension or revocation thereof. The books and
10 register of the board shall be open to public inspection at all
11 reasonable times, and the books and register, or a copy of any
12 part thereof, certified by the secretary and attested by the seal
13 of the board, shall be prima facie evidence of all matters
14 recorded therein.

15 (b) On or before the first day of January of each year in
16 which the Legislature meets in regular session, the board shall
17 submit to the governor and to the Legislature a report of its
18 transactions for the preceding two years, an itemized statement
19 of its receipts and disbursements for that period, a full list of the
20 names of all persons licensed or registered by it during that
21 period, statistical reports by county of practice, by specialty if
22 appropriate to the particular profession, and a list of any
23 complaints which were filed against persons licensed by the

24 board, including any action taken by the board regarding those
25 complaints. The report shall be certified by the president and
26 the secretary of the board, and a copy of the report shall be filed
27 with the secretary of state and with the legislative librarian.

28 (c) To promote public access, the secretary of every board
29 shall ensure that the address and telephone number of the board
30 are included every year in the state government listings of the
31 Charleston area telephone directory. Every board shall regularly
32 evaluate the feasibility of adopting additional methods of
33 providing public access, including, but not limited to, listings
34 in additional telephone directories, toll-free telephone numbers,
35 facsimile and computer-based communications.

CHAPTER 196

(S. B. 184 — By Senator Minear)

[Passed March 9, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to acts which do not constitute the practice of medicine; and amending the reference to certification of persons who provide orthotic and prosthetic devices by a particular credentialing body.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-13. Unauthorized practice of medicine and surgery or podiatry; criminal penalties; limitations.

1 (a) A person shall not engage in the practice of medicine
2 and surgery or podiatry, hold himself or herself out as qualified
3 to practice medicine and surgery or podiatry or use any title,
4 word or abbreviation to indicate to or induce others to believe
5 that he or she is licensed to practice medicine and surgery or
6 podiatry in this state unless he or she is actually licensed under
7 the provisions of this article. A person engaged in the practice
8 of telemedicine is considered to be engaged in the practice of
9 medicine within this state and is subject to the licensure
10 requirements of this article. As used in this section, the term
11 "practice of telemedicine" means the use of electronic informa-
12 tion and communication technologies to provide health care
13 when distance separates participants and includes one or both
14 of the following: (1) The diagnosis of a patient within this state
15 by a physician located outside this state as a result of the
16 transmission of individual patient data, specimens or other
17 material by electronic or other means from within this state to
18 the physician or his or her agent; or (2) the rendering of
19 treatment to a patient within this state by a physician located
20 outside this state as a result of transmission of individual patient
21 data, specimens or other material by electronic or other means
22 from within this state to the physician or his or her agent. No
23 person may practice as a physician's assistant, hold himself or
24 herself out as qualified to practice as a physician's assistant, or
25 use any title, word or abbreviation to indicate to or induce
26 others to believe that he or she is licensed to practice as a
27 physician's assistant in this state unless he or she is actually
28 licensed under the provisions of this article. Any person who
29 violates the provisions of this subsection is guilty of a misde-
30 meanor and, upon conviction thereof, shall be fined not more
31 than ten thousand dollars, or imprisoned in the county jail not
32 more than twelve months, or both fined and imprisoned.

33 (b) The provisions of this section do not apply to:

34 (1) Persons who are duly licensed health care providers
35 under other pertinent provisions of this code and are acting
36 within the scope of their license;

37 (2) Physicians or podiatrists licensed in other states or
38 foreign countries who are acting in a consulting capacity with
39 physicians or podiatrists duly licensed in this state, for a period
40 of not more than three months: *Provided*, That this exemption
41 is applicable on a one-time only basis;

42 (3) An individual physician or podiatrist, or physician or
43 podiatrist, or physician or podiatrist groups, or physicians or
44 podiatrists at a tertiary care or university hospital outside this
45 state and engaged in the practice of telemedicine who consult
46 or render second opinions concerning diagnosis or treatment of
47 patients within this state: (i) In an emergency or without
48 compensation or expectation of compensation; or (ii) on an
49 irregular or infrequent basis which occurs less than once a
50 month or less than twelve times in a calendar year;

51 (4) Persons holding licenses granted by another state or
52 foreign country who are commissioned medical officers of, a
53 member of or employed by the armed forces of the United
54 States, the United States public health service, the veterans'
55 administration of the United States, any federal institution or
56 any other federal agency while engaged in the performance of
57 their official duties;

58 (5) Any person providing first-aid care in emergency
59 situations;

60 (6) The practice of the religious tenets of any recognized
61 church in the administration of assistance to the sick or suffer-
62 ing by mental or spiritual means;

63 (7) Visiting medical faculty engaged in teaching or research
64 duties at a medical school or institution recognized by the board
65 and who are in this state for periods of not more than six

66 months: *Provided*, That the individuals do not otherwise engage
67 in the practice of medicine or podiatry outside of the auspices
68 of their sponsoring institutions;

69 (8) Persons enrolled in a school of medicine approved by
70 the liaison committee on medical education or by the board, or
71 persons enrolled in a school of podiatric medicine approved by
72 the council of podiatry education or by the board, or persons
73 enrolled in an undergraduate or graduate physician assistant
74 program approved by the committee on allied health education
75 and accreditation or its successor on behalf of the American
76 medical association or by the board, or persons engaged in
77 graduate medical training in a program approved by the liaison
78 committee on graduate medical education or the board, or
79 engaged in graduate podiatric training in a program approved
80 by the council on podiatric medical education or by the board,
81 who are performing functions in the course of training includ-
82 ing with respect to functions performed by medical residents or
83 medical students under the supervision of a licensed physician,
84 ordering and obtaining laboratory tests, medications and other
85 patient orders by computer or other electronic means and no
86 other provision of this code to the contrary may be construed to
87 prohibit or limit medical residents' or medical students' use of
88 computers or other electronic devices in this manner;

89 (9) The fitting, recommending or sale of corrective shoes,
90 arch supports or similar mechanical appliances in commercial
91 establishments; and

92 (10) The fitting or sale of a prosthetic or orthotic device not
93 involving any surgical procedure, in accord with a prescription
94 of a physician, osteopathic physician, or where chiropractors or
95 podiatrists are authorized by law to prescribe such a prosthetic
96 or orthotic device, in accord with a prescription of a chiroprac-
97 tor or podiatrist, by a practitioner certified in the provision of
98 custom orthotic and prosthetic devices, respectively, by a
99 nationally recognized credentialing body for orthotics and
100 prosthetics that is accredited by the national commission for

101 certifying agencies (NCCA): *Provided*, That the sale of any
102 prosthetic or orthotic device by a partnership, proprietorship or
103 corporation which employs such a practitioner or registered
104 technician who fitted the prosthetic or orthotic device shall not
105 constitute the unauthorized practice of medicine: *Provided*,
106 *however*, That the practitioner or registered technician may,
107 without a prescription, make recommendation solely to a
108 physician or osteopathic physician or to a chiropractor or
109 podiatrist otherwise authorized by law to prescribe a particular
110 prosthetic or orthotic device, regarding any prosthetic or
111 orthotic device to be used for a patient upon a request for such
112 recommendation.

113 (c) This section shall not be construed as being in any way
114 a limitation upon the services of a physician's assistant per-
115 formed in accordance with the provisions of this article.

116 (d) Persons covered under this article may be permitted to
117 utilize electronic signature or unique electronic identification to
118 effectively sign materials, transmitted by computer or other
119 electronic means, upon which signature is required for the
120 purpose of authorized medical practice. Such signatures are
121 deemed legal and valid for purposes related to the provision of
122 medical services. This subsection does not confer any new
123 practice privilege or right on any persons covered under this
124 article.

CHAPTER 197

(H. B. 4061 — By Delegates Douglas, Kuhn, Perdue,
Hatfield, Caputo, L. Smith and Willison)

[Passed February 29, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and seven, article thirty-one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said

article by adding thereto a new section, designated section seven-a, relating to authorizing the West Virginia board of examiners in counseling to propose legislative rules for restricted practice licensure of addictions counselors.

Be it enacted by the Legislature of West Virginia:

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

§30-31-2. Definitions.

§30-31-7. Qualifications of applicants for license; application fee.

§30-31-7a. Restricted practice license for addictions counselors.

§30-31-2. Definitions.

1 As used in this article:

2 (1) "Applicant" means any person making an application
3 for an original or renewal license under the provisions of this
4 article;

5 (2) "Board" means the West Virginia board of examiners in
6 counseling established by this article;

7 (3) "Counseling" means rendering, offering to render or
8 supervising those who render any service for compensation or
9 other personal gain involving the application of mental health
10 counseling procedures to help in learning how to solve prob-
11 lems or make decisions related to careers, personal growth,
12 marriage, family or other interpersonal or intrapersonal
13 concerns;

14 (4) "Counselor" means one who holds himself or herself
15 out to the public as engaged in the practice of counseling as
16 defined herein, and, in so doing, represents that he or she has

17 the knowledge, training, expertise and ethical standards
18 necessary to engage in such practice;

19 (5) "Licensed professional counselor" means a counselor as
20 defined herein who holds a valid license to practice counseling
21 issued pursuant to this article; and

22 (6) "Mental health counseling procedures" include, but are
23 not restricted to, the use of methods and techniques which
24 contribute to self-understanding, desired personal behavior
25 change or more effective interpersonal behavior; assessment
26 techniques useful in appraising aptitudes, abilities, achieve-
27 ments, interest or attitudes; informational and community
28 resources for career, personal or social development; individual
29 and group techniques which facilitate problem-solving behavior
30 or decision making; and supervision, referral and placement
31 techniques and methods which serve to further the goals of
32 counseling.

33 (7) "Substance abuse counseling procedures" or "addictions
34 counseling procedures" include, but are not restricted to,
35 informing, motivating, guiding and assisting those persons
36 affected either directly or indirectly by problems related to the
37 misuse of alcohol and/or other drugs, or by problems related to
38 addictions.

39 (8) "Supervised setting" means an institution, clinic or other
40 health care facility employing a counselor holding a restricted
41 practice license under section seven-a of this article, where one
42 or more health care professionals fully licensed under this
43 chapter, which may include persons other than the approved
44 professional supervisor, are generally available on the premises.

45 (9) "Supervision" means individual control or direction
46 over the services of a counselor holding a restricted practice
47 license under section seven-a of this article, by an approved
48 professional supervisor as defined by the board by rule.
49 Continual and uninterrupted physical presence of the approved

50 professional supervisor is not required so long as he or she is
51 available for telephone consultation, and meets the requirement
52 for one (1) hour of direct individual supervision for every
53 twenty (20) hours of services provided by the counselor holding
54 a restricted practice license as provided in section seven-a of
55 this article.

§30-31-7. Qualifications of applicants for license; application fee.

1 (a) To be eligible for a license to engage in the practice of
2 counseling, an applicant must:

3 (1) Be a legal resident of the state of West Virginia;

4 (2) Satisfy the board that he or she is of good moral
5 character and merits the public trust, which shall be evidenced
6 as follows:

7 (A) If the applicant has never been convicted of a felony or
8 a crime involving moral turpitude, the applicant shall submit
9 letters of recommendation from three persons not related to the
10 applicant and a sworn statement from the applicant stating that
11 he or she has never been convicted of a felony or a crime
12 involving moral turpitude; or

13 (B) If the applicant has been convicted of a felony or a
14 crime involving moral turpitude, it is a rebuttable presumption
15 that the applicant is unfit for licensure unless he or she submits
16 competent evidence of sufficient rehabilitation and present
17 fitness to perform the duties of a licensed professional coun-
18 selor as may be established by the production of: (i) Documen-
19 tary evidence including a copy of the relevant release or
20 discharge order, evidence showing compliance with all condi-
21 tions of probation or parole, evidence showing that at least one
22 year has elapsed since release or discharge without subsequent
23 conviction, and letters of reference from three persons who
24 have been in contact with the applicant since his or her release
25 or discharge; and (ii) any collateral evidence and testimony as

26 may be requested by the board which shows the nature and
27 seriousness of the crime, the circumstances relative to the crime
28 or crimes committed and any mitigating circumstances or social
29 conditions surrounding the crime or crimes and any other
30 evidence necessary for the board to judge present fitness for
31 licensure or whether licensure will enhance the likelihood that
32 the applicant will commit the same or similar offenses;

33 (3) Not be an alcohol or drug abuser as these terms are
34 defined in section eleven, article one-a, chapter twenty-seven of
35 this code: *Provided*, That an applicant who has had at least two
36 continuous years of uninterrupted sobriety in an active recovery
37 process, which may, in the discretion of the board, be evidenced
38 by participation in a twelve-step program or other similar group
39 or process, may be considered;

40 (4) Have earned a master's degree in an accredited counsel-
41 ing program or in a field closely related to an accredited
42 counseling program as determined by the board, or have
43 received training equivalent to such degree as may be deter-
44 mined by the board, and have at least two years of supervised
45 professional experience in counseling of such a nature as shall
46 be designated by the board, including at least one year's
47 experience after earning an aforementioned master's degree or
48 equivalent; or have earned a doctorate degree in an accredited
49 counseling program or in a field closely related to an accredited
50 counseling program as determined by the board, or have
51 received training equivalent to such degree as may be deter-
52 mined by the board, and have at least one year of supervised
53 professional experience in counseling of such a nature as shall
54 be designated by the board after earning an aforementioned
55 doctorate degree or equivalent; and

56 (5) Have passed a standardized national certification
57 examination in counseling approved by the board.

58 (b) Any person who holds a license or certificate to engage
59 in the practice of counseling issued by any other state, the

60 qualifications for which license or certificate are determined by
61 the board to be at least as great as those provided in this article,
62 is eligible for licensure.

63 (c) Every applicant must submit an application for a license
64 to practice counseling to the secretary of the board in such
65 manner, on such forms and containing such information as the
66 board may prescribe and pay to the board a nonrefundable
67 application fee as established by the board.

68 (d) Any person who has been continually licensed under
69 this article since the year one thousand nine hundred eighty-
70 seven, pursuant to prior enactments permitting waiver of certain
71 examination and other requirements, is eligible for renewal of
72 licensure.

§30-31-7a. Restricted practice license for addictions counselors.

1 (a) On or before the first day of July, two thousand, the
2 board shall propose rules for legislative approval in accordance
3 with the provisions of article three, chapter twenty-nine-a of
4 this code, authorizing restricted practice licensure for addic-
5 tions counselors who meet all of the requirements for licensure
6 set forth in section seven of this article, other than the require-
7 ment that the applicant hold a master's or doctorate degree, and
8 who make application to the board within two years of the date
9 of passage of the rule. The rule shall set forth requirements
10 related to the practice of substance abuse counseling procedures
11 or addictions counseling procedures under supervision in a
12 supervised setting.

13 (b) Rules pursuant to this section shall require that appli-
14 cants for restricted practice licensure:

15 (1) Hold current certification as a certified addictions
16 counselor (CAC) by the international certification reciprocity
17 consortium/alcohol and other drugs of abuse (ICRC/AODA) or
18 its successor organization and be in good standing with the

19 West Virginia certification board for addictions professionals
20 or its successor organization;

21 (2) Hold a baccalaureate degree which would meet the
22 qualifications for admission to an accredited graduate degree
23 program in counseling;

24 (3) Document acceptance to and enrollment in an educa-
25 tional program that would, within seven years of the date of
26 application, lead to:

27 (A) The award of a master's degree in an accredited
28 counseling program or in a field closely related to an accredited
29 counseling program as determined by the board, or training
30 equivalent to an accredited counseling program or in a field
31 closely related to a master's degree in an accredited counseling
32 program as determined by the board, and at least two years of
33 supervised professional experience, at least one year of which
34 must be attained after earning the master's degree, all as
35 approved by the board; or

36 (B) The award of a doctorate degree in an accredited
37 counseling program or in a field closely related to an accredited
38 counseling program as approved by the board, or training
39 equivalent to a doctorate degree in an accredited counseling
40 program or in a field closely related to an accredited counseling
41 program as approved by the board, and at least one year of
42 supervised professional experience which must be attained after
43 earning the doctorate degree, all as approved by the board;

44 (4) Submit a written job description or summary outlining
45 the duties of the applicant's current or proposed employment
46 working with addicted persons or their families;

47 (5) Submit a description of the institution, clinic or other
48 setting where services to addicted persons or their families are
49 being or will be provided;

50 (6) Submit the curriculum vitae of an approved professional
51 supervisor as defined by the board by rule, together with a letter
52 signed by that individual agreeing to supervise the applicant's
53 practice under the restricted practice license; and

54 (7) Submit other information that the board may reasonably
55 require.

56 (c) The rules related to supervision of counselors holding a
57 restricted practice license under this section shall require a
58 minimum of one (1) hour of direct individual supervision by the
59 approved professional supervisor for every twenty (20) hours
60 of counseling services provided by the counselor holding a
61 restricted practice license. The direct individual supervision
62 shall include examination of selected patient or client records
63 of sufficient number to assure adequate review of the scope of
64 practice of the counselor holding a restricted practice license,
65 and periodic, at least monthly, education and review sessions
66 discussing specific problems, therapeutic approaches, proce-
67 dures and specific patients or clients.

68 (d) The board shall review, at least annually, the educa-
69 tional progress of each person holding a restricted practice
70 license under this article, to verify that his or her progress is
71 sufficient to meet the requirements of the board and of this
72 article. Annual renewal of the restricted practice license is
73 conditioned upon continued approved supervision, continued
74 educational progress which must include at a minimum the
75 successful completion of six (6) hours of approved graduate
76 coursework per year, and compliance with the requirements of
77 rules promulgated pursuant to this section.

CHAPTER 198

(H. B. 4800 — By Delegates Michael, Leach,
Doyle, Kelley, Facemyer and Border)

[Passed March 11, 2000; in effect 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-b; and to

amend and reenact section twenty-five of said article, all relating generally to the public employees insurance agency; establishing a new prescription drug program within the public employees insurance agency; requiring the executive director to appoint an advisory committee; setting forth guidelines for the new program; authorizing contract amendments; requiring reporting; and changing reserve fund to require specific percentages.

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-b; and that section twenty-five of said article be amended and reenacted, all to read as follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-7b. Prescription benefit program.

§5-16-25. Reserve fund.

§5-16-7b. Prescription benefit program.

1 (a) *Findings*—The Legislature finds that the rapidly rising
2 cost of prescription drugs places an undue financial burden on
3 the state of West Virginia, the payors, and the consumers of
4 prescription drugs. The Legislature further finds that those
5 rising costs are related to the following factors:

6 (1) National pharmaceutical trends reflecting that prescrip-
7 tion spending has doubled in the past eight years from forty-
8 nine billion dollars per year to an estimated one hundred
9 nineteen billion dollars in the year two thousand. This trend
10 reflects successes in drug therapy research, drug effectiveness,
11 and an overall improvement in the quality of life. However, the
12 trend also signals an increase in drug cost and utilization, which
13 impacts all West Virginians directly or indirectly;

14 (2) The aging of our state population and increased life
15 expectancy of our citizens have a significant impact on the

16 rising cost and utilization of prescription drugs in West Vir-
17 ginia. When these factors are combined with the escalating
18 number of drug-related preventative treatments, increased
19 product development, and growing consumerism in the pre-
20 scription drug market, many West Virginians are forced to
21 utilize an increasing portion of their income to maintain their
22 physical and mental health;

23 (3) Four decades ago, more than ninety percent of drug
24 costs were paid by consumers. Now, more than half the cost of
25 prescription drugs are supplemented by governmental and
26 private health insurance, thus removing usual market forces that
27 serve to control costs. This poses a substantial burden on the
28 taxpayers of West Virginia to support the state's health benefit
29 programs, as well as their own; and

30 (4) Despite the data reflecting a substantial percentage
31 decrease in physician and hospital expenses, the number of
32 drugs reaching the billion dollar sales mark has doubled since
33 1994, which contributes to the overall increase in health care
34 expenditures in the United States.

35 (b) *Advisory committee*—The executive director of the
36 public employees insurance agency shall appoint an advisory
37 committee of six persons to assist in the development of a
38 rational and equitable prescription benefit program. The
39 advisory committee is to be composed of physicians represent-
40 ing specialists and primary care practices, pharmacists, includ-
41 ing clinical pharmacists and a representative of the vendor for
42 the prescription benefit program. The executive director shall
43 serve as the chairperson. The advisory committee shall meet
44 routinely, upon the call of the chairperson. The advisory
45 committee may form any number of ad hoc committees,
46 representing expertise in the particular area of study for that ad
47 hoc committee, to assist with the development and implementa-
48 tion of the prescription benefit program authorized by this
49 section.

50 (c) *Program design*—The advisory committee shall design
51 a prescription drug strategy statement to guide all decisions
52 made by the advisory committee. The strategy statement shall
53 reflect consideration of the goals of a prescription benefit
54 program, the needs of the various populations served and the
55 overall value to the state of these expenditures. In developing
56 the prescription benefit program, the committee shall focus on
57 specific disease states or conditions, the appropriate pharma-
58 ceutical management or treatment of those disease states or
59 conditions, and prioritize that information for purposes of
60 establishing the appropriate level of third party coverage, giving
61 consideration to the appropriate priority given to coverage for
62 life saving, life enhancing, life lengthening, life style and
63 cosmetic drugs. In determining the levels of third party cover-
64 age, the advisory committee may continue to separate generic
65 prescription drugs from the brand name prescription drugs.

66 (d) *Development and revisions*—The advisory committee
67 shall develop and submit the prescription benefit program to the
68 agency no later than the first day of July, two thousand one. The
69 advisory committee shall continuously evaluate the prescription
70 benefit program and make necessary revisions to maintain
71 conformity with the goals of the prescription benefit program,
72 which are to be (1) responsive to the needs of the employees
73 insured by the program, and (2) fiscally accountable to the
74 taxpayers of the state of West Virginia.

75 (e) *Contracts*—After receiving and reviewing the prescrip-
76 tion benefit program, the executive director may amend any
77 existing prescription benefit program contract, or enter into a
78 separate contract, to establish the prescription benefit program
79 authorized in this section: *Provided*, That for a new contract,
80 the provisions of section nine of this article apply.

§5-16-25. Reserve fund.

1 Upon the effective date of this section, the finance board
2 shall establish and maintain a reserve fund for the purposes of

3 offsetting unanticipated claim losses in any fiscal year. Begin-
4 ning with the fiscal year two thousand two plan and for each
5 succeeding fiscal year plan, the finance board shall transfer ten
6 percent of the projected total plan costs for that year into the
7 reserve fund, which is to be certified by the actuary and
8 included in the final, approved financial plan submitted to the
9 governor and Legislature in accordance with the provisions of
10 this article. Any moneys saved in a plan year shall be trans-
11 ferred into the reserve fund. At the close of any fiscal year in
12 which the balance in the reserve fund exceeds the recommended
13 reserve amount by fifteen percent, the executive director shall
14 transfer that amount to the fund established in section fourteen-
15 a, article two, chapter five-a of this code for appropriation by
16 the Legislature.

CHAPTER 199

(Com. Sub. for S. B. 29 — By Senator Hunter)

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

AN ACT to amend and reenact section four, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing that a public service district which sells water for resale to other water utilities in addition to servicing retail customers may adopt an alternative method of determining the salaries of its board members which is based on the annual revenues of the public service district.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE
AND GAS SERVICES.**

**§16-13A-4. Board chairman; members' compensation; procedure;
district name.**

1 (a) The chairman shall preside at all meetings of the board
2 and may vote as any other member of the board. If the chairman
3 is absent from any meeting, the remaining members may select
4 a temporary chairman and if the member selected as chairman
5 resigns as such or ceases for any reason to be a member of the
6 board, the board shall select one of its members as chairman to
7 serve until the next annual organization meeting.

8 (b) Salaries of the board members are:

9 (1) For districts with fewer than six hundred customers, up
10 to seventy-five dollars per attendance at regular monthly
11 meetings and fifty dollars per attendance at additional special
12 meetings, total salary not to exceed fifteen hundred dollars per
13 annum;

14 (2) For districts with six hundred customers or more but
15 fewer than two thousand customers, up to one hundred dollars
16 per attendance at regular monthly meetings and seventy-five
17 dollars per attendance at additional special meetings, total
18 salary not to exceed two thousand five hundred fifty dollars per
19 annum;

20 (3) For districts with two thousand customers or more, up
21 to one hundred twenty-five dollars per attendance at regular
22 monthly meetings and seventy-five dollars per attendance at
23 additional special meetings, total salary not to exceed three
24 thousand seven hundred fifty dollars per annum; and

25 (4) For districts with four thousand or more customers, up
26 to one hundred fifty dollars per attendance at regular monthly

27 meetings and one hundred dollars per attendance at additional
28 special meetings, total salary not to exceed five thousand four
29 hundred dollars per annum.

30 The public service district shall certify the number of
31 customers served to the public service commission beginning
32 on the first day of July, one thousand nine hundred eighty-six,
33 and continue each fiscal year thereafter.

34 (c) Public service districts selling water to other water
35 utilities for resale may adopt the following salaries for its board
36 members:

37 (1) For districts with annual revenues of less than fifty
38 thousand dollars, up to seventy-five dollars per attendance at
39 regular monthly meetings and fifty dollars per attendance at
40 additional special meetings, total salary not to exceed fifteen
41 hundred dollars per annum;

42 (2) For districts with annual revenues of fifty thousand
43 dollars or more, but less than two hundred fifty thousand
44 dollars, up to one hundred dollars per attendance at regular
45 monthly meetings and seventy-five dollars per attendance at
46 special meetings, total salary not to exceed two thousand five
47 hundred fifty dollars per annum;

48 (3) For districts with annual revenues of two hundred fifty
49 thousand dollars or more, but less than five hundred thousand
50 dollars, up to one hundred twenty-five dollars per attendance at
51 regular monthly meetings and seventy-five dollars per atten-
52 dance at additional special meetings, total salary not to exceed
53 three thousand seven hundred fifty dollars per annum; and

54 (4) For districts with annual revenues of five hundred
55 thousand dollars or more, up to one hundred fifty dollars per
56 attendance at regular monthly meetings and one hundred dollars

57 per attendance at additional special meetings, total salary not to
58 exceed five thousand four hundred dollars per annum.

59 The public service district shall certify the number of
60 customers served and its annual revenue to the public service
61 commission beginning on the first day of July, two thousand,
62 and continue each fiscal year thereafter.

63 (d) Board members may be reimbursed for all reasonable
64 and necessary expenses actually incurred in the performance of
65 their duties as provided for by the rules of the board.

66 (e) The board shall by resolution determine its own rules of
67 procedure, fix the time and place of its meetings and the manner
68 in which special meetings may be called. Public notice of
69 meetings shall be given in accordance with section three, article
70 nine-a, chapter six of this code. Emergency meetings may be
71 called as provided for by said section. A majority of the
72 members constituting the board also constitute a quorum to do
73 business.

74 (f) The members of the board are not personally liable or
75 responsible for any obligations of the district or the board, but
76 are answerable only for willful misconduct in the performance
77 of their duties. At any time prior to the issuance of bonds as
78 hereinafter provided, the board may by resolution change the
79 official or corporate name of the public service district and the
80 change is effective from the filing of an authenticated copy of
81 such resolution with the clerk of the county commission of each
82 county in which the territory embraced within such district or
83 any part thereof is located and with the public service commis-
84 sion. The official name of any district created under the
85 provisions of this article may contain the name or names of any
86 city, incorporated town or other municipal corporation included
87 therein or the name of any county or counties in which it is
88 located.

CHAPTER 200

(H. B. 4805 — By Delegates Staton, Givens, Smirl,
Faircloth, Linch, Schadler and Capito)

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

AN ACT to amend and reenact section thirty, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to obtaining money, goods or other property from the state or any political subdivision of the state under a contract, by false pretense, token or representation, or by delivery of inferior commodities, with intent to defraud; setting forth legislative statement of purpose; extending to political subdivisions the offense of obtaining money, goods or other property under a contract, by false pretense, token or representation, or by delivery of inferior commodities, with intent to defraud, and providing penalties for such felony offense; prohibiting certain described defenses; and defining the term “inferior commodities”.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PURCHASING DIVISION.

§5A-3-30. Statement of purpose; obtaining money and property under false pretenses or by fraud from the state or a political subdivision of the state; penalties; definition.

1 (a) The Legislature of the state of West Virginia hereby
2 declares that the purpose of this statute is to promote equal and
3 fair bidding for the purchase of commodities by the state and
4 any political subdivision of the state purchasing commodities
5 under any state contract; to eliminate fraud in the procurement
6 of commodities by the state.

7 (b) It is unlawful for any person to obtain any money, goods
8 or other property from the state or any political subdivision of
9 the state under any contract made under the provisions of this
10 article, by false pretense, token or representation, or by delivery
11 of inferior commodities, with intent to defraud. A person who
12 violates this subsection is guilty of a felony, and, upon conviction
13 thereof, shall be confined in a state correctional facility for
14 not less than one year nor more than five years, and shall be
15 fined not exceeding one thousand dollars.

16 (c) It shall not be a defense to a charge under this section
17 that (1) the commodities purchased were accepted and used, or
18 are being used, by the state or a political subdivision of the
19 state, or (2) the commodities are functional or suitable for the
20 purpose for which the commodities were purchased by the state
21 or a political subdivision of the state notwithstanding the
22 standard or specification issued by the purchasing agency or the
23 division of purchasing.

24 (d) For the purpose of this section, "inferior commodities"
25 includes, but shall not be limited to, (1) any commodity which
26 does not meet the specification or standard issued by the
27 purchasing agency and the division of purchasing, or any
28 change order approved by both the purchasing agency and
29 division of purchasing, and (2) any commodity which is of a
30 lesser quality, quantity, or measure of any kind set forth within
31 the specification or standard issued by the purchasing agency
32 and the division of purchasing.

CHAPTER 201

(Com. Sub. for S. B. 362 — By Senators Sharpe, Minard, Minear, Snyder and Edgell)

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

AN ACT to amend and reenact sections seven and twelve, article twenty-two-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to racetrack video lottery generally; requiring a national crime records check for licensure; and reducing required number of video lottery terminals.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-7. License and permit qualifications; individual qualifications; applicant required to furnish information; waiver of liability; oath or affirmation; duty to provide accurate and material information.

§29-22A-12. Number and location of video lottery terminals security.

§29-22A-7. License and permit qualifications; individual qualifications; applicant required to furnish information; waiver of liability; oath or affirmation; duty to provide accurate and material information.

- 1 (a) No video lottery license or permit may be granted unless
- 2 the commission has determined that the applicant satisfies all
- 3 of the following qualifications:

4 (1) An applicant for a video lottery license must hold a
5 valid racing license granted by the West Virginia racing
6 commission under provisions of article twenty-three, chapter
7 nineteen of this code.

8 (2) An applicant must be a person of good character and
9 integrity.

10 (3) An applicant must be a person whose background,
11 including criminal record, reputation and associations, does not
12 pose a threat to the security and integrity of the lottery or to the
13 public interest of the state. All new applicants for licenses and
14 permits issued by the commission shall furnish fingerprints for
15 a national criminal records check by the criminal identification
16 bureau of the West Virginia state police and the federal bureau
17 of investigation. The fingerprints shall be furnished by all
18 persons required to be named in the application and shall be
19 accompanied by a signed authorization for the release of
20 information by the criminal investigation bureau and the federal
21 bureau of investigation. The commission may require any
22 applicant seeking the renewal of a license or permit to furnish
23 fingerprints for a national criminal records check by the
24 criminal identification bureau of the West Virginia state police
25 and the federal bureau of investigation. A person who has been
26 convicted of any violation of article twenty-two of this chapter
27 or of this article or of any crime related to theft, bribery,
28 gambling or involving moral turpitude is not eligible for any
29 license or permit. The commission shall revoke the license or
30 permit of any person who is convicted of any such crime after
31 a license or permit is granted.

32 (4) An applicant must be a person who demonstrates the
33 business ability and experience necessary to establish, operate
34 and maintain the business for which a video lottery license or
35 permit application is made.

36 (5) An applicant must be a person who has secured ade-
37 quate financing for the business for which a video lottery
38 license or permit application is made. The commission shall
39 determine whether financing is from a source which meets the
40 qualifications of this section and is adequate to support the
41 successful performance of the duties and responsibilities of the
42 licensed racetrack or permit holder. An applicant for a video
43 lottery license shall disclose all financing or refinancing
44 arrangements for the purchase, lease or other acquisition of
45 video lottery terminals and associated equipment in the degree
46 of detail requested by the commission. A licensed racetrack
47 shall request commission approval of any change in financing
48 or lease arrangements at least thirty days before the effective
49 date of the change.

50 (6) A racetrack applying for a video lottery license or a
51 license renewal must present to the commission evidence of the
52 existence of an agreement, regarding the proceeds from video
53 lottery terminals, between the applicant and the representative
54 of a majority of the horse owners and trainers, the representa-
55 tive of a majority of the pari-mutuel clerks and the representa-
56 tive of a majority of the breeders or the representative of a
57 majority of the kennel owners for the applicable racetrack who
58 hold permits required by section two, article twenty-three,
59 chapter nineteen of this code.

60 (7) A racetrack applying for a video lottery license or a
61 license renewal must file with the commission a copy of any
62 current or proposed agreement between the applicant and any
63 manufacturer for the sale, lease or other assignment to the
64 racetrack of video lottery terminals, the electronic computer
65 components of the terminals, the random number generator of
66 the terminals, or the cabinet in which it is housed. Once filed
67 with the commission, the agreement is a public document
68 subject to the provisions of article one, chapter twenty-nine-b
69 of this code.

70 (b) No video lottery license or permit may be granted to an
71 applicant until the commission determines that each person who
72 has control of the applicant meets all applicable qualifications
73 of subsection (a) of this section. The following persons are
74 considered to have control of an applicant:

75 (1) Each person associated with a corporate applicant,
76 including any corporate holding company, parent company or
77 subsidiary company of the applicant, but not including a bank
78 or other licensed lending institution which holds a mortgage or
79 other lien acquired in the ordinary course of business, who has
80 the ability to control the activities of the corporate applicant or
81 elect a majority of the board of directors of that corporation.

82 (2) Each person associated with a noncorporate applicant
83 who directly or indirectly holds any beneficial or proprietary
84 interest in the applicant or who the commission determines to
85 have the ability to control the applicant.

86 (3) Key personnel of an applicant, including any executive,
87 employee or agent, having the power to exercise significant
88 influence over decisions concerning any part of the applicant's
89 business operation.

90 (c) Applicants must furnish all information, including
91 financial data and documents, certifications, consents, waivers,
92 individual history forms and other materials requested by the
93 commission for purposes of determining qualifications for a
94 license or permit. No video lottery license or permit may be
95 granted to an applicant who fails to provide information and
96 documentation requested by the commission. The burden of
97 proving qualification for any video lottery license or permit is
98 on the applicant.

99 (d) Each applicant bears all risks of adverse public notice,
100 embarrassment, criticism, damages or financial loss which may
101 result from any disclosure or publication of any material or

102 information obtained by the commission pursuant to action on
103 an application. The applicant shall, as a part of its application,
104 expressly waive any and all claims against the commission, the
105 state of West Virginia and the employees of either for damages
106 as a result of any background investigation, disclosure or
107 publication relating to an application for a video lottery license
108 or permit.

109 (e) All application, registration and disclosure forms and
110 other documents submitted to the commission by or on behalf
111 of the applicant for purposes of determining qualification for a
112 video lottery license or permit shall be sworn to or affirmed
113 before an officer qualified to administer oaths.

114 (f) An applicant who knowingly fails to reveal any fact
115 material to qualification or who knowingly submits false or
116 misleading material information is ineligible for a video lottery
117 license or permit.

**§29-22A-12. Number and location of video lottery terminals
security.**

1 (a) A racetrack which has been licensed to conduct video
2 lottery games has the right to install and operate up to four
3 hundred video lottery terminals at a licensed racetrack. A
4 licensed racetrack may apply to the commission for authoriza-
5 tion to install and operate more than four hundred video lottery
6 terminals. If the commission determines that the installation of
7 additional machines is in the best interest of the licensed
8 racetrack, the lottery commission and the citizens of this state,
9 the commission may grant permission to install and operate
10 additional machines.

11 (b) All video lottery terminals in licensed racetracks shall
12 be physically located as follows:

13 (1) The video lottery location shall be continuously
14 monitored through the use of a closed circuit television system

15 capable of recording activity for a continuous 24-hour period.
16 All video tapes shall be retained for a period of at least thirty
17 days;

18 (2) Access to video lottery terminal locations shall be
19 restricted to persons legally entitled by age to play video lottery
20 games;

21 (3) The licensed racetrack shall submit for commission
22 approval a floor plan of the area or areas where video lottery
23 terminals are to be operated showing terminal locations and
24 security camera mount locations;

25 (4) No video lottery terminal may be relocated without
26 prior approval from the commission; and

27 (5) Operational video lottery terminals may only be located
28 in the building or structure in which the grandstand area of the
29 racetrack is located and in the area of the building or structure
30 where pari-mutuel wagering is permitted under the provisions
31 of article twenty-three, chapter nineteen of this code: *Provided,*
32 That if the commission, before the first day of November, one
33 thousand nine hundred ninety-three, has authorized any
34 racetrack to operate video lottery terminals and offer video
35 lottery games in a location which would not conform to the
36 requirements of this subdivision, the racetrack may continue to
37 use video lottery terminals registered with and approved by the
38 commission at that nonconforming location and to offer the
39 games and any variations or composites of the games as may be
40 approved by the commission.

41 (c) A licensee shall allow video lottery games to be played
42 only on days when live racing is being conducted at the
43 racetrack and/or on televised racing days: *Provided,* That this
44 restriction shall not apply to any racetrack authorized by the
45 commissioner prior to the first day of November, one thousand

46 nine hundred ninety-three, to operate video lottery terminals
47 and conduct video lottery games.

48 (d) Security personnel shall be present during all hours of
49 operation at each video lottery terminal location. Each license
50 holder shall employ the number of security personnel the
51 commission determines is necessary to provide for safe and
52 approved operation of the video lottery facilities and the safety
53 and well-being of the players.

CHAPTER 202

(Com. Sub. for H. B. 4430 — By Delegates L. Smith, Hall,
Warner, Mattaliano, Douglas, Staton and Boggs)

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

AN ACT to amend and reenact sections two and six, article two-a, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to blocking emergency medical vehicles at railroad crossings; and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. RAILROAD CROSSING.

§31-2A-2. Blocking of crossing prohibited; time limit.

§31-2A-6. Fines and penalties.

§31-2A-2. Blocking of crossing prohibited; time limit.

1 (a) It is unlawful for any railroad company, except in an
2 emergency, to order, allow or permit the operation of or to

3 operate or to so operate its system so that a train blocks the
4 passage of vehicular traffic over the railroad crossing of any
5 public street, road or highway of this state for a period longer
6 than ten minutes. This section does not apply to an obstruction
7 of any such street, road or highway caused by a continuously
8 moving train or caused by circumstances wholly beyond the
9 control of the railroad, but does apply to all other obstructions
10 as aforesaid, including, but not limited to, those caused by a
11 stopped train or a train engaged in switching, loading or
12 unloading operations: *Provided*, That if any such train is within
13 the jurisdictional limits of any municipality which now has or
14 hereafter shall have in force and effect an ordinance limiting the
15 time a railroad crossing may be blocked by a train, such
16 ordinance shall govern, and the provisions of this article shall
17 not be applicable.

18 (b) Upon receiving notification from a law-enforcement
19 officer, member of a fire department, operator of an emergency
20 medical vehicle, or a member of an emergency services
21 provider that emergency circumstances require the immediate
22 clearing of a public highway railroad grade crossing, the
23 members of the train crew of the train, railroad car or equip-
24 ment, or engine blocking such crossing shall immediately notify
25 the appropriate railroad dispatcher of the pending emergency
26 situation. Upon receipt of notice of such emergency circum-
27 stances by the train crew or dispatcher, the railroad shall
28 immediately clear the crossing, consistent with the safe
29 operation of the train.

§31-2A-6. Fines and penalties.

1 (a) Any railroad company, carrier or railroad violating the
2 provisions of subsection (a), section two of this article is guilty
3 of a misdemeanor and, upon conviction thereof, shall be fined not
4 less than one hundred fifty dollars; upon a second conviction
5 occurring at the same crossing within one year thereafter, shall
6 be fined not less than two hundred fifty dollars; and upon a

7 third or subsequent conviction occurring at the same crossing
8 within one year after the first conviction, shall be fined not less
9 than three hundred fifty dollars.

10 (b) Any railroad company, carrier or railroad violating the
11 provisions of subsection (b), section two of this article is guilty
12 of a misdemeanor and, upon conviction thereof, shall be fined
13 not less than one thousand dollars; upon a second conviction
14 occurring at the same crossing within one year thereafter, shall
15 be fined not less than two thousand five hundred dollars; and
16 upon a third or subsequent conviction occurring at the same
17 crossing within one year after the first conviction, shall be fined
18 not less than five thousand dollars.

CHAPTER 203

(H. B. 4102 — By Delegates Jenkins, Hubbard,
J. Smith, Campbell, Williams, Hall and Harrison)

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

AN ACT to amend and reenact sections two, twenty-one and twenty-two, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the public employees retirement system; adding and defining terms; providing for “retroactive service” and “limited credited service”; providing for application of terms; and providing for restrictions resulting from said application.

Be it enacted by the Legislature of West Virginia:

That sections two, twenty-one and twenty-two, article ten, 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 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-2. Definitions.

§5-10-21. Deferred retirement and early retirement.

§5-10-22. Retirement annuity.

§5-10-2. Definitions.

1 The following words and phrases as used in this article,
2 unless a different meaning is clearly indicated by the context,
3 have the following meanings:

4 (1) "State" means the state of West Virginia;

5 (2) "Retirement system" or "system" means the West
6 Virginia public employees retirement system created and
7 established by this article;

8 (3) "Board of trustees" or "board" means the board of
9 trustees of the West Virginia public employees retirement
10 system;

11 (4) "Political subdivision" means the state of West Virginia,
12 a county, city or town in the state; a school corporation or
13 corporate unit; any separate corporation or instrumentality
14 established by one or more counties, cities or towns, as permit-
15 ted by law; any corporation or instrumentality supported in
16 most part by counties, cities or towns; any public corporation
17 charged by law with the performance of a governmental
18 function and whose jurisdiction is coextensive with one or more
19 counties, cities or towns: *Provided*, That any mental health
20 agency participating in the public employees retirement system
21 before the first day of July, one thousand nine hundred ninety-
22 seven, is considered a political subdivision solely for the
23 purpose of permitting those employees who are members of the
24 public employees retirement system to remain members and
25 continue to participate in the retirement system at their option
26 after the first day of July, one thousand nine hundred ninety-
27 seven;

28 (5) "Participating public employer" means the state of West
29 Virginia, any board, commission, department, institution or
30 spending unit, and includes any agency created by rule of the
31 supreme court of appeals having full-time employees, which for
32 the purposes of this article is considered a department of state
33 government; and any political subdivision in the state which has
34 elected to cover its employees, as defined in this article, under
35 the West Virginia public employees retirement system;

36 (6) "Employee" means any person who serves regularly as
37 an officer or employee, full time, on a salary basis, whose
38 tenure is not restricted as to temporary or provisional appoint-
39 ment, in the service of, and whose compensation is payable, in
40 whole or in part, by any political subdivision, or an officer or
41 employee whose compensation is calculated on a daily basis
42 and paid monthly or on completion of assignment, including
43 technicians and other personnel employed by the West Virginia
44 national guard whose compensation, in whole or in part, is paid
45 by the federal government: *Provided*, That members of the
46 Legislature, the clerk of the House of Delegates, the clerk of the
47 Senate, employees of the Legislature whose term of employ-
48 ment is otherwise classified as temporary and who are em-
49 ployed to perform services required by the Legislature for its
50 regular sessions or during the interim between regular sessions
51 and who have been or are employed during regular sessions or
52 during the interim between regular sessions in seven consecu-
53 tive calendar years, as certified by the clerk of the house in
54 which the employee served, members of the legislative body of
55 any political subdivision and judges of the state court of claims
56 are considered to be employees, anything contained in this
57 article to the contrary notwithstanding. In any case of doubt as
58 to who is an employee within the meaning of this article, the
59 board of trustees shall decide the question;

60 (7) "Member" means any person who is included in the
61 membership of the retirement system;

62 (8) "Retirant" means any member who retires with an
63 annuity payable by the retirement system;

64 (9) "Beneficiary" means any person, except a retirant, who
65 is entitled to, or will be entitled to, an annuity or other benefit
66 payable by the retirement system;

67 (10) "Service" means personal service rendered to a
68 participating public employer by an employee, as defined in this
69 article, of a participating public employer;

70 (11) "Prior service" means service rendered prior to the first
71 day of July, one thousand nine hundred sixty-one, to the extent
72 credited a member as provided in this article;

73 (12) "Contributing service" means service rendered by a
74 member within this state and for which the member made
75 contributions to a public retirement system account of this state,
76 to the extent credited him or her as provided by this article. This
77 revised definition is retroactive and applicable to the first day
78 of April, one thousand nine hundred eighty-eight, and thereaf-
79 ter;

80 (13) "Credited service" means the sum of a member's prior
81 service credit and contributing service credit standing to his or
82 her credit as provided in this article;

83 (14) "Limited credited service" means service by employ-
84 ees of the West Virginia educational broadcasting authority, in
85 the employment of West Virginia university, during a period
86 when the employee made contributions to another retirement
87 system, as required by West Virginia university, and did not
88 make contributions to the public employees retirement system:
89 *Provided*, That while limited credited service can be used for
90 the formula set forth in section twenty-one, subsection (e) of
91 this article, it may not be used to increase benefits calculated
92 under section twenty-two of this article;

93 (15) “Compensation” means the remuneration paid a
94 member by a participating public employer for personal
95 services rendered by him or her to the participating public
96 employer. In the event a member’s remuneration is not all paid
97 in money, his or her participating public employer shall fix the
98 value of the portion of his or her remuneration which is not paid
99 in money;

100 (16) “Final average salary” means either:

101 (a) The average of the highest annual compensation
102 received by a member (including a member of the Legislature
103 who participates in the retirement system in the year one
104 thousand nine hundred seventy-one or thereafter) during any
105 period of three consecutive years of his or her credited service
106 contained within his or her ten years of credited service
107 immediately preceding the date his or her employment with a
108 participating public employer last terminated; or

109 (b) If he or she has less than five years of credited service,
110 the average of the annual rate of compensation received by him
111 or her during his or her total years of credited service; and in
112 determining the annual compensation, under either paragraph
113 (a) or (b) of this subdivision, of a member of the Legislature
114 who participates in the retirement system as a member of the
115 Legislature in the year one thousand nine hundred seventy-one
116 or in any year thereafter, his or her actual legislative compensa-
117 tion (the total of all compensation paid under sections two,
118 three, four and five, article two-a, chapter four of this code) in
119 the year one thousand nine hundred seventy-one or in any year
120 thereafter, plus any other compensation he or she receives in
121 any year from any other participating public employer including
122 the state of West Virginia, without any multiple in excess of
123 one times his or her actual legislative compensation and other
124 compensation, shall be used: *Provided*, That “final average
125 salary” for any former member of the Legislature or for any
126 member of the Legislature in the year one thousand nine
127 hundred seventy-one who, in either event, was a member of the

128 Legislature on the thirtieth day of November, one thousand nine
129 hundred sixty-eight, or the thirtieth day of November, one
130 thousand nine hundred sixty-nine, or the thirtieth day of
131 November, one thousand nine hundred seventy, or on the
132 thirtieth day of November in any one or more of those three
133 years, and who participated in the retirement system as a
134 member of the Legislature in any one or more of those years
135 means: (i) Either (notwithstanding the provisions of this
136 subdivision preceding this proviso) one thousand five hundred
137 dollars multiplied by eight, plus the highest other compensation
138 the former member or member received in any one of the three
139 years from any other participating public employer including
140 the state of West Virginia; or (ii) "final average salary"
141 determined in accordance with paragraph (a) or (b) of this
142 subdivision, whichever computation produces the higher final
143 average salary (and in determining the annual compensation
144 under (ii) of this proviso, the legislative compensation of the
145 former member shall be computed on the basis of one thousand
146 five hundred dollars multiplied by eight, and the legislative
147 compensation of the member shall be computed on the basis set
148 forth in the provisions of this subdivision immediately preced-
149 ing this proviso or on the basis of one thousand five hundred
150 dollars multiplied by eight, whichever computation as to the
151 member produces the higher annual compensation);

152 (17) "Accumulated contributions" means the sum of all
153 amounts deducted from the compensations of a member and
154 credited to his or her individual account in the members'
155 deposit fund, together with regular interest on the contributions;

156 (18) "Regular interest" means the rate or rates of interest
157 per annum, compounded annually, as the board of trustees
158 adopts from time to time;

159 (19) "Annuity" means an annual amount payable by the
160 retirement system throughout the life of a person. All annuities

161 shall be paid in equal monthly installments, using the upper
162 cent for any fraction of a cent;

163 (20) "Annuity reserve" means the present value of all
164 payments to be made to a retirant or beneficiary of a retirant on
165 account of any annuity, computed upon the basis of such
166 mortality and other tables of experience, and regular interest, as
167 the board of trustees adopts from time to time;

168 (21) "Retirement" means a member's withdrawal from the
169 employ of a participating public employer with an annuity
170 payable by the retirement system;

171 (22) "Actuarial equivalent" means a benefit of equal value
172 computed upon the basis of such mortality table and regular
173 interest as the board of trustees adopts from time to time; and

174 (23) "Retroactive service" means: (1) Service an employee
175 was entitled to, but which the employer has not withheld or paid
176 for; or (2) that service from the first day of July, one thousand
177 nine hundred sixty-one, and the date an employer decides to
178 become a participating member of the public employees
179 retirement system; or (3) service prior to the first day of July,
180 one thousand nine hundred sixty-one, for which the employee
181 is not entitled to prior service at no cost in accordance with
182 CSR 5.16.

***§5-10-21. Deferred retirement and early retirement.**

1 (a) Any member who has five or more years of credited
2 service in force, of which at least three years are contributing
3 service, and who leaves the employ of a participating public
4 employer prior to his or her attainment of age sixty years, for
5 any reason except his or her disability retirement or death, is
6 entitled to an annuity computed according to section twenty-
7 two of this article, as that section was in force as of the date of
8 his or her said separation from the employ of a participating
9 public employer: *Provided*, That he or she does not withdraw
10 his or her accumulated contributions from the members' deposit
11 fund. His or her said annuity begins the first day of the calendar

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 204), which passed subsequent to this act.

12 month next following the month in which his or her application
13 is filed with the board of trustees on or after his or her attain-
14 ment of age sixty-two years.

15 (b) Any member who qualifies for deferred retirement
16 benefits in accordance with subsection (a) of this section, and
17 has ten or more years of credited service in force and who has
18 attained age fifty-five as of the date of his or her separation
19 may, prior to the effective date of his or her retirement, but not
20 thereafter, elect to receive the actuarial equivalent of his or her
21 deferred retirement annuity as a reduced annuity commencing
22 on the first day of any calendar month between his or her date
23 of separation and his or her attainment of age sixty-two years
24 and payable throughout his or her life.

25 (c) Any member who qualifies for deferred retirement
26 benefits in accordance with subsection (a) of this section, and
27 has twenty or more years of credited service in force, may elect
28 to receive the actuarial equivalent of his or her deferred
29 retirement annuity as a reduced annuity commencing on the
30 first day of any calendar month between his or her fifty-fifth
31 birthday and his or her attainment of age sixty-two years and
32 payable throughout his or her life.

33 (d) Notwithstanding any of the other provisions of this
34 section or of this article and pursuant to rules promulgated by
35 the board, any member who has thirty or more years of credited
36 service in force, at least three of which are contributing service,
37 and who elects to take early retirement, which for the purposes
38 of this subsection means retirement prior to age sixty, whether
39 an active employee or a separated employee at the time of
40 application, is entitled to the full computation of annuity
41 according to section twenty-two of this article, as that section
42 was in force as of the date of retirement application, but with
43 the reduced actuarial equivalent of the annuity the member
44 would have received if his or her benefit had commenced at age

45 sixty when he or she would have been entitled to full computa-
46 tion of benefit without any reduction.

47 (e) Notwithstanding any of the other provisions of this
48 section or of this article, any member of the retirement system
49 may retire with full pension rights, without reduction of
50 benefits, if the member is at least fifty-five years of age and the
51 sum of his or her age plus years of contributing service and
52 limited credited service as defined in section two of this article
53 equals or exceeds eighty.

§5-10-22. Retirement annuity.

1 Upon a member's retirement, as provided in this article, he
2 or she shall receive a straight life annuity equal to one and five-
3 tenths percent of his or her final average salary multiplied by
4 the number of years, and fraction of a year, of his or her
5 credited service in force at the time of his or her retirement. The
6 credited service used for this calculation may not include any
7 period of limited credited service: *Provided*, That after March
8 one, one thousand nine hundred seventy, all members retired
9 and all members retiring shall receive a straight life annuity
10 equal to two percent of his or her final average salary multiplied
11 by the number of years, and fraction of a year, of his or her
12 credited service, exclusive of limited credited service in force
13 at the time of his or her retirement. In either event, upon his or
14 her retirement he or she has the right to elect an option provided
15 for in section twenty-four of this article. All annuity payments
16 shall commence effective the first of the month following the
17 month in which a member retires or a member dies leaving a
18 beneficiary entitled to benefits and shall continue to the end of
19 the month in which the retirant or beneficiary dies, and the
20 annuity payments may not be prorated for any portion of a
21 month in which a member retires or retirant or beneficiary dies.
22 Any member receiving an annuity based in part upon limited
23 credited service is not eligible for the supplements provided for

24 in sections twenty-two-a through twenty-two-d, inclusive, of
25 this article.

26 The annuity of any member of the Legislature who partici-
27 pates in the retirement system as a member of the Legislature
28 and who retires under this article or of any former member of
29 the Legislature who has retired under this article (including any
30 former member of the Legislature who has retired under this
31 article and whose annuity was readjusted as of the first day of
32 March, one thousand nine hundred seventy, under the former
33 provisions of this section) shall be increased from time to time
34 during the period of his or her retirement when and if the
35 legislative compensation paid under section two, article two-a,
36 chapter four of this code to a member of the Legislature shall be
37 increased to the point where a higher annuity would be payable
38 to the retirant if he or she were retiring as of the effective date
39 of the latest increase in such legislative compensation, but on
40 the basis of his or her years of credited service to the date of his
41 or her actual retirement.

CHAPTER 204

(S. B. 652 — By Senators Plymale, Fanning,
Jackson, Walker, McCabe, Edgell and Sprouse)

[Passed March 11, 2000; in effect July 1, 2000. Approved by the Governor.]

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

thirteen, eighteen, nineteen, twenty-one, twenty-three, twenty-five and twenty-seven, article fourteen-d, chapter seven of said code; to further amend said article by adding thereto four new sections, designated sections nine-a, nine-b, nine-c and thirty-one; to amend and reenact sections twenty-six, twenty-seven, twenty-eight, twenty-nine and thirty-five, article two, chapter fifteen of said code; to further amend said article by adding thereto six new sections, designated sections forty-four, forty-five, forty-six, forty-seven, forty-eight and forty-nine; to amend and reenact sections two, three, five, fifteen and nineteen, article two-a of said chapter; to further amend said article by adding thereto five new sections, designated sections four-a, six-a, six-b, six-c and twenty; to amend article seven-a, chapter eighteen of said code by adding thereto six new sections, designated sections three-a, fourteen-b, twenty-eight-a, twenty-eight-b, twenty-eight-c and thirty-seven; to amend and reenact sections eleven, thirteen, seventeen, thirty and thirty-four of said article; to amend and reenact sections two, four, seven, twelve, thirteen and eighteen, article seven-b of said chapter; to further amend said article by adding thereto four new sections, designated sections eight-a, twelve-a, thirteen-b and nineteen; to amend and reenact sections one-a, three, four, six, six-a and fourteen, article nine, chapter fifty-one of said code; and to further amend said article by adding thereto five new sections, designated sections three-a, twelve-a, twelve-b, twelve-c and seventeen, all relating generally to the public employees retirement system, deputy sheriff retirement plan, state police death, disability and retirement fund, state police retirement system, state teachers retirement system, teachers defined contribution retirement system and retirement system for judges of courts of record; compliance of the public employees retirement system, deputy sheriff retirement plan, state police death, disability and retirement fund, state police retirement system, state teachers retirement system, teachers defined contribution retirement system and retirement system for judges of courts of record with the federal tax law qualification requirements of Section 401(a) and related sections of the Internal Revenue Code of 1986 as

applicable to governmental plans; definition of leased employees and clarification of ineligibility of leased employees to participate in these retirement systems; requirements relating to retirement plan loans for members in the deputy sheriff retirement plan and state teachers retirement system and provisions for the administration of those loans by the consolidated public retirement board; making technical corrections; eliminating certain annuity options in the deputy sheriff retirement system; clarifying that certain benefits in the deputy sheriff retirement system may not be reduced upon the death of a named beneficiary; replacing “base salary” with “annual compensation” as a factor in determining the amount of death benefits due a surviving spouse in the deputy sheriff retirement system; clarifying the amount to be paid in lieu of the standard burial benefit in certain cases in the deputy sheriff retirement system; permitting members of the state teachers retirement system the option to purchase service credit for time periods they were absent from work and receiving temporary total disability payments; setting forth cost to purchase such service credit in the state teachers retirement system; establishing applicable time periods; setting forth a window of time during which such purchase must occur; relating to the public employees retirement system; providing for “retroactive service” and “limited credited service”; providing for application of terms; providing for restrictions resulting from said application and making technical corrections; relating to the teachers’ retirement system; providing that certain members who are also members of the Legislature may make contributions to the plan for time spent serving in the Legislature; relating to public employees retirement system; clarifying that no less than ten days of service by any member may be credited as one month of service; clarifying that no member may receive more than one year of credited service for any calendar year; clarifying the definition of interim sessions; increasing the time limit to purchase retroactive service credit; clarifying that no interest be paid upon certain purchases of retroactive service credit; relating to the public employees retirement system; service credit; allowing transfer of service

with the state police; and requiring the member's employer to make certain employer contributions to the plan for the same time period and conforming reenacted sections to existing law with regard to all pension and retirement plans administered by the consolidated public retirement board.

Be it enacted by the Legislature of West Virginia:

That sections three-a, thirteen, fourteen, fifteen, twenty-one, forty-two and forty-six, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto four new sections, designated sections twenty-seven-a, twenty-seven-b, twenty-seven-c and fifty-five; that sections two, two-a, three, four, five, nine, twelve, thirteen, eighteen, nineteen, twenty-one, twenty-three, twenty-five and twenty-seven, article fourteen-d, chapter seven of said code be amended and reenacted; that said article be further amended by adding thereto four new sections, designated sections nine-a, nine-b, nine-c and thirty-one; that sections twenty-six, twenty-seven, twenty-eight, twenty-nine and thirty-five, article two, chapter fifteen of said code be amended and reenacted; that said article be further amended by adding thereto six new sections, designated sections forty-four, forty-five, forty-six, forty-seven, forty-eight and forty-nine; that sections two, three, five, fifteen and nineteen, article two-a of said chapter be amended and reenacted; that said article be further amended by adding thereto five new sections, designated sections four-a, six-a, six-b, six-c and twenty; that article seven-a, chapter eighteen of said code be amended by adding thereto six new sections, designated sections three-a, fourteen-b, twenty-eight-a, twenty-eight-b, twenty-eight-c and thirty-seven; that sections eleven, thirteen, seventeen, thirty and thirty-four of said article be amended and reenacted; that sections two, four, seven, twelve, thirteen and eighteen, article seven-b of said chapter be amended and reenacted; that said article be further amended by adding thereto four new sections, designated sections eight-a, twelve-a, thirteen-b and nineteen; that sections one-a, three, four, six, six-a and fourteen,

article nine, chapter fifty-one of said code be amended and reenacted; and that said article be further amended by adding thereto five new sections, designated sections three-a, twelve-a, twelve-b, twelve-c and seventeen, all to read as follows:

Chapter

- 1. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.**
- 7. County Commissions and Officers.**
- 15. Public Safety.**
- 18. Education.**
- 51. Courts and Their Officers.**

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

- §5-10-3a. Article to be liberally construed; supplements federal social security; federal qualification requirements.
- §5-10-13. Actuarial investigations and valuations; specification of actuarial assumptions.
- §5-10-14. Service credit; retroactive provisions.
- §5-10-15. Military service credit; qualified military service.
- §5-10-21. Deferred retirement and early retirement.
- §5-10-27a. Federal law maximum benefit limitations.
- §5-10-27b. Federal law minimum required distributions.
- §5-10-27c. Direct rollovers.
- §5-10-42. Fiscal or plan year of retirement system.
- §5-10-46. Right to benefits not subject to execution, etc.; assignments prohibited; deductions for group insurance; setoffs for fraud; exception for certain domestic relations orders.
- §5-10-55. Benefits not to be forfeited if system terminates.

§5-10-3a. Article to be liberally construed; supplements federal social security; federal qualification requirements.

1 (a) The provisions of this article shall be liberally construed
2 so as to provide a general retirement system for the employees
3 of the state herein made eligible for such retirement: *Provided,*
4 That nothing in this article shall be construed as permitting any
5 governmental unit, its officers or employees to substitute the
6 retirement plan herein authorized for federal social security
7 now in force in West Virginia.

8 (b) The purpose of this article is to provide a state pension
9 plan which supplements the federal social security pension plan
10 now in force and heretofore authorized by law for members of
11 this retirement system.

12 (c) The retirement system is intended to meet the federal
13 qualification requirements of Section 401(a) and related
14 sections of the Internal Revenue Code as applicable to govern-
15 mental plans. Notwithstanding any other provision of state law,
16 the board shall administer the retirement system to fulfill this
17 intent for the exclusive benefit of the members and their
18 beneficiaries. Any provision of this article referencing or
19 relating to such federal tax qualification requirements shall be
20 effective as of the date required by federal law. The board may
21 promulgate rules and amend or repeal conflicting rules in
22 accordance with the authority granted to it pursuant to section
23 one, article ten-d of this chapter to assure compliance with this
24 section.

§5-10-13. Actuarial investigations and valuations; specification of actuarial assumptions.

1 (a) The board of trustees shall keep, or cause to be kept,
2 such data as shall be necessary for the preparation of mortality,
3 service and retirement tables and for the compilation of such

4 other data as shall be required for an actuarial valuation of the
5 assets and liabilities of the retirement system.

6 (b) Beginning in one thousand nine hundred sixty-six, and
7 in each five-year period thereafter, the actuary shall make
8 actuarial investigations into the experiences of the members,
9 retirants and beneficiaries of the retirement system. Based upon
10 such investigations, the board of trustees shall adopt for the
11 system rates of mortality, withdrawal from service, superannua-
12 tion retirement and disability retirement and salary scales for
13 final average salary.

14 (c) Beginning in one thousand nine hundred sixty-two, and
15 at least once in each three-year period thereafter, the actuary
16 shall make an actuarial valuation of the assets and liabilities of
17 the retirement system: *Provided*, That until the first actuarial
18 investigations are made, the valuations shall be based upon
19 decrement assumptions which are, in the opinion of the actuary,
20 applicable to the members, retirants and beneficiaries of the
21 system.

22 (d) Beginning in one thousand nine hundred sixty-two, the
23 actuary shall annually compute the annuity reserve liabilities
24 for annuities being paid retirants and beneficiaries.

25 (e) The board shall specify and adopt all actuarial assump-
26 tions for the system at its first meeting of every calendar year
27 or as soon thereafter as may be practicable, which assumptions
28 shall become part of the terms of the system.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-14. Service credit; retroactive provisions.

1 (a) The board of trustees shall credit each member with the
2 prior service and contributing service to which he or she is
3 entitled based upon such rules as the board of trustees shall
4 from time to time adopt and based upon the following:

5 (1) In no event may less than ten days of service rendered
6 by a member in any calendar month be credited as a month of
7 service: *Provided*, That for employees of the state Legislature
8 whose term of employment is otherwise classified as temporary
9 and who are employed to perform services required by the
10 Legislature for its regular sessions or during the interim
11 between regular sessions and who have been or are so em-
12 ployed during regular sessions or during the interim between
13 regular sessions in seven consecutive calendar years, service
14 credit of one month shall be awarded for each ten days em-
15 ployed in the interim between regular sessions, which interim
16 days shall be cumulatively calculated so that any ten days,
17 regardless of calendar month or year, shall be calculated toward
18 any award of one month of service credit;

19 (2) Except for hourly employees, ten or more months of
20 service credit earned in any calendar year shall be credited as a
21 year of service: *Provided*, That no more than one year of
22 service may be credited to any member for all service rendered
23 by him or her in any calendar year and no days may be carried
24 over by a member from one calendar year to another calendar
25 year where the member has received a full year credit for that
26 year; and

27 (3) Service may be credited to a member who was em-
28 ployed by a political subdivision if his or her employment
29 occurred within a period of thirty years immediately preceding
30 the date the political subdivision became a participating public
31 employer.

32 (b) The board of trustees shall grant service credit to
33 employees of boards of health, the clerk of the House of
34 Delegates and the clerk of the state Senate, or to any former and
35 present member of the state teachers retirement system who
36 have been contributing members for more than three years, for
37 service previously credited by the state teachers retirement
38 system and shall require the transfer of the member's contribu-

39 tions to the system and shall also require a deposit, with
40 interest, of any withdrawals of contributions any time prior to
41 the member's retirement. Repayment of withdrawals shall be as
42 directed by the board of trustees.

43 (c) Court reporters who are acting in an official capacity,
44 although paid by funds other than the county commission or
45 state auditor, may receive prior service credit for time served in
46 that capacity.

47 (d) Employees of the state Legislature whose terms of
48 employment are otherwise classified as temporary and who are
49 employed to perform services required by the Legislature for its
50 regular sessions or during the interim time between regular
51 sessions shall receive service credit for the time served in that
52 capacity in accordance with the following. For purposes of this
53 section the term "regular session" means day one through day
54 sixty of a sixty-day legislative session or day one through day
55 thirty of a thirty-day legislative session. Employees of the state
56 Legislature whose term of employment is otherwise classified
57 as temporary and who are employed to perform services
58 required by the Legislature for its regular sessions or during the
59 interim time between regular sessions and who have been or are
60 employed during regular sessions or during the interim time
61 between regular sessions in seven consecutive calendar years,
62 as certified by the clerk of the houses in which the employee
63 served, shall receive service credit of six months for all regular
64 sessions served, as certified by the clerk of the houses in which
65 the employee served, or shall receive service credit of three
66 months for each regular thirty-day session served prior to one
67 thousand nine hundred seventy-one, as certified by the clerk of
68 the houses in which the employee served, and shall receive
69 service credit of one month for each ten days served during the
70 interim between regular sessions, which interim days shall be
71 cumulatively calculated so that any ten days, regardless of
72 calendar month or year, shall be calculated toward any award

73 of one month of service credit: *Provided*, That no more than
74 one year of service may be credited to any temporary legislative
75 employee for all service rendered by that employee in any
76 calendar year and no days may be carried over by a temporary
77 legislative employee from one calendar year to another calendar
78 year where the member has received a full year credit for that
79 year. Service credit awarded for legislative employment
80 pursuant to this section shall be used for the purpose of calcu-
81 lating that member's retirement annuity, pursuant to section
82 twenty-two of this article, and determining eligibility as it
83 relates to credited service, notwithstanding any other provision
84 of this section. Certification of employment for a complete
85 legislative session and for interim days shall be determined by
86 the clerk of the houses in which the employee served, based
87 upon employment records. Service of fifty-five days of a
88 regular session constitutes an absolute presumption of service
89 for a complete legislative session, and service of twenty-seven
90 days of a thirty-day regular session occurring prior to one
91 thousand nine hundred seventy-one constitutes an absolute
92 presumption of service for a complete legislative session. Once
93 a legislative employee has been employed during regular
94 sessions for seven consecutive years or has become a full-time
95 employee of the Legislature, that employee shall receive the
96 service credit provided in this section for all regular and interim
97 sessions, and interim days worked by that employee, as
98 certified by the clerk of the houses in which the employee
99 served, regardless of when the session or interim legislative
100 employment occurred: *Provided, however*, That regular session
101 legislative employment for seven consecutive years may be
102 served in either or both houses of the Legislature.

103 Any employee may purchase retroactive service credit for
104 periods of employment in which contributions were not
105 deducted from the employee's pay. In the purchase of service
106 credit for employment prior to the year one thousand nine
107 hundred eighty-nine in any department, including the Legisla-

108 ture, which operated from the general revenue fund and which
109 was not expressly excluded from budget appropriations in
110 which blanket appropriations were made for the state's share of
111 public employees' retirement coverage in the years prior to the
112 year one thousand nine hundred eighty-nine, the employee shall
113 pay the employee's share. Other employees shall pay the state's
114 share and the employee's share to purchase retroactive service
115 credit. Where an employee purchases service credit for employ-
116 ment which occurred after the year one thousand nine hundred
117 eighty-eight, that employee shall pay for the employee's share
118 and the employer shall pay its share for the purchase of
119 retroactive service credit: *Provided*, That no legislative em-
120 ployee and no current or former member of the Legislature may
121 be required to pay any interest or penalty upon the purchase of
122 retroactive service credit in accordance with the provisions of
123 this section where the employee was not eligible to become a
124 member during the years he or she is purchasing retroactive
125 credit for or had the employee attempted to contribute to the
126 system during the years he or she is purchasing retroactive
127 service credit for and such contributions would have been
128 refused by the board: *Provided, however*, That a legislative
129 employee purchasing retroactive credit under this section does
130 so within twenty-four months of becoming a member of the
131 system or no later than the last day of December, two thousand
132 five, whichever occurs last: *Provided further*, That once a
133 legislative employee becomes a member of the retirement
134 system, he or she may purchase retroactive service credit for
135 any time he or she was employed by the Legislature and did not
136 receive service credit. Any service credit purchased shall be
137 credited as six months for each sixty-day session worked and
138 three months for each thirty-day session worked, and credit for
139 interim employment as provided in this subsection: *And*
140 *provided further*, That this legislative service credit shall also
141 be used for months of service in order to meet the sixty-month
142 requirement for the payments of a temporary legislative
143 employee member's retirement annuity: *And provided further*,

144 That no legislative employee may be required to pay for any
145 service credit beyond the actual time he or she worked regard-
146 less of the service credit which is credited to him or her
147 pursuant to this section: *And provided further*, That any
148 legislative employee may request a recalculation of his or her
149 credited service to comply with the provisions of this section at
150 any time.

151 (e) Notwithstanding any provision to the contrary, the seven
152 consecutive calendar years requirement and the service credit
153 requirements set forth in this section shall be applied retroac-
154 tively to all periods of legislative employment prior to the
155 passage of this section, including any periods of legislative
156 employment occurring before the seven consecutive calendar
157 years referenced in this section.

158 (f) The board of trustees shall grant service credit to any
159 former or present member of the state police death, disability
160 and retirement fund who has been a contributing member of this
161 system for more than three years, for service previously
162 credited by the state police death, disability and retirement fund
163 if the member transfers all of his or her contributions to the
164 state police death, disability and retirement fund to the system
165 created in this article, including repayment of any amounts
166 withdrawn any time from the state police death, disability and
167 retirement fund by the member seeking the transfer allowed in
168 this subsection: *Provided*, That there shall be added by the
169 member to the amounts transferred or repaid under this para-
170 graph an amount which shall be sufficient to equal the contribu-
171 tions he or she would have made had the member been under
172 the public employees retirement system during the period of his
173 or her membership in the state police death, disability and
174 retirement fund plus interest at a rate determined by the board.

***§5-10-15. Military service credit; qualified military service.**

***Clerk's Note:** This section was also amended by H. B. 4391 (Chapter 205), which passed prior to this act.

1 (a)(1) In addition to any benefit provided by federal law,
2 any member of the retirement system who has previously
3 served in or enters the active service of the armed forces of the
4 United States during any period of compulsory military service
5 shall receive credited service for said time spent in the armed
6 forces of the United States, not to exceed five years if such
7 member:

8 (A) Has been honorably discharged from the armed forces;

9 (B) Substantiates by appropriate documentation or evidence
10 his or her active military service and entry therein during any
11 period of compulsory military service; and

12 (C) Pays to the members' deposit fund the amount he or she
13 may have withdrawn therefrom, together with regular interest
14 from the date of withdrawal to the date of repayment.

15 (2) Any member of the retirement system who enters the
16 active service of the armed forces of the United States during
17 any period of compulsory military service shall receive the
18 credit provided by this section regardless of whether he or she
19 was a public employee at the time of entering the military
20 service.

21 (3) No member may receive the credit described in this
22 section for any period for which the member has received credit
23 under section ten-b of this article.

24 (b) In any case of doubt as to the period of service to be
25 credited a member under the provisions of this section, the
26 board of trustees shall have final power to determine such
27 period.

28 (c) During the period of such armed service and until the
29 member's return to the employ of a participating public
30 employer, his or her contributions to the retirement system shall

31 be suspended and any credit balance remaining in the members'
32 deposit fund shall be accumulated at regular interest

33 (d) Notwithstanding the preceding provisions of this
34 section, contributions, benefits and service credit with respect
35 to qualified military service shall be provided in accordance
36 with Section 414(u) of the Internal Revenue Code. For purposes
37 of this section, "qualified military service" has the same
38 meaning as in Section 414(u) of the Internal Revenue Code.
39 The retirement board is authorized to determine all questions
40 and make all decisions relating to this section and, pursuant to
41 the authority granted to the retirement board in section one,
42 article ten-d of chapter five, may promulgate rules relating to
43 contributions, benefits and service credit to comply with
44 Section 414(u) of the Internal Revenue Code.

***§5-10-21. Deferred retirement and early retirement.**

1 (a) Any member who has five or more years of credited
2 service in force, of which at least three years are contributing
3 service, and who leaves the employ of a participating public
4 employer prior to his or her attaining age sixty years for any
5 reason except his or her disability retirement or death, shall be
6 entitled to an annuity computed according to section
7 twenty-two of this article, as that section was in force as of the
8 date of his or her separation from the employ of a participating
9 public employer: *Provided*, That he or she does not withdraw
10 his or her accumulated contributions from the members' deposit
11 fund. His or her annuity shall begin the first day of the calendar
12 month next following the month in which his or her application
13 for same is filed with the board of trustees on or after his or her
14 attaining age sixty-two years.

15 (b) Any member who qualifies for deferred retirement
16 benefits in accordance with subsection (a) of this section, and
17 has ten or more years of credited service in force and who has

***Clerk's Note:** This section was also amended by H. B. 4102 (Chapter 203), which passed prior to this act.

18 attained age fifty-five as of the date of his or her separation
19 may, prior to the effective date of his or her retirement, but not
20 thereafter, elect to receive the actuarial equivalent of his or her
21 deferred retirement annuity as a reduced annuity commencing
22 on the first day of any calendar month between his or her date
23 of separation and his or her attainment of age sixty-two years
24 and payable throughout his or her life.

25 (c) Any member who qualifies for deferred retirement
26 benefits in accordance with subsection (a) of this section, and
27 has twenty or more years of credited service in force, may elect
28 to receive the actuarial equivalent of his or her deferred
29 retirement annuity as a reduced annuity commencing on the
30 first day of any calendar month between his or her fifty-fifth
31 birthday and his or her attainment of age sixty-two years and
32 payable throughout his or her life.

33 (d) Notwithstanding any of the other provisions of this
34 section or of this article, except sections twenty-seven-a and
35 twenty-seven-b, and pursuant to rules promulgated by the
36 board, any member who has thirty or more years of credited
37 service in force, at least three of which are contributing service,
38 and who elects to take early retirement, which for the purposes
39 of this subsection means retirement prior to age sixty, whether
40 an active employee or a separated employee at the time of
41 application, shall be entitled to the full computation of annuity
42 according to section twenty-two of this article, as that section
43 was in force as of the date of retirement application, but with
44 the reduced actuarial equivalent of the annuity the member
45 would have received if his or her benefit had commenced at age
46 sixty when he or she would have been entitled to full computa-
47 tion of benefit without any reduction.

48 (e) Notwithstanding any of the other provisions of this
49 section or of this article, except sections twenty-seven-a and
50 twenty-seven-b of this article, any member of the retirement
51 system may retire with full pension rights, without reduction of

52 benefits, if he or she is at least fifty-five years of age and the
53 sum of his or her age plus years of contributing service and
54 limited credited service, as defined in section two of this article,
55 equals or exceeds eighty.

§5-10-27a. Federal law maximum benefit limitations.

1 Notwithstanding any other provision of this article or state
2 law, the board shall administer the retirement system in
3 compliance with the limitations of Section 415 of the Internal
4 Revenue Code and regulations promulgated thereunder to the
5 extent applicable to governmental plans so that no annuity or
6 other benefit provided under this system shall exceed those
7 limitations. The extent to which any annuity or other benefit
8 payable under this retirement system shall be reduced as
9 compared to the extent to which an annuity, contributions or
10 other benefits under any other defined benefit plans or defined
11 contribution plans required to be taken into consideration under
12 Section 415 of the Internal Revenue Code shall be reduced shall
13 be determined by the board in a manner that shall maximize the
14 aggregate benefits payable to the member. If the reduction is
15 under this retirement system, the board shall advise affected
16 members of any additional limitation on the annuities required
17 by this section.

§5-10-27b. Federal law minimum required distributions.

1 The requirements of this section apply to any distribution
2 of a member's or beneficiary's interest and take precedence
3 over any inconsistent provisions of this code. This provision
4 applies to plan years beginning after the thirty-first day of
5 December, one thousand nine hundred eighty-six. Notwith-
6 standing anything in this code to the contrary, the payment of
7 benefits under this article shall be determined and made in
8 accordance with Section 401(a)(9) of the Internal Revenue
9 Code and the federal regulations promulgated thereunder. For
10 this purpose, the following provisions apply:

11 (a) The payment of benefits under the retirement system to
12 any member shall be distributed to him or her not later than the
13 required beginning date, or be distributed to him or her com-
14 mencing not later than the required beginning date, in accor-
15 dance with regulations prescribed under Section 401(a)(9) of
16 the Internal Revenue Code, over the life of the member or over
17 the lives of the member and his or her beneficiary or over a
18 period not extending beyond the life expectancy of the member
19 and his or her beneficiary.

20 (b) If a member dies after distribution to him or her has
21 commenced pursuant to this section but before his or her entire
22 interest in the retirement system has been distributed, then the
23 remaining portion of that interest shall be distributed at least as
24 rapidly as under the method of distribution being used at the
25 date of his or her death.

26 (c) If a member dies before distribution to him or her has
27 commenced, then his or her entire interest in the retirement
28 system will be distributed by the thirty-first day of December
29 of the calendar year containing the fifth anniversary of the
30 member's death, except as follows:

31 (1) If a member's interest is payable to a beneficiary,
32 distributions may be made over the life of that beneficiary or
33 over a period certain not greater than the life expectancy of that
34 beneficiary, commencing on or before the thirty-first day of
35 December of the calendar year immediately following the
36 calendar year in which the member died; or

37 (2) If the member's beneficiary is the surviving spouse, the
38 date distributions are required to begin shall be no later than the
39 later of:

40 (A) The thirty-first day of December of the calendar year in
41 which the member would have attained age seventy and one
42 half; or

43 (B) The earlier of: (i) The thirty-first day of December of
44 the calendar year following the calendar year in which the
45 member died; or (ii) the thirty-first day of December of the
46 calendar year following the calendar year in which the spouse
47 died.

§5-10-27c. Direct rollovers.

1 (a) This section applies to distributions made on or after the
2 first day of January, one thousand nine hundred ninety-three.
3 Notwithstanding any provision of this article to the contrary
4 that would otherwise limit a distributee's election under this
5 system, a distributee may elect, at the time and in the manner
6 prescribed by the board, to have any portion of an eligible
7 rollover distribution that is equal to at least five hundred dollars
8 paid directly to an eligible retirement plan specified by the
9 distributee in a direct rollover. For purposes of this section, the
10 following definitions apply:

11 (1) "Eligible rollover distribution" means any distribution
12 of all or any portion of the balance to the credit of the
13 distributee, except that an eligible rollover distribution does not
14 include any of the following: (i) Any distribution that is one of
15 a series of substantially equal periodic payments not less
16 frequently than annually made for the life or life expectancy of
17 the distributee or the joint lives or the joint life expectancies of
18 the distributee and the distributee's designated beneficiary, or
19 for a specified period of ten years or more; (ii) any distribution
20 to the extent such distribution is required under Section
21 401(a)(9) of the Internal Revenue Code; (iii) the portion of any
22 distribution that is not includable in gross income determined
23 without regard to the exclusion for net unrealized appreciation
24 with respect to employer securities; (iv) any hardship distribu-
25 tion described in Section 401(k)(2)(B)(i)(iv) of the Internal
26 Revenue Code; and (v) any other distribution or distributions
27 reasonably expected to total less than two hundred dollars
28 during a year.

29 (2) “Eligible retirement plan” means an individual retire-
30 ment account described in Section 408(a) of the Internal
31 Revenue Code, an individual retirement annuity described in
32 Section 408(b) of the Internal Revenue Code, an annuity plan
33 described in Section 403(a) of the Internal Revenue Code or a
34 qualified plan described in Section 401(a) of the Internal
35 Revenue Code that accepts the distributee’s eligible rollover
36 distribution: *Provided*, That in the case of an eligible rollover
37 distribution to the surviving spouse, an eligible retirement plan
38 is an individual retirement account or individual retirement
39 annuity.

40 (3) “Distributee” means an employee or former employee.
41 In addition, the employee’s or former employee’s surviving
42 spouse and the employee’s or former employee’s spouse or
43 former spouse who is the alternate payee under a qualified
44 domestic relations order, as defined in Section 414(p) of the
45 Internal Revenue Code with respect to governmental plans, are
46 distributees with regard to the interest of the spouse or former
47 spouse.

48 (4) “Direct rollover” means a payment by the retirement
49 system to an eligible retirement plan.

50 (b) Nothing in this section may be construed as permitting
51 rollovers into this system or any other system administered by
52 the retirement board.

§5-10-42. Fiscal or plan year of retirement system.

1 The fiscal or plan year of the retirement system shall
2 coincide with the fiscal year of the state.

**§5-10-46. Right to benefits not subject to execution, etc.; assign-
ments prohibited; deductions for group insur-
ance; setoffs for fraud; exception for certain
domestic relations orders.**

1 The right of a person to any benefit provided for in this
2 article shall not be subject to execution, attachment, garnish-
3 ment, the operation of bankruptcy or insolvency laws, or other
4 process whatsoever, nor shall any assignment thereof be
5 enforceable in any court except that the benefits or contribu-
6 tions under this system shall be subject to “qualified domestic
7 relations orders” as that term is defined in Section 414(p) of the
8 Internal Revenue Code as applicable to governmental plans:
9 *Provided*, That should a member be covered by a group
10 insurance or prepayment plan participated in by a participating
11 public employer, and should he or she be permitted to, and elect
12 to, continue such coverage as a retirant, he or she may authorize
13 the board of trustees to have deducted from his or her annuity
14 the payments required of him or her to continue coverage under
15 such group insurance or prepayment plan: *Provided, however*,
16 That a participating public employer shall have the right of
17 setoff for any claim arising from embezzlement by, or fraud of,
18 a member, retirant or beneficiary.

§5-10-55. Benefits not to be forfeited if system terminates.

1 If the retirement system is terminated or contributions are
2 completely discontinued, the rights of all members to benefits
3 accrued or contributions made to the date of such termination
4 or discontinuance, to the extent then funded, are not forfeited.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

- §7-14D-2. Definitions.
- §7-14D-2a. Meaning of terms.
- §7-14D-3. Creation and administration of West Virginia deputy sheriff's retire-
ment system; specification of actuarial assumptions.
- §7-14D-4. Article to be liberally construed; supplements federal social security;
federal qualification requirements.
- §7-14D-5. Members.
- §7-14D-9. Retirement; commencement of benefits.
- §7-14D-9a. Federal law maximum benefit limitations.
- §7-14D-9b. Federal law minimum required distributions.

- §7-14D-9c. Direct rollovers.
- §7-14D-12. Annuity options.
- §7-14D-13. Refunds to certain members upon discharge or resignation; deferred retirement; forfeitures.
- §7-14D-18. Awards and benefits to surviving spouse — When member dies in performance of duty, etc.
- §7-14D-19. Same — When member dies from nonservice-connected causes.
- §7-14D-21. Burial benefit.
- §7-14D-23. Loans to members.
- §7-14D-25. Exemption from taxation, garnishment and other process; exception for certain qualified domestic relations orders.
- §7-14D-27. Credit toward retirement for member's prior military service; credit toward retirement when member has joined armed forces in time of armed conflict; qualified military service.
- §7-14D-31. Benefits not forfeited if system terminates.

§7-14D-2. Definitions.

1 As used in this article, unless a federal law or regulation or
2 the context clearly requires a different meaning:

3 (a) "Accrued benefit" means on behalf of any member two
4 and one-quarter percent of the member's final average salary
5 multiplied by the member's years of credited service. A
6 member's accrued benefit may not exceed the limits of Section
7 415 of the Internal Revenue Code and is subject to the provi-
8 sions of section nine-a of this article.

9 (b) "Accumulated contributions" means the sum of all
10 amounts deducted from the compensation of a member, or paid
11 on his or her behalf pursuant to article ten-c, chapter five of this
12 code, either pursuant to section seven of this article or section
13 twenty-nine, article ten, chapter five of this code as a result of
14 covered employment together with regular interest on the
15 deducted amounts.

16 (c) "Active military duty" means full-time active duty with
17 any branch of the armed forces of the United States, including
18 service with the national guard or reserve military forces when
19 the member has been called to active full-time duty and has

20 received no compensation during the period of that duty from
21 any board or employer other than the armed forces.

22 (d) "Actuarial equivalent" means a benefit of equal value
23 computed upon the basis of the mortality table and interest rates
24 as set and adopted by the retirement board in accordance with
25 the provisions of this article.

26 (e) "Annual compensation" means the wages paid to the
27 member during covered employment within the meaning of
28 Section 3401(a) of the Internal Revenue Code, but determined
29 without regard to any rules that limit the remuneration included
30 in wages based upon the nature or location of employment or
31 services performed during the plan year plus amounts excluded
32 under Section 414(h)(2) of the Internal Revenue Code and less
33 reimbursements or other expense allowances, cash or noncash
34 fringe benefits or both, deferred compensation and welfare
35 benefits. Annual compensation for determining benefits during
36 any determination period may not exceed one hundred fifty
37 thousand dollars as adjusted for cost of living in accordance
38 with Section 401(a)(17)(B) of the Internal Revenue Code.

39 (f) "Annual leave service" means accrued annual leave.

40 (g) "Annuity starting date" means the first day of the first
41 period for which an amount is received as an annuity by reason
42 of retirement.

43 (h) "Base salary" means a member's cash compensation
44 exclusive of overtime from covered employment during the last
45 twelve months of employment. Until a member has worked
46 twelve months, annualized base salary is used as base salary.

47 (i) "Board" means the consolidated public retirement board
48 created pursuant to article ten-d, chapter five of this code.

49 (j) "County commission" has the meaning ascribed to it in
50 section one, article one, chapter seven of this code.

51 (k) "Covered employment" means either: (1) Employment
52 as a deputy sheriff and the active performance of the duties
53 required of a deputy sheriff; or (2) the period of time which
54 active duties are not performed but disability benefits are
55 received under section thirteen or fourteen of this article; or (3)
56 concurrent employment by a deputy sheriff in a job or jobs in
57 addition to his or her employment as a deputy sheriff where
58 such secondary employment requires the deputy sheriff to be a
59 member of another retirement system which is administered by
60 the consolidated public retirement board pursuant to article ten-
61 d of chapter five of this code: *Provided*, That the deputy sheriff
62 contribute to the fund created in section six of this article the
63 amount specified as the deputy sheriff's contribution in section
64 seven of this article.

65 (l) "Credited service" means the sum of a member's years
66 of service, active military duty, disability service and annual
67 leave service.

68 (m) "Deputy sheriff" means an individual employed as a
69 county law-enforcement deputy sheriff in this state and as
70 defined by section two, article fourteen, chapter seven of this
71 code.

72 (n) "Dependent child" means either:

73 (1) An unmarried person under age eighteen who is:

74 (A) A natural child of the member;

75 (B) A legally adopted child of the member;

76 (C) A child who at the time of the member's death was
77 living with the member while the member was an adopting
78 parent during any period of probation; or

79 (D) A stepchild of the member residing in the member's
80 household at the time of the member's death; or

81 (2) Any unmarried child under age twenty-three:

82 (A) Who is enrolled as a full-time student in an accredited
83 college or university;

84 (B) Who was claimed as a dependent by the member for
85 federal income tax purposes at the time of member's death; and

86 (C) Whose relationship with the member is described in
87 subparagraph (A), (B) or (C), paragraph (1) of this subdivision.

88 (o) "Dependent parent" means the father or mother of the
89 member who was claimed as a dependent by the member for
90 federal income tax purposes at the time of the member's death.

91 (p) "Disability service" means service received by a
92 member, expressed in whole years, fractions thereof or both,
93 equal to one half of the whole years, fractions thereof, or both,
94 during which time a member receives disability benefits under
95 section fourteen or fifteen of this article.

96 (q) "Early retirement age" means age forty or over and
97 completion of twenty years of service.

98 (r) "Effective date" means the first day of July, one
99 thousand nine hundred ninety-eight.

100 (s) "Final average salary" means the average of the highest
101 annual compensation received for covered employment by the
102 member during any five consecutive plan years within the
103 member's last ten years of service. If the member did not have
104 annual compensation for the five full plan years preceding the
105 member's attainment of normal retirement age and during that
106 period the member received disability benefits under section
107 fourteen or fifteen of this article then "final average salary"
108 means the average of the monthly salary determined paid to the
109 member during that period as determined under section
110 seventeen of this article multiplied by twelve.

111 (t) "Fund" means the West Virginia deputy sheriff retire-
112 ment fund created pursuant to section six of this article.

113 (u) "Hour of service" means:

114 (1) Each hour for which a member is paid or entitled to
115 payment for covered employment during which time active
116 duties are performed. These hours shall be credited to the
117 member for the plan year in which the duties are performed;
118 and

119 (2) Each hour for which a member is paid or entitled to
120 payment for covered employment during a plan year but where
121 no duties are performed due to vacation, holiday, illness,
122 incapacity including disability, layoff, jury duty, military duty,
123 leave of absence, or any combination thereof, and without
124 regard to whether the employment relationship has terminated.
125 Hours under this paragraph shall be calculated and credited
126 pursuant to West Virginia division of labor rules. A member
127 will not be credited with any hours of service for any period of
128 time he or she is receiving benefits under section fourteen or
129 fifteen of this article; and

130 (3) Each hour for which back pay is either awarded or
131 agreed to be paid by the employing county commission,
132 irrespective of mitigation of damages. The same hours of
133 service shall not be credited both under paragraph (1) or (2) of
134 this subdivision and under this paragraph. Hours under this
135 paragraph shall be credited to the member for the plan year or
136 years to which the award or agreement pertains, rather than the
137 plan year in which the award, agreement or payment is made.

138 (v) "Member" means a person first hired as a deputy sheriff
139 after the effective date of this article, as defined in subsection
140 (r) of this section, or a deputy sheriff first hired prior to the
141 effective date and who elects to become a member pursuant to
142 section five or section seventeen of this article. A member shall

143 remain a member until the benefits to which he or she is
144 entitled under this article are paid or forfeited.

145 (w) "Monthly salary" means the portion of a member's
146 annual compensation which is paid to him or her per month.

147 (x) "Normal form" means a monthly annuity which is one
148 twelfth of the amount of the member's accrued benefit which
149 is payable for the member's life. If the member dies before the
150 sum of the payments he or she receives equals his or her
151 accumulated contributions on the annuity starting date, the
152 named beneficiary shall receive in one lump sum the difference
153 between the accumulated contributions at the annuity starting
154 date and the total of the retirement income payments made to
155 the member.

156 (y) "Normal retirement age" means the first to occur of the
157 following:

158 (1) Attainment of age fifty years and the completion of
159 twenty or more years of service;

160 (2) While still in covered employment, attainment of at
161 least age fifty years and when the sum of current age plus years
162 of service equals or exceeds seventy years;

163 (3) While still in covered employment, attainment of at
164 least age sixty years and completion of five years of service; or

165 (4) Attainment of age sixty-two years and completion of
166 five or more years of service.

167 (z) "Partially disabled" means a member's inability to
168 engage in the duties of deputy sheriff by reason of any medi-
169 cally determinable physical or mental impairment that can be
170 expected to result in death or that has lasted or can be expected
171 to last for a continuous period of not less than twelve months.
172 A member may be determined partially disabled for the

173 purposes of this article and maintain the ability to engage in
174 other gainful employment which exists within the state but
175 which ability would not enable him or her to earn an amount at
176 least equal to two thirds of the average annual compensation
177 earned by all active members of this plan during the plan year
178 ending as of the most recent thirtieth day of June, as of which
179 plan data has been assembled and used for the actuarial
180 valuation of the plan.

181 (aa) "Public employees retirement system" means the West
182 Virginia public employee's retirement system created by article
183 ten, chapter five of this code.

184 (bb) "Plan" means the West Virginia deputy sheriff death,
185 disability and retirement plan established by this article.

186 (cc) "Plan year" means the twelve-month period commenc-
187 ing on the first day of July of any designated year and ending
188 the following thirtieth day of June.

189 (dd) "Regular interest" means the rate or rates of interest
190 per annum, compounded annually, as the board adopts in
191 accordance with the provisions of this article.

192 (ee) "Retirement income payments" means the annual
193 retirement income payments payable under the plan.

194 (ff) "Spouse" means the person to whom the member is
195 legally married on the annuity starting date.

196 (gg) "Surviving spouse" means the person to whom the
197 member was legally married at the time of the member's death
198 and who survived the member.

199 (hh) "Totally disabled" means a member's inability to
200 engage in substantial gainful activity by reason of any medi-
201 cally determined physical or mental impairment that can be

202 expected to result in death or that has lasted or can be expected
203 to last for a continuous period of not less than twelve months.

204 For purposes of this subdivision:

205 (1) A member is totally disabled only if his or her physical
206 or mental impairment or impairments is so severe that he or she
207 is not only unable to perform his or her previous work as a
208 deputy sheriff but also cannot, considering his or her age,
209 education and work experience, engage in any other kind of
210 substantial gainful employment which exists in the state
211 regardless of whether: (A) The work exists in the immediate
212 area in which the member lives; (B) a specific job vacancy
213 exists; or (C) the member would be hired if he or she applied
214 for work.

215 (2) "Physical or mental impairment" is an impairment that
216 results from an anatomical, physiological or psychological
217 abnormality that is demonstrated by medically accepted clinical
218 and laboratory diagnostic techniques.

219 A member's receipt of social security disability benefits
220 creates a rebuttable presumption that the member is totally
221 disabled for purposes of this plan. Substantial gainful employ-
222 ment rebuts the presumption of total disability.

223 (ii) "Year of service". A member shall, except in his or her
224 first and last years of covered employment, be credited with
225 year of service credit based upon the hours of service performed
226 as covered employment and credited to the member during the
227 plan year based upon the following schedule:

228	Hours of Service	Year of Service Credited
229	Less than 500	0
230	500 to 999	1/3
231	1,000 to 1,499	2/3

232 1,500 or more 1

233 During a member’s first and last years of covered employ-
234 ment, the member shall be credited with one twelfth of a year
235 of service for each month during the plan year in which the
236 member is credited with an hour of service. A member is not
237 entitled to credit for years of service for any time period during
238 which he or she received disability payments under section
239 fourteen or fifteen of this article. Except as specifically ex-
240 cluded, years of service include covered employment prior to
241 the effective date.

242 Years of service which are credited to a member prior to his
243 or her receipt of accumulated contributions upon termination of
244 employment pursuant to section thirteen of this article or
245 section thirty, article ten, chapter five of this code, shall be
246 disregarded for all purposes under this plan unless the member
247 repays the accumulated contributions with interest pursuant to
248 section twelve of this article or had prior to the effective date
249 made the repayment pursuant to section eighteen, article ten,
250 chapter five of this code.

251 (jj) “Required beginning date” means the first day of April
252 of the calendar year following the later of: (i) The calendar year
253 in which the member attains age seventy and one-half; or (ii)
254 the calendar year in which he or she retires or otherwise
255 separates from covered employment.

§7-14D-2a. Meaning of terms.

1 Any term used in this article shall have the same meaning
2 as when used in a comparable context in the laws of the United
3 States, unless a different meaning is clearly required. Any
4 reference in this article to the Internal Revenue Code means the
5 Internal Revenue Code of 1986, as amended.

§7-14D-3. Creation and administration of West Virginia deputy sheriff's retirement system; specification of actuarial assumptions.

1 There is hereby created the West Virginia deputy sheriff's
2 retirement system. The purpose of this system is to provide for
3 the orderly retirement of deputy sheriffs who become superan-
4 nuated because of age or permanent disability and to provide
5 certain survivor death benefits. The retirement system consti-
6 tutes a body corporate. All business of the system shall be
7 transacted in the name of the West Virginia deputy sheriff's
8 retirement system. The board shall specify and adopt all
9 actuarial assumptions for the plan at its first meeting of every
10 calendar year or as soon thereafter as may be practicable, which
11 assumptions shall become part of the plan.

§7-14D-4. Article to be liberally construed; supplements federal social security; federal qualification requirements.

1 (a) The provisions of this article shall be liberally construed
2 so as to provide a general retirement system for deputy sheriffs
3 eligible to retire under the provisions of this plan. Nothing in
4 this article may be construed to permit a county to substitute
5 this plan for federal social security now in force in West
6 Virginia.

7 (b) The board shall administer the plan in accordance with
8 its terms and may construe the terms and determine all ques-
9 tions arising in connection with the administration, interpreta-
10 tion and application of the plan. The board may sue and be
11 sued, contract and be contracted with and conduct all the
12 business of the system in the name of the plan. The board may
13 employ those persons it considers necessary or desirable to
14 administer the plan. The board shall administer the plan for the
15 exclusive benefit of the members and their beneficiaries subject
16 to the specific provisions of the plan.

17 (c) The plan is intended to meet the federal qualification
18 requirements of Section 401(a) and related sections of the
19 Internal Revenue Code as applicable to governmental plans.
20 Notwithstanding any other provision of state law, the board
21 shall administer the plan to fulfill this intent for the exclusive
22 benefit of the members and their beneficiaries. Any provision
23 of this article referencing or relating to these federal qualifica-
24 tion requirements shall be effective as of the date required by
25 federal law. The board may promulgate rules and amend or
26 repeal conflicting rules in accordance with the authority granted
27 to the board pursuant to section one, article ten-d of chapter five
28 to assure compliance with the requirements of this section.

§7-14D-5. Members.

1 (a) Any deputy sheriff first employed by a county in
2 covered employment after the effective date of this article shall
3 be a member of this retirement system and plan and does not
4 qualify for membership in any other retirement system adminis-
5 tered by the board, so long as he or she remains employed in
6 covered employment.

7 (b) Any deputy sheriff employed in covered employment on
8 the effective date of this article shall within six months of that
9 effective date notify in writing both the county commission in
10 the county in which he or she is employed and the board of his
11 or her desire to become a member of the plan: *Provided*, That
12 this time period is extended to the thirtieth day of January, one
13 thousand nine hundred ninety-nine, in accordance with the
14 decision of the supreme court of appeals in *West Virginia*
15 *Deputy Sheriffs' Association, et al v. James L. Sims, et al*, No.
16 25212: *Provided, however*, That any deputy sheriff employed
17 in covered employment on the effective date of this article has
18 an additional time period consisting of the ten-day period
19 following the day after which the amended provisions of this
20 section become law to notify in writing both the county
21 commission in the county in which he or she is employed and

22 the board of his or her desire to become a member of the plan.
23 Any deputy sheriff who elects to become a member of the plan
24 ceases to be a member or have any credit for covered employ-
25 ment in any other retirement system administered by the board
26 and shall continue to be ineligible for membership in any other
27 retirement system administered by the board so long as the
28 deputy sheriff remains employed in covered employment in this
29 plan: *Provided further*, That any deputy sheriff who elects
30 during the time period from the first day of July, one thousand
31 nine hundred ninety-eight, to the thirtieth day of January, one
32 thousand nine hundred ninety-nine, or who so elects during the
33 ten-day time period occurring immediately following the day
34 after the day the amendments made during the one thousand
35 nine hundred ninety-nine legislative session become law, to
36 transfer from the public employees retirement system to the
37 plan created in this article shall contribute to the plan created in
38 this article at the rate set forth in section seven of this article
39 retroactive to the first day of July, one thousand nine hundred
40 ninety-eight. Any deputy sheriff who does not affirmatively
41 elect to become a member of the plan continues to be eligible
42 for any other retirement system as is from time to time offered
43 to other county employees but is ineligible for this plan regard-
44 less of any subsequent termination of employment and rehire.

45 (c) Any deputy sheriff who was employed as a deputy
46 sheriff prior to the effective date, but was not employed on the
47 effective date of this article, shall become a member upon
48 rehire as a deputy sheriff. For purposes of this section, the
49 member's years of service and credited service prior to the
50 effective date shall not be counted for any purposes under this
51 plan unless: (1) The deputy sheriff has not received the return
52 of his or her accumulated contributions in the public employees
53 retirement fund system pursuant to section thirty, article ten,
54 chapter five of this code; or (2) the accumulated contributions
55 returned to the member from the public employees retirement
56 system have been repaid pursuant to section twelve of this

57 article. If the conditions of subdivision (1) or (2) of this
58 subsection are met, all years of the deputy sheriff's covered
59 employment shall be counted as years of service for the
60 purposes of this article. Each transferring deputy sheriff shall be
61 given credited service for the purposes of this article for all
62 covered employment transferred from the public employees
63 retirement system regardless of whether such credited service
64 (as that term is defined in section two, article ten, chapter five
65 of this code) was earned as a deputy sheriff. All service in the
66 public employees retirement system accrued by a transferring
67 deputy sheriff shall be transferred into the plan created by this
68 article and the transferring deputy sheriff shall be given the
69 same credit for the purposes of this article for all such covered
70 service which is transferred from the public employees retire-
71 ment system as that transferring deputy sheriff would have
72 received from the public employees retirement system if such
73 transfer had not occurred. In connection with each deputy
74 sheriff receiving credit for prior employment provided in this
75 subsection, a transfer from public employees retirement system
76 to this plan shall be made pursuant to the procedures described
77 in section eight of this article.

78 (d) Once made, the election made under this section is
79 irrevocable. All deputy sheriffs first employed after the
80 effective date and deputy sheriffs electing to become members
81 as described in this section shall be members as a condition of
82 employment and shall make the contributions required by
83 section seven of this article.

84 (e) Notwithstanding any other provisions of this article, any
85 individual who is a leased employee shall not be eligible to
86 participate in the plan. For purposes of this plan, a "leased
87 employee" means any individual who performs services as an
88 independent contractor or pursuant to an agreement with an
89 employee leasing organization or similar organization. If a

90 question arises regarding the status of an individual as a leased
91 employee, the board has final power to decide the question.

§7-14D-9. Retirement; commencement of benefits.

1 A member may retire and commence to receive retirement
2 income payments on the first day of the calendar month
3 coincident with or next following the later of the date the
4 member ceases employment and the date the member attains
5 early or normal retirement age, in an amount as provided under
6 section eleven of this article, by filing with the board his or her
7 voluntary petition in writing for retirement: *Provided*, That
8 retirement income payments under this plan shall be subject to
9 the provisions of section nine-b of this article. Upon receipt of
10 the petition, the board shall promptly provide the member with
11 an explanation of his or her optional forms of retirement
12 benefits and upon receipt of properly executed forms from the
13 member, the board shall process member's request for and
14 commence payments as soon as administratively feasible.

§7-14D-9a. Federal law maximum benefit limitations.

1 Notwithstanding any other provision of this article or state
2 law, the board shall administer the retirement system in
3 compliance with the limitations of Section 415 of the Internal
4 Revenue Code and regulations under that section to the extent
5 applicable to governmental plans so that no annuity or other
6 benefit provided under this system shall exceed those limita-
7 tions. The extent to which any annuity or other benefit payable
8 under this retirement system shall be reduced as compared with
9 the extent to which an annuity, contributions or other benefits
10 under any other defined benefit plans or defined contribution
11 plans required to be taken into consideration under Section 415
12 of the Internal Revenue Code shall be reduced shall be deter-
13 mined by the board in a manner that shall maximize the
14 aggregate benefits payable to the member. If the reduction is
15 under this retirement system, the board shall advise affected

16 members of any additional limitation on the annuities required
17 by this section.

§7-14D-9b. Federal law minimum required distributions.

1 The requirements of this section apply to any distribution
2 of a member's or beneficiary's interest and take precedence
3 over any inconsistent provisions of this plan. This section
4 applies to plan years beginning after the thirty-first day of
5 December, one thousand eight hundred eighty-six. Notwith-
6 standing anything in the plan to the contrary, the payment of
7 benefits under this article shall be determined and made in
8 accordance with Section 401(a)(9) of the Internal Revenue
9 Code and the regulations thereunder. For this purpose, the
10 following provisions apply:

11 (a) The payment of benefits under the plan to any member
12 shall be distributed to him or her not later than the required
13 beginning date, or be distributed to him or her commencing not
14 later than the required beginning date, in accordance with
15 regulations prescribed under Section 401(a)(9) of the Internal
16 Revenue Code, over the life of the member or over the lives of
17 the member and his or her beneficiary or over a period not
18 extending beyond the life expectancy of the member and his or
19 her beneficiary.

20 (b) If a member dies after distribution to him or her has
21 commenced pursuant to this section but before his or her entire
22 interest in the plan has been distributed, then the remaining
23 portion of that interest shall be distributed at least as rapidly as
24 under the method of distribution being used at the date of his or
25 her death.

26 (c) If a member dies before distribution to him or her has
27 commenced, then his or her entire interest in the plan shall be
28 distributed by the thirty-first day of December of the calendar

29 year containing the fifth anniversary of the member's death,
30 except as follows:

31 (1) If a member's interest is payable to a beneficiary,
32 distributions may be made over the life of that beneficiary or
33 over a period certain not greater than the life expectancy of the
34 beneficiary, commencing on or before the thirty-first of
35 December of the calendar year immediately following the
36 calendar year in which the member died; or

37 (2) If the member's beneficiary is the surviving spouse, the
38 date distributions are required to begin shall be no later than the
39 later of:

40 (A) The thirty-first day of December of the calendar year in
41 which the member would have attained age seventy and one-
42 half; or

43 (B) The earlier of: (i) The thirty-first day of December of
44 the calendar year following the calendar year in which the
45 member died, or (ii) the thirty-first day of December of the
46 calendar year following the calendar year in which the spouse
47 died.

§7-14D-9c. Direct rollovers.

1 (a) This section applies to distributions made on or after the
2 first day of January, one thousand nine hundred ninety-three.
3 Notwithstanding any provision of this article to the contrary
4 that would otherwise limit a distributee's election under this
5 plan, a distributee may elect, at the time and in the manner
6 prescribed by the board, to have any portion of an eligible
7 rollover distribution that is equal to at least five hundred dollars
8 paid directly to an eligible retirement plan specified by the
9 distributee in a direct rollover. For purposes of this section, the
10 following definitions apply:

11 (1) “Eligible rollover distribution” means any distribution
12 of all or any portion of the balance to the credit of the
13 distributee, except that an eligible rollover distribution does not
14 include any of the following: (i) Any distribution that is one of
15 a series of substantially equal periodic payments not less
16 frequently than annually made for the life or life expectancy of
17 the distributee or the joint lives or the joint life expectancies of
18 the distributee and the distributee’s designated beneficiary, or
19 for a specified period of ten years or more; (ii) any distribution
20 to the extent such distribution is required under Section
21 401(a)(9) of the Internal Revenue Code; (iii) the portion of any
22 distribution that is not includable in gross income determined
23 without regard to the exclusion for net unrealized appreciation
24 with respect to employer securities; (iv) any hardship distribu-
25 tion described in Section 401(k)(2)(B)(i)(iv) of the Internal
26 Revenue Code; and (v) any other distribution or distributions
27 reasonably expected to total less than two hundred dollars
28 during a year.

29 (2) “Eligible retirement plan” means an individual retire-
30 ment account described in Section 408(a) of the Internal
31 Revenue Code, an individual retirement annuity described in
32 Section 408(b) of the Internal Revenue Code, an annuity plan
33 described in Section 403(a) of the Internal Revenue Code or a
34 qualified plan described in Section 401(a) of the Internal
35 Revenue Code that accepts the distributee’s eligible rollover
36 distribution: *Provided*, That in the case of an eligible rollover
37 distribution to the surviving spouse, an eligible retirement plan
38 is an individual retirement account or individual retirement
39 annuity.

40 (3) “Distributee” means an employee or former employee.
41 In addition, the employee’s or former employee’s surviving
42 spouse and the employee’s or former employee’s spouse or
43 former spouse who is the alternate payee under a qualified
44 domestic relations order, as defined in Section 414(p) of the

45 Internal Revenue Code with respect to governmental plans, are
46 distributees with regard to the interest of the spouse or former
47 spouse.

48 (4) "Direct rollover" means a payment by the plan to the
49 eligible retirement plan.

50 (b) Nothing in this section shall be construed as permitting
51 rollovers to this plan or any other retirement system adminis-
52 tered by the board.

§7-14D-12. Annuity options.

1 Prior to the effective date of retirement, but not thereafter,
2 a member may elect to receive retirement income payments in
3 the normal form, or the actuarial equivalent of the normal form
4 from the following options:

5 (a) *Option A — Joint and Survivor Annuity.* — A life
6 annuity payable during the joint lifetime of the member and his
7 or her beneficiary who is a natural person with an insurable
8 interest in the member's life. Upon the death of either the
9 member or his or her beneficiary, the benefit shall continue as
10 a life annuity to the survivor in an amount equal to fifty percent,
11 sixty-six and two-thirds percent, seventy-five percent or one
12 hundred percent of the amount paid while both were living as
13 selected by the member. If the retiring member is married, the
14 spouse shall sign a waiver of benefit rights if the beneficiary is
15 to be other than the spouse.

16 (b) *Option B — Contingent Joint and Survivor Annuity.* —
17 A life annuity payable during the joint lifetime of the member
18 and his or her beneficiary who must be a natural person with an
19 insurable interest in the member's life. Upon the death of the
20 member, the benefit shall continue as a life annuity to the
21 beneficiary in an amount equal to fifty percent, sixty-six and
22 two-thirds percent, seventy-five percent or one hundred percent
23 of the amount paid while both were living as selected by the

24 member. If the beneficiary dies first, the monthly amount of
25 benefits may not be reduced, but shall be paid at the amount
26 that was in effect before the death of the beneficiary. If the
27 retiring member is married, the spouse shall sign a waiver of
28 benefit rights if the beneficiary is to be other than the spouse.

29 (c) *Option C — Ten Years Certain and Life Annuity.* — A
30 life annuity payable during the member's lifetime but in any
31 event for a minimum of ten years. If the member dies before the
32 expiration of ten years, the remaining payments shall be made
33 to a designated beneficiary, if any, or otherwise to the mem-
34 ber's estate.

35 (d) *Option D — Level Income Annuity.* — A life annuity
36 payable monthly in an increased amount "A" from the time of
37 retirement until the member is social security retirement age,
38 and then a lesser amount "B" payable for the member's lifetime
39 thereafter, with these amounts computed actuarially to satisfy
40 the following two conditions:

41 (1) *Actuarial equivalence.* — The actuarial present value at
42 the date of retirement of the member's annuity if taken in the
43 normal form must equal the actuarial present value of the term
44 life annuity in amount "A" plus the actual present value of the
45 deferred life annuity in amount "B"; and

46 (2) *Level income.* — The amount "A" equals the amount
47 "B" plus the amount of the member's estimated monthly social
48 security primary insurance amount that would commence at the
49 date amount "B" becomes payable. For this calculation, the
50 primary insurance amount is estimated when the member
51 applies for retirement, using social security law then in effect,
52 using assumptions established by the board.

53 In the case of a member who has elected the options set
54 forth in subdivisions (a) and (b) of this section, respectively,
55 and whose beneficiary dies prior to the member's death, the

56 member may name an alternative beneficiary. If an alternative
57 beneficiary is named within eighteen months following the
58 death of the prior beneficiary, the benefit shall be adjusted to be
59 the actuarial equivalent of the benefit the member is receiving
60 just after the death of the member's named beneficiary. If the
61 election is not made until eighteen months after the death of the
62 prior beneficiary, the amount shall be reduced so that it is only
63 ninety percent of the actuarial equivalent of the benefit the
64 member is receiving just after the death of the member's named
65 beneficiary.

§7-14D-13. Refunds to certain members upon discharge or resignation; deferred retirement; forfeitures.

1 (a) Any member who terminates covered employment and
2 is not eligible to receive disability benefits under this article is,
3 by written request filed with the board, entitled to receive from
4 the fund the member's accumulated contributions. Except as
5 provided in subsection (b) of this section, upon withdrawal the
6 member shall forfeit his or her accrued benefit and cease to be
7 a member.

8 (b) Any member who withdraws accumulated contributions
9 from either this plan or the public employees retirement system
10 and thereafter becomes reemployed in covered employment
11 shall not receive any credited service for the prior employment
12 unless following his or her return to covered employment, the
13 member redeposits in the fund the amount of the accumulated
14 contributions, together with interest on the accumulate contri-
15 butions at the rate determined by the board from the date of
16 withdrawal to the date of redeposit. Upon repayment he or she
17 shall receive the same credit on account of his or her former
18 service as if no refund had been made. The repayment shall be
19 made in a lump sum within sixty months of the deputy sheriff's
20 reemployment or if later, within sixty months of the effective
21 date of this article.

22 (c) Every member who completes sixty months of covered
23 employment is eligible, upon cessation of covered employment,
24 to either withdraw his or her accumulated contributions in
25 accordance with subsection (a) of this section, or to choose not
26 to withdraw his or her accumulated contribution and to receive
27 retirement income payments upon attaining early or normal
28 retirement age.

29 (d) Notwithstanding any other provision of this article,
30 forfeitures under the plan shall not be applied to increase the
31 benefits any member would otherwise receive under the plan.

§7-14D-18. Awards and benefits to surviving spouse — When member dies in performance of duty, etc.

1 (a) The surviving spouse of any member who, after the
2 effective date of this article while in covered employment, has
3 died or dies by reason of injury, illness or disease resulting
4 from an occupational risk or hazard inherent in or peculiar to
5 the service required of members, while the member was or is
6 engaged in the performance of his or her duties as a deputy
7 sheriff, or the survivor spouse of a member who dies from any
8 cause while receiving benefits pursuant to section fourteen of
9 this article, is entitled to receive and shall be paid from the fund
10 benefits as determined in subsection (b) of this section: To the
11 surviving spouse annually, in equal monthly installments during
12 his or her lifetime an amount equal to the greater of: (i) Two
13 thirds of the annual compensation received in the preceding
14 twelve-month period by the deceased member; or (ii) if the
15 member dies after his or her early or normal retirement age, the
16 monthly amount which the spouse would have received had the
17 member retired the day before his or her death, elected a one
18 hundred percent joint and survivor annuity with the spouse as
19 the joint annuitant, and then died.

20 (b) Benefits for a surviving spouse received under this
21 section, section twenty and section twenty-one of this article are

22 in lieu of receipt of any other benefits under this article for the
23 spouse or any other person or under the provisions of any other
24 state retirement system based upon the member's covered
25 employment.

§7-14D-19. Same — When member dies from nonservice-connected causes.

1 (a) In any case where a member who has been a member for
2 at least ten years, while in covered employment after the
3 effective date of this article, has died or dies from any cause
4 other than those specified in section eighteen of this article and
5 not due to vicious habits, intemperance or willful misconduct
6 on his or her part, the fund shall pay annually in equal monthly
7 installments to the surviving spouse during his or her lifetime,
8 a sum equal to the greater of: (i) One half of the annual com-
9 pensation received in the preceding twelve-month employment
10 period by the deceased member; or (ii) if the member dies after
11 his or her early or normal retirement age, the monthly amount
12 which the spouse would have received had the member retired
13 the day before his or her death, elected a one hundred percent
14 joint and survivor annuity with the spouse as the joint annuitant,
15 and then died. Where the member is receiving disability
16 benefits under section fourteen of this article at the time of his
17 or her death, the most recent monthly compensation determined
18 under section seventeen of this article shall be substituted for
19 the annual compensation in (i) of this section.

20 (b) Benefits for a surviving spouse received under this
21 section, section twenty and section twenty-one of this article are
22 in lieu of receipt of any other benefits under this article for the
23 spouse or any other person or under the provisions of any other
24 state retirement system based upon the member's covered
25 employment.

§7-14D-21. Burial benefit.

1 Any member who dies as a result of any service related
2 illness or injury after the effective date is entitled to a lump sum
3 burial benefit of five thousand dollars. If the member is
4 married, the burial benefit shall be paid to the member's
5 spouse. If the member is not married, the burial benefit shall be
6 paid to the member's estate for the purposes of paying burial
7 expenses, settling the member's final affairs, or both. Any
8 unspent balance shall be distributed as a part of the member's
9 estate. If the member is not entitled to a death benefit under
10 sections eighteen and nineteen of this article, then if greater
11 than five thousand dollars, the amount payable to the member's
12 estate shall be his or her accumulated contributions.

§7-14D-23. Loans to members.

1 (a) A member who is not yet receiving disability or
2 retirement income benefits from the plan may borrow from the
3 plan no more than one time in any year an amount up to one
4 half of his or her accumulated contributions, but not less than
5 five hundred dollars nor more than eight thousand dollars:
6 *Provided*, That the maximum amount of any loan when added
7 to the outstanding balance of all other loans shall not exceed the
8 lesser of the following: (1) Fifty thousand dollars reduced by
9 the excess (if any) of the highest outstanding balance of loans
10 to the member on the date on which the loan is made; or (2)
11 fifty percent of his or her accumulated contributions. No loan
12 may be made from the plan if the board determines that the
13 loans constitute more than fifteen percent of the amortized cost
14 value of the assets of the plan as of the last day of the preceding
15 plan year. The board may discontinue the loans any time it
16 determines that cash flow problems might develop as a result of
17 the loans. Each loan shall be repaid through monthly install-
18 ments over periods of six through sixty months and carry
19 interest on the unpaid balance and an annual effective interest
20 rate that is two hundred basis points higher than the most recent
21 rate of interest used by the board for determining actuarial

22 contributions levels. Monthly loan payments shall be calculated
23 to be as nearly equal as possible with all but the final payment
24 being an equal amount. An eligible member may make addi-
25 tional loan payments or pay off the entire loan balance at any
26 time without incurring any interest penalty. At the member's
27 option, the monthly loan payment may include a level premium
28 sufficient to provide declining term insurance with the plan as
29 beneficiary to repay the loan in full upon the member's death.
30 If a member declines the insurance and dies before the loan is
31 repaid, the unpaid balance of the loan shall be deducted from
32 the lump sum insurance benefit payable under section
33 twenty-one of this article.

34 (b) A member with an unpaid loan balance who wishes to
35 retire may have the loan repaid in full by accepting retirement
36 income payments reduced by deducting from the actuarial
37 reserve for the accrued benefit the amount of the unpaid balance
38 and then converting the remaining of the reserve to a monthly
39 pension payable in the form of the annuity desired by the
40 member.

41 (c) The entire unpaid balance of any loan, and interest due
42 thereon, shall at the option of the retirement board become due
43 and payable without further notice or demand upon the occur-
44 rence with respect to the borrowing member of any of the
45 following events of default: (1) Any payment of principal and
46 accrued interest on a loan remains unpaid after the same
47 become due and payable under the terms of the loan or after
48 such grace period as may be established in the discretion of the
49 retirement board; (2) the borrowing member attempts to make
50 an assignment for the benefit of creditors of his or her benefit
51 under the retirement system; or (3) any other event of default
52 set forth in rules promulgated by the board pursuant to the
53 authority granted in section one, article ten-d, chapter five of
54 this code.

55 (d) Loans shall be evidenced by such form of obligations
56 and shall be made upon such additional terms as to default,
57 prepayment, security, and otherwise as the retirement board
58 may determine.

§7-14D-25. Exemption from taxation, garnishment and other process; exception for certain qualified domestic relations orders.

1 The moneys in the fund and the right of a member, spouse
2 or other beneficiary to benefits under this article, to the return
3 of contributions, or to any retirement, death or disability
4 payments under the provisions of this article, are exempt from
5 any state or municipal tax; are not subject to execution,
6 garnishment, attachment or any other process whatsoever with
7 the exception that the benefits or contributions under the system
8 shall be subject to “qualified domestic relations orders” as that
9 term is defined in Section 414(p) of the Internal Revenue Code
10 with respect to governmental plans, and are unassignable except
11 as is provided in this article.

§7-14D-27. Credit toward retirement for member’s prior military service; credit toward retirement when member has joined armed forces in time of armed conflict; qualified military service.

1 (a) Any member who has previously served on active
2 military duty is entitled to receive additional years of service
3 for the purpose of determining his or her years of credited
4 service for a period equal to the active military duty not to
5 exceed five years, subject to the following:

6 (1) That he or she has been honorably discharged from the
7 armed forces;

8 (2) That he or she substantiates by appropriate documenta-
9 tion or evidence his or her period of active military duty; and

10 (3) That he or she is receiving no benefits from any other
11 retirement system for his or her active military duty.

12 (b) In addition, any member who while in covered employ-
13 ment was commissioned, enlisted or inducted into the armed
14 forces of the United States or, being a member of the reserve
15 officers' corps, was called to active duty in the armed forces
16 between the first day of September, one thousand nine hundred
17 forty, and the close of hostilities in World War II, or between
18 the twenty-seventh day of June, one thousand nine hundred
19 fifty, and the close of the armed conflict in Korea on the
20 twenty-seventh day of July, one thousand nine hundred
21 fifty-three, between the first day of August, one thousand nine
22 hundred sixty-four, and the close of the armed conflict in
23 Vietnam, or during any other period of armed conflict by the
24 United States whether sanctioned by a declaration of war by
25 congress or by executive or other order of the president, is
26 entitled to and shall receive credited service, for a period equal
27 to the full time that he or she has or, pursuant to that commis-
28 sion, enlistment, induction or call, shall have served with the
29 armed forces subject to the following:

30 (1) That he or she has been honorably discharged from the
31 armed forces;

32 (2) That within ninety days after honorable discharge from
33 the armed forces, he or she presented himself or herself to the
34 county commission and offered to resume service as a deputy
35 sheriff; and

36 (3) That he or she has made no voluntary act, whether by
37 reenlistment, waiver of discharge, acceptance of commission or
38 otherwise, to extend or participate in extension of the period of
39 service with the armed forces beyond the period of service for
40 which he or she was originally commissioned, enlisted,
41 inducted or called.

42 (c) The total amount of service allowable under subsections
43 (a) and (b) of this section may not exceed five years.

44 (d) Any service credit allowed under this section may be
45 credited one time only for each deputy sheriff, regardless of any
46 changes in job title or responsibilities.

47 (e) Notwithstanding the preceding provisions of this
48 section, contributions, benefits and service credit with respect
49 to qualified military service shall be provided in accordance
50 with Section 414(u) of the Internal Revenue Code. For pur-
51 poses of this section, "qualified military service" has the same
52 meaning as in Section 414(u) of the Internal Revenue Code.
53 The retirement board is authorized to determine all questions
54 and make all decisions relating to this section and, pursuant to
55 the authority granted to the retirement board in section one,
56 article ten-d, chapter five of this code, may promulgate rules
57 relating to contributions, benefits and service credit to comply
58 with Section 414(u) of the Internal Revenue Code.

§7-14D-31. Benefits not forfeited if system terminates.

1 If the retirement system is terminated or contributions are
2 completely discontinued, the rights of all members to benefits
3 accrued or contributions made to the date of such termination
4 or discontinuance, to the extent then funded, are not forfeited.

CHAPTER 15. PUBLIC SAFETY.

Article

2. West Virginia State Police.

2A. West Virginia State Police Retirement System.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-26. Continuation of death, disability and retirement fund; designating the consolidated public retirement board as administrator of fund

§15-2-27. Retirement; awards and benefits; leased employees.

- §15-2-28. Credit toward retirement for member's prior military service; credit toward retirement when member has joined armed forces in time of armed conflict; qualified military service.
- §15-2-29. Awards and benefits for disability - Incurred in performance of duty.
- §15-2-35. Same - When member dies after retirement or after serving twenty years.
- §15-2-44. Federal law maximum benefit limitations.
- §15-2-45. Federal law minimum required distributions.
- §15-2-46. Direct rollovers.
- §15-2-47. Federal qualification requirements.
- §15-2-48. Specification of actuarial assumptions.
- §15-2-49. Benefits not forfeited if system terminates.

§15-2-26. Continuation of death, disability and retirement fund; designating the consolidated public retirement board as administrator of fund.

1 (a) There shall be continued the death, disability and
2 retirement fund heretofore created for the benefit of members
3 of the division of public safety and any dependent of a retired
4 or deceased member thereof.

5 (b) There shall be deducted from the monthly payroll of
6 each member of the division of public safety and paid into such
7 fund six percent of the amount of his or her salary: *Provided*,
8 That beginning on the first day of July, one thousand nine
9 hundred ninety-four, there shall be deducted from the monthly
10 payroll of each member and paid into the fund seven and one-
11 half percent of the amount of his or her salary: *Provided*,
12 *however*, That on and after the first day of July, one thousand
13 nine hundred ninety-five, there shall be deducted from the
14 monthly payroll of each member and paid into the fund nine
15 percent of the amount of his or her salary. An additional twelve
16 percent of the monthly salary of each member of the division
17 shall be paid by the state of West Virginia monthly into such
18 fund out of the annual appropriation for the division: *Provided*
19 *further*, That beginning on the first day of July, one thousand
20 nine hundred ninety-five, the state shall pay thirteen percent of
21 the monthly salary of each member into the fund: *And provided*
22 *further*, That beginning on the first day of July, one thousand

23 nine hundred ninety-six, the state shall pay fourteen percent of
24 the monthly salary of each member into the fund: *And provided*
25 *further*, That on and after the first day of July, one thousand
26 nine hundred ninety-seven, the state shall pay fifteen percent of
27 the monthly salary of each member into the retirement fund.
28 There shall also be paid into the fund amounts that have
29 previously been collected by the superintendent of the division
30 of public safety on account of payments to members for court
31 attendance and mileage, rewards for apprehending wanted
32 persons, fees for traffic accident reports and photographs, fees
33 for criminal investigation reports and photographs, fees for
34 criminal history record checks, fees for criminal history record
35 reviews and challenges or from any other sources designated by
36 the superintendent. All moneys payable into the fund shall be
37 deposited in the state treasury and the treasurer and auditor
38 shall keep a separate account thereof on their respective books.

39 (c) Notwithstanding any other provisions of this article,
40 forfeitures under the fund shall not be applied to increase the
41 benefits any member would otherwise receive under the fund.

42 (d) The moneys in this fund, and the right of a member to
43 a retirement allowance, to the return of contributions, or to any
44 benefit under the provisions of this article, are hereby exempt
45 from any state or municipal tax; shall not be subject to execu-
46 tion, garnishment, attachment or any other process whatsoever,
47 with the exception that the benefits or contributions under the
48 fund shall be subject to "qualified domestic relations orders" as
49 that term is defined in Section 414(p) of the Internal Revenue
50 Code with respect to governmental plans; and shall be
51 unassignable except as is provided in this article. The death,
52 disability and retirement fund shall be administered by the
53 consolidated public retirement board created pursuant to article
54 ten-d, chapter five of this code.

55 (e) All moneys paid into and accumulated in the death,
56 disability and retirement fund, except such amounts as shall be

57 designated or set aside by the awards, shall be invested by the
58 state board of investments as provided by law.

§15-2-27. Retirement; awards and benefits; leased employees.

1 (a) The retirement board shall retire any member of the
2 division of public safety when the member has both attained the
3 age of fifty-five years and completed twenty-five years of
4 service as a member of the division, including military service
5 credit granted under the provisions of section twenty-eight of
6 this article.

7 (b) The retirement board shall retire any member of the
8 division of public safety who has lodged with the secretary of
9 the consolidated public retirement board his or her voluntary
10 petition in writing for retirement, and:

11 (1) Has or shall have completed twenty-five years of
12 service as a member of the division (including military service
13 credit granted under the provisions of section twenty-eight of
14 this article);

15 (2) Has or shall have attained the age of fifty years and has
16 or shall have completed twenty years of service as a member of
17 the division (excluding military service credit granted under
18 section twenty-eight of this article); or

19 (3) Being under the age of fifty years has or shall have
20 completed twenty years of service as a member of the division
21 (excluding military service credit granted under section
22 twenty-eight of this article).

23 (c) When the retirement board retires any member under
24 any of the provisions of this section, the board shall, by order
25 in writing, make an award directing that the member shall be
26 entitled to receive annually and that there shall be paid to the
27 member from the death, disability and retirement fund in equal
28 monthly installments during the lifetime of the member while

29 in status of retirement one or the other of two amounts, which-
30 ever is the greater:

31 (1) An amount equal to five and one-half percent of the
32 aggregate of salary paid to the member during the whole period
33 of service as a member of the division of public safety; or

34 (2) The sum of six thousand dollars.

35 When a member has or shall have served twenty years or
36 longer but less than twenty-five years as a member of the
37 division and shall be retired under any of the provisions of this
38 section before he or she shall have attained the age of fifty
39 years, payment of monthly installments of the amount of
40 retirement award to such member shall commence on the date
41 he or she attains the age of fifty years. Beginning on the
42 fifteenth day of July, one thousand nine hundred ninety-four, in
43 no event may the provisions of section thirteen, article sixteen,
44 chapter five of this code be applied in determining eligibility to
45 retire with either immediate or deferred commencement of
46 benefit.

47 (d) Any individual who is a leased employee shall not be
48 eligible to participate in the fund. For purposes of this fund, a
49 "leased employee" means any individual who performs services
50 as an independent contractor or pursuant to an agreement with
51 an employee leasing organization or other similar organization.
52 If a question arises regarding the status of an individual as a
53 leased employee, the board has final power to decide the
54 question.

**§15-2-28. Credit toward retirement for member's prior military
service; credit toward retirement when member
has joined armed forces in time of armed conflict;
qualified military service.**

1 (a) For purposes of this section, the term "active military
2 duty" means full-time active duty with the armed forces of the

3 United States, namely, the United States air force, army, coast
4 guard, marines or navy; and service with the national guard or
5 reserve military forces of any of such armed forces when the
6 member has been called to active full-time duty and has
7 received no compensation during the period of such duty from
8 any person other than the armed forces.

9 (b) Any member of the department who has previously
10 served on active military duty shall be entitled to and receive
11 credit on the minimum period of service required by law for
12 retirement pay from the service of the department of public
13 safety under the provisions of this article for a period equal to
14 the active military duty not to exceed five years, subject to the
15 following:

16 (1) That he or she has been honorably discharged from the
17 armed forces;

18 (2) That he or she substantiates by appropriate documenta-
19 tion or evidence his or her period of active military duty;

20 (3) That he or she is receiving no benefits from any other
21 retirement system for his or her active military duty; and

22 (4) That, except with respect to disability retirement pay
23 awarded under section thirty of this article, he or she has
24 actually served with the department for twenty years exclusive
25 of his or her active military duty.

26 (c) The amount of retirement pay to which any such
27 member is entitled shall be calculated and determined as if he
28 or she had been receiving for the period of his or her active
29 military duty a monthly salary from the department equal to the
30 average monthly salary which he or she actually received from
31 the department for his or her total service with the department
32 exclusive of the active military duty. The superintendent is
33 authorized to transfer and pay into the death, disability and
34 retirement fund from moneys appropriated for the department

35 a sum equal to eighteen percent of the aggregate of the salaries
36 on which the retirement pay of all such members has been
37 calculated and determined for their periods of active military
38 duty. In addition, any person who while a member of the
39 department was commissioned, enlisted or inducted into the
40 armed forces of the United States or, being a member of the
41 reserve officers' corps, was called to active duty in said armed
42 forces between the first day of September, one thousand nine
43 hundred forty, and the close of hostilities in World War II, or
44 between the twenty-seventh day of June, one thousand nine
45 hundred fifty, and the close of the armed conflict in Korea on
46 the twenty-seventh day of July, one thousand nine hundred
47 fifty-three, between the first day of August, one thousand nine
48 hundred sixty-four and the close of the armed conflict in
49 Vietnam, or during any other period of armed conflict by the
50 United States whether sanctioned by a declaration of war by the
51 congress or by executive or other order of the president, shall
52 be entitled to and receive credit on the minimum period of
53 service required by law for retirement pay from the service of
54 the department of public safety for a period equal to the full
55 time he or she has or shall, pursuant to such commission,
56 enlistment, induction or call, have served with said armed
57 forces subject to the following:

58 (1) That he or she has been honorably discharged from the
59 armed forces;

60 (2) That within ninety days after honorable discharge from
61 the armed forces he or she has presented himself to the superin-
62 tendent and offered to resume service as an active member of
63 the department; and

64 (3) That he or she has made no voluntary act, whether by
65 reenlistment, waiver of discharge, acceptance of commission or
66 otherwise, to extend or participate in extension of the period of
67 service with the armed forces beyond the period of service for

68 which he or she was originally commissioned, enlisted,
69 inducted or called.

70 (d) That amount of retirement pay to which any such
71 member shall be entitled shall be calculated and determined as
72 if the member has continued in the active service of the
73 department at the rank or grade to him appertaining at the time
74 of such commission, induction, enlistment or call, during a
75 period coextensive with the time the member served with the
76 armed forces pursuant to the commission, induction, enlistment
77 or call. The superintendent of the department is authorized to
78 transfer and pay each month into the death, disability and
79 retirement fund from moneys appropriated for the department
80 a sum equal to eighteen percent of the aggregate of salary
81 which all such members would have been entitled to receive
82 had they continued in the active service of the department
83 during a period coextensive with the time such members served
84 with the armed forces pursuant to the commission, induction,
85 enlistment or call: *Provided*, That the total amount of military
86 service credit allowable under this section shall not exceed five
87 years.

88 (e) Notwithstanding any of the preceding provisions of this
89 section, contributions, benefits and service credit with respect
90 to qualified military service shall be provided in accordance
91 with Section 414(u) of the Internal Revenue Code. For purposes
92 of this section, "qualified military service" has the same
93 meaning as in Section 414(u) of the Internal Revenue Code.
94 The retirement board is authorized to determine all questions
95 and make all decisions relating to this section and, pursuant to
96 the authority granted to the retirement board in section one,
97 article ten-d, chapter five of this code, may promulgate rules
98 relating to contributions, benefits and service credit to comply
99 with Section 414(u) of the Internal Revenue Code.

§15-2-29. Awards and benefits for disability - Incurred in performance of duty.

1 (a) Any member of the division who has been or shall
2 become physically or mentally permanently disabled by injury,
3 illness or disease resulting from any occupational risk or hazard
4 inherent in or peculiar to the services required of members of
5 the division and incurred pursuant to or while such member was
6 or shall be engaged in the performance of his or her duties as a
7 member of the division shall, if, in the opinion of the retirement
8 board, he or she is by reason of such cause unable to perform
9 adequately the duties required of him or her as a member of the
10 division, but is able to engage in any other gainful employment,
11 be retired from active service by the retirement board. The
12 member thereafter shall be entitled to receive annually and
13 there shall be paid to such member from the death, disability
14 and retirement fund in equal monthly installments during the
15 lifetime of such member; or until the member attains the age of
16 fifty; or until such disability shall sooner terminate, one or the
17 other of two amounts, whichever is greater:

18 (1) An amount equal to two thirds of the salary received in
19 the preceding twelve-month employment period: *Provided,*
20 That if the member had not been employed with the division for
21 twelve months prior to the disability, the amount of monthly
22 salary shall be annualized for the purpose of determining the
23 benefit; or

24 (2) The sum of six thousand dollars.

25 (b) Upon attaining age fifty, the member shall receive the
26 benefit provided for in subsection (c), section twenty-seven of
27 this article as it would apply to his or her aggregate career
28 earnings from the division through the day immediately
29 preceding his or her disability. The recalculation of benefit
30 upon a member attaining age fifty shall be deemed to be a
31 retirement under the provisions of section twenty-seven of this
32 article, for purposes of determining the amount of annual
33 annuity adjustment and for all other purposes of this article. If
34 any member shall become permanently physically or mentally

35 disabled by injury, illness or disease resulting from any
36 occupational risk or hazard inherent in or peculiar to the
37 services required of members of the division and incurred
38 pursuant to or while such member was or shall be engaged in
39 the performance of his or her duties as a member of the
40 division, to the extent that such member is or shall be incapacitated
41 ever to engage in any gainful employment, such member
42 shall be entitled to receive annually and there shall be paid to
43 such member from the death, disability and retirement fund in
44 equal monthly installments during the lifetime of such member
45 or until such disability shall sooner terminate, an amount equal
46 to the amount of the salary received by the member in the
47 preceding twelve-month employment period: *Provided*, That in
48 no event may such amount be less than fifteen thousand dollars
49 per annum, unless required by section forty of this article:
50 *Provided, however*, That if the member had not been employed
51 with the division for twelve months prior to the disability, the
52 amount of monthly salary shall be annualized for the purpose
53 of determining the benefit.

54 (c) The superintendent is authorized to expend moneys
55 from funds appropriated for the division in payment of medical,
56 surgical, laboratory, X-ray, hospital, ambulance and dental
57 expenses and fees, and reasonable costs and expenses incurred
58 in the purchase of artificial limbs and other approved appliances
59 which may be reasonably necessary for any member of the
60 division who has or shall become temporarily, permanently or
61 totally disabled by injury, illness or disease resulting from any
62 occupational risk or hazard inherent in or peculiar to the service
63 required of members of the division and incurred pursuant to or
64 while such member was or shall be engaged in the performance
65 of duties as a member of the division. Whenever the superintendent
66 shall determine that any disabled member is ineligible to
67 receive any of the aforesaid benefits at public expense, the
68 superintendent shall, at the request of such disabled member,

69 refer such matter to the consolidated public retirement board for
70 hearing and final decision.

71 (d) For the purposes of this section, the term "salary" does
72 not include any compensation paid for overtime service.

**§15-2-35. Same - When member dies after retirement or after
serving twenty years.**

1 When any member of said department has heretofore
2 completed or hereafter shall complete twenty years of service
3 or longer as a member of said department and has died or shall
4 die from any cause or causes other than those specified in this
5 article before having been retired by the retirement board, and
6 when a member in retirement status has died or shall die after
7 having been retired by the retirement board under the provi-
8 sions of this article, there shall be paid annually in equal
9 monthly installments from said fund to the surviving spouse of
10 said member, commencing on the date of the death of said
11 member and continuing during the lifetime or until remarriage
12 of said surviving spouse an amount equal to three-fourths the
13 retirement benefits said deceased member was receiving while
14 in status of retirement, or would have been entitled to receive
15 to the same effect as if such member had been retired under the
16 provisions of this article immediately prior to the time of his or
17 her death and in no event to be less than five thousand dollars
18 unless otherwise required under section forty of this article and
19 in addition thereto said surviving spouse shall be entitled to
20 receive and there shall be paid to such surviving spouse from
21 said fund the sum of one hundred dollars monthly for each
22 dependent child or children. If such surviving spouse die, or
23 remarry, or if there be no surviving spouse there shall be paid
24 monthly from said fund to each dependent child or children of
25 said deceased member a sum equal to twenty-five percent of the
26 surviving spouse's entitlement. If there be no surviving spouse
27 or no surviving spouse eligible to receive benefits and no
28 dependent child or children there shall be paid annually in equal

29 monthly installments from said fund to the dependent parents
30 of said deceased member during their joint lifetimes a sum
31 equal to the amount which a surviving spouse without children
32 would have been entitled to receive: *Provided*, That when there
33 shall be but one dependent parent surviving, such parent shall
34 be entitled to receive during his or her lifetime one half the
35 amount which both parents, if living, would have been entitled
36 to receive.

§15-2-44. Federal law maximum benefit limitations.

1 Notwithstanding any other provision of this article or state
2 law, the board shall administer the fund in compliance with the
3 limitations of Section 415 of the Internal Revenue Code and
4 regulations under that section to the extent applicable to
5 governmental plans so that no annuity or other benefit provided
6 under this fund shall exceed those limitations. The extent to
7 which any annuity or other benefit payable under this fund shall
8 be reduced as compared with the extent to which an annuity,
9 contributions or other benefits under any other defined benefit
10 plans or defined contribution plans required to be taken into
11 consideration under Section 415 of the Internal Revenue Code
12 shall be reduced shall be determined by the board in a manner
13 that shall maximize the aggregate benefits payable to the
14 member. If the reduction is under this fund, the board shall
15 advise affected members of any additional limitation on the
16 annuities required by this section.

§15-2-45. Federal law minimum required distributions.

1 The requirements of this section apply to any distribution
2 of a member's or beneficiary's interest and take precedence
3 over any inconsistent provisions of this code. This section
4 applies to plan years beginning after the thirty-first day of
5 December, one thousand nine hundred ninety-eight. Notwith-
6 standing anything in the retirement system to the contrary, the
7 payment of benefits under this article shall be determined and

8 made in accordance with Section 401(a)(9) of the Internal
9 Revenue Code and the regulations thereunder. For this purpose,
10 the following provisions apply:

11 (a) The payment of benefits under the fund to any member
12 shall be distributed to him or her not later than the required
13 beginning date, or be distributed to him or her commencing not
14 later than the required beginning date, in accordance with
15 regulations prescribed under Section 401(a)(9) of the Internal
16 Revenue Code, over the life of the member or over the lives of
17 the member and his or her beneficiary, or over a period not
18 extending beyond the life expectancy of the member and his or
19 her beneficiary. For purposes of this section, the term “required
20 beginning date” means the first day of April of the calendar
21 year following the later of: (i) The calendar year in which the
22 member attains age seventy and one-half, or (ii) the calendar
23 year in which the member retires or otherwise ceases providing
24 covered service under this fund.

25 (b) If a member dies after distribution to him or her has
26 commenced pursuant to this section but before his or her entire
27 interest in the retirement system has been distributed, then the
28 remaining portion of that interest shall be distributed at least as
29 rapidly as under the method of distribution being used at the
30 date of his or her death.

31 (c) If a member dies before distribution to him or her has
32 commenced, then his or her entire interest in the fund shall be
33 distributed by the thirty-first day of December of the calendar
34 year containing the fifth anniversary of the member’s death,
35 except as follows:

36 (1) If a member’s interest is payable to a beneficiary,
37 distributions may be made over the life of that beneficiary or
38 over a period certain not greater than the life expectancy of the
39 beneficiary commencing on or before the thirty-first day of

40 December of the calendar year immediately following the
41 calendar year in which the participant died; or

42 (2) If the member's beneficiary is the surviving spouse, the
43 date distributions are required to begin shall be no later than the
44 later of:

45 (A) The thirty-first day of December of the calendar year in
46 which the member would have attained age seventy and one-
47 half; or

48 (B) The earlier of: (i) The thirty-first day of December of
49 the calendar year following the calendar year in which the
50 member died, or (ii) the thirty-first day of December of the
51 calendar year following the calendar year in which the spouse
52 died.

§15-2-46. Direct rollovers.

1 (a) This section applies to distributions made on or after the
2 first day of January, one thousand nine hundred ninety-three.
3 Notwithstanding any provision of this article to the contrary
4 that would otherwise limit a distributee's election under this
5 fund, a distributee may elect, at the time and in the manner
6 prescribed by the board, to have any portion of an eligible
7 rollover distribution that is equal to at least five hundred dollars
8 paid directly to an eligible retirement plan specified by the
9 distributee in a direct rollover. For purposes of this section, the
10 following definitions apply:

11 (1) "Eligible rollover distribution" means any distribution
12 of all or any portion of the balance to the credit of the
13 distributee, except that an eligible rollover distribution does not
14 include any of the following: (i) Any distribution that is one of
15 a series of substantially equal periodic payments not less
16 frequently than annually made for the life or life expectancy of
17 the distributee or the joint lives or the joint life expectancies of
18 the distributee and the distributee's designated beneficiary, or

19 for a specified period of ten years or more; (ii) any distribution
20 to the extent such distribution is required under Section
21 401(a)(9) of the Internal Revenue Code; (iii) the portion of any
22 distribution that is not includable in gross income determined
23 without regard to the exclusion for net unrealized appreciation
24 with respect to employer securities; (iv) any hardship distribu-
25 tion described in Section 401(k)(2)(B)(i)(iv) of the Internal
26 Revenue Code; and (v) any other distribution or distributions
27 that is reasonably expected to total less than two hundred
28 dollars during a year.

29 (2) "Eligible retirement plan" means an individual retire-
30 ment account described in Section 408(a) of the Internal
31 Revenue Code, an individual retirement annuity described in
32 Section 408(b) of the Internal Revenue Code, an annuity plan
33 described in Section 403(a) of the Internal Revenue Code, or a
34 qualified plan described in Section 401(a) of the Internal
35 Revenue Code, that accepts the distributee's eligible rollover
36 distribution: *Provided*, That in the case of an eligible rollover
37 distribution to the surviving spouse, an eligible retirement plan
38 is an individual retirement account or individual retirement
39 annuity.

40 (3) "Distributee" means a member. In addition, the
41 member's surviving spouse and the member's spouse or former
42 spouse who is the alternate payee under a qualified domestic
43 relations order, as defined in Section 414(p) of the Internal
44 Revenue Code with respect to governmental plans, are
45 distributees with regard to the interest of the spouse or former
46 spouse.

47 (4) "Direct rollover" means a payment by the system to the
48 eligible retirement plan.

49 (b) Nothing in this section may be construed as permitting
50 rollovers into this fund or any other retirement system adminis-
51 tered by the board.

§15-2-47. Federal qualification requirements.

1 This retirement system is intended to meet the requirements
2 of Section 401(a) of the Internal Revenue Code as applicable to
3 governmental plans. Notwithstanding any other provision of
4 state law, the board shall administer the retirement system to
5 fulfill this intent for the exclusive benefit of the members and
6 their beneficiaries. Any provision of this article referencing or
7 relating to these federal qualification requirements shall be
8 effective as of the date required by federal law. The board may
9 promulgate rules and amend or repeal conflicting rules in
10 accordance with the authority granted to the board pursuant to
11 section one, article ten-d of chapter five to assure compliance
12 with this section.

§15-2-48. Specification of actuarial assumptions.

1 The board shall specify and adopt all actuarial assumptions
2 for the fund at its first meeting of every calendar year or as soon
3 thereafter as may be practicable, which assumptions shall
4 become part of the terms of the fund.

§15-2-49. Benefits not forfeited if system terminates.

1 If the fund is terminated or contributions are completely
2 discontinued, the rights of all members to benefits accrued or
3 contributions made to the date of such termination or discon-
4 tinuance, to the extent then funded, are not forfeited.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

§15-2A-2. Definitions.

§15-2A-3. Creation and administration of West Virginia state police retirement system; leased employees; federal qualification requirements.

§15-2A-4a. Specification of actuarial assumptions.

§15-2A-5. Members' contributions; employer contributions; forfeitures.

§15-2A-6a. Federal law maximum benefit limitations.

§15-2A-6b. Federal law minimum required distributions.

§15-2A-6c. Direct rollovers.

- §15-2A-15. Exemption from taxation, garnishment and other process; exception for certain qualified domestic relations orders.
- §15-2A-19. Credit toward retirement for member's prior military service; credit toward retirement when member has joined armed forces in time of armed conflict; qualified military service.
- §15-2A-20. Benefits not forfeited if system terminates.

§15-2A-2. Definitions.

1 As used in this article, unless the context clearly requires a
2 different meaning:

3 (1) "Active military duty" means full-time active duty with
4 the armed forces of the United States, namely, the United States
5 air force, army, coast guard, marines or navy; and service with
6 the national guard or reserve military forces of any of such
7 armed forces when the member has been called to active
8 full-time duty and has received no compensation during the
9 period of such duty from any person other than the armed
10 forces.

11 (2) "Base salary" means compensation paid to a member
12 without regard to any overtime pay.

13 (3) "Board" means the consolidated public retirement board
14 created pursuant to article ten-d, chapter five of this code.

15 (4) "Division" means the division of public safety.

16 (5) "Final average salary" means the average of the highest
17 annual compensation received for employment with the
18 division, including compensation paid for overtime service,
19 received by the member during any five years within the
20 member's last ten years of service.

21 (6) "Fund" means the West Virginia state police retirement
22 fund created pursuant to section four of this article.

23 (7) "Member" or "employee" means a person regularly
24 employed in the service of the division of public safety after the
25 effective date of this article.

26 (8) "Salary" means the compensation of a member,
27 excluding any overtime payments.

28 (9) "Internal Revenue Code" means the Internal Revenue
29 Code of 1986, as amended.

30 (10) "Plan year" means the twelve month period commenc-
31 ing on the first day of July of any designated year and ending
32 the following thirtieth day of June.

33 (11) "Required beginning date" means the first day of April
34 of the calendar year following the later of: (a) The calendar year
35 in which the member attains age seventy and one-half; or (b)
36 the calendar year in which he or she retires or otherwise
37 separates from service with the department.

38 (12) "Retirement system" or "system" means the West
39 Virginia state police retirement system created and established
40 by this article.

**§15-2A-3. Creation and administration of West Virginia state
police retirement system; leased employees;
federal qualification requirements.**

1 (a) There is hereby created the West Virginia state police
2 retirement system. Any West Virginia state trooper employed
3 by the West Virginia state police on or after the effective date
4 of this article shall be a member of this retirement system and
5 may not qualify for membership in any other retirement system
6 administered by the consolidated public retirement board, so
7 long as he or she remains employed by the state police.

8 (b) Any individual who is a leased employee shall not be
9 eligible to participate in the system. For purposes of this

10 system, a “leased employee” means any individual who
11 performs services as an independent contractor or pursuant to
12 an agreement with an employee leasing organization or other
13 similar organization. If a question arises regarding the status of
14 an individual as a leased employee, the board has final power
15 to decide the question.

16 (c) The consolidated public retirement board created
17 pursuant to article ten-d, chapter five of this code shall adminis-
18 ter the West Virginia state police retirement system. The board
19 may sue and be sued, contract and be contracted with and
20 conduct all the business of the system in the name of the West
21 Virginia state police retirement system.

22 (d) This retirement system is intended to meet the federal
23 qualification requirements of Section 401(a) and related
24 sections of the Internal Revenue Code as applicable to govern-
25 mental plans. Notwithstanding any other provision of state law,
26 the board shall administer the retirement system to fulfill this
27 intent for the exclusive benefit of the members and their
28 beneficiaries. Any provision of this article referencing or
29 relating to these federal qualification requirements shall be
30 effective as of the date required by federal law. The board may
31 promulgate rules and amend or repeal conflicting rules in
32 accordance with the authority granted to the board pursuant to
33 section one, article ten-d, chapter five of this code, to assure
34 compliance with this section.

§15-2A-4a. Specification of actuarial assumptions.

1 The board shall specify and adopt all actuarial assumptions
2 for the fund at its first meeting in each calendar year or as soon
3 thereafter as may be practicable, which assumptions shall
4 become part of the terms of the system.

**§15-2A-5. Members’ contributions; employer contributions;
forfeitures.**

1 (a) There shall be deducted from the monthly payroll of
2 each member and paid into the fund created pursuant to section
3 four of this article twelve percent of the amount of his or her
4 salary. An additional twelve percent of the monthly salary of
5 each member of the department shall be paid by the state of
6 West Virginia monthly into such fund out of the annual
7 appropriation for the division.

8 (b) Notwithstanding any other provisions of this article,
9 forfeitures under the system shall not be applied to increase the
10 benefits any member would otherwise receive under the system.

§15-2A-6a. Federal law maximum benefit limitations.

1 Notwithstanding any other provision of this article or state
2 law, the board shall administer the retirement system in
3 compliance with the limitations of Section 415 of the Internal
4 Revenue Code and treasury regulations under that section to the
5 extent applicable to governmental plans so that no annuity or
6 other benefit provided under this system shall exceed those
7 limitations. The extent to which any annuity or other benefit
8 payable under this retirement system shall be reduced as
9 compared with the extent to which an annuity, contributions or
10 other benefits under any other defined benefit plans or defined
11 contribution plans required to be taken into consideration under
12 Section 415 of the Internal Revenue Code shall be reduced shall
13 be determined by the board in a manner that shall maximize the
14 aggregate benefits payable to the member. If the reduction is
15 under this retirement system, the board shall advise affected
16 members of any additional limitation on the annuities required
17 by this section.

§15-2A-6b. Federal law minimum required distributions.

1 The requirements of this section apply to any distribution
2 of a member's interest and take precedence over any inconsis-
3 tent provisions of this retirement system. This section applies

4 to plan years beginning after the thirty-first day of December,
5 one thousand nine hundred eighty-six. Notwithstanding
6 anything in the retirement system to the contrary, the payment
7 of benefits under this article shall be determined and made in
8 accordance with Section 401(a)(9) of the Internal Revenue
9 Code and the regulations thereunder. For this purpose, the
10 following provisions apply:

11 (a) The payment of benefits under the retirement system to
12 any member shall be distributed to him or her not later than the
13 required beginning date, or be distributed to him or her com-
14 mencing not later than the required beginning date, in accor-
15 dance with regulations prescribed under Section 401(a)(9) of
16 the Internal Revenue Code, over the life of the member or over
17 the lives of the member and his or her beneficiary or over a
18 period not extending beyond the life expectancy of the member
19 and his or her beneficiary.

20 (b) If a member dies after distribution to him or her has
21 commenced pursuant to this section but before his or her entire
22 interest in the retirement system has been distributed, then the
23 remaining portion of that interest shall be distributed at least as
24 rapidly as under the method of distribution being used at the
25 date of his or her death.

26 (c) If a member dies before distribution to him or her has
27 commenced, then his or her entire interest in the retirement
28 system shall be distributed by the thirty-first day of December
29 of the calendar year containing the fifth anniversary of the
30 member's death, except as follows:

31 (1) If a member's interest is payable to a beneficiary,
32 distributions may be made over the life of that beneficiary or
33 over a period certain not greater than the life expectancy of the
34 beneficiary commencing on or before the thirty-first of Decem-
35 ber of the calendar year immediately following the calendar
36 year in which the member died; or

37 (2) If the member's beneficiary is the surviving spouse, the
38 date distributions are required to begin shall be no later than the
39 later of:

40 (A) The thirty-first day of December of the calendar year in
41 which the member would have attained age seventy and one-
42 half; or

43 (B) The earlier of: (i) The thirty-first day of December of
44 the calendar year following the calendar year in which the
45 member died; or (ii) the thirty-first day of December of the
46 calendar year following the calendar year in which the spouse
47 died.

§15-2A-6c. Direct rollovers.

1 (a) This section applies to distributions made on or after the
2 first day of January, one thousand nine hundred ninety-three.
3 Notwithstanding any provision of this article to the contrary
4 that would otherwise limit a distributee's election under this
5 system, a distributee may elect, at the time and in the manner
6 prescribed by the board, to have any portion of an eligible
7 rollover distribution that is equal to at least five hundred dollars
8 paid directly to an eligible retirement plan specified by the
9 distributee in a direct rollover. For purposes of this section, the
10 following definitions shall apply:

11 (1) "Eligible rollover distribution" means any distribution
12 of all or any portion of the balance to the credit of the
13 distributee, except that an eligible rollover distribution does not
14 include any of the following: (i) Any distribution that is one of
15 a series of substantially equal periodic payments not less
16 frequently than annually made for the life or life expectancy of
17 the distributee or the joint lives or the joint life expectancies of
18 the distributee and the distributee's designated beneficiary, or
19 for a specified period of ten years or more; (ii) any distribution
20 to the extent such distribution is required under Section

21 401(a)(9) of the Internal Revenue Code; (iii) the portion of any
22 distribution that is not includable in gross income determined
23 without regard to the exclusion for net unrealized appreciation
24 with respect to employer securities; (iv) any hardship distribu-
25 tion described in Section 401(k)(2)(B)(i)(iv) of the Internal
26 Revenue Code; and (v) any other distribution or distributions
27 expected to total less than two hundred dollars during a year.

28 (2) “Eligible retirement plan” means an individual retire-
29 ment account described in Section 408(a) of the Internal
30 Revenue Code, an individual retirement annuity described in
31 Section 408(b) of the Internal Revenue Code, an annuity plan
32 described in Section 403(a) of the Internal Revenue Code or a
33 qualified plan described in Section 401(a) of the Internal
34 Revenue Code that accepts the distributee’s eligible rollover
35 distribution: *Provided*, That in the case of an eligible rollover
36 distribution to the surviving spouse, an eligible retirement plan
37 is an individual retirement account or individual retirement
38 annuity.

39 (3) “Distributee” means an employee or former employee.
40 In addition, the employee’s or former employee’s surviving
41 spouse and the employee’s or former employee’s spouse or
42 former spouse who is the alternate payee under a qualified
43 domestic relations order, as defined in Section 414(p) of the
44 Internal Revenue Code with respect to governmental plans, are
45 distributees with regard to the interest of the spouse or former
46 spouse.

47 (4) “Direct rollover” means a payment by the system to the
48 eligible retirement plan.

49 (b) Nothing in this section may be construed as permitting
50 rollovers into this system or any other retirement system
51 administered by the board.

§15-2A-15. Exemption from taxation, garnishment and other process; exception for certain qualified domestic relations orders.

1 The moneys in the fund and the right of a member to a
2 retirement allowance, to the return of contributions, or to any
3 benefit under the provisions of this article, are hereby exempt
4 from any state or municipal tax; shall not be subject to execu-
5 tion, garnishment, attachment or any other process whatsoever
6 except that the benefits or contributions under this system shall
7 be subject to “qualified domestic relations orders” as that term
8 is defined in Section 414(p) of the Internal Revenue Code with
9 respect to governmental plans; and shall be unassignable except
10 as is provided in this article.

§15-2A-19. Credit toward retirement for member’s prior military service; credit toward retirement when member has joined armed forces in time of armed conflict; qualified military service.

1 (a) Any member who has previously served on active
2 military duty is entitled to receive additional credited service
3 for the purpose of determining the amount of retirement award
4 under the provisions of this article for a period equal to the
5 active military duty not to exceed five years, subject to the
6 following:

7 (1) That he or she has been honorably discharged from the
8 armed forces;

9 (2) That he or she substantiates by appropriate documenta-
10 tion or evidence his or her period of active military duty;

11 (3) That he or she is receiving no benefits from any other
12 retirement system for his or her active military duty; and

13 (4) That, except with respect to disability retirement pay
14 awarded under this article, he or she has actually served with

15 the division for twenty years exclusive of his or her active
16 military duty.

17 (b) In addition, any person who while a member of the
18 division was commissioned, enlisted or inducted into the armed
19 forces of the United States or, being a member of the reserve
20 officers' corps, was called to active duty in the armed forces
21 between the first day of September, one thousand nine hundred
22 forty, and the close of hostilities in World War II, or between
23 the twenty-seventh day of June, one thousand nine hundred
24 fifty, and the close of the armed conflict in Korea on the
25 twenty-seventh day of July, one thousand nine hundred
26 fifty-three, between the first day of August, one thousand nine
27 hundred sixty-four, and the close of the armed conflict in
28 Vietnam, or during any other period of armed conflict by the
29 United States whether sanctioned by a declaration of war by
30 Congress or by executive or other order of the president, is
31 entitled to and shall receive credit on the minimum period of
32 service required by law for retirement pay from the service of
33 the division of public safety, or its predecessor agency, for a
34 period equal to the full time that he or she has or, pursuant to
35 that commission, enlistment, induction or call, shall have served
36 with the armed forces subject to the following:

37 (1) That he or she has been honorably discharged from the
38 armed forces;

39 (2) That within ninety days after honorable discharge from
40 the armed forces, he or she presented himself or herself to the
41 superintendent and offered to resume service as an active
42 member of the division; and

43 (3) That he or she has made no voluntary act, whether by
44 reenlistment, waiver of discharge, acceptance of commission or
45 otherwise, to extend or participate in extension of the period of
46 service with the armed forces beyond the period of service for

47 which he or she was originally commissioned, enlisted,
48 inducted or called.

49 (c) The total amount of military service credit allowable
50 under this section may not exceed five years for any member of
51 the division.

52 (d) Notwithstanding the preceding provisions of this
53 section, contributions, benefits and service credit with respect
54 to qualified military service shall be provided in accordance
55 with Section 414(u) of the Internal Revenue Code. For purposes
56 of this section, "qualified military service" has the same
57 meaning as in Section 414(u) of the Internal Revenue Code.
58 The retirement board is authorized to determine all questions
59 and make all decisions relating to this section and, pursuant to
60 the authority granted to the retirement board in section one,
61 article ten-d, chapter five of this code, may promulgate rules
62 relating to contributions, benefits and service credit to comply
63 with Section 414(u) of the Internal Revenue Code.

§15-2A-20. Benefits not forfeited if system terminates.

1 If the retirement system is terminated or contributions are
2 completely discontinued, the rights of all members to benefits
3 accrued or contributions made to the date of such termination
4 or discontinuance, to the extent then funded, are not forfeited.

CHAPTER 18. EDUCATION.

Article

7A. State Teachers Retirement System.

7B. Teachers' Defined Contribution Retirement System.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-3a. Federal qualification requirements.

§18-7A-11. Records; actuarial data; tables; specification of actuarial assumptions.

§18-7A-13. Membership in retirement system; cessation of membership; reinstatement of withdrawn service.

§18-7A-14b. Members' option to make contributions for periods of temporary total disability.

- §18-7A-17. Statement and computation of teachers' service; qualified military service.
- §18-7A-28a. Federal law maximum benefit limitations.
- §18-7A-28b. Federal law minimum required distributions.
- §18-7A-28c. Direct rollovers.
- §18-7A-30. Exemption from taxation, garnishment and other process; exception for qualified domestic relations order.
- §18-7A-34. Loans to members.
- §18-7A-37. Benefits not forfeited if system terminates.

§18-7A-3a. Federal qualification requirements.

1 The retirement system is intended to meet the federal
2 qualification requirements of Section 401(a) and related
3 sections of the Internal Revenue Code as applicable to govern-
4 mental plans. Notwithstanding any other provision of state law,
5 the board shall administer the retirement system to fulfill this
6 intent for the exclusive benefit of the members and their
7 beneficiaries. Any provision of this article referencing or
8 relating to these federal qualification requirements shall be
9 effective as of the date required by federal law. The board may
10 promulgate rules and amend or repeal conflicting rules in
11 accordance with the authority granted to the board pursuant to
12 section one, article ten-d of chapter five to assure compliance
13 with this section.

**§18-7A-11. Records; actuarial data; tables; specification of
actuarial assumptions.**

1 The retirement board shall maintain an individual account
2 with each member, showing the amount of the member's
3 contributions and the interest accumulations thereon. It shall
4 collect and keep in convenient form data as may be necessary
5 for the preparation of the required mortality and service tables,
6 and for the compilation of such other information as may be
7 needed for the actuarial valuation of the funds created by this
8 article. The retirement board shall specify and adopt all
9 actuarial assumptions for the system at its first meeting of every

10 calendar year or as soon thereafter as may be practicable, which
11 assumptions shall become part of the terms of the system.

§18-7A-13. Membership in retirement system; cessation of membership; reinstatement of withdrawn service.

1 The membership of the retirement system shall consist of
2 the following:

3 (a) New entrants, whose membership in the system shall be
4 compulsory upon employment as teachers and nonteachers.

5 (b) The membership of the retirement system shall not
6 include any person who is an active member of or who has been
7 retired by the West Virginia public employees retirement
8 system, the judge's retirement system, or the retirement system
9 of the department of public safety or the supplemental retire-
10 ment system as provided in section four-a, article twenty-three
11 of this chapter. The membership of any person in the retirement
12 system shall cease:

13 (1) Upon the withdrawal of accumulated contributions after
14 the cessation of service; or (2) upon retirement; or (3) at death;
15 or (4) if service amounts to fewer than five years in any period
16 of ten consecutive years.

17 (c) Any former member of the retirement system who has
18 withdrawn accumulated contributions but subsequently reenters
19 the retirement system shall be permitted to repay to the retire-
20 ment fund the amount withdrawn, plus interest at a rate of six
21 percent, compounded annually from the date of withdrawal to
22 the date of repayment: *Provided*, That no such repayment may
23 be made until the former member has completed two years of
24 contributory service after reentry; and such member shall be
25 accorded all the rights to prior service and experience as were
26 held at the time of withdrawal of such accumulated contribu-
27 tions: *Provided, however*, That no withdrawn service may be
28 reinstated that has been transferred to another retirement system

29 from which the member is currently or will in the future draw
30 benefits based on the same service. The interest paid shall be
31 deposited in the reserve fund.

32 (d) No member shall be eligible for prior service credit
33 unless he or she is eligible for prior service pension, as pre-
34 scribed by section twenty-two of this article; however, a new
35 entrant who becomes a present teacher as provided in this
36 paragraph shall be deemed eligible for prior service pension
37 upon retirement.

38 (e) Any individual who is a leased employee shall not be
39 eligible to participate in the system. For purposes of this
40 system, a "leased employee" means any individual who
41 performs services as an independent contractor or pursuant to
42 an agreement with an employee leasing organization or other
43 similar organization. If a question arises regarding the status of
44 an individual as a leased employee, the board has final power
45 to decide the question.

***§18-7A-14b. Members' option to make contributions for periods
of temporary total disability.**

1 Any member who was absent from work while receiving
2 temporary total disability benefits pursuant to the provisions of
3 chapter twenty-three of this code as a result of a compensable
4 injury received in the course of and as a result of his or her
5 employment with the covered employer during the time period
6 beginning the first day of January, one thousand nine hundred
7 eighty-eight and the thirty-first day of December, one thousand
8 nine hundred ninety-eight, may purchase credited service for
9 that time period or those time periods the member was absent
10 from work as a result of a compensable injury and receiving
11 temporary total disability benefits: *Provided*, That the member
12 returned to work with his or her covered employer within one
13 year following the cessation of temporary total disability
14 benefits. The member desiring to purchase such credited service
15 may do so only by lump sum payment from personal funds:
16 *Provided, however*, That the purchase of service credit pursuant

***Clerk's Note:** This section was also amended by H. B. 4575 (Chapter 212), which passed prior to this act.

17 to the provisions of this section shall be completed between the
18 time period beginning the first day of July, two thousand and
19 ending the thirtieth day of June, two thousand one: *Provided*
20 *further*, That in order to purchase such service credit, the
21 member shall pay to the board his or her regular contribution
22 and an equal amount that represents the employer's contribu-
23 tion, based on the salary the member was receiving immediately
24 prior to having sustained such compensable injury: *And*
25 *provided further*, That the member purchasing service credit
26 under the provisions of this section may not be charged interest.
27 The maximum number of years of service credit that may be
28 purchased under this section shall not exceed four.

**§18-7A-17. Statement and computation of teachers' service;
qualified military service.**

1 (a) Under rules adopted by the retirement board, each
2 teacher shall file a detailed statement of his or her length of
3 service as a teacher for which he or she claims credit. The
4 retirement board shall determine what part of a year is the
5 equivalent of a year of service. In computing the service,
6 however, it shall credit no period of more than a month's
7 duration during which a member was absent without pay, nor
8 shall it credit for more than one year of service performed in
9 any calendar year.

10 (b) For the purpose of this article, the retirement board shall
11 grant prior service credit to new entrants and other members of
12 the retirement system for service in any of the armed forces of
13 the United States in any period of national emergency within
14 which a federal Selective Service Act was in effect. For
15 purposes of this section, "armed forces" includes women's
16 army corps, women's appointed volunteers for emergency
17 service, army nurse corps, spars, women's reserve and other
18 similar units officially parts of the military service of the United
19 States. The military service is considered equivalent to public
20 school teaching, and the salary equivalent for each year of that

21 service is the actual salary of the member as a teacher for his or
22 her first year of teaching after discharge from military service.
23 Prior service credit for military service shall not exceed ten
24 years for any one member, nor shall it exceed twenty-five
25 percent of total service at the time of retirement. Notwithstand-
26 ing the preceding provisions of this subsection, contributions,
27 benefits and service credit with respect to qualified military
28 service shall be provided in accordance with Section 414(u) of
29 the Internal Revenue Code. For purposes of this section,
30 “qualified military service” has the same meaning as in Section
31 414(u) of the Internal Revenue Code. The retirement board is
32 authorized to determine all questions and make all decisions
33 relating to this section and, pursuant to the authority granted to
34 the retirement board in section one, article ten-d, chapter five of
35 this code, may promulgate rules relating to contributions,
36 benefits and service credit to comply with Section 414(u) of the
37 Internal Revenue Code.

38 (c) For service as a teacher in the employment of the federal
39 government, or a state or territory of the United States, or a
40 governmental subdivision of that state or territory, the retire-
41 ment board shall grant credit to the member: *Provided*, That the
42 member shall pay to the system double the amount he or she
43 contributed during the first full year of current employment,
44 times the number of years for which credit is granted, plus
45 interest at a rate to be determined by the retirement board. The
46 interest shall be deposited in the reserve fund and service credit
47 granted at the time of retirement shall not exceed the lesser of
48 ten years or fifty percent of the member’s total service as a
49 teacher in West Virginia. Any transfer of out-of-state service,
50 as provided in this article, shall not be used to establish eligibil-
51 ity for a retirement allowance and the retirement board shall
52 grant credit for the transferred service as additional service
53 only: *Provided, however*, That a transfer of out-of-state service
54 is prohibited if the service is used to obtain a retirement benefit
55 from another retirement system: *Provided further*, That salaries

56 paid to members for service prior to entrance into the retirement
57 system shall not be used to compute the average final salary of
58 the member under the retirement system.

59 (d) Service credit for members or retired members shall not
60 be denied on the basis of minimum income rules promulgated
61 by the teachers retirement board: *Provided*, That the member or
62 retired member shall pay to the system the amount he or she
63 would have contributed during the year or years of public
64 school service for which credit was denied as a result of the
65 minimum income rules of the teachers retirement board.

66 (e) No members shall be considered absent from service
67 while serving as a member or employee of the Legislature of
68 the state of West Virginia during any duly constituted session
69 of that body or while serving as an elected member of a county
70 commission during any duly constituted session of that body.

71 (f) No member shall be considered absent from service as
72 a teacher while serving as an officer with a statewide profes-
73 sional teaching association, or who has served in that capacity,
74 and no retired teacher, who served in that capacity while a
75 member, shall be considered to have been absent from service
76 as a teacher by reason of that service: *Provided*, That the period
77 of service credit granted for that service shall not exceed ten
78 years: *Provided, however*, That a member or retired teacher
79 who is serving or has served as an officer of a statewide
80 professional teaching association shall make deposits to the
81 teachers retirement board, for the time of any absence, in an
82 amount double the amount which he or she would have contrib-
83 uted in his or her regular assignment for a like period of time.

84 The teachers retirement board shall grant service credit to
85 any former or present member of the West Virginia public
86 employees retirement system who has been a contributing
87 member for more than three years, for service previously
88 credited by the public employees retirement system and: (1)

89 Shall require the transfer of the member's contributions to the
90 teachers retirement system; or (2) shall require a repayment of
91 the amount withdrawn any time prior to the member's retire-
92 ment: *Provided*, That there shall be added by the member to the
93 amounts transferred or repaid under this subsection an amount
94 which shall be sufficient to equal the contributions he or she
95 would have made had the member been under the teachers
96 retirement system during the period of his or her membership
97 in the public employees retirement system plus interest at a rate
98 of six percent compounded annually from the date of with-
99 drawal to the date of payment. The interest paid shall be
100 deposited in the reserve fund.

101 (g) For service as a teacher in an elementary or secondary
102 parochial school, located within this state and fully accredited
103 by the West Virginia department of education, the retirement
104 board shall grant credit to the member: *Provided*, That the
105 member shall pay to the system double the amount contributed
106 during the first full year of current employment, times the
107 number of years for which credit is granted, plus interest at a
108 rate to be determined by the retirement board. The interest shall
109 be deposited in the reserve fund and service granted at the time
110 of retirement shall not exceed the lesser of ten years or fifty
111 percent of the member's total service as a teacher in the West
112 Virginia public school system. Any transfer of parochial school
113 service, as provided in this section, may not be used to establish
114 eligibility for a retirement allowance and the board shall grant
115 credit for the transfer as additional service only: *Provided*,
116 *however*, That a transfer of parochial school service is prohib-
117 ited if the service is used to obtain a retirement benefit from
118 another retirement system.

119 (h) If a member is not eligible for prior service credit or
120 pension as provided in this article, then his or her prior service
121 shall not be considered a part of his or her total service.

122 (i) A member who withdrew from membership may regain
123 his or her former membership rights as specified in section
124 thirteen of this article only in case he or she has served two
125 years since his or her last withdrawal.

126 (j) Subject to the provisions of subsection (a) through (i),
127 inclusive, of this section, the board shall verify as soon as
128 practicable the statements of service submitted. The retirement
129 board shall issue prior service certificates to all persons eligible
130 for the certificates under the provisions of this article. The
131 certificates shall state the length of the prior service credit, but
132 in no case shall the prior service credit exceed forty years.

133 Notwithstanding any provision of this article to the con-
134 trary, when a member is or has been elected to serve as a
135 member of the Legislature, and the proper discharge of his or
136 her duties of public office require that member to be absent
137 from his or her teaching or administrative duties, the time
138 served in discharge of his or her duties of the legislative office
139 are credited as time served for purposes of computing service
140 credit: *Provided*, That the board may not require any additional
141 contributions from that member in order for the board to credit
142 him or her with the contributing service credit earned while
143 discharging official legislative duties: *Provided, however*, That
144 nothing herein may be construed to relieve the employer from
145 making the employer contribution at the member's regular
146 salary rate or rate of pay from that employer on the contributing
147 service credit earned while the member is discharging his or her
148 official legislative duties. These employer payments shall
149 commence as of the first day of June, two thousand: *Provided*,
150 *further*, That any member to which the provisions of this
151 subsection apply may elect to pay to the board an amount equal
152 to what his or her contribution would have been for those
153 periods of time he or she was serving in the Legislature. The
154 periods of time upon which the member paid his or her contri-
155 bution shall then be included for purposes of determining his or

156 her final average salary as well as for determining years of
157 service: *And provided further*, That a member utilizing the
158 provisions of this subsection is not required to pay interest on
159 any contributions he or she may decide to make.

§18-7A-28a. Federal law maximum benefit limitations.

1 Notwithstanding any other provision of this article or state
2 law, the board shall administer the retirement system in
3 compliance with the limitations of Section 415 of the Internal
4 Revenue Code and regulations under that section to the extent
5 applicable to governmental plans so that no annuity or other
6 benefit provided under this system shall exceed those limita-
7 tions. The extent to which any annuity or other benefit payable
8 under this retirement system shall be reduced as compared with
9 the extent to which an annuity, contributions or other benefits
10 under any other defined benefit plans or defined contribution
11 plans required to be taken into consideration under Section 415
12 of the Internal Revenue Code shall be reduced shall be deter-
13 mined by the board in a manner that shall maximize the
14 aggregate benefits payable to the member. If the reduction is
15 under this retirement system, the board shall advise affected
16 members of any additional limitation on the annuities required
17 by this section.

§18-7A-28b. Federal law minimum required distributions.

1 The requirements of this section apply to any distribution
2 of a member's or beneficiary's interest and take precedence
3 over any inconsistent provisions of this retirement system. This
4 section applies to plan years beginning after the thirty-first day
5 of December, one thousand eight hundred eighty-six. Notwith-
6 standing anything in the retirement system to the contrary, the
7 payment of benefits under this article shall be determined and
8 made in accordance with Section 401(a)(9) of the Internal
9 Revenue Code and the regulations thereunder. For this purpose,
10 the following provisions apply:

11 (a) The payment of benefits under the retirement system to
12 any member shall be distributed to him or her not later than the
13 required beginning date, or be distributed to him or her com-
14 mencing not later than the required beginning date, in accor-
15 dance with regulations prescribed under Section 401(a)(9) of
16 the Internal Revenue Code, over the life of the member or over
17 the lives of the member and his or her beneficiary or over a
18 period not extending beyond the life expectancy of the member
19 and his or her beneficiary.

20 (b) If a member dies after distribution to him or her has
21 commenced pursuant to this section but before his or her entire
22 interest in the retirement system has been distributed, then the
23 remaining portion of that interest shall be distributed at least as
24 rapidly as under the method of distribution being used at the
25 date of his or her death.

26 (c) If a member dies before distribution to him or her has
27 commenced, then his or her entire interest in the retirement
28 system shall be distributed by the thirty-first day of December
29 of the calendar year containing the fifth anniversary of the
30 member's death, except as follows:

31 (1) If a member's interest is payable to a beneficiary,
32 distributions may be made over the life or over a period certain
33 not greater than the life expectancy of the beneficiary com-
34 mencing on or before the thirty-first of December of the
35 calendar year immediately following the calendar year in which
36 the member died; or

37 (2) If the member's beneficiary is the surviving spouse, the
38 date distributions are required to begin shall be no later than the
39 later of:

40 (A) The thirty-first day of December of the calendar year in
41 which the member would have attained age seventy and one-
42 half; or

43 (B) The earlier of: (i) The thirty-first day of December of
44 the calendar year following the calendar year in which the
45 member died; or (ii) the thirty-first day of December of the
46 calendar year following the calendar year in which the spouse
47 died.

§18-7A-28c. Direct rollovers.

1 (a) This section applies to distributions made on or after the
2 first day of January, one thousand nine hundred ninety-three.
3 Notwithstanding any provision of this article to the contrary
4 that would otherwise limit a distributee's election under this
5 system, a distributee may elect, at the time and in the manner
6 prescribed by the board, to have any portion of an eligible
7 rollover distribution that is equal to at least five hundred dollars
8 paid directly to an eligible retirement plan specified by the
9 distributee in a direct rollover. For purposes of this section, the
10 following definitions apply:

11 (1) "Eligible rollover distribution" means any distribution
12 of all or any portion of the balance to the credit of the
13 distributee, except that an eligible rollover distribution does not
14 include any of the following: (i) Any distribution that is one of
15 a series of substantially equal periodic payments not less
16 frequently than annually made for the life or life expectancy of
17 the distributee or the joint lives or the joint life expectancies of
18 the distributee and the distributee's designated beneficiary, or
19 for a specified period of ten years or more; (ii) any distribution
20 to the extent such distribution is required under Section
21 401(a)(9) of the Internal Revenue Code; (iii) the portion of any
22 distribution that is not includable in gross income determined
23 without regard to the exclusion for net unrealized appreciation
24 with respect to employer securities; (iv) any hardship distribu-
25 tion described in Section 401(k)(2)(B)(i)(iv) of the Internal
26 Revenue Code; and (v) any other distribution reasonably or
27 distributions expected to total less than two hundred dollars
28 during a year.

29 (2) "Eligible retirement plan" means an individual retire-
30 ment account described in Section 408(a) of the Internal
31 Revenue Code, an individual retirement annuity described in
32 Section 408(b) of the Internal Revenue Code, an annuity plan
33 described in Section 403(a) of the Internal Revenue Code, or a
34 qualified plan described in Section 401(a) of the Internal
35 Revenue Code, that accepts the distributee's eligible rollover
36 distribution: *Provided*, That in the case of an eligible rollover
37 distribution to the surviving spouse, an eligible retirement plan
38 is an individual retirement account or individual retirement
39 annuity.

40 (3) "Distributee" means an employee or former employee.
41 In addition, the employee's or former employee's surviving
42 spouse and the employee's or former employee's spouse or
43 former spouse who is the alternate payee under a qualified
44 domestic relations order, as defined in Section 414(p) of the
45 Internal Revenue Code, as applicable to governmental plans,
46 are distributees with regard to the interest of the spouse or
47 former spouse.

48 (4) "Direct rollover" means a payment by the system to the
49 eligible retirement plan.

50 (b) Nothing in this section may be construed as permitting
51 rollovers into this system or any other retirement system
52 administered by the board.

**§18-7A-30. Exemption from taxation, garnishment and other
process; exception for qualified domestic relations
order.**

1 The moneys in the various funds and the right of a member
2 to a retirement allowance, to the return of contributions, or to
3 any benefit under the provisions of this article, are hereby
4 exempt from municipal tax; shall not be subject to execution,
5 garnishment, attachment or any other process whatsoever

6 except that any benefits or contributions under this system shall
7 be subject to “qualified domestic relations orders” as that term
8 is defined in Section 414(p) of the Internal Revenue Code with
9 respect to governmental plans; and shall be unassignable except
10 as is provided in this article.

§18-7A-34. Loans to members.

1 A member of the retirement system upon written applica-
2 tion may borrow from his or her individual account in the
3 teachers accumulation fund, subject to these restrictions:

4 (1) Loans shall be made in multiples of ten dollars, the
5 minimal loan being one hundred dollars and the maximum
6 being eight thousand dollars: *Provided*, That the maximum
7 amount of any loan when added to the outstanding balance of
8 all other loans shall not exceed the lesser of the following: (a)
9 fifty thousand dollars reduced by the excess (if any) of the
10 highest outstanding balance of loans during the one-year period
11 ending on the day before the date on which the loan is made,
12 over the outstanding balance of loans to the member on the date
13 on which the loan is made; or (b) fifty percent of the member’s
14 contributions to his or her individual account in the teachers
15 accumulations fund: *Provided, however*, That if the total
16 amount of loaned money outstanding exceeds forty million
17 dollars, the maximum shall not exceed three thousand dollars
18 until the teachers retirement board determines that loans
19 outstanding have been reduced to an extent that additional loan
20 amounts are again authorized.

21 (2) Interest charged on the amount of the loan shall be six
22 percent per annum, or a higher rate as set by the teachers
23 retirement board. If repayable in installments, the interest shall
24 not exceed the annual rate so established upon the principal
25 amount of the loan, for the entire period of the loan, and such
26 charge shall be added to the principal amount of the loan. The
27 minimal interest charge shall be for six months.

28 (3) No member shall be eligible for more than one loan in
29 any one year.

30 (4) If a refund or benefit is payable to the borrower or his
31 or her beneficiary before he or she repays the loan with interest,
32 the balance due with interest to date shall be deducted from
33 such benefit or refund.

34 (5) From his or her monthly salary as a teacher the member
35 shall pay the loan and interest by deductions which will pay the
36 loan and interest in substantially level payments in not more
37 than sixty nor less than six months. Upon notice of loan granted
38 and payment due, the employer shall be responsible for making
39 such salary deductions and reporting them to the retirement
40 board. At the option of the retirement board, loan deductions
41 may be collected as prescribed herein for the collection of
42 members' contribution, or may be collected through issuance of
43 warrant by employer. If the borrower decides to make loan
44 payments while not paid for service as a teacher, the retirement
45 board must accept such payments.

46 (6) The entire unpaid balance of any loan, and interest due
47 thereon, shall, at the option of the retirement board, become due
48 and payable without further notice or demand upon the occur-
49 rence with respect to the borrowing member of any of the
50 following events of default: (A) Any payment of principal and
51 accrued interest on a loan remains unpaid after the same
52 becomes due and payable under the terms of the loan or after
53 such grace period as may be established in the discretion of the
54 retirement board; (B) the borrowing member attempts to make
55 an assignment for the benefit of creditors of his or her refund or
56 benefit under the retirement system; or (C) any other event of
57 default set forth in rules promulgated by the retirement board in
58 accordance with the authority granted pursuant to section one,
59 article ten-d, chapter five of this code.

60 (7) Loans shall be evidenced by such form of obligations
 61 and shall be made upon such additional terms as to default,
 62 prepayment, security, and otherwise as the retirement board
 63 may determine.

§18-7A-37. Benefits not forfeited if system terminates.

1 If the retirement system is terminated or contributions are
 2 completely discontinued, the rights of all members to benefits
 3 accrued or contributions made to the date of such termination
 4 or discontinuance, to the extent then funded, are not forfeited.

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-2. Definitions.

§18-7B-4. Article to be liberally construed; purpose; federal qualification requirements.

§18-7B-7. Participation in teachers' defined contribution retirement system; limiting participation in existing teachers' retirement system.

§18-7B-8a. Qualified military service.

§18-7B-12. Retirement, commencement of annuity payments.

§18-7B-12a. Federal minimum required distributions.

§18-7B-13. Amount of annuity payments; federal law maximum benefit limitations.

§18-7B-13b. Direct rollovers.

§18-7B-18. Right to benefits not subject to execution, etc.; exception for qualified domestic relations orders.

§18-7B-19. Benefits not forfeited if system terminates.

§18-7B-2. Definitions.

1 As used in this article, unless the context clearly requires a
 2 different meaning:

3 (1) "Defined contribution system" or "system" means the
 4 teachers' defined contribution retirement system created and
 5 established by this article;

6 (2) “Existing retirement system” means the state teachers
7 retirement system established in article seven-a of this chapter;

8 (3) “Existing employer” means any employer who em-
9 ployed or employs a member of the existing retirement system;

10 (4) “Consolidated board” or “board” means the consoli-
11 dated public retirement board created and established pursuant
12 to article ten-d, chapter five of this code;

13 (5) “Member” or “employee” means the following persons,
14 if regularly employed for full-time service: (a) Any person
15 employed for instructional service in the public schools of West
16 Virginia; (b) principals; (c) public school librarians; (d)
17 superintendents of schools and assistant county superintendents
18 of schools; (e) any county school attendance director holding a
19 West Virginia teacher’s certificate; (f) the executive secretary
20 of the retirement board; (g) members of the research, extension,
21 administrative or library staffs of the public schools; (h) the
22 state superintendent of schools, heads and assistant heads of the
23 divisions under his or her supervision, or any other employee
24 thereunder performing services of an educational nature; (i)
25 employees of the state board of education who are performing
26 services of an educational nature; (j) any person employed in a
27 nonteaching capacity by the state board of education, any
28 county board of education, the state department of education or
29 the teachers retirement board, if such person was formerly
30 employed as a teacher in the public schools; (k) all classroom
31 teachers, principals and educational administrators in schools
32 under the supervision of the department of corrections, the
33 department of health or the department of human services; (l)
34 any person who is regularly employed for full-time service by
35 any county board of education, the state board of education or
36 the teachers retirement board; and (m) the administrative staff
37 of the public schools including deans of instruction, deans of
38 men and deans of women, and financial and administrative
39 secretaries;

40 (6) "Regularly employed for full-time service" means
41 employment in a regular position or job throughout the employ-
42 ment term regardless of the number of hours worked or the
43 method of pay;

44 (7) "Year of employment service" means employment for
45 at least ten months, a month being defined as twenty employ-
46 ment days: *Provided*, That no more than one year of service
47 may be accumulated in any twelve-month period;

48 (8) "Employer" means the agency of and within the state
49 which has employed or employs a member;

50 (9) "Compensation" means the full compensation actually
51 received by members for service whether or not a part of such
52 compensation is received from other funds, federal or other-
53 wise, than those provided by the state or its subdivisions;

54 (10) "Public schools" means all publicly supported schools,
55 including normal schools, colleges and universities in this state;

56 (11) "Member contribution" means an amount reduced
57 from the employee's regular pay periods, and deposited into the
58 member's individual annuity account within the defined
59 contribution retirement system;

60 (12) "Employer contribution" means an amount deposited
61 into the member's individual annuity account on a periodic
62 basis coinciding with the employee's regular pay period by an
63 employer from its own funds;

64 (13) "Annuity account" or "annuity" means an account
65 established for each member to record the deposit of member
66 contributions and employer contributions and interest, divi-
67 dends or other accumulations credited on behalf of the member;

68 (14) "Retirement" means a member's withdrawal from the
69 active employment of a participating employer and completion
70 of all conditions precedent to retirement;

71 (15) "Permanent, total disability" means a mental or
72 physical incapacity requiring the absence from employment
73 service for at least six months: *Provided*, That such incapacity
74 is shown by an examination by a physician or physicians
75 selected by the board;

76 (16) "Plan year" means the twelve-month period commenc-
77 ing on the first day of July of any designated year and ending on
78 the following thirtieth day of June;

79 (17) "Required beginning date" means the first day of April
80 of the calendar year following the later of: (a) The calendar year
81 in which the member attains age seventy one and one-half; or
82 (b) the calendar year in which the member retires or otherwise
83 ceases employment with a participating employer;

84 (18) "Internal Revenue Code" means the Internal Revenue
85 Code of 1986, as amended.

§18-7B-4. Article to be liberally construed; purpose; federal qualification requirements.

1 The provisions of this article shall be liberally construed so
2 as to provide a general annuity based retirement system for
3 teachers in this state. The purpose of this article is to provide a
4 defined contribution retirement program which is fully funded
5 on a current basis from employer and employee contribution.

6 The retirement system is intended to meet the federal
7 qualification requirements of Section 401(a) and related
8 sections of the Internal Revenue Code as applicable to govern-
9 mental plans. Notwithstanding any other provision of state law,
10 the board shall administer the retirement system to fulfill this
11 intent for the exclusive benefit of the members and their

12 beneficiaries. Any provision of this article referencing or
13 relating to these federal qualification requirements shall be
14 effective as of the date required by federal law. The board may
15 promulgate rules and amend or repeal conflicting rules in
16 accordance with the authority granted to the board pursuant to
17 section one, article ten-d, chapter five of this code to assure
18 compliance with the requirements of this section.

**§18-7B-7. Participation in teachers' defined contribution retire-
ment system; limiting participation in existing
teachers' retirement system.**

1 Beginning the first day of July, one thousand nine hundred
2 ninety-one, the teachers' defined contribution retirement system
3 shall be the single retirement program for all new employees
4 whose employment commences on or after that date. No
5 additional new employees except as may be provided herein
6 may be admitted to the existing retirement system. Members of
7 the existing retirement system whose employment continues
8 beyond the first day of July, one thousand nine hundred
9 ninety-one, are not affected by this article and shall continue to
10 contribute and participate in the existing system without change
11 in provisions or benefits.

12 Notwithstanding the provisions of section twenty-three,
13 article seven-a of this chapter, any employee whose employ-
14 ment terminates after the thirtieth day of June, one thousand
15 nine hundred ninety-one, who is later reemployed by an
16 employer shall be eligible for membership only in the teachers'
17 defined contribution system: *Provided*, That if such
18 reemployment with an existing employer occurs not more than
19 six months after the employee's previous employment, he or
20 she shall be entitled to readmission to the existing retirement
21 system in which he or she was originally a member: *Provided*,
22 *however*, That if such employee has five or more years of
23 credited service in the existing retirement system, he or she
24 shall be entitled to readmission into the existing retirement

25 system in which he or she was originally a member so long as
26 he or she has not withdrawn his or her contributions from the
27 existing retirement system: *Provided further*, That if such
28 employee has withdrawn his or her contribution from the
29 existing retirement system, then readmission shall not be
30 permitted and the employee will be entitled only to the defined
31 contribution system.

32 An employee whose employment with an employer was
33 suspended or terminated while he or she served as an officer
34 with a statewide professional teaching association is eligible for
35 readmission to the existing retirement system in which he or
36 she was a member. Any employee reemployed with an em-
37 ployer on or after the first day of July, one thousand nine
38 hundred ninety-one, who had five or more years credited
39 service in the teachers' defined benefit retirement system may
40 elect readmission to the teachers' defined benefit retirement
41 system in which he or she was originally a member. Any
42 employee reemployed between the first day of July, one
43 thousand nine hundred ninety-one, and the first day of July, one
44 thousand nine hundred ninety-five, and who was required to
45 participate in the teachers' defined contribution system but now
46 elects, pursuant to the provisions of this section, readmission to
47 the teachers' defined benefit retirement system shall pay an
48 additional contribution to the teachers' defined benefit retire-
49 ment system equal to one and one-half percent of his or her
50 annual gross compensation earned for each year he or she
51 participated in the teachers' defined contribution system and
52 shall transfer all member and employer contributions and
53 investment earnings therefrom from the teacher defined
54 contribution system to the teachers' defined benefit system and
55 shall receive service credit for the time the member participated
56 in the defined contribution system as if that participation had
57 been in the teachers' defined benefit retirement system. Any
58 member making an election under the provisions of this section
59 to reenter the teachers' defined benefit retirement system who

60 is currently a member of the defined contribution retirement
61 system must do so on or before the first day of January, one
62 thousand nine hundred ninety-six. Any other member
63 reemployed must make the election as to the retirement system
64 that he or she will be a member of at the time he or she is
65 reemployed.

66 An employee whose employment with an employer or an
67 existing employer is suspended as a result of an approved leave
68 of absence, approved maternity or paternity break in service, or
69 any other approved break in service authorized by the board, is
70 eligible for readmission to the existing retirement system in
71 which he or she was a member.

72 In all cases where a question exists as to readmission to
73 membership in the existing retirement system, the board shall
74 decide the question.

75 Any individual who is a leased employee shall not be
76 eligible to participate in the system. For purposes of this
77 system, a "leased employee" means any individual who
78 performs services as an independent contractor or pursuant to
79 an agreement with an employee leasing organization or other
80 similar organization. If a question arises regarding the status of
81 an individual as a leased employee, the board has final power
82 to decide the question.

§18-7B-8a. Qualified military service.

1 Contributions, benefits and service credit with respect to
2 qualified military service will be provided in accordance with
3 section 414(u) of the Internal Revenue Code. For purposes of
4 this section, "qualified military service" has the same meaning
5 as in Section 414(u) of the Internal Revenue Code. The retire-
6 ment board is authorized to determine all questions and make
7 all decisions relating to this section and, pursuant to the
8 authority granted to the retirement board in section one, article

9 ten-d, chapter five of this code, may promulgate rules relating
10 to contributions, benefits and service credit to comply with
11 Section 414(u) of the Internal Revenue Code.

§18-7B-12. Retirement, commencement of annuity payments.

1 At any time after an employee reaches the age of fifty-five
2 years, and subject to the provisions of section twelve-a of this
3 article, he or she may elect to take retirement by notifying the
4 board or its designee in writing of such intention not less than
5 sixty days prior to the effective date of retirement. Retirement
6 payments shall commence within thirty days of the retirement
7 date under such payment option or options as may be provided
8 by the board and elected by the employee.

§18-7B-12a. Federal minimum required distributions.

1 The requirements of this section apply to any distribution
2 of a member's or beneficiary's interest and take precedence
3 over any inconsistent provisions of this defined contribution
4 system. This section applies to plan years beginning after the
5 thirty-first day of December, one thousand nine hundred eighty-
6 six. Notwithstanding anything in this system to the contrary, the
7 payment of benefits under this article shall be determined and
8 made in accordance with Section 401(a)(9) of the Internal
9 Revenue Code and the regulations thereunder. For this purpose,
10 the following provisions apply:

11 (a) The payment of benefits under the defined contribution
12 system to any member shall be distributed to him or her not
13 later than the required beginning date, or be distributed to him
14 or her commencing not later than the required beginning date,
15 in accordance with regulations prescribed under Section
16 401(a)(9) of the Internal Revenue Code, over the life of the
17 member or over the lives of the member and his or her benefi-
18 ciary or over a period not extending beyond the life expectancy
19 of the member and his or her beneficiary.

20 (b) If a member dies after distribution to him or her has
21 commenced pursuant to this section but before his or her entire
22 interest in the system has been distributed, then the remaining
23 portion of that interest shall be distributed at least as rapidly as
24 under the method of distribution being used at the date of his or
25 her death.

26 (c) If a member dies before distribution to him or her has
27 commenced, then his or her entire interest in the system shall be
28 distributed by the thirty-first day of December of the calendar
29 year containing the fifth anniversary of the member's death,
30 except as follows:

31 (1) If a member's interest is payable to a beneficiary,
32 distributions may be made over the life of that beneficiary or
33 over a period certain not greater than the life expectancy of the
34 beneficiary commencing on or before the thirty-first day of
35 December of the calendar year immediately following the
36 calendar year in which the participant died; or

37 (2) If the member's beneficiary is the surviving spouse, the
38 date distributions are required to begin shall be no later than the
39 later of:

40 (A) The thirty-first day of December of the calendar year in
41 which the member would have attained age seventy and one-
42 half; or

43 (B) The earlier of: (i) The thirty-first day of December of
44 the calendar year following the calendar year in which the
45 member died; or (ii) the thirty-first day of December of the
46 calendar year following the calendar year in which the spouse
47 died.

48 (d) For purposes of this section, any amount paid to a child
49 of a member will be treated as if it had been paid to the surviv-
50 ing spouse of the member if such remaining amount becomes

51 payable to the surviving spouse when the child reaches the age
52 of majority.

**§18-7B-13. Amount of annuity payments; federal law maximum
benefit limitations.**

1 (a) The amount of annuity payments a retired member shall
2 receive shall be based solely upon the balance in the member's
3 annuity account at the date of retirement, the retirement option
4 selected, or in the event of an annuity option being selected, the
5 actuarial life expectancy of the member and such other factors
6 as normally govern annuity payments.

7 (b) The board, or its designee, is authorized upon retirement
8 of a member, with the approval of that member, to purchase an
9 annuity with the balance of the member's account. Upon
10 delivery of the annuity to the member upon his or her retire-
11 ment, the member shall execute a release surrendering any
12 claim the member may have against the retirement trust.

13 (c) Notwithstanding any other provision of this article or
14 state law, the board shall administer the retirement system in
15 compliance with the limitations of Section 415 of the Internal
16 Revenue Code and treasury regulations under that section to the
17 extent applicable to governmental plans so that no annuity or
18 other benefit provided under this system shall exceed those
19 limitations. The extent to which any annuity or other benefit
20 payable under this retirement system shall be reduced as
21 compared to the extent which an annuity, contributions or other
22 benefits under any other defined benefit plans or defined
23 contribution plans required to be taken into consideration under
24 Section 415 of the Internal Revenue Code shall be reduced shall
25 be determined by the board in a manner that shall maximize the
26 aggregate benefits payable to the member. If the reduction is
27 under this retirement system, the board shall advise affected
28 members of any additional limitation on the annuities required
29 by this section.

§18-7B-13b. Direct rollovers.

1 (a) This section applies to distributions made on or after the
2 first day of January, one thousand nine hundred ninety-three.
3 Notwithstanding any provision of this article to the contrary
4 that would otherwise limit a distributee's election under this
5 system, a distributee may elect, at the time and in the manner
6 prescribed by the board, to have any portion of an eligible
7 rollover distribution that is equal to at least five hundred dollars
8 paid directly to an eligible retirement plan specified by the
9 distributee in a direct rollover. For purposes of this section, the
10 following definitions apply:

11 (1) "Eligible rollover distribution" means any distribution
12 of all or any portion of the balance to the credit of the
13 distributee, except that an eligible rollover distribution does not
14 include any of the following: (i) Any distribution that is one of
15 a series of substantially equal periodic payments not less
16 frequently than annually made for the life or life expectancy of
17 the distributee or the joint lives or the joint life expectancies of
18 the distributee and the distributee's designated beneficiary, or
19 for a specified period of ten years or more; (ii) any distribution
20 to the extent such distribution is required under Section
21 401(a)(9) of the Internal Revenue Code; (iii) the portion of any
22 distribution that is not includable in gross income determined
23 without regard to the exclusion for net unrealized appreciation
24 with respect to employer securities; (iv) any hardship distribu-
25 tion described in Section 401(k)(2)(B)(i)(iv) of the Internal
26 Revenue Code; and (v) any other distribution or distributions
27 reasonably expected to total less than two hundred dollars
28 during a year.

29 (2) "Eligible retirement plan" means an individual retire-
30 ment account described in Section 408(a) of the Internal
31 Revenue Code, an individual retirement annuity described in
32 Section 408(b) of the Internal Revenue Code, an annuity plan
33 described in Section 403(a) of the Internal Revenue Code or a

34 qualified plan described in Section 401(a) of the Internal
35 Revenue Code that accepts the distributee's eligible rollover
36 distribution: *Provided*, That in the case of an eligible rollover
37 distribution to the surviving spouse, an eligible retirement plan
38 is an individual retirement account or individual retirement
39 annuity.

40 (3) "Distributee" means an employee or former employee.
41 In addition, the employee's or former employee's surviving
42 spouse and the employee's or former employee's spouse or
43 former spouse who is the alternate payee under a qualified
44 domestic relations order, as defined in Section 414(p) of the
45 Internal Revenue Code with respect to governmental plans, are
46 distributees with regard to the interest of the spouse or former
47 spouse.

48 (4) "Direct rollover" means a payment by the system to the
49 eligible retirement plan.

50 (b) Nothing in this section may be construed as permitting
51 rollovers into this retirement system or any other retirement
52 system administered by the retirement board.

**§18-7B-18. Right to benefits not subject to execution, etc.; excep-
tion for qualified domestic relations orders.**

1 The right of any person to a benefit provided for in this
2 article shall not be subjected to execution, attachment, garnish-
3 ment, the operation of bankruptcy or insolvency laws, or other
4 process whatsoever with the exception that the benefits or
5 contributions under this system shall be subject to "qualified
6 domestic relations orders" as that term is defined in Section
7 414(p) of the Internal Revenue Code with respect to govern-
8 mental plans, nor shall any assignment thereof be enforceable
9 in any court.

§18-7B-19. Benefits not forfeited if system terminates.

1 If the retirement system is terminated or contributions are
 2 completely discontinued, the rights of all members to contribu-
 3 tions made to the date of such termination or discontinuance, to
 4 the extent then funded, are not forfeited.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

- §51-9-1a. Definitions.
- §51-9-3. Custody, permissible investment and administration of retirement system trust fund; state auditor's authority as administrator and trust fund fiduciary; refunds required, including interest; federal qualification requirements.
- §51-9-3a. Specification of actuarial assumptions.
- §51-9-4. Required percentage contributions from salaries; any termination of required contributions prior to actual retirement disallowed; leased employees; military service credit; maximum allowable and qualified military service; qualifiable prosecutorial service.
- §51-9-6. Eligibility for and payment of benefits.
- §51-9-6a. Eligibility benefits; service and retirement of judges over sixty-five years of age.
- §51-9-12a. Federal law maximum benefit limitations.
- §51-9-12b. Federal minimum required distributions.
- §51-9-12c. Direct rollovers.
- §51-9-14. Moneys exempt from execution, etc.; unassignable and nontransferable; exception for certain domestic relations orders.
- §51-9-17. Benefits not forfeited if system terminates.

§51-9-1a. Definitions.

1 (a) As used in this article the term "judge" or "judge of any
 2 court of record" or "judge of any court of record of this state"
 3 shall mean, refer to and include judges of the several circuit
 4 courts and justices of the supreme court of appeals.

5 (b) "Beneficiary" means any person, except a member, who
 6 is entitled to an annuity or other benefit payable by the retire-
 7 ment system.

8 (c) "Board" means the consolidated public retirement board
9 created pursuant to article ten-d, chapter five of this code.

10 (d) "Internal Revenue Code" means the Internal Revenue
11 Code of 1986, as amended.

12 (e) "Member" means a judge participating in this system.

13 (f) "Plan year" means the twelve month period commencing
14 on the first day of July of any designated year and ending the
15 following thirtieth day of June.

16 (g) "Required beginning date," means the first day of April
17 of the calendar year following the later of: (a) The calendar year
18 in which the member attains age seventy and one-half; or (b)
19 the calendar year in which the member retires or otherwise
20 separates from covered employment.

21 (h) "Retirement system" or "system" means the judges
22 retirement system created and established by this article.

**§51-9-3. Custody, permissible investment and administration of
retirement system trust fund; state auditor's
authority as administrator and trust fund fidu-
ciary; refunds required, including interest; fed-
eral qualification requirements.**

1 (a) The state treasurer shall be the custodian of the fund and
2 of any investment securities of the retirement system and shall
3 give a separate and additional bond for the faithful performance
4 of his or her duties as such custodian. The governor shall fix the
5 amount of such bond which shall be approved as to sufficiency
6 and form by the attorney general and shall be filed in the office
7 of the secretary of state. The premium on such bond shall be
8 paid from the fund.

9 (b) In a manner and to an extent consonant with sound
10 administrative principles, the state board of investments shall

11 have authority to invest such fund in interest-bearing securities
12 of the United States of America, of the state of West Virginia
13 and of any political subdivision thereof or such other invest-
14 ments as may be authorized or permitted by the provisions of
15 article six, chapter twelve of this code.

16 (c) The state auditor shall be the primary fiscal officer,
17 responsible for the records and administration of the trust fund,
18 including budgetary matters incident to the authority vested in
19 him or her with respect to judicial department appropriations
20 under article VI, section fifty-one of the constitution of West
21 Virginia. The state auditor shall also, as trust fund fiduciary,
22 independently determine anew, in a substantive sense and as a
23 check and balance, any information concerning eligible service
24 years, required money contributions, computation of judge's
25 retirement benefit or spousal benefit or any other substantive
26 element of qualification supplied or certified to the state auditor
27 by any other public officer, including the supreme court
28 administrator or the chief executive, toward proper final review
29 before issuance of a state warrant in payment of any benefit
30 under the judges' retirement system.

31 (d) Through the thirtieth day of June, one thousand nine
32 hundred ninety-one, the state auditor shall be the primary fiscal
33 officer, responsible for the records and administration of the
34 trust fund, including budgetary matter incident to the authority
35 vested in him or her with respect to judicial department
36 appropriations under article VI, section fifty-one of the consti-
37 tution of West Virginia. The state auditor shall also, as trust
38 fund fiduciary, independently determine anew, in a substantive
39 sense and as a check and balance, any information concerning
40 eligible service years, required money contributions, computa-
41 tion of judge's retirement benefit or spousal benefit or any other
42 substantial element of qualification supplied or certified to the
43 state auditor by any other public officer, including the supreme
44 court administrator or the chief executive, toward proper final

45 review before issuance of a state warrant in payment of any
46 benefit under the judges' retirement system. From the first day
47 of July, one thousand nine hundred ninety-one and thereafter,
48 the funds shall be administered by the consolidated public
49 retirement board created by article ten-d, chapter five of this
50 code.

51 (e) In respect of any credited service heretofore acquired
52 under the *Dostert* decision and subsequent related decisions, the
53 state auditor shall make refund to any person heretofore making
54 payment to acquire such service credit, primary or derivative,
55 in the amount so earlier paid, together with interest at the same
56 rate such sum actually earned because of its investment by the
57 auditor or treasurer, as the case may be, in the consolidated
58 pension pool or with the interest such sum would have earned
59 if timely invested in such pool, whichever amount of interest be
60 greater.

61 (f) The retirement system is intended to meet the federal
62 qualification requirements of Section 401(a) and related
63 sections of the Internal Revenue Code as applicable to govern-
64 mental plans. Notwithstanding any other provision of state law,
65 the board shall administer the retirement system to fulfill this
66 intent for the exclusive benefit of the members and their
67 beneficiaries. Any provision of this article referencing or
68 relating to these federal qualification requirements shall be
69 effective as of the date required by federal law. The board may
70 promulgate rules and amend or repeal conflicting rules in
71 accordance with the authority granted to the board pursuant to
72 section one, article ten-d, chapter five of this code to assure
73 compliance with the requirements of this section.

§ 51-9-3a. Specification of actuarial assumptions.

1 The board at its first meeting in each calendar year or as
2 soon thereafter as may be practicable shall adopt and specify

- 3 actuarial assumptions for the system, which assumptions shall
4 become part of the terms of this system.

§51-9-4. Required percentage contributions from salaries; any termination of required contributions prior to actual retirement disallowed; leased employees; military service credit; maximum allowable and qualified military service; qualifiable prosecutorial service.

1 (a) Every person who is now serving or shall hereafter serve
2 as a judge of any court of record of this state shall pay into the
3 judges' retirement fund six percent of the salary received by
4 such person out of the state treasury: *Provided*, That when a
5 judge becomes eligible to receive benefits from such trust fund
6 by actual retirement, no further payment by him or her shall be
7 required, since such employee contribution, in an equal
8 treatment sense, ceases to be required in the other retirement
9 systems of the state, also, only after actual retirement: *Pro-*
10 *vided, however*, That on and after the first day of January, one
11 thousand nine hundred ninety-five, every person who is then
12 serving or shall thereafter serve as a judge of any court of
13 record in this state shall pay into the judges' retirement fund
14 nine percent of the salary received by that person. Any prior
15 occurrence or practice to the contrary, in any way allowing
16 discontinuance of required employee contributions prior to
17 actual retirement under this retirement system, is rejected as
18 erroneous and contrary to legislative intent and as violative of
19 required equal treatment and is hereby nullified and discontin-
20 ued fully, with the state auditor to require such contribution in
21 every instance hereafter, except where no contributions are
22 required to be made under any of the provisions of this article.

23 (b) An individual who is a leased employee shall not be
24 eligible to participate in the system. For purposes of this
25 system, a "leased employee" means any individual who
26 performs services as an independent contractor or pursuant to

27 an agreement with an employee leasing organization or other
28 similar organization. If a question arises regarding the status of
29 an individual as a leased employee, the board has the final
30 power to decide the question.

31 (c) In drawing warrants for the salary checks of judges, the
32 state auditor shall deduct from the amount of each such salary
33 check six percent thereof, which amount so deducted shall be
34 credited by the consolidated public retirement board to the trust
35 fund: *Provided*, That on or after the first day of January, one
36 thousand nine hundred ninety-five, the amount so deducted and
37 credited shall be nine percent of each such salary check.

38 (d) Any judge seeking to qualify military service to be
39 claimed as credited service, in allowable aggregate maximum
40 amount up to five years, shall be entitled to be awarded the
41 same without any required payment in respect thereof to the
42 judges' retirement fund.

43 (e) Notwithstanding the preceding provisions of this
44 section, contributions, benefits and service credit with respect
45 to qualified military service shall be provided in accordance
46 with Section 414(u) of the Internal Revenue Code. For purposes
47 of this section, "qualified military service" has the same
48 meaning as in Section 414(u) of the Internal Revenue Code.
49 The retirement board is authorized to determine all questions
50 and make all decisions relating to this section and may promul-
51 gate rules relating to contributions, benefits and service credit
52 pursuant to the authority granted to the retirement board in
53 section one, article ten-d, chapter five of this code to comply
54 with Section 414(u) of the Internal Revenue Code.

55 (f) Any judge holding office as such on the effective date of
56 the amendments to this article adopted by the Legislature at its
57 regular session in the year one thousand nine hundred
58 eighty-seven, who seeks to qualify service as a prosecuting
59 attorney as credited service, which service credit must have

60 been earned prior to the year one thousand nine hundred
61 eighty-seven, shall be required to pay into the judges' retire-
62 ment fund nine percent of the annual salary which was actually
63 received by such person as prosecuting attorney during the time
64 such prosecutorial service was rendered prior to the year one
65 thousand nine hundred eighty-seven, and for which credited
66 service is being sought, together with applicable interest. No
67 judge whose term of office shall commence after the effective
68 date of such amendments to this article shall be eligible to claim
69 any credit for service rendered as a prosecuting attorney as
70 eligible service for retirement benefits under this article, nor
71 shall any time served as a prosecutor after the year one thou-
72 sand nine hundred eighty-eight be considered as eligible service
73 for any purposes of this article.

74 (g) The Legislature finds that any increase in salary for
75 judges of courts of record directly affects the actuarial sound-
76 ness of the retirement system for judges of courts of record and,
77 therefore, an increase in the required percentage contributions
78 of members of that retirement system is the same subject for
79 purposes of determining the single object of this bill.

§51-9-6. Eligibility for and payment of benefits.

1 (a) Except as otherwise provided in sections five, twelve
2 and thirteen of this article, and subject to the provisions of
3 subsection (e) of this section, any person who is now serving,
4 or who shall hereafter serve, as a judge of any court of record
5 of this state and shall have served as such judge for a period of
6 not less than sixteen full years and shall have reached the age
7 of sixty-five years, or who has served as judge of such court or
8 of that court and other courts of record of the state for a period
9 of sixteen full years or more (whether continuously or not and
10 whether said service be entirely before or after this article
11 became effective, or partly before and partly after said date, and
12 whether or not said judge shall be in office on the date he or she
13 shall become eligible to benefits hereunder) and shall have

14 reached the age of sixty-five years, or who is now serving, or
15 who shall hereafter serve, as a judge of any court of record of
16 this state and shall have served as such judge for a period of not
17 less than twenty-four full years, regardless of age, shall, upon
18 a determination and certification of his or her eligibility as
19 provided in section nine hereof, be paid from the fund annual
20 retirement benefits, so long as he or she shall live, in an amount
21 equal to seventy-five percent of the annual salary of the office
22 from which he or she has retired based upon such salary of such
23 office and as such salary may be changed from time to time
24 during the period of his or her retirement and the amount of his
25 or her retirement benefits shall be based upon and be equal to
26 seventy-five percent of the highest annual salary of such office
27 for any one calendar year during the period of his or her
28 retirement, and shall be payable in monthly installments:
29 *Provided*, That such retirement benefits shall be paid only after
30 such judge has resigned as such or, for any reason other than his
31 or her impeachment, his or her service as such has ended:
32 *Provided, however*, That every such person seeking to retire and
33 to receive the annual retirement benefits provided by this
34 subsection must have served a minimum of twelve years as a
35 sitting judge of any such court of record.

36 (b) Notwithstanding any other provisions of this article with
37 the exception of sections twelve-a and twelve-b, any person
38 who is now serving or who shall hereafter serve as a judge of
39 any court of record of this state and who shall have accumu-
40 lated sixteen years or more of credited service, at least twelve
41 years of which is as a sitting judge of a court of record, and who
42 has attained the age of sixty-two years or more but less than the
43 age of sixty-five years, may elect to retire from his or her office
44 and to receive the pension to which he or she would otherwise
45 be entitled to receive at age sixty-five, but with an actuarial
46 reduction of pension benefit to be established as a reduced
47 annuity receivable throughout retirement. The reduced percent-
48 age (less than seventy-five percent) actuarially computed,

49 determined and established at time of retirement in respect of
50 this reduced pension benefit shall also continue and be applica-
51 ble to any subsequent new annual salary set for the office from
52 which such judge has retired and as such salary may be changed
53 from time to time during the period of his or her retirement.

54 (c) In determining eligibility for the benefits provided by
55 this section, active full-time duty (including leaves and fur-
56 loughs) in the armed forces of the United States shall be eligible
57 for qualification as credited military service for the purposes of
58 this article by any judge with twelve or more years actual
59 service as a sitting judge of a court of record, such awardable
60 military service to not exceed five years.

61 (d) If a judge of a court of record who is presently sitting as
62 such on the effective date of the amendments to this section
63 enacted by the Legislature at its regular session held in the year
64 one thousand nine hundred eighty-seven, and who has served
65 for a period of not less than twelve full years and has made
66 payments into the judges' retirement fund as provided in this
67 article for each month during which he served as judge,
68 following the effective date of this section, any portion of time
69 which he or she had served as prosecuting attorney in any
70 county in this state shall qualify as years of service, if such
71 judge shall pay those sums required to be paid pursuant to the
72 provisions of section four of this article: *Provided*, That any
73 term of office as prosecuting attorney, or part thereof, com-
74 mencing after the thirty-first day of December, one thousand
75 nine hundred eighty-eight, shall not hereafter in any way
76 qualify as eligible years of service under this retirement system.

77 (e) Any retirement benefit accruing under the provisions of
78 this section shall not be paid if otherwise barred under the
79 provisions of article ten-a, chapter five of this code.

80 (f) Notwithstanding any other provisions of this article,
81 forfeitures under the system shall not be applied to increase the
82 benefits any member would otherwise receive under the system.

**§51-9-6a. Eligibility benefits; service and retirement of judges
over sixty-five years of age.**

1 Any judge of a court of record of this state, who shall have
2 served for a period of not less than eight full years after
3 attaining the age of sixty-five years and who shall have made
4 payments into the judges' retirement fund as provided in this
5 article for each month during which he or she served as such
6 judge following the effective date of this section, shall be
7 subject to all the applicable terms and provisions of this article,
8 not inconsistent with the provisions hereof, and shall receive
9 retirement benefits in an amount equal to seventy-five percent
10 of the annual salary of the office from which he or she has
11 retired based upon such salary of such office as such salary may
12 be changed from time to time during the period of his or her
13 retirement and the amount of his or her retirement benefits shall
14 be based upon and be equal to seventy-five percent of the
15 highest annual salary of such office for any one calendar year
16 during the period of his or her retirement, and shall be payable
17 in monthly installments. If such judge shall become incapacitated
18 to perform his or her said duties before the expiration of
19 his or her said term and after serving for six years thereof, and
20 upon the acceptance of his or her resignation as in this article
21 provided, he or she shall be paid the annual retirement benefits
22 as herein provided so long as he or she shall live. The provisions
23 of this section shall prevail over any language to the
24 contrary in this article contained, except those provisions of
25 sections twelve-a and twelve-b of this article.

§51-9-12a. Federal law maximum benefit limitations.

1 Notwithstanding any other provision of this article or state
2 law, the board shall administer the retirement system in

3 compliance with the limitations of Section 415 of the Internal
4 Revenue Code and regulations under that section to the extent
5 applicable to governmental plans so that no annuity or other
6 benefit provided under this system shall exceed those limita-
7 tions. The extent to which any annuity or other benefit payable
8 under this retirement system shall be reduced as compared with
9 the extent to which an annuity, contributions or other benefits
10 under any other defined benefit plans or defined contribution
11 plans required to be taken into consideration under Section 415
12 of the Internal Revenue Code shall be reduced shall be deter-
13 mined by the board in a manner that shall maximize the
14 aggregate benefits payable to the member. If the reduction is
15 under this retirement system, the board shall advise affected
16 members of any additional limitation on the annuities required
17 by this section.

§51-9-12b. Federal minimum required distributions.

1 The requirements of this section apply to any distribution
2 of a member's or beneficiaries interest and take precedence
3 over any inconsistent provisions of this retirement system. This
4 section applies to plan years beginning after the thirty-first day
5 of December, one thousand eight hundred eighty-six. Notwith-
6 standing anything in the retirement system to the contrary, the
7 payment of benefits under this article shall be determined and
8 made in accordance with Section 401(a)(9) of the Internal
9 Revenue Code and the regulations thereunder. For this purpose,
10 the following provisions apply:

11 (a) The payment of benefits under the retirement system to
12 any member shall be distributed to him or her not later than the
13 required beginning date, or be distributed to him or her com-
14 mencing not later than the required beginning date, in accor-
15 dance with treasury regulations prescribed under Section
16 401(a)(9) of the Internal Revenue Code, over the life of the
17 member or over the lives of the member and his or her benefi-

18 ciary or over a period not extending beyond the life expectancy
19 of the member and his or her beneficiary.

20 (b) If a member dies after distribution to him or her has
21 commenced pursuant to this section but before his or her entire
22 interest in the retirement system has been distributed, then the
23 remaining portion of that interest shall be distributed at least as
24 rapidly as under the method of distribution being used at the
25 date of his or her death.

26 (c) If a member dies before distribution to him or her has
27 commenced, then his or her entire interest in the retirement
28 system shall be distributed by the thirty-first day of December
29 of the calendar year containing the fifth anniversary of the
30 member's death, except as follows:

31 (1) If a member's interest is payable to a beneficiary,
32 distributions may be made over the life of that beneficiary or
33 over a period certain not greater than the life expectancy of the
34 beneficiary commencing on or before the thirty-first of Decem-
35 ber of the calendar year immediately following the calendar
36 year in which the member died; or

37 (2) If the member's beneficiary is the surviving spouse, the
38 date distributions are required to begin shall be no later than the
39 later of:

40 (A) The thirty-first day of December of the calendar year in
41 which the member would have attained age seventy and one-
42 half; or

43 (B) The earlier of: (i) The thirty-first day of December of
44 the calendar year following the calendar year in which the
45 member died; or (ii) the thirty-first day of December of the
46 calendar year following the calendar year in which the spouse
47 died.

§51-9-12c. Direct rollovers.

1 (a) This section applies to distributions made on or after the
2 first day of January, one thousand nine hundred ninety-three.
3 Notwithstanding any provision of this article to the contrary
4 that would otherwise limit a distributee's election under this
5 system, a distributee may elect, at the time and in the manner
6 prescribed by the board, to have any portion of an eligible
7 rollover distribution that is equal to at least five hundred dollars
8 paid directly to an eligible retirement plan specified by the
9 distributee in a direct rollover. For purposes of this section, the
10 following definitions apply:

11 (1) "Eligible rollover distribution" means any distribution
12 of all or any portion of the balance to the credit of the
13 distributee, except that an eligible rollover distribution does not
14 include any of the following: (i) Any distribution that is one of
15 a series of substantially equal periodic payments not less
16 frequently than annually made for the life or life expectancy of
17 the distributee or the joint lives or the joint life expectancies of
18 the distributee and the distributee's designated beneficiary, or
19 for a specified period of ten years or more; (ii) any distribution
20 to the extent such distribution is required under Section
21 401(a)(9) of the Internal Revenue Code; (iii) the portion of any
22 distribution that is not includable in gross income determined
23 without regard to the exclusion for net unrealized appreciation
24 with respect to employer securities; (iv) any hardship distribu-
25 tion described in Section 401(k)(2)(B)(i)(iv) of the Internal
26 Revenue Code; and (v) any other distribution or distributions
27 expected to total less than two hundred dollars during a year.

28 (2) "Eligible retirement plan" means an individual retire-
29 ment account described in Section 408(a) of the Internal
30 Revenue Code, an individual retirement annuity described in
31 Section 408(b) of the Internal Revenue Code, an annuity plan
32 described in Section 403(a) of the Internal Revenue Code, or a
33 qualified plan described in Section 401(a) of the Internal
34 Revenue Code, that accepts the distributee's eligible rollover
35 distribution: *Provided*, That in the case of an eligible rollover
36 distribution to the surviving spouse, an eligible retirement plan

37 is an individual retirement account or individual retirement
38 annuity.

39 (3) "Distributee" means judge or former judge. In addition,
40 the judge's or former judge's surviving spouse and the judge's
41 or former judge's spouse or former spouse who is the alternate
42 payee under a qualified domestic relations order, as defined in
43 Section 414(p) of the Internal Revenue Code, with respect to
44 governmental plans, are distributees with regard to the interest
45 of the spouse or former spouse.

46 (4) "Direct rollover" means a payment by the system to the
47 eligible retirement plan.

48 (b) Nothing in this section may be construed as permitting
49 rollovers into this system or any other system administered by
50 the board.

**§51-9-14. Moneys exempt from execution, etc.; unassignable and
nontransferable; exception for certain domestic
relations orders.**

1 The moneys in the judges' retirement fund, the right of any
2 judge to participate in the pay and benefits of the retirement
3 system and the right of any judge to a refund of payments or
4 contributions made to the fund shall not be subject to execution,
5 garnishment, attachment or any other process whatsoever
6 except that the benefits or contributions under this system shall
7 be subject to "qualified domestic relations orders" as that term
8 is defined in Section 414(p) of the Internal Revenue Code with
9 respect to governmental plans; and shall be unassignable and
10 nontransferable.

§51-9-17. Benefits not forfeited if system terminates.

1 If the retirement system is terminated or contributions are
2 completely discontinued, the rights of all members to benefits
3 accrued or contributions made to the date of such termination
4 or discontinuance, to the extent then funded, may not be
5 forfeited.

CHAPTER 205

(Com. Sub. for H. B. 4391 — By Delegates Givens, Sparks,
Manuel, Yeager, Linch, Modesitt and H. White)

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

AN ACT to amend and reenact section fifteen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section fifteen-b, all relating to public employees retirement; granting service credit for persons entering the active service of the armed forces of the United States during periods of compulsory military service; granting service credit for persons in the active service of the armed forces of the United States during periods of armed conflict; requirements needed to qualify for credit; defining terms; and authorizing legislative rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-15. Military service credit; periods of compulsory military service.

§5-10-15b. Military service credit; periods of armed conflict.

***§5-10-15. Military service credit; periods of compulsory military service.**

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 204), which passed subsequent to this act.

1 (a)(1) In addition to any benefit provided by federal law,
2 any member of the retirement system who has previously
3 served in or enters the active service of the armed forces of the
4 United States during any period of compulsory military service
5 shall receive credited service for said time spent in the armed
6 forces of the United States, not to exceed five years if such
7 member:

8 (A) Has been honorably discharged from the armed forces;

9 (B) Substantiates by appropriate documentation or evidence
10 his or her active military service and entry therein during any
11 period of compulsory military service; and

12 (C) Pays to the members' deposit fund the amount he or she
13 may have withdrawn therefrom, together with regular interest
14 from the date of withdrawal to the date of repayment.

15 (2) Any member of the retirement system who enters the
16 active service of the armed forces of the United States during
17 any period of compulsory military service shall receive the
18 credit provided by this section regardless of whether he or she
19 was a public employee at the time of entering the military
20 service.

21 (3) No member may receive the credit described in this
22 section for any period for which the member has received credit
23 under section ten-b of this article.

24 (b) In any case of doubt as to the period of service to be
25 credited a member under the provisions of this section, the
26 board of trustees shall have final power to determine such
27 period.

28 (c) During the period of such armed service and until the
29 member's return to the employ of a participating public
30 employer, the member's contributions to the retirement system

31 shall be suspended and any credit balance remaining in the
32 members' deposit fund shall be accumulated at regular interest.

§5-10-15b. Military service credit; periods of armed conflict.

1 (a) The Legislature hereby recognizes the men and women
2 of this state who have served in the armed forces of the United
3 States during times of war, conflict and danger. It is the intent
4 of this section to confer upon persons who are eligible at any
5 time for public employees retirement benefits military service
6 credits for any time served in active duty in the armed forces of
7 the United States when such duty was during periods of armed
8 conflict.

9 (b)(1) In addition to any benefit provided by federal law,
10 any member of the retirement system who has previously
11 served in or enters the active service of the armed forces of the
12 United States during any period of armed conflict shall receive
13 credited service for said time spent in active duty in the armed
14 forces of the United States during the period of armed conflict,
15 not to exceed five years if such member:

16 (A) Has been honorably discharged from the armed forces;

17 (B) Substantiates by appropriate documentation or evidence
18 his or her active military service during periods of armed
19 conflict; and

20 (C) Pays to the members' deposit fund the amount he or she
21 may have withdrawn therefrom, together with regular interest
22 from the date of withdrawal to the date of repayment.

23 (2) Any member of the retirement system who previously
24 served on active military duty during a period of armed conflict
25 shall receive the credit provided by this section regardless of
26 whether he or she was a public employee at the time of service.

27 (3) No member may receive the credit described in this
28 section for any period for which the member has received credit
29 under section ten of this article.

30 (c) In any case of doubt as to the period of service to be
31 credited a member under the provisions of this section, the
32 board of trustees shall have final power to determine such
33 period.

34 (d) If a member of the public employees retirement system
35 enters the active service of the United States and serves during
36 any period of armed conflict, during the period of such armed
37 service and until the member's return to the employ of a
38 participating public employer, the member's contributions to
39 the retirement system shall be suspended and any credit balance
40 remaining in the members' deposit fund shall be accumulated
41 at regular interest.

42 (e) For purposes of this section, the following definitions
43 shall apply:

44 (1) "Period of armed conflict" means the Spanish-American
45 War, the Mexican border period, World War I, World War II,
46 the Korean conflict, the Vietnam era, the Persian Gulf War, and
47 any other period of armed conflict by the United States,
48 including, but not limited to, those periods sanctioned by a
49 declaration of war by the United States Congress or by execu-
50 tive or other order of the president.

51 (2) "Spanish-American War" means the period beginning
52 on the twenty-first day of April, one thousand eight hundred
53 ninety-eight, and ending on the fourth day of July, one thousand
54 nine hundred two, and includes the Philippine Insurrection, the
55 Boxer Rebellion, and, in the case of a veteran who served with
56 the United States military forces engaged in hostilities in the
57 Moro Province, means the period beginning on the twenty-first
58 day of April, one thousand eight hundred ninety-eight, and

59 ending on the fifteenth day of July, one thousand nine hundred
60 three.

61 (3) "The Mexican border period" means the period begin-
62 ning on the ninth day of May, one thousand nine hundred
63 sixteen, and ending on the fifth day of April, one thousand nine
64 hundred seventeen, in the case of a veteran who during such
65 period served in Mexico, on the borders thereof or in the waters
66 adjacent thereto.

67 (4) "World War I" means the period beginning on the sixth
68 day of April, one thousand nine hundred seventeen, and ending
69 on the eleventh day of November, one thousand nine hundred
70 eighteen, and, in the case of a veteran who served with the
71 United States military forces in Russia, means the period
72 beginning on the sixth day of April, one thousand nine hundred
73 seventeen, and ending on the first day of April, one thousand
74 nine hundred twenty,

75 (5) "World War II" means the period beginning on the
76 seventh day of December, one thousand nine hundred forty-one,
77 and ending on the thirty-first day of December, one thousand
78 nine hundred forty-six.

79 (6) "Korean conflict" means the period beginning on the
80 twenty-seventh day of June, one thousand nine hundred fifty,
81 and ending on the thirty-first day of January, one thousand nine
82 hundred fifty-five.

83 (7) "The Vietnam era" means the period beginning on the
84 twenty-eighth day of February, one thousand nine hundred
85 sixty-one, and ending on the seventh day of May, one thousand
86 nine hundred seventy-five, in the case of a veteran who served
87 in the Republic of Vietnam during that period; and the fifth day
88 of August, one thousand nine hundred sixty-four, and ending on
89 the seventh day of May, one thousand nine hundred seventy-
90 five, in all other cases.

91 (8) "Persian Gulf War" means the period beginning on the
92 second day of August, one thousand nine hundred ninety, and
93 ending on the eleventh day of April, one thousand nine hundred
94 ninety-one.

95 (9) The board is empowered to consider a petition by any
96 member whose tour of duty, in territory that would reasonably
97 be considered hostile and dangerous, was extended beyond the
98 period in which an armed conflict was officially recognized, if
99 that tour of duty commenced during a period of armed conflict,
100 and the member was assigned to duty stations within the hostile
101 territory throughout the period for which service credit is being
102 sought. The board has the authority to evaluate the facts and
103 circumstances peculiar to the petition, and rule on whether
104 granting service credit for the extended tour of duty is consis-
105 tent with the objectives of this article. In that determination, the
106 board is empowered to grant full credit for the period under
107 petition subject to the limitations otherwise applicable, or to
108 grant credit for any part of the period as the board deems
109 appropriate, or to deny credit altogether.

110 (f) The board of trustees may propose legislative rules for
111 promulgation in accordance with the provisions of article three,
112 chapter twenty-nine-a of this code to administer the provisions
113 of this section.

CHAPTER 206

(H. B. 4441 — By Mr. Speaker, Mr. Kiss, and
Delegates Stemple, Warner, Jenkins, Williams and J. Smith)

[Passed March 10, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article ten, chapter
five of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, relating to membership in the public employees retirement system; allowing persons who retired under the deputy sheriff retirement system to become a member of the public employees retirement system without receiving credit for prior service in the deputy sheriff retirement system; clarifying that an active or retired member of any state teacher retirement system is excluded from membership in the public employees retirement system; and eliminating dual retirement system participation by employees of the state rail authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-17. Retirement system membership.

1 The membership of the retirement system consists of the
2 following persons:

3 (a) All employees, as defined in section two of this article,
4 who are in the employ of a political subdivision the day
5 preceding the date it becomes a participating public employer
6 and who continue in the employ of the participating public
7 employer on and after that date shall become members of the
8 retirement system; and all persons who become employees of
9 a participating public employer on or after that date shall
10 thereupon become members of the system; except as provided
11 in subdivisions (b) and (c) of this section.

12 (b) The membership of the retirement system shall not
13 include any person who is a member of, or who has been retired
14 by, any of the state teachers retirement systems, the judges
15 retirement system, the retirement system of the division of
16 public safety, the deputy sheriff retirement system or any

17 municipal retirement system for either, or both, policemen or
18 firemen; and the bureau of employment programs, by the
19 commissioner of the bureau, may elect whether its employees
20 will accept coverage under this article or be covered under the
21 authorization of a separate enactment: *Provided*, That the
22 exclusions of membership shall not apply to any member of the
23 state Legislature, the clerk of the House of Delegates, the clerk
24 of the state Senate or to any member of the legislative body of
25 any political subdivision provided he or she once becomes a
26 contributing member of the retirement system: *Provided*,
27 *however*, That any retired member of the retirement system of
28 the division of public safety, the deputy sheriff retirement
29 system and any retired member of any municipal retirement
30 system for either, or both, policemen or firemen may on and
31 after the effective date of this section become a member of the
32 retirement system as provided in this article, without receiving
33 credit for prior service as a municipal policeman or fireman or
34 as a member of the division of public safety or of the deputy
35 sheriff retirement system: *Provided further*, That the member-
36 ship of the retirement system does not include any person who
37 becomes employed by the Pretera center for mental health
38 services, valley comprehensive mental health center, Westbrook
39 health services or eastern panhandle mental health center on or
40 after the first day of July, one thousand nine hundred ninety-
41 seven: *And provided further*, That membership of the retirement
42 system does not include any person who becomes a member of
43 the federal railroad retirement act on or after the first day of
44 July, two thousand.

45 (c) Any member of the state Legislature, the clerk of the
46 House of Delegates, the clerk of the state Senate and any
47 employee of the state Legislature whose employment is
48 otherwise classified as temporary and who is employed to
49 perform services required by the Legislature for its regular
50 sessions or during the interim between regular sessions and who
51 has been or is so employed during regular sessions or during the

52 interim between sessions in seven consecutive calendar years,
53 as certified by the clerk of the house in which the employee
54 served, or any member of the legislative body of any other
55 political subdivision shall become a member of the retirement
56 system provided he or she notifies the retirement system in
57 writing of his or her intention to be a member of the system and
58 files a membership enrollment form as prescribed by the board
59 of trustees, and each person, upon filing his or her written
60 notice to participate in the retirement system, shall by that act
61 authorize the clerk of the House of Delegates or the clerk of the
62 state Senate or such person or legislative agency as the legisla-
63 tive body of any other political subdivision shall designate to
64 deduct the member's contribution, as provided in subsection
65 (b), section twenty-nine of this article, and after the deductions
66 have been made from the member's compensation, the deduc-
67 tions shall be forwarded to the retirement system.

68 (d) If question arises regarding the membership status of
69 any employee, the board of trustees has the final power to
70 decide the question.

CHAPTER 207

(H. B. 4317 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed March 11, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-two-f; and to amend article seven-a, chapter eighteen of said code, by adding thereto a new section, designated section twenty-six-r, all

relating to a minimum monthly retirement annuity for certain retired members of the public employees retirement system and the state teachers retirement system; qualifying years of service; and exclusion of certain service credit.

Be it enacted by the Legislature of West Virginia:

That article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-two-f; and that article seven-a, chapter eighteen of said code be amended by adding thereto a new section, designated section twenty-six-r, all to read as follows:

Chapter

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

18. Education.

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-22f. Minimum benefit for certain retirants; legislative declaration; state interest and public purpose.

1 The Legislature hereby finds and declares that an important
2 state interest exists in providing a minimum retirement annuity
3 for certain retirants (or their beneficiaries) who are credited
4 with twenty or more years of credited service; that such
5 program constitutes a public purpose; and that the exclusions of
6 credited service while an elected public official or while a

7 temporary legislative employee are reasonable and equitable
8 exclusions for purposes of determining eligibility for such
9 minimum benefits. For purposes of this section: (1) "Elected
10 public official" means any member of the Legislature or any
11 member of the legislative body of any political subdivision; and
12 (2) "temporary legislative employee" means any employee of
13 the clerk of the House of Delegates, the clerk of the Senate, the
14 Legislature or a committee thereof whose employment is
15 classified as temporary and who is employed to perform
16 services required by the clerk of the House of Delegates, the
17 clerk of the Senate, the Legislature or a committee thereof, as
18 the case may be, for regular sessions, extraordinary sessions
19 and/or interim meetings of the Legislature.

20 If the retirement annuity of a retirant (or, if applicable, his
21 or her beneficiary) with at least twenty years of credited service
22 as of the effective date of this section is less than five hundred
23 dollars per month (including any supplemental benefits or
24 incentives provided by this article), then the monthly retirement
25 benefit for any such retired member (or if applicable, his or her
26 beneficiary) shall be increased to five hundred dollars per
27 month: *Provided*, That any year of credited service while an
28 elected public official or a temporary legislative employee shall
29 not be taken into account for purposes of this section.

30 The payment of any minimum benefit under this section
31 shall be in lieu of, and not in addition to, the payments of any
32 retirement benefit or supplemental benefit or incentives
33 otherwise provided by law: *Provided*, That the minimum
34 benefit provided herein shall be subject to any limitations
35 thereon under §415 of the Internal Revenue Code of 1986, as
36 amended.

37 Any minimum benefit conferred herein shall not be
38 retroactive to the time of retirement and shall apply only to
39 members who have retired prior to the effective date of this

40 section, or, if applicable, to beneficiaries receiving benefits
41 under the retirement system prior to the effective date.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-26r. Minimum benefit for certain retired members; legislative declaration; state interest and public purpose.

1 The Legislature hereby finds and declares that an important
2 state interest exists in providing a minimum retirement annuity
3 for certain retired members who are credited with twenty or
4 more years of total service; that such program constitutes a
5 public purpose; and that the exclusion of total service for
6 certain employees of institutions of higher education is a
7 reasonable and equitable exclusion for purposes of determining
8 eligibility for such minimum benefits.

9 If the retirement annuity of a retired member (or if applica-
10 ble, a spouse thereof) with at least twenty years of total service
11 is less than five hundred dollars per month (including any
12 supplemental or additional benefits provided by this article),
13 then the monthly retirement annuity for any such retired
14 member shall be increased to five hundred dollars per month:
15 *Provided*, That any year of service while an employee of an
16 institution of higher education shall not be taken into account
17 for purposes of this section if his or her salary is capped under
18 the retirement system at four thousand eight hundred dollars per
19 year pursuant to section fourteen-a of this article.

20 The payment of any minimum benefit under this section
21 shall be in lieu of, and not in addition to, the payments of any
22 retirement annuity or supplemental or additional benefits
23 otherwise provided by this article: *Provided*, That the minimum
24 benefit provided herein shall be subject to any limitations

25 thereon under §415 of the Internal Revenue Code of 1986, as
26 the same may be amended.

27 Any minimum benefit conferred herein shall not be
28 retroactive to the time of retirement and shall apply only to
29 members who have retired prior to the effective date of this
30 section, or, if applicable, to beneficiaries receiving benefits
31 under the retirement system prior to the effective date.

32 The minimum benefit provided herein shall be subject to a
33 recommendation by the governor for such minimum benefit
34 through the delivery of an executive message to the Legislature
35 and an appropriation by the Legislature for such minimum
36 benefit, such appropriation to be made over a continuous six-
37 year period following the effective date of this section.

CHAPTER 208

**(Com. Sub. for S. B. 215 — By Senators Plymale, Fanning, Walker,
Sprouse, Jackson, Edgell, McCabe, Snyder, Ross, Minard and Dawson)**

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

AN ACT to amend and reenact section twenty-three, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article seven-a, chapter eighteen of said code by adding thereto a new section, designated section twenty-three-a, all relating to the public employees retirement system and the teachers' retirement system; and providing for terminal benefit payments and the return of any remaining employee contributions.

Be it enacted by the Legislature of West Virginia:

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

Chapter

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

18. Education.

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-23. Terminal payment.

1 For the purposes of this section, the term “accumulated net
2 benefit” means the aggregate amount of all benefits paid to or
3 on behalf of a member. This includes, without limitation: (a)
4 Benefits paid to the member as an annuity; (b) any lump sum
5 distributions paid to the member or to any other person on
6 account of the member’s rights to benefits from the plan; (c)
7 survivor benefits paid to any person or persons on account of
8 the member’s rights to benefits from the plan; and (d) any other
9 distributions on account of the member’s rights to benefits from
10 the plan whether they are paid in the nature of a refund of
11 contributions, interest on contributions, lump sum distributions,
12 or annuity type benefits. The amounts counted will be the
13 amounts actually paid without regard to any optional form of
14 any annuity benefit.

15 For the purposes of this section, the term “accumulated
16 employee contributions” means all money the member has
17 contributed to the plan, whether the form of the contribution
18 was after tax deductions from wages, before tax deductions
19 from wages, direct remittance by the member to repay contribu-
20 tions and interest previously distributed and direct remittance
21 by the member to pay imputed contributions for periods which
22 were not subject to contributions but may be counted for benefit
23 purposes under the plan. The term accumulated employee
24 contributions does not include any amount credited under the
25 provisions of the plan as interest on member contributions.

26 For the purposes of this section, the term “ member’s
27 account” means the excess of the accumulated employee
28 contributions over the accumulated net benefit payments at any
29 point in time and the term “member” includes retirant. This
30 section provides for the payment of the balance in the member’s
31 account in the event that all claims to benefits payable to, or on
32 behalf of, a member expire before his or her member account
33 has been fully exhausted. The expiration of such rights to
34 benefits would be on the occasion of the death of the member
35 and any and all beneficiaries who might have a claim to regular
36 benefit payments under the plan, for any form of benefit.
37 Without limitation, this would include the demise of beneficia-
38 ries of survivor annuities and beneficiaries of any lump sum
39 distributions.

40 In the event that all claims to benefit payable to, or on
41 behalf of, a member expire, and the accumulated employee
42 contributions exceed his or her accumulated net benefit
43 payments, the balance in the member’s account shall be paid to
44 the person or persons as the member has nominated by written
45 designation duly executed and filed with the board of trustees.
46 If there be no designated person or persons surviving the
47 member, the excess of the accumulated employee contributions

48 over the accumulated net benefit, if any, shall be paid to his or
49 her estate. In no case may the plan retain any amount of the
50 accumulated employee contributions remaining in the mem-
51 ber's account, but it shall retain interest earned on the same
52 accumulated employee contributions in the instance of a
53 member's or beneficiary's post-retirement death.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-23a. Terminal benefits.

1 For the purposes of this section, the term "accumulated net
2 benefit" means the aggregate amount of all benefits paid to or
3 on behalf of a member. This includes, without limitation: (a)
4 Benefits paid to the member as an annuity; (b) any lump sum
5 distributions paid to the member or to any other person on
6 account of the member's rights to benefits from the plan; (c)
7 survivor benefits paid to any person or persons on account of
8 the member's rights to benefits from the plan; and (d) any other
9 distributions on account of the member's rights to benefits from
10 the plan whether they are paid in the nature of a refund of
11 contributions, interest on contributions, lump sum distributions,
12 or annuity type benefits. The amounts counted will be the
13 amounts actually paid without regard to any optional form of
14 any annuity benefit.

15 For the purposes of this section, the term "accumulated
16 employee contributions" means all money the member has
17 contributed to the plan, whether the form of the contribution
18 was after tax deductions from wages, before tax deductions
19 from wages, direct remittance by the member to repay contribu-
20 tions and interest previously distributed and direct remittance
21 by the member to pay imputed contributions for period which
22 were not subject to contributions but may be counted for benefit
23 purposes under the plan. The term accumulated employee

24 contributions does not include any amount credited under the
25 provisions of the plan as interest on member contributions.

26 For the purposes of this section, the term “member’s
27 account” means the excess of the accumulated employee
28 contributions over the accumulated net benefit payments at any
29 point in time and the term “member” includes each individual
30 who has contributed, or will contribute in the future, to the
31 teachers retirement system, including each retirant. This section
32 provides for the payment of the balance in the member’s
33 account to paid in the manner described herein in the event that
34 all claims to benefits payable to, or on behalf of, a member
35 expire before his or her member account has been fully ex-
36 hausted. The expiration of such rights to benefits would be on
37 the occasion of the death of the member and any and all
38 beneficiaries who might have a claim to regular benefit
39 payments under the plan, for any form of benefit. Without
40 limitation, this would include the demise of beneficiaries of
41 survivor annuities and beneficiaries of any lump sum distribu-
42 tions.

43 In the event that all claims to benefits payable to, or on
44 behalf of, a member expire, and the accumulated employee
45 contributions exceed his or her accumulated net benefit
46 payments, the balance in the member’s account shall be paid to
47 the person or persons as the member has nominated by written
48 designation duly executed and filed with the board of trustees.
49 If there be no designated person or persons surviving the
50 member, the excess of the accumulated employee contributions
51 over the accumulated net benefit, if any, shall be paid to his or
52 her estate. In no case may the plan retain any amount of the
53 accumulated employee contributions remaining in the mem-
54 ber’s account, but it shall retain interest earned on the same
55 accumulated employee contributions in the instance of a
56 member’s or beneficiary’s post-retirement death.

CHAPTER 209

(Com. Sub. for S. B. 212 — By Senators Plymale, Fanning, Walker,
Sprouse, Jackson, Edgell, McCabe, Snyder, Ross, Hunter and Minard)

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

AN ACT to amend and reenact section twenty-four, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia public employees retirement act; annuity options; providing options when a member obtains a divorce; and requiring a divorced member to prove that there is no qualified domestic relations order in effect as a condition for the member to elect certain annuity options.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-24. Annuity options.

1 Prior to the effective date of his or her retirement, but not
2 thereafter except upon the death of a spouse, a member may
3 elect to receive his or her annuity as a straight life annuity
4 payable throughout his or her life, or he or she may elect to
5 receive the actuarial equivalent, at the time, of his or her
6 straight life annuity in a reduced annuity payable throughout his
7 or her life, and nominate a beneficiary, in accordance with
8 option A or B set forth below:

9 *Option A — Joint and survivor annuity.* — Upon the death
10 of a retirant who elected option A, his or her reduced annuity
11 shall be continued throughout the life of and paid to the
12 beneficiary, having an insurable interest in the retirant's life,
13 whom the retirant nominated by written designation duly
14 executed and filed with the board of trustees prior to the
15 effective date of his or her retirement; or

16 *Option B — Modified joint and survivor annuity.* — Upon
17 the death of a retirant who elected option B, one half of his or
18 her reduced annuity shall be continued throughout the life of
19 and paid to the beneficiary, having an insurable interest in the
20 retirant's life, whom the retirant nominated by written designa-
21 tion duly executed and filed with the board of trustees prior to
22 the effective date of his or her retirement.

23 Upon the death of a spouse, a retirant may elect any of the
24 retirement options offered by the provisions of this section in an
25 amount adjusted on a fair basis to be of equal actuarial value as
26 the annuity prospectively in effect relative to the surviving
27 member at the time the new option is elected.

28 Upon divorce, a member may elect to change any of the
29 retirement benefit options offered by the provisions of this
30 section to a life annuity in an amount adjusted on a fair basis to
31 be of equal actuarial value of the annuity prospectively in effect
32 relative to the retirant at the time the option is elected: *Pro-*
33 *vided,* That the retirant furnishes to the board satisfactory proof
34 of entry of a final decree of divorce or annulment: *Provided,*
35 *however,* That the retirant certifies under penalty of perjury that
36 no qualified domestic relations order that would restrict such an
37 election is in effect: *Provided further,* That no cause of action
38 against the board may then arise or be maintained on the basis
39 of having permitted the retirant to name a new spouse as
40 annuitant for any of the survivorship retirement benefit options.

41 Upon remarriage, a retirant may name the new spouse as an
42 annuitant for any of the retirement benefit options offered by
43 the provisions of this section: *Provided*, That the beneficiary
44 shall furnish to the board proof of marriage: *Provided, however*,
45 That the retirant certifies under penalty of perjury that no
46 qualified domestic relations order that would restrict such a
47 designation is in effect: *Provided further*, That no cause of
48 action against the board may then arise or be maintained on the
49 basis of having permitted the retirant to name a new spouse as
50 annuitant for any of the survivorship retirement benefit options.
51 The value of the new survivorship annuity shall be the actuarial
52 equivalent of the retirant's benefit prospectively in effect at the
53 time the new annuity is elected.

CHAPTER 210

(H. B. 4103 — 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 amend and reenact section seven, article ten-d, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to compensation limits of participants in public employee retirement plans.

Be it enacted by the Legislature of West Virginia:

That section seven, article ten-d, 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 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-7. Compensation limitations; effective dates.

1 Effective for plan years beginning after the thirty-first day
2 of December, one thousand nine hundred ninety-five, the
3 annual compensation of a participant taken into account in
4 determining benefits or contributions under any of the public
5 retirement plans administered by the board and which are
6 qualified plans under section 401(a)(17) of the Internal Revenue
7 Code may not exceed one hundred fifty thousand dollars, as
8 indexed. This provision shall apply notwithstanding any other
9 provision to the contrary in this code and not withstanding any
10 provisions of any legislative rule.

CHAPTER 211

(H. B. 4101 — 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 amend and reenact section three, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to definitions of terms pertaining to interest rates used in teacher retirement legislation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**§18-7A-3. Definitions.**

1 “Teacher member” means the following persons, if regu-
2 larly employed for full-time service: (a) Any person employed
3 for instructional service in the public schools of West Virginia;
4 (b) principals; (c) public school librarians; (d) superintendents
5 of schools and assistant county superintendents of schools; (e)
6 any county school attendance director holding a West Virginia
7 teacher’s certificate; (f) the executive secretary of the retire-
8 ment board; (g) members of the research, extension, administra-
9 tive or library staffs of the public schools; (h) the state superin-
10 tendent of schools, heads and assistant heads of the divisions
11 under his supervision, or any other employee thereunder
12 performing services of an educational nature; (i) employees of
13 the state board of education who are performing services of an
14 educational nature; (j) any person employed in a nonteaching
15 capacity by the state board of education, the West Virginia
16 board of regents [abolished], any county board of education, the
17 state department of education or the teachers retirement board,
18 if such person was formerly employed as a teacher in the public
19 schools; (k) all classroom teachers, principals and educational
20 administrators in schools under the supervision of the depart-
21 ment of corrections, the division of health or the division of
22 human services; and (l) employees of the state board of school
23 finance, if such person was formerly employed as a teacher in
24 the public schools.

25 “Nonteaching member” means any person, except a teacher
26 member, who is regularly employed for full-time service by: (a)
27 Any county board of education; (b) the state board of education;
28 (c) the West Virginia board of regents [abolished]; or (d) the
29 teachers retirement board.

30 “Members of the administrative staff of the public schools”
31 means deans of instruction, deans of men, deans of women, and
32 financial and administrative secretaries.

33 “Members of the extension staff of the public schools”
34 means every agricultural agent, boys’ and girls’ club agent, and

35 every member of the agricultural extension staff whose work is
36 not primarily stenographic, clerical or secretarial.

37 “Retirement system” means the state teachers retirement
38 system provided for in this article.

39 “Present teacher” means any person who was a teacher
40 within the thirty-five years beginning the first day of July, one
41 thousand nine hundred thirty-four, and whose membership in
42 the retirement system is currently active.

43 “New entrant” means a teacher who is not a present teacher.

44 “Regularly employed for full-time service” means employ-
45 ment in a regular position or job throughout the employment
46 term regardless of the number of hours worked or the method
47 of pay.

48 “Employment term” means employment for at least ten
49 months, a month being defined as twenty employment days.

50 “Present member” means a present teacher who is a
51 member of the retirement system.

52 “Total service” means all service as a teacher while a
53 member of the retirement system since last becoming a member
54 and, in addition thereto, credit for prior service, if any.

55 “Prior service” means all service as a teacher completed
56 prior to the first day of July, one thousand nine hundred forty-
57 one, and all service of a present member who was employed as
58 a teacher, and did not contribute to a retirement account
59 because he was legally ineligible for membership during the
60 service.

61 “Average final salary” means the average of the five
62 highest fiscal year salaries earned as a member within the last
63 fifteen fiscal years of total service credit, including military
64 service as provided herein, or if total service is less than fifteen

65 years, the average annual salary for the period on which
66 contributions were made.

67 “Accumulated contributions” means all deposits and all
68 deductions from the earnable compensation of a contributor
69 minus the total of all supplemental fees deducted from his
70 compensation.

71 “Regular interest” means interest at three percent com-
72 pounded annually, or a higher earnable rate if set forth in the
73 formula established in legislative rules, series seven of the
74 consolidated public retirement board.

75 “Refund interest” means interest compounded, according to
76 the formula established in legislative rules, series seven of the
77 consolidated public retirement board.

78 “Employer” means the agency of and within the state which
79 has employed or employs a member.

80 “Contributor” means a member of the retirement system
81 who has an account in the teachers accumulation fund.

82 “Beneficiary” means the recipient of annuity payments
83 made under the retirement system.

84 “Refund beneficiary” means the estate of a deceased
85 contributor, or a person as he shall have nominated as benefi-
86 ciary of his contributions by written designation duly executed
87 and filed with the retirement board.

88 “Earnable compensation” means the full compensation
89 actually received by members for service as teachers whether
90 or not a part of the compensation is received from other funds,
91 federal or otherwise, than those provided by the state or its
92 subdivisions. Allowances from employers for maintenance of
93 members shall be considered a part of earnable compensation
94 for such members whose allowances were approved by the
95 teachers retirement board and contributions to the teachers

96 retirement system were made, in accordance therewith, on or
97 before the first day of July, one thousand nine hundred eighty.

98 “Annuities” means the annual retirement payments for life
99 granted beneficiaries in accordance with this article.

100 “Member” means a member of the retirement system.

101 “Public schools” means all publicly supported schools,
102 including normal schools, colleges and universities in this state.

103 “Deposit” means a voluntary payment to his account by a
104 member.

105 The masculine gender shall be construed so as to include
106 the feminine.

107 Age in excess of seventy years shall be considered to be
108 seventy years.

CHAPTER 212

**(H. B. 4575 — By Delegates H. White, Mezzatesta, Jenkins,
Kominar, Michael and Hubbard)**

[Passed March 11, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen-b, relating to the state teachers retirement system; permitting members the option to purchase service credit for time periods they were absent from work and receiving temporary total disability payments; setting forth cost to purchase such service credit; establishing applicable time periods; and setting forth a window of time during which such purchase must occur.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

***§18-7A-14b. Members' option to make contributions for periods of temporary total disability.**

1 Any member who was absent from work while receiving
2 temporary total disability benefits pursuant to the provisions of
3 chapter twenty-three of this code as a result of a compensable
4 injury received in the course of and as a result of his or her
5 employment with the covered employer during the time period
6 beginning the first day of January, one thousand nine hundred
7 eighty-eight and the thirty-first day of December, one thousand
8 nine hundred ninety-eight, may purchase credited service for
9 that time period or those time periods the member was absent
10 from work as a result of a compensable injury and receiving
11 temporary total disability benefits: *Provided*, That the member
12 returned to work with his or her covered employer within one
13 year following the cessation of temporary total disability
14 benefits. The member desiring to purchase such credited service
15 may do so only by lump sum payment from personal funds:
16 *Provided, however*, That the purchase of service credit pursuant
17 to the provisions of this section shall be completed between the
18 time period beginning the first day of July, two thousand and
19 ending the thirtieth day of June, two thousand one: *Provided*
20 *further*, That in order to purchase such service credit, the
21 member shall pay to the board his or her regular contribution
22 and an equal amount that represents the employer's contribu-
23 tion, based on the salary the member was receiving immediately
24 prior to having sustained such compensable injury: *And*
25 *provided further*, That the member purchasing service credit
26 under the provisions of this section may not be charged interest.
27 The maximum number of years of service credit that may be
28 purchased under this section shall not exceed two.

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 204), which passed subsequent to this act.

CHAPTER 213

(H. B. 4541 — By Delegates Jenkins, Campbell, Williams,
J. Smith, Harrison, Hubbard and Hall)

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

AN ACT to amend and reenact section twenty-four, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the disposition of accumulated contributions in the teacher retirement system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-24. Disposition of accumulated contributions upon cessation of membership.

1 When a contributor with fewer than five years of service
2 ceases to be a member because of absence from service as a
3 teacher, his or her accumulated contributions with refund
4 interest up to and including the fiscal year in which his or her
5 membership ceased, shall be returned to him or her, or to his or
6 her legal representative. Five years after cessation of member-
7 ship, if such contributor or his or her legal representative cannot
8 be found, his accumulated contributions with refund interest
9 shall be forfeited to the retirement system and credited to the
10 reserve fund.

CHAPTER 214

(Com. Sub. for S. B. 211 — By Senators Plymale, Fanning, Walker,
Sprouse, Jackson, Edgell, McCabe, Snyder, Ross,
Bowman, Hunter, Minard, McKenzie and Redd)

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

AN ACT to amend and reenact section twenty-eight, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the state teachers retirement system; and providing for the rights of members to name annuitants.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-28. Options to beneficiaries; change of certain options because of divorce or annulment; limitation on recalculated monthly benefits.

1 The retirement board is hereby authorized to offer plans,
2 optional with the beneficiary, for the payment of allowances
3 due such beneficiary for retirement, withdrawal or prior service
4 pensions under the retirement system. No plans shall be offered,
5 however, which are not approved by competent actuaries.

6 When a beneficiary and his or her spouse have been
7 approved for a retirement plan which provides for them a joint
8 life annuity, and their marriage is subsequently dissolved, the
9 board shall permit such beneficiary to convert to the maximum
10 life annuity plan approved by the board: *Provided*, That the

11 beneficiary shall furnish to the board proof of entry of a final
12 decree of divorce or annulment: *Provided, however,* That a
13 beneficiary who qualifies for the change of retirement plans
14 afforded by this section shall be permitted only one such
15 change: *Provided further,* That the recalculated monthly
16 benefits, independently of increases granted by law after the
17 beneficiary's retirement, shall not exceed the monthly benefits
18 which would have been applicable under the maximum life
19 annuity plan at the time the beneficiary retired; and with such
20 recalculation to be effective on the first day of the month
21 following submission to the board by the beneficiary of proof
22 of entry of a final decree of divorce or annulment.

23 Upon remarriage, a retirant may name the new spouse as an
24 annuitant for any of the survivorship retirement benefit options
25 offered by the provisions of this section: *Provided,* That the
26 beneficiary shall furnish to the retirement board satisfactory
27 proof of the marriage: *Provided, however,* That the retirant
28 certifies under penalty of perjury that no qualified domestic
29 relations order that would restrict such a designation is in
30 effect: *Provided further,* That no cause or action against the
31 board may then arise or be maintained on the basis of having
32 permitted the retirant to name a new spouse as annuitant for any
33 of the survivorship retirement benefit options. The value of the
34 new survivorship annuity shall be the actuarial equivalent of the
35 retirant's benefit prospectively in effect at the time the new
36 annuity is elected.

CHAPTER 215

(Com. Sub. for H. B. 4049 — By Delegate Warner)

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

AN ACT to amend and reenact section seventeen-b, article four,
chapter seventeen of the code of West Virginia, one thousand nine

hundred thirty-one, as amended; and to amend said article by adding thereto a new section, designated section seventeen-d, all relating to the payment of utilities on highway construction projects.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. STATE ROAD SYSTEM.

§17-4-17b. Relocation of public utility lines to accommodate federal-aid highway projects.

§17-4-17d. Relocation of public utility lines on state highway construction projects.

§17-4-17b. Relocation of public utility lines to accommodate federal-aid highway projects.

1 (a) Whenever the commissioner of highways determines
2 that any public utility line or facility located upon, across or
3 under any portion of a state highway needs to be relocated in
4 order to accommodate a federal-aid interstate or Appalachian
5 highway project, he or she shall notify the public utility owning
6 or operating the facility which shall relocate the same in
7 accordance with the order of the commissioner. The cost of the
8 relocation shall be paid out of the state road fund in all cases
9 involving the interstate or the Appalachian system where
10 proportionate reimbursement of the cost shall be obtained by
11 the commissioner of highways from the United States pursuant
12 to the "Federal Aid Highway Act of 1956" or the "Appalachian
13 Regional Development Act of 1965," as amended, and all acts
14 amendatory or supplementary thereto: *Provided*, That the cost
15 of any relocation of municipally owned utility facilities and
16 water or sanitary districts or authorities shall be paid out of state

17 road funds in any case involving any federal-aid system where
18 proportionate reimbursement of such cost shall be obtained by
19 the commissioner of highways from the United States.

20 (b) For the purposes of this section, the term, "cost of
21 relocation," includes the entire amount paid by the utility,
22 exclusive of any right-of-way costs incurred by the utility,
23 properly attributable to the relocation after deducting therefrom
24 any increase in the value of the new facility and salvage value
25 derived from the old facility.

26 The cost of relocating utility facilities, as defined in this
27 section, in connection with any federal-aid interstate or Appala-
28 chian highway project is hereby declared to be a cost of
29 highway construction.

30 (c) The commissioner of highways is hereby authorized to
31 include within the cost of highway construction the cost of
32 relocation necessarily incurred by any public utility, and any
33 pipeline company subject to the jurisdiction of the federal
34 energy regulatory commission, in relocating any public utility
35 line, pipeline or facility as a result of the construction of any
36 fully or partially controlled access highway as a part of the
37 national highway system as authorized by the "Federal
38 Intermodal Surface Transportation Efficiency Act of 1991", and
39 all acts amendatory and supplementary thereto as of the
40 twentieth day of March, one thousand nine hundred
41 ninety-three. The provisions of article five-a, chapter
42 twenty-one of this code apply to all work performed pursuant
43 to the provisions of this subsection.

44 (d) Any notice required by this section is sufficient if given
45 by registered or certified mail, return receipt requested,
46 addressed to any officer of the utility or to an individual if the
47 person to whom the notice is required is an individual.

§17-4-17d. Relocation of public utility lines on state highway construction projects.

1 (a) Whenever the commissioner of highways determines
2 that any public utility line owned by a county or municipal
3 governmental body located upon, across or under any portion
4 of a state highway needs to be relocated in order to accommo-
5 date a highway project for which proportionate reimbursement
6 of the cost is not available from any federal program, the
7 commissioner shall notify the public utility owning or operating
8 the facility which shall relocate the same in accordance with the
9 order of the commissioner, and the cost of the relocation shall
10 be paid out of the state road fund.

11 (b) The commissioner may propose legislative rules in
12 accordance with the provisions of article three, chapter twenty-
13 nine-a of this code to provide for reimbursement of privately
14 held public utilities for the cost of relocation, due to the
15 division of highways construction or improvement projects, of
16 their public utility lines located upon, across or under any
17 portion of a state highway in order to accommodate a highway
18 project for which proportionate reimbursement of the cost is not
19 available from any federal program, with the cost of the
20 relocation to be paid out of the state road fund.

21 (c) For the purpose of this section, the term “cost of
22 relocation” includes the entire amount paid by the utility,
23 exclusive of any right-of-way costs incurred by the utility,
24 properly attributable to the relocation after deducting therefrom
25 any increase in the value of the new facility and salvage value
26 derived from the old facility.

27 (d) Any notice required by this section is sufficient if given
28 by registered mail or certified mail, return receipt requested,
29 addressed to any officer of the utility or to an individual if the
30 person to whom notice is required is an individual.

CHAPTER 216

(H. B. 4740 — By Delegates Azinger, Modesitt, Beane,
Anderson and Border)

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

AN ACT to amend article seventeen, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-seven, relating to giving a county commission the opportunity to assume the ownership and control of a toll bridge in the event the municipality which owns and operates the bridge chooses not to retain ownership of the bridge.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. TOLL BRIDGES.

§17-17-37. Transfer of toll bridge to county.

1 Notwithstanding any provision of this code to the contrary,
2 in the event the municipality which owns and operates a toll
3 bridge does not retain ownership of the bridge under the
4 provisions of section thirty-five of this article, the county
5 commission of the county in which the municipality is located
6 has the option to take over the ownership and operation of the
7 bridge. The commissioner of the division of highways shall
8 notify the county commission in writing when the opportunity
9 to exercise the option exists. The county commission has ninety

10 days from receipt of the notification to exercise its option. If the
11 county commission decides to assume the ownership and
12 control of the bridge, it shall comply with all applicable
13 provisions of this article that are imposed on a municipality that
14 chooses to retain ownership of a toll bridge.

CHAPTER 217

(Com. Sub. for H. B. 4063 — By Delegates Flanigan and Prunty)

[Passed March 9, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty, relating to authorizing legislative rules providing for the placement of roadside memorial markers or other tributes within state highway rights-of-way to memorialize people who have died as a result of vehicle related accidents; provisions of rules; and removal of markers or tributes.

Be it enacted by the Legislature of West Virginia:

That chapter seventeen 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, to read as follows:

ARTICLE 20. ROADSIDE MEMORIAL MARKERS.

§17-20-1. Roadside memorial markers authorized.

§17-20-2. Roadside memorial marker criteria.

§17-20-1. Roadside memorial markers authorized.

1 Notwithstanding any provision of section one, article
2 nineteen of this chapter to the contrary, the commissioner of
3 highways is authorized to propose legislative rules for promul-
4 gation in accordance with the provisions of chapter twenty-
5 nine-a of this code providing for the placement of memorial

6 markers or other tributes within state highway rights-of-way to
7 memorialize people who have died as a result of vehicle related
8 accidents.

§17-20-2. Roadside memorial marker criteria.

1 (a) Legislative rules proposed pursuant to section one of
2 this article shall provide for the placement of markers in a
3 manner that increases public awareness of highway safety and
4 promotes the safe use of the highways and their rights-of-way.
5 The rules shall prescribe circumstances under which:

6 (1) Memorial markers may be placed near to where a fatal
7 accident occurred, considering available space, property owner
8 complaints or other constraints; and

9 (2) Decorations, flowers or other memorial ornaments or
10 tributes may be placed on the right-of-way by family members.

11 (b) Notwithstanding any provision of the rules to the
12 contrary, the commissioner may direct or cause the removal of
13 any memorial marker or tribute from a state highway right-of-
14 way, without notice, upon the determination by the commis-
15 sioner that the removal is necessary for construction, mainte-
16 nance, safety or other purpose. The state of West Virginia, its
17 agencies and subdivisions, and their officers and employees
18 shall not be liable for any claims arising as a result of the
19 removal of a marker or tribute.

CHAPTER 218

(H. B. 4603 — 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 article one, chapter five-f of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, by

adding thereto a new section, designated section three-a, relating to establishing an executive compensation commission and setting forth the duties and responsibilities of the commission.

Be it enacted by the Legislature of West Virginia:

That article one, chapter five-f 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-a, to read as follows:

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-3a. Executive compensation commission.

1 There is hereby created an executive compensation com-
2 mission composed of three members, one of whom shall be the
3 secretary of administration, one of whom shall be appointed by
4 the governor from the names of two or more nominees submit-
5 ted by the president of the Senate, and one of whom shall be
6 appointed by the governor from the names of two or more
7 nominees submitted by the speaker of the House of Delegates.
8 The names of such nominees shall be submitted to the governor
9 by not later than the first day of June in the year two thousand,
10 and the appointment of such members shall be made by the
11 governor by not later than the first day of July in the year two
12 thousand. The members appointed by the governor shall have
13 had significant business management experience at the time of
14 their appointment and shall serve without compensation other
15 than reimbursement for their reasonable expenses necessarily
16 incurred in the performance of their commission duties. For the
17 regular session of the Legislature, two thousand one, and every
18 four years thereafter, the commission shall review the compen-
19 sation for cabinet secretaries and other appointed officers of this
20 state, including, but not limited to, the following: Commis-
21 sioner, division of highways; commissioner, bureau of employ-
22 ment programs; director, division of environmental protection;
23 commissioner, bureau of senior services; director of tourism;

24 commissioner, division of tax; administrator, division of health;
25 commissioner, division of corrections; director, division of
26 natural resources; superintendent, state police; administrator,
27 lottery division; director, public employees insurance agency;
28 administrator, alcohol beverage control commission; commis-
29 sioner, division of motor vehicles; director, division of person-
30 nel; adjutant general; chairman, health care authority; members,
31 health care authority; director, division of rehabilitation
32 services; executive director, educational broadcasting authority;
33 executive secretary, library commission; chairman and mem-
34 bers of the public service commission; director of emergency
35 services; administrator, division of human services; executive
36 director, human rights commission; director, division of
37 veterans affairs; director, office of miner's health safety and
38 training; commissioner, division of banking; commissioner,
39 division of insurance; commissioner, division of culture and
40 history; commissioner, division of labor; director, prosecuting
41 attorneys institute; director, board of risk and insurance
42 management; commissioner, oil and gas conservation commis-
43 sion; director, geological and economic survey; executive
44 director, water development authority; executive director,
45 public defender services; director, state rail authority; chairman
46 and members of the parole board; members, employment
47 security review board; members, workers' compensation appeal
48 board; chairman, racing commission; executive director,
49 women's commission; and director, hospital finance authority.

50 Following this review, but not later than the twenty-first
51 day of such regular session, the commission shall submit an
52 executive compensation report to the Legislature to include
53 specific recommendations for adjusting the compensation for
54 the officers described in this section. The recommendation may
55 be in the form of a bill to be introduced in each house to amend
56 this section to incorporate the recommended adjustments.

CHAPTER 219

**(Com. Sub. for S. B. 497 — By Senators Kessler, Mitchell,
Snyder, Edgell, Hunter, Unger, Plymale, Sharpe,
Bowman, Ball, McKenzie and Sprouse)**

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

AN ACT to amend and reenact section two, article two-c, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one-a, two, two-a, three, four, five, eight and nine, article twelve of said chapter, all relating to the central abuse and the sex offender registries; declaring a reduced expectation of privacy for sex offenders; including persons convicted of certain attempted offenses and persons found not guilty by reason of mental illness, mental retardation or addiction within registration requirements; adding required registration information from sex offenders; requiring the department of health and human resources to obtain information; adding persons found not guilty by reason of mental illness, mental retardation or addiction in duration determination; adding entities that receive information on sex offenders; providing that failure to provide notice of changes in registration information constitutes a criminal offense; requiring notice to certain offenders; increasing penalties for certain offenders who fail to provide information; requiring registration of out-of-state persons who visit this state and who have been convicted of an offense similar to an offense requiring registration in this state or in the state of residence; and requiring registration of certain offenders moving to this state.

Be it enacted by the Legislature of West Virginia:

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

Article

2C. Central Abuse Registry.

12. Sex Offender Registration Act.

ARTICLE 2C. CENTRAL ABUSE REGISTRY.

§15-2C-2. Central abuse registry; required information; procedures.

1 (a) The criminal identification bureau of the West Virginia
2 state police shall establish a central abuse registry, to contain
3 information relating to criminal convictions involving child
4 abuse or neglect, abuse or neglect of an incapacitated adult and
5 misappropriation of property by individuals specified in
6 subsection (b) of this section and information relating to
7 individuals required to be registered as a sex offender.

8 (b) The central abuse registry shall contain, at a minimum,
9 information relating to: Convictions of a misdemeanor or a
10 felony involving abuse, neglect or misappropriation of property,
11 by an individual performing services for compensation, within
12 the scope of the individual's employment or contract to provide
13 services, in a residential care facility, in a licensed day care
14 center, or in connection with the provision of home care
15 services; information relating to individuals convicted of
16 specific offenses enumerated in subsection (a), section three of
17 this article with respect to a child or an incapacitated adult; and
18 information relating to all individuals required to register with
19 the West Virginia state police as sex offenders pursuant to the
20 provisions of article twelve, chapter fifteen of this code. The
21 central abuse registry shall contain the following information:

22 (1) The individual's full name;

23 (2) Sufficient information to identify the individual,
24 including date of birth, social security number and fingerprints
25 if available;

26 (3) Identification of the criminal offense constituting abuse,
27 neglect or misappropriation of property of a child or an incapac-
28 itated adult;

29 (4) For cases involving abuse, neglect or misappropriation
30 of property of a child or an incapacitated adult in a residential
31 care facility or a day care center, or of a child or an incapaci-
32 tated adult receiving home care services, sufficient information
33 to identify the location where the documentation of any
34 investigation by the department of health and human resources
35 is on file and the location of pertinent court files; and

36 (5) Any statement by the individual disputing the convic-
37 tion, if he or she chooses to make and file one.

38 (c) Upon conviction in the criminal courts of this state of a
39 misdemeanor or a felony offense constituting child abuse or
40 neglect or abuse or neglect of an incapacitated adult, the
41 individual so convicted shall be placed on the central abuse
42 registry.

ARTICLE 12. SEX OFFENDER REGISTRATION ACT.

§15-12-1a. Intent and findings.

§15-12-2. Registration.

§15-12-2a. Court determination of sexually violent predator.

§15-12-3. Change in registry information.

§15-12-4. Duration.

§15-12-5. Distribution and disclosure of information; community information programs by prosecuting attorney and state police; petition to circuit court.

§15-12-8. Failure to register or provide notice of registration changes; penalty.

§15-12-9. Registration of out-of-state offenders.

§15-12-1a. Intent and findings.

1 (a) It is the intent of this article to assist law-enforcement
2 agencies' efforts to protect the public from sex offenders by
3 requiring sex offenders to register with the state police detach-
4 ment in the county where he or she shall reside and by making
5 certain information about sex offenders available to the public
6 as provided in this article. It is not the intent of the Legislature
7 that the information be used to inflict retribution or additional
8 punishment on any person convicted of any offense requiring
9 registration under this article. This article is intended to be
10 regulatory in nature and not penal.

11 (b) The Legislature finds and declares that there is a
12 compelling and necessary public interest that the public have
13 information concerning persons convicted of sexual offenses in
14 order to allow members of the public to adequately protect
15 themselves and their children from these persons.

16 (c) The Legislature also finds and declares that persons
17 required to register as sex offenders pursuant to this article have
18 a reduced expectation of privacy because of the state's interest
19 in public safety.

§15-12-2. Registration.

1 (a) The provisions of this article apply both retroactively
2 and prospectively.

3 (b) Any person who has been convicted of an offense or an
4 attempted offense or has been found not guilty by reason of
5 mental illness, mental retardation or addiction of an offense
6 under any of the following provisions of chapter sixty-one of
7 this code or under a similar provision in another state, federal
8 or military jurisdiction shall register as set forth in subsection
9 (d) of this section and according to the internal management
10 rules promulgated by the superintendent under authority of
11 section twenty-five, article two, chapter fifteen of this code:

12 (1) Article eight-b;

13 (2) Article eight-c;

14 (3) Sections five and six, article eight-d;

15 (4) Section fourteen, article two; or

16 (5) Sections six, seven, twelve and thirteen, article eight.

17 (c) Any person who has been convicted of a criminal
18 offense, which at the time of sentencing was found by the
19 sentencing judge to have been sexually motivated, shall also
20 register as set forth in this article.

21 (d) Persons required to register under the provisions of this
22 article shall provide or cooperate in providing, at a minimum,
23 the following when registering:

24 (1) The full name of the registrant, including any aliases,
25 nicknames or other names used by the registrant;

26 (2) The address where the registrant intends to reside or
27 resides at the time of registration, the name and address of the
28 registrant's employer or place of occupation at the time of
29 registration, the names and addresses of any anticipated future
30 employers or places of occupation, the name and address of any
31 school or training facility the registrant is attending at the time
32 of registration and the names and addresses of any schools or
33 training facilities the registrant expects to attend;

34 (3) The registrant's social security number;

35 (4) A full face photograph of the registrant at the time of
36 registration;

37 (5) A brief description of the crime(s) for which the
38 registrant was convicted; and

39 (6) Fingerprints.

40 (e) On the date that any person convicted or found not
41 guilty by reason of mental illness, mental retardation or

42 addiction of any of the crimes listed herein, including those
43 persons who are continuing under some post conviction
44 supervisory status, are released, granted probation or a sus-
45 pended sentence, released on parole, probation, home detention,
46 work release, conditional release or any other release from
47 confinement, the commissioner of corrections, regional jail
48 administrator, city or sheriff operating a jail, or secretary of the
49 department of health and human services which releases the
50 person, and any parole or probation officer who releases the
51 person or supervises the person following the release, shall
52 obtain all information required by subsection (d) of this section
53 prior to the release of the person, inform the person of his or her
54 duty to register, and send written notice of the release of the
55 person to the state police within three days of receiving the
56 information. The notice shall include the information required
57 by subsection (d) of this section.

58 (f) For any person determined to be a sexually violent
59 predator, the notice required by subsection (d) of this section
60 shall also include:

61 (1) Identifying factors, including physical characteristics;

62 (2) History of the offense; and

63 (3) Documentation of any treatment received for the mental
64 abnormality or personality disorder.

65 (g) At the time the person is convicted or found not guilty
66 by reason of mental illness, mental retardation or addiction in
67 a court of this state of the crimes set forth in subsection (b) of
68 this section, the person shall sign in open court, a statement
69 acknowledging that he or she understands the requirements
70 imposed by this article. The court shall inform the person so
71 convicted of the requirements to register imposed by this article
72 and shall further satisfy itself by interrogation of the defendant
73 or his or her counsel that the defendant has received notice of

74 the provisions of this article and that the defendant understands
75 the provisions. The statement, when signed and witnessed, shall
76 constitute prima facie evidence that the person had knowledge
77 of the requirements of this article. Persons who have not signed
78 a statement under the provisions of this subsection and who are
79 subject to the registration requirements of this article shall be
80 informed of such requirement by the state police whenever the
81 state police obtain information that the person is subject to
82 registration requirements.

83 (h) The state police shall maintain a central registry of all
84 persons who register under this article and shall release
85 information only as provided in this article. The information
86 required to be made public by the state police by subdivision
87 (2), subsection (b), section five of this article shall be accessible
88 through the internet.

89 (i) For the purpose of this article, “sexually violent offense”
90 means:

91 (1) Sexual assault in the first degree as set forth in section
92 three, article eight-b, chapter sixty-one of this code, or of a
93 similar provision in another state, federal or military jurisdic-
94 tion;

95 (2) Sexual assault in the second degree as set forth in
96 section four, article eight-b, chapter sixty-one of this code, or of
97 a similar provision in another state, federal or military jurisdic-
98 tion;

99 (3) Sexual assault of a spouse as set forth in section six,
100 article eight-b, chapter sixty-one of this code, or of a similar
101 provision in another state, federal or military jurisdiction;

102 (4) Sexual abuse in the first degree as set forth in section
103 seven, article eight-b, chapter sixty-one of this code, or of a
104 similar provision in another state, federal or military jurisdic-
105 tion.

106 (j) For purposes of this article, the term “sexually moti-
107 vated” means that one of the purposes for which a person
108 committed the crime was for any person’s sexual gratification.

109 (k) For purposes of this article, the term “sexually violent
110 predator” means a person who has been convicted or found not
111 guilty by reason of mental illness, mental retardation or
112 addiction of a sexually violent offense and who suffers from a
113 mental abnormality or personality disorder that makes the
114 person likely to engage in predatory sexually violent offenses.

115 (l) For purposes of this article, the term “mental abnormal-
116 ity” means a congenital or acquired condition of a person that
117 affects the emotional or volitional capacity of the person in a
118 manner that predisposes that person to the commission of
119 criminal sexual acts to a degree that makes the person a menace
120 to the health and safety of other persons.

121 (m) For purposes of this article, the term “predatory act”
122 means an act directed at a stranger or at a person with whom a
123 relationship has been established or promoted for the primary
124 purpose of victimization.

§15-12-2a. Court determination of sexually violent predator.

1 (a) The circuit court that has sentenced a person for the
2 commission of a sexually violent offense or that has entered a
3 judgment of acquittal of a charge of committing a sexually
4 violent offense in which the defendant has been found not
5 guilty by reason of mental illness, mental retardation or
6 addiction shall make a determination whether:

7 (1) A person is a sexually violent predator; or

8 (2) A person is no longer a sexually violent predator.

9 (b) A hearing to make a determination as provided for in
10 subsection (a) of this section is a summary proceeding, triable
11 before the court without a jury.

12 (c) A proceeding seeking to establish that a person is a
13 sexually violent predator is initiated by the filing of a written
14 pleading by the prosecuting attorney. The pleading shall
15 describe the record of the judgment of the court on the person's
16 conviction or finding of not guilty by reason of mental illness,
17 mental retardation or addiction of a sexually violent offense and
18 shall set forth a short and plain statement of the prosecutor's
19 claim that the person suffers from a mental abnormality or
20 personality disorder that makes the person likely to engage in
21 predatory sexually violent offenses.

22 (d) A proceeding seeking to establish that a person is no
23 longer a sexually violent predator is initiated by the filing of a
24 petition by the person who has been determined to be a sexually
25 violent predator.

26 (e) Prior to making a determination pursuant to the provi-
27 sions of this section, the sentencing court may order a psychiat-
28 ric or other clinical examination and, after examination, may
29 further order a period of observation in an appropriate facility
30 within this state designated by the court after consultation with
31 the director of the division of health.

32 (f) Prior to making a determination pursuant to the provi-
33 sions of this section, the sentencing court shall request and
34 receive a report by the board established pursuant to section
35 two-b of this article. The report shall set forth the findings and
36 recommendation of the board on the issue of whether the person
37 is a sexually violent predator.

38 (g) At a hearing to determine whether a person is a sexually
39 violent predator, the person shall be present and shall have the
40 right to be represented by counsel, introduce evidence and
41 cross-examine witnesses. The offender shall have access to a
42 summary of the medical evidence to be presented by the state.
43 The offender shall have the right to an examination by an
44 independent expert of his or her choice and testimony from the

45 expert as a medical witness on his or her behalf. At the termina-
46 tion of the hearing the court shall make a finding of fact upon
47 a preponderance of the evidence as to whether the person is a
48 sexually violent predator.

49 (h) If a person is determined by the circuit court to be a
50 sexually violent predator, the clerk of the court shall forward a
51 copy of the order to the state police in the manner promulgated
52 in accordance with the provisions of article three, chapter
53 twenty-nine-a of this code.

§15-12-3. Change in registry information.

1 When any person required to register under this article
2 changes his or her residence, address, place of employment or
3 occupation, or school or training facility which he or she is
4 attending, or when any of the other information required by this
5 article changes, he or she shall, within ten days, inform the
6 West Virginia state police of the changes in the manner
7 prescribed by the superintendent of state police in procedural
8 rules promulgated in accordance with the provisions of article
9 three, chapter twenty-nine-a of this code.

§15-12-4. Duration.

1 (a) A person required to register under the terms of this
2 article shall continue to comply with this section, except during
3 ensuing periods of incarceration or confinement, until:

4 (1) Ten years have elapsed since the person was released
5 from prison, jail or a mental health facility or ten years have
6 elapsed since the person was placed on probation, parole or
7 supervised or conditional release. The ten-year registration
8 period shall not be reduced by the sex offender's release from
9 probation, parole or supervised or conditional release; or

10 (2) For the life of that person if that person: (A) Has one or
11 more prior convictions or has previously been found not guilty

12 by reason of mental illness, mental retardation or addiction for
13 any qualifying offense referred to in this article; or (B) has been
14 convicted or has been found not guilty by reason of mental
15 illness, mental retardation or addiction of a qualifying offense
16 as referred to in this article, and upon motion of the prosecuting
17 attorney, the court finds by clear and convincing evidence, that
18 the qualifying offense involved multiple victims or multiple
19 violations of the qualifying offense; or (C) has been convicted
20 or has been found not guilty by reason of mental illness, mental
21 retardation or addiction of a sexually violent offense; or (D) has
22 been determined pursuant to section two-a of this article to be
23 a sexually violent predator; or (E) has been convicted or has
24 been found not guilty by reason of mental illness, mental
25 retardation or addiction of a qualifying offense as referred to in
26 this article, involving a minor.

27 (b) A person whose conviction is overturned for the offense
28 which required them to register under this article shall, upon
29 petition to the court, have their name removed from the
30 registry.

**§15-12-5. Distribution and disclosure of information; community
information programs by prosecuting attorney
and state police; petition to circuit court.**

1 (a) Within five working days after receiving any notifica-
2 tion as described in this article, the state police shall distribute
3 a copy of the notification statement to:

4 (1) The supervisor of each county and municipal
5 law-enforcement office and any campus police department in
6 the city and county where the registrant resides, is employed or
7 attends school or a training facility;

8 (2) The county superintendent of schools where the
9 registrant resides, is employed or attends school or a training
10 facility;

11 (3) The child protective services office charged with
12 investigating allegations of child abuse or neglect in the county
13 where the registrant resides, is employed or attends school or a
14 training facility;

15 (4) All community organizations or religious organizations
16 which regularly provide services to youths in the county where
17 the registrant resides, is employed or attends school or a
18 training facility;

19 (5) Individuals and organizations which provide day care
20 services for youths or day care, residential or respite care, or
21 other supportive services for mentally or physically incapacitated
22 or infirm persons in the county where the registrant
23 resides, is employed or attends school or a training facility; and

24 (6) The federal bureau of investigation (FBI).

25 (b) Information concerning persons whose names are
26 contained in the sexual offender registry and who are not
27 required to register for life shall be disseminated only in the
28 following manner and shall not be subject to the requirements
29 of the West Virginia freedom of information act, as set forth in
30 chapter twenty-nine-b of this code:

31 (1) When a person has been determined to be a sexually
32 violent predator under the terms of section two-a of this article,
33 the state police shall notify the prosecuting attorney of the
34 county in which the person resides, is employed or attends a
35 school or training facility. The prosecuting attorney shall
36 cooperate with the state police in conducting a community
37 notification program which shall include publication of the
38 offender's name, photograph, and place of residence, employ-
39 ment and education or training, as well as information concern-
40 ing the legal rights and obligations of both the offender and the
41 community. The prosecuting attorney and state police may
42 conduct a community notification program in the county of

43 residence, employment or where a person is attending school or
44 a training facility of any person who is required to register for
45 life under the terms of subdivision (2), subsection (a), section
46 four of this article. Community notification may be repeated
47 when determined to be appropriate by the prosecuting attorney;

48 (2) The state police shall maintain and make available to
49 the public at least quarterly the list of all persons who are
50 required to register for life according to the terms of subdivi-
51 sion (2), subsection (a), section four of this article. The method
52 of publication and access to this list shall be determined by the
53 superintendent; and

54 (3) A resident of a county may petition the circuit court for
55 an order requiring the state police to release information about
56 persons residing in that county who are required to register
57 under section two of this article. The court shall determine
58 whether information contained on the list and relevant to public
59 safety outweighs the importance of confidentiality, and if the
60 court orders information to be released, it may further order
61 limitations upon secondary dissemination by the resident
62 seeking the information. In no event shall information concern-
63 ing the identity of a victim of an offense requiring registration
64 be released.

65 (c) The state police may furnish information and documen-
66 tation required in connection with the registration to authorized
67 law-enforcement, campus police and governmental agencies of
68 the United States and its territories, of foreign countries duly
69 authorized to receive the same, of other states within the United
70 States and of the state of West Virginia upon proper request
71 stating that the records will be used solely for law enforcement-
72 related purposes. The state police may disclose information
73 collected under this article to federal, state and local govern-
74 mental agencies responsible for conducting preemployment
75 checks.

76 (d) An elected public official, public employee or public
77 agency is immune from civil liability for damages arising out
78 of any action relating to the provisions of this section except
79 when the official, employee or agency acted with gross negli-
80 gence or in bad faith.

§15-12-8. Failure to register or provide notice of registration changes; penalty.

1 (a) Except as provided in this section, any person required
2 to register under this article who knowingly provides false
3 information or who refuses to provide accurate information
4 when so required by terms of this article, or who knowingly
5 fails to register or knowingly fails to provide a change in any
6 information as required by this article, is guilty of a misde-
7 meanor and, upon conviction thereof, shall be fined not less
8 than two hundred fifty dollars nor more than ten thousand
9 dollars, or imprisoned in the county or regional jail not more
10 than one year, or both: *Provided*, That each time the person has
11 a change in any of the registration information as required by
12 this article and fails to register the change or changes, each
13 failure to register each separate item of information changed
14 shall constitute a separate offense.

15 (b) Any person required to register under this article who is
16 convicted of a second or subsequent offense of failing to
17 register or provide a change in any information as required by
18 this article, or any person who is required to register for life
19 pursuant to subsection (2), subdivision (a), section four of this
20 article and who fails to register or provide a change in informa-
21 tion as required by this article is guilty of a felony and, upon
22 conviction thereof, shall be imprisoned in a state correctional
23 facility for not less than one year nor more than five years.

24 (c) Any person required to register as a sexual predator who
25 fails to register or provide a change in information as required
26 by this article is guilty of a felony and, upon conviction thereof,

27 shall, for a first offense, be confined in a state correctional
28 facility not less than two years nor more than ten years, and for
29 a second or subsequent offense, is guilty of a felony and shall
30 be confined in a state correctional facility not less than five
31 years nor more than twenty years.

32 (d) In addition to any other penalty specified for failure to
33 register under this article, any person under the supervision of
34 a probation officer, parole officer or any other sanction short of
35 confinement in jail or prison, who knowingly refuses to
36 register, or who knowingly fails to provide a change in informa-
37 tion as required by this article, shall be subject to immediate
38 revocation of probation or parole and returned to confinement
39 for the remainder of any suspended or unserved portion of his
40 or her original sentence.

§15-12-9. Registration of out-of-state offenders.

1 (a) When any probation or parole officer accepts supervi-
2 sion of and has legal authority over any person required to
3 register under this article from another state under the terms and
4 conditions of the uniform act for out-of-state parolee supervi-
5 sion established under article six, chapter twenty-eight of this
6 code, the officer shall give the person written notice of the
7 registration requirements of this section and obtain a signed
8 statement from the person required to register acknowledging
9 the receipt of the notice. The officer shall obtain and submit to
10 the state police the information required in subsection (d),
11 section two of this article.

12 (b) Any person:

13 (1) Who resides in another state or federal or military
14 jurisdiction;

15 (2) Who is employed, carries on a vocation, is a student in
16 this state or is a visitor to this state for a period of more than
17 fifteen continuous days; and

18 (3) Who is required by the state, federal or military jurisdic-
19 tion in which he or she resides to register in that state, federal
20 or military jurisdiction as a sex offender, or has been convicted
21 of a violation in that state, federal or military jurisdiction that
22 is similar to a violation in this article requiring registration as
23 a sex offender in this state, shall register in this state and
24 otherwise comply with the provisions of this article.

25 (c) Any person changing residence to this state from
26 another state or federal or military jurisdiction who is required
27 to register as a sex offender under the laws of that state or
28 federal or military jurisdiction shall register as a sex offender in
29 this state.

CHAPTER 220

(S. B. 127 — By Senators Hunter, Mitchell and Kessler)

[Passed February 17, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one thousand three hundred one, article thirteen, chapter thirty-one-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to adding social workers to the list of professionals who may organize professional limited liability companies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. PROFESSIONAL LIMITED LIABILITY COMPANIES.

§31B-13-1301. Definitions.

1 As used in this article:

2 (1) "Licensing board" means the governing body or agency
3 established under chapter thirty of this code which is responsi-
4 ble for the licensing and regulation of the practice of the
5 profession which the professional limited liability company is
6 organized to provide;

7 (2) "Professional limited liability company" means a
8 limited liability company organized under this chapter for the
9 purpose of rendering a professional service; and

10 (3) "Professional service" means the services rendered by
11 the following professions: Attorneys-at-law under article two,
12 physicians and podiatrists under article three, dentists under
13 article four, optometrists under article eight, accountants under
14 article nine, veterinarians under article ten, architects under
15 article twelve, engineers under article thirteen, osteopathic
16 physicians and surgeons under article fourteen, chiropractors
17 under article sixteen, psychologists under article twenty-one
18 and social workers under article thirty, all of chapter thirty of
19 this code.

CHAPTER 221

(Com. Sub. for S. B. 406 — By Senators Bowman, Bailey, Ball, Dawson,
Kessler, McCabe, Minard, Redd, Snyder, Boley and Minear)

[Passed March 9, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend and reenact sections four and eleven, article six,
chapter five of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, all relating to the state building

commission; terminating certain powers; and transferring certain powers and responsibilities to the secretary of administration and to the West Virginia economic development authority.

Be it enacted by the Legislature of West Virginia:

That sections four and eleven, article six, 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 6. STATE BUILDINGS.

§5-6-4. Powers of commission.

§5-6-11. Management and control of project.

§5-6-4. Powers of commission.

1 The commission has the power:

2 (1) To sue and be sued, plead and be impleaded;

3 (2) To have a seal and alter the same at pleasure;

4 (3) To contract to acquire and to acquire, in the name of the
5 commission or of the state, by purchase, lease, lease-purchase
6 or otherwise, real property or rights or easements necessary or
7 convenient for its corporate purposes and to exercise the power
8 of eminent domain to accomplish those purposes;

9 (4) To acquire, hold and dispose of personal property for its
10 corporate purposes;

11 (5) To make bylaws for the management and regulation of
12 its affairs;

13 (6) With the consent of the attorney general of the state of
14 West Virginia, to use the facilities of his or her office, assistants
15 and employees in all legal matters relating to or pertaining to
16 the commission;

17 (7) To appoint officers, agents and employees and fix their
18 compensation;

19 (8) To make contracts, and to execute all instruments
20 necessary or convenient to effectuate the intent of, and to
21 exercise the powers granted to it by this article;

22 (9) To renegotiate all contracts entered into by it whenever,
23 due to a change in situation, it appears to the commission that
24 its interests will be best served;

25 (10) To construct a building or buildings on real property,
26 which it may acquire, or which may be owned by the state of
27 West Virginia, in the city of Charleston, as convenient as may
28 be to the capitol building, together with incidental approaches,
29 structures and facilities, subject to the consent and approval of
30 the city of Charleston in any case as may be necessary; and, in
31 addition, to acquire or construct a warehouse, including office
32 space in the warehouse in Kanawha County for the West
33 Virginia alcohol beverage control commissioner, and equip and
34 furnish the office space; and to acquire or construct, through
35 lease, purchase, lease-purchase or bond financing, hospitals or
36 other facilities, buildings, or additions or renovations to
37 buildings as may be necessary for the safety and care of
38 patients, inmates and guests at facilities under the jurisdiction
39 of and supervision of the division of health and at institutions
40 under the jurisdiction of the division of corrections or the
41 regional jail and correctional facilities authority; and to
42 formulate and program plans for the orderly and timely capital
43 improvement of all of the hospitals and institutions and the state
44 capitol buildings; and to construct a building or buildings in
45 Kanawha County to be used as a general headquarters by the
46 division of public safety to accommodate that division's
47 executive staff, clerical offices, technical services, supply
48 facilities and dormitory accommodations; and to develop,
49 improve and expand state parks and recreational facilities to be
50 operated by the division of natural resources; and to establish
51 one or more systems or complexes of buildings and projects
52 under control of the commission; and, subject to prior agree-

53 ments with holders of bonds previously issued, to change the
54 systems, complexes of buildings and projects from time to time,
55 in order to facilitate the issuance and sale of bonds of different
56 series on a parity with each other or having such priorities
57 between series as the commission may determine; and to
58 acquire by purchase, eminent domain or otherwise all real
59 property or interests in the real property necessary or conve-
60 nient to accomplish the purposes of this subdivision. The rights
61 and powers set forth in this subdivision shall not be construed
62 as in derogation of any rights and powers now vested in the
63 West Virginia alcohol beverage control commissioner, the
64 department of health and human resources, the division of
65 corrections or the division of natural resources;

66 (11) To maintain, construct and operate a project authorized
67 under this article;

68 (12) To charge rentals for the use of all or any part of a
69 project or buildings at any time financed, constructed, acquired
70 or improved, in whole or in part, with the proceeds of sale of
71 bonds issued pursuant to this article, subject to and in accor-
72 dance with such agreements with bondholders as may be made
73 as provided in this article: *Provided*, That on and after the
74 effective date of the amendments to this section, to charge
75 rentals for the use of all or any part of a project or buildings at
76 any time financed, constructed, acquired, maintained or
77 improved, in whole or in part, with the proceeds of sale of
78 bonds issued pursuant to this article, subject to and in accor-
79 dance with such agreements with bondholders as may be made
80 as in this section provided, or with any funds available to the
81 state building commission, including, but not limited to, all
82 buildings and property owned by the state of West Virginia or
83 by the state building commission, but no rentals shall be
84 charged to the governor, attorney general, secretary of state,
85 state auditor, state treasurer, the Legislature and the members

86 of the Legislature, the supreme court of appeals, nor for their
87 offices, agencies, official functions and duties;

88 (13) To issue negotiable bonds and to provide for the rights
89 of the holders of the negotiable bonds;

90 (14) To accept and expend any gift, grant or contribution of
91 money to, or for the benefit of, the commission, from the state
92 of West Virginia or any other source for any or all of the
93 purposes specified in this article or for any one or more of such
94 purposes as may be specified in connection with the gift, grant
95 or contribution;

96 (15) To enter on any lands and premises for the purpose of
97 making surveys, soundings and examinations;

98 (16) To invest in United States government obligations, on
99 a short-term basis, any surplus funds which the commission
100 may have on hand pending the completion of any project or
101 projects;

102 (17) To issue revenue bonds in accordance with the
103 applicable provisions of this article for the purposes set forth in
104 section eleven-a of this article; and

105 (18) To do all things necessary or convenient to carry out
106 the powers given in this article.

107 (19) The power and authority granted to the state building
108 commission pursuant to this section and sections seven, eight
109 and eleven-a of this article to initiate, acquire, construct,
110 finance or develop projects; to issue revenue bonds; or to
111 exercise the power of eminent domain with respect to any
112 project, shall terminate on the effective date of this section:
113 *Provided*, That nothing herein shall be construed to affect the
114 validity of any act of the state building commission prior to the
115 effective date of this section or to impair the rights of bondhold-
116 ers with respect to bonds or other evidence of indebtedness

117 issued prior to the effective date of this section. Following the
118 effective date of this section, the secretary of administration
119 may exercise any power expressly granted pursuant to this
120 article with respect to any project or facility previously con-
121 structed or acquired, any existing contractual obligations, and
122 any outstanding bonded indebtedness. Refunding bonds for any
123 outstanding bonded indebtedness are authorized, subject to the
124 provisions of article two-e, chapter thirteen of this code. The
125 West Virginia economic development authority provided for in
126 article fifteen, chapter thirty-one of this code is designated to
127 act as the governing body whose authorizations and determina-
128 tions are required for the purpose of refunding bonds.

§5-6-11. Management and control of project.

1 The secretary of administration shall properly maintain,
2 repair, operate, manage and control the project, fix the rates of
3 rental, and establish bylaws and rules and regulations for the
4 use and operation of the project, and may make and enter into
5 all contracts or agreements necessary and incidental to the
6 performance of its duties and the execution of its powers under
7 this article.

CHAPTER 222

(S. B. 454 — Originating in the Committee on Finance)

[Passed March 9, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eleven-c, relating to directing the state building commission to transfer unexpended

funds from the capitol complex bus access facility project to state capitol improvements and renovations project.

Be it enacted by the Legislature of West Virginia:

That article six, 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 eleven-c, to read as follows:

ARTICLE 6. STATE BUILDING COMMISSION.

§5-6-11c. Power of the state building commission to transfer project funds to other projects for state capitol improvements and renovations.

1 (a) The state building commission shall transfer unex-
2 pended funds allocated to the capitol complex bus access
3 facility project certified under subsection (f), section eleven-a
4 of this article to other projects for state capitol improvements
5 and renovations.

6 (b) The provisions of subsection (f), section eleven-a of this
7 article requiring public hearing do not apply to transfers of
8 funds under subsection (a) of this section.

CHAPTER 223

(H. B. 4060 — By Delegates Douglas, Varner, Kuhn,
Perdue, Angotti, Stalnaker and Willison)

[Passed February 15, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article ten, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section five-b; to amend and reenact

section eighteen, article three, chapter thirty of said code; to amend and reenact section three, article thirteen-a of said chapter; and to amend and reenact section three, article thirty of said chapter, all relating to establishing a sunset review process for regulatory boards.

Be it enacted by the Legislature of West Virginia:

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

Chapter

4. The Legislature.

30. Professions and Occupations.

CHAPTER 4. THE LEGISLATURE.

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-3. Definitions.

§4-10-5b. Termination of boards created to regulate professions and occupations.

§4-10-3. Definitions.

1 As used in this article, unless the context clearly indicates
2 a different meaning:

3 (1) "Agency" means any bureau, department, division,
4 commission, agency, committee, office, board, authority,
5 subdivision, program, council, advisory body, cabinet, panel,
6 system, task force, fund, compact, institution, survey, position,
7 coalition or other entity, however designated, in the state of
8 West Virginia.

9 (2) “Committee” means the joint committee on government
10 operations, hereinafter continued, to perform duties under this
11 article.

12 (3) “Full performance evaluation” means to determine for
13 an agency whether or not the agency is operating in an efficient
14 and effective manner and to determine whether or not there is
15 a demonstrable need for the continuation of the agency,
16 pursuant to the provisions of section ten of this article. Refer-
17 ences in this code to performance audit or full performance
18 audit shall be taken as and shall mean full performance evalua-
19 tion.

20 (4) “Preliminary performance review” means to determine
21 for an agency whether or not the agency is performing in an
22 efficient and effective manner and to determine whether or not
23 there is a demonstrable need for the continuation of the agency
24 pursuant to the provisions of section eleven of this article.

25 (5) “Compliance monitoring and further inquiry update”
26 means to determine for an agency whether or not the agency has
27 complied with recommendations contained in a completed full
28 performance evaluation or a completed preliminary perfor-
29 mance review conducted pursuant to this article and that further
30 inquiry into the operation of the agency may be conducted
31 pursuant to the provisions of sections ten-a and eleven-a of this
32 article.

33 (6) “Regulatory board evaluation” means to determine for
34 a board whether or not the board is necessary for the protection
35 of public health and safety and whether or not the board is
36 operating in compliance with the policies and provisions of
37 chapter thirty of this code and other applicable laws and rules.
38 A regulatory board evaluation may be based on reported data
39 which is not independently verified.

§4-10-5b. Termination of boards created to regulate professions and occupations.

1 (a) The legislative auditor shall evaluate each board created
2 under chapter thirty of this code to regulate professions and
3 occupations, at least once every twelve years. The evaluation
4 shall assess whether the board complies with the policies and
5 provisions of chapter thirty of this code and other applicable
6 laws and rules, whether the board follows a disciplinary
7 procedure which observes due process rights and protects the
8 public interest, and whether the public interest requires that the
9 board be continued.

10 (b) The following boards shall be terminated on the date
11 indicated, but no board may be terminated under this section
12 unless a regulatory board evaluation has been conducted upon
13 the board:

14 (1) On the first day of July, two thousand one: Board of
15 accountancy; board of architects; massage therapy licensure
16 board; board of licensed dietitians; board of medicine.

17 (2) On the first day of July, two thousand two: Board for
18 respiratory care; board of examiners for speech language
19 pathology and audiology; board of examiners for registered
20 practical nurses; board of examiners for licensed practical
21 nurses.

22 (3) On the first day of July, two thousand three: Board of
23 pharmacy; board of dental examiners; board of osteopathy.

24 (4) On the first day of July, two thousand four: Board of
25 examiners of land surveyors; board of landscape architects;
26 board of registration for foresters.

27 (5) On the first day of July, two thousand five: Board of
28 social work examiners; board of veterinary medicine; acupunc-
29 ture board.

30 (6) On the first day of July, two thousand six: Board of
31 examiners in counseling; board of examiners of psychologists.

32 (7) On the first day of July, two thousand seven: Board of
33 registration for sanitarians; board of embalmers and funeral
34 directors; board of optometry.

35 (8) On the first day of July, two thousand eight: Nursing
36 home administrators board; board of hearing aid dealers; board
37 of barbers and cosmetologists.

38 (9) On the first day of July, two thousand nine: Board of
39 physical therapy; board of chiropractic examiners; board of
40 occupational therapy.

41 (10) On the first day of July, two thousand ten: Professional
42 firefighters board; board of registration for professional
43 engineers; radiologic technology board of examiners.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

Article

- 3. West Virginia Medical Practice Act.
- 13A. Land Surveyors.
- 30. Social Workers.

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

***§30-3-18. Continuation of board.**

1 The board of medicine shall continue to exist until the first
2 day of July, two thousand, pursuant to the provisions of article
3 ten, chapter four of this code, to allow for the completion of a
4 regulatory board evaluation by the joint committee on govern-
5 ment operations.

ARTICLE 13A. LAND SURVEYORS.

§30-13A-3. Board of examiners of land surveyors created; ap- pointment, terms, removal, etc., of members; officers; meetings; quorum; compensation and expenses.

***Clerk's Note:** This section was also amended by S. B. 450 (Chapter 243), which passed subsequent to this act.

1 (a) There is hereby created the state board of examiners of
2 land surveyors which shall be composed of three members
3 appointed by the governor by and with the advice and consent
4 of the Senate. Each member shall have been actively engaged
5 in the practice of land surveying for at least ten years and shall
6 be the holder of a license under the provisions of this article.

7 (b) The members of the board shall be appointed for
8 overlapping terms of three years each ending on the thirtieth
9 day of June, and until their respective successors have been
10 appointed and qualified. Members may be reappointed for any
11 number of terms. Before entering upon the performance of his
12 duties, each member shall take and subscribe to the oath
13 required by section five, article IV of the constitution of this
14 state. Vacancies shall be filled by appointment by the governor
15 for the unexpired term of the member whose office shall be
16 vacant and such appointment shall be made within sixty days of
17 the occurrence of such vacancy. Any member may be removed
18 by the governor in case of incompetency, neglect of duty, gross
19 immorality or malfeasance in office.

20 (c) The board shall elect from its membership a chairman
21 and secretary-treasurer. A majority of the members of the board
22 shall constitute a quorum and meetings shall be held at the call
23 of the chairman or upon the written request of two members at
24 such time and place as designated in such call or request, and,
25 in any event, the board shall meet at least once annually to
26 conduct the examination hereinafter provided for and to transact
27 such other business as may come before it.

28 (d) Members shall be paid such reasonable compensation
29 as the board may from time to time determine, and in addition
30 may be reimbursed for all reasonable and necessary expenses
31 actually incurred in the performance of their duties, which
32 compensation and expenses shall be paid in accordance with the
33 provisions of subsection (b), section four of this article.

34 (e) After having conducted a regulatory board evaluation
35 through its joint committee on government operations, pursuant
36 to section nine, article ten, chapter four of this code, the
37 Legislature hereby finds and declares that the board of examin-
38 ers of land surveyors should be continued and reestablished.
39 Accordingly, notwithstanding the provisions of section four of
40 said article, the board of examiners of land surveyors shall
41 continue to exist until the first day of July, two thousand four.

ARTICLE 30. SOCIAL WORKERS.

§30-30-3. Board of social work examiners.

1 (a) For the purpose of carrying out the provisions of this
2 article, there is hereby created a West Virginia board of social
3 work examiners, consisting of seven members who shall be
4 appointed by the governor, subject to the following require-
5 ments:

6 (1) No person may be excluded from serving on the board
7 by reason of race, sex or national origin;

8 (2) One member shall be an independent clinical social
9 worker, two members shall be certified social workers, one
10 member shall be a graduate social worker and two members
11 shall be social workers. All such members must be licensed
12 under the provisions of this article in accordance with their
13 respective titles. In addition, there shall be one member of the
14 board chosen from the general public: *Provided*, That those
15 members who are appointed by the governor to serve as the first
16 board after the effective date of this article shall be persons
17 eligible for the licensing required under this article: *Provided*,
18 *however*, That the member from the general public shall never
19 be required to be eligible for licensing;

20 (3) The members of the first board to serve after the
21 effective date of this article shall be appointed within ninety
22 days thereof;

23 (4) The term of office for each member of the board shall
24 be three years: *Provided*, That one of the members of the first
25 board to serve after the effective date of this article shall serve
26 a term of two years, three of them shall serve a term of three
27 years and the remaining three shall serve a term of four years;
28 and

29 (5) The governor shall, whenever there is a vacancy on the
30 board due to circumstances other than the expiration of the term
31 of a member, appoint another member with the same qualifica-
32 tions as the member who has vacated to serve the duration of
33 the unexpired term.

34 For the purpose of accepting nominations for the replace-
35 ment of a member, the governor shall cause a notice of the
36 vacancy to be published at least thirty days prior to an an-
37 nouncement of the replacement member, as a Class I-0 legal
38 advertisement, in accordance with the provisions of section two,
39 article three, chapter fifty-nine of this code. The publication
40 area shall be statewide.

41 If the governor fails to make appointment in ninety days
42 after expiration of any term, the board shall make the necessary
43 appointment. Each member shall hold office until the expiration
44 of the term for which such member is appointed and until a
45 successor shall have been duly appointed and qualified.

46 (b) Any members of the board may be removed from office
47 for cause, in accordance with procedures set forth in this code
48 for the removal of public officials from office.

49 (c) The board shall pay each member the same compensa-
50 tion as is paid to members of the Legislature for their interim
51 duties as recommended by the citizens legislative compensation
52 commission and authorized by law for each day or portion
53 thereof engaged in the discharge of official duties and shall
54 reimburse each member for actual and necessary expenses

55 incurred in the discharge of official duties: *Provided*, That such
56 compensation and such expenses shall not exceed the amount
57 received by the board from licensing fees and penalties imposed
58 under subdivision (4), subsection (e) of this section.

59 (d) The board shall hold an annual election for the purpose
60 of electing a chairman, vice chairman and secretary. The
61 requirements for meetings and management of the board shall
62 be established in regulations promulgated by the board as
63 required by this article.

64 (e) In addition to the duties set forth in other provisions of
65 this article, the board shall:

66 (1) Recommend to the Legislature any proposed modifica-
67 tions to this article;

68 (2) Report to county prosecutors any suspected violations
69 of this article: *Provided*, That no report shall be made until the
70 board has given the suspected violator ninety days written
71 notice of the suspected violation and the violator has, within
72 such ninety-day period, been afforded an opportunity to respond
73 to the board with respect to the allegation;

74 (3) Publish an annual report and a roster listing the names
75 and addresses of all persons who have been licensed in accor-
76 dance with the provisions of this article as an independent
77 clinical social worker, certified social worker, graduate social
78 worker or social worker;

79 (4) Establish a fee schedule by legislative rule, pursuant to
80 the provisions of chapter twenty-nine-a of this code, which
81 schedule may include fees for the initial examination, license
82 fee, license renewal, license replacement, reciprocal license,
83 license classification change, continuing education provider
84 approval and monitoring, mailing lists and requests for informa-
85 tion and reports; fees for requests for information and reports
86 shall not be greater than the cost of personnel, time and supplies

87 incurred by the board and shall not be applied to the annual
88 report;

89 (5) Establish standards and requirements by legislative rule,
90 pursuant to the provisions of chapter twenty-nine-a of this code,
91 for continuing education. In establishing these requirements the
92 board shall consult with professional groups and organizations
93 representing all levels of practice provided for in this article and
94 the board shall consider recognized staff development pro-
95 grams, continuing education programs offered by colleges and
96 universities having social work programs approved or accred-
97 ited by the council on social work education, and continuing
98 education programs offered by recognized state and national
99 social work bodies: *Provided*, That such standards and require-
100 ments for continuing education shall not be construed to alter
101 or affect in any way the standards and requirements for licens-
102 ing as set forth elsewhere in this article;

103 (6) Establish standards and requirements for the practice of
104 social work and the differentiation of qualifications, education,
105 training, experience, supervision, responsibilities, rights, duties
106 and privileges at the independent clinical social worker,
107 certified social worker, graduate social worker and social
108 worker license levels. In establishing these standards and
109 requirements the board shall consult with professional groups
110 and organizations representing all levels of practice provided
111 for in this article. Standards and requirements may include, but
112 are not limited to, practice standards, practice parameters,
113 quality indicators, minimal standards of acceptance, advanced
114 training and certification and continuing education: *Provided*,
115 That such standards and requirements for practice may not be
116 construed to alter or affect in any way the standards and
117 requirements for licensing as set forth elsewhere in this article;

118 (7) Conduct its proceedings in accordance with provisions
119 of article nine-a, chapter six of this code; and

120 (8) Employ, direct and define the duties of administrative
121 clerical support staff.

122 (f) After having conducted a regulatory board evaluation
123 through its joint committee on government operations, pursuant
124 to article ten, chapter four of this code, the Legislature hereby
125 finds and declares that the board of social work examiners be
126 continued and reestablished. Accordingly, notwithstanding the
127 provisions of said article, the board of social work examiners
128 shall continue to exist until the first day of July, two thousand
129 five.

CHAPTER 224

(H. B. 4793 — By Delegates Douglas, Varner, Butcher, Caputo,
Prunty, Willison and Stalnaker)

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

AN ACT to amend and reenact sections four, four-a, five and five-a, article ten, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, changing agency termination dates pursuant to the West Virginia sunset law.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-4. Termination of agencies following full performance evaluations.

§4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.

§4-10-5. Termination of agencies following preliminary performance reviews.

§4-10-5a. Termination of agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates.

§4-10-4. Termination of agencies following full performance evaluations.

1 The following agencies shall be terminated on the date
2 indicated, but no agency may be terminated under this section
3 unless a full performance evaluation has been conducted upon
4 such agency:

5 (1) On the first day of July, two thousand one: Purchasing
6 division within the department of administration; division of
7 motor vehicles; division of environmental protection; depart-
8 ment of health and human resources; and department of tax and
9 revenue.

10 (2) On the first day of July, two thousand two: Division of
11 highways; division of labor; division of natural resources; and
12 division of corrections.

13 (3) On the first day of July, two thousand three: Division of
14 culture and history; and school building authority.

15 (4) On the first day of July, two thousand four: Division of
16 personnel; division of rehabilitation services; and workers'
17 compensation.

18 (5) On the first day of July, two thousand five: Parkways,
19 economic development and tourism authority; tourism func-
20 tions within the development office.

§4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.

1 The following agencies shall be terminated on the date
2 indicated, but no agency may be terminated under this section
3 unless a compliance monitoring and further inquiry update has

4 been completed on the agency subsequent to the prior comple-
5 tion of a full performance evaluation:

6 On the first day of July, two thousand one: Office of judges
7 in workers' compensation.

**§4-10-5. Termination of agencies following preliminary perfor-
mance reviews.**

1 The following agencies shall be terminated on the date
2 indicated, but no agency may be terminated under this section
3 unless a preliminary performance review has been conducted
4 upon such agency:

5 (1) On the first day of July, one thousand nine hundred
6 ninety-six: Juvenile facilities review panel.

7 (2) On the first day of July, one thousand nine hundred
8 ninety-seven: Public employees insurance agency advisory
9 board; cable television advisory board.

10 (3) On the first day of July, one thousand nine hundred
11 ninety-nine: Tree fruit industry self improvement assessment
12 program.

13 (4) On the first day of July, two thousand: Terms of family
14 law master and family law master system; motorcycle safety
15 and education committee.

16 (5) On the first day of July, two thousand one: Real estate
17 commission; public employees insurance agency; public
18 employees insurance agency finance board; rural health
19 advisory panel; oil and gas conservation commission; state fire
20 commission; state police; and motor vehicle dealers advisory
21 board.

22 (6) On the first day of July, two thousand two: Whitewater
23 commission within the division of natural resources; state
24 geological and economic survey; unemployment compensation;

25 West Virginia contractor licensing board; women's commis-
26 sion; ethics commission; veterans' council; educational
27 broadcasting authority; division of protective services; office of
28 explosives and blasting; office of coalfield community develop-
29 ment; motorcycle safety standards and education committee;
30 and state rail authority.

31 (7) On the first day of July, two thousand three: Driver's
32 licensing advisory board; West Virginia commission for
33 national and community service; West Virginia's membership
34 in the southern regional education board; marketing and
35 development division of the department of agriculture; manu-
36 factured housing construction and safety board; and environ-
37 mental quality board.

38 (8) On the first day of July, two thousand four: Meat
39 inspection program of the department of agriculture; state board
40 of risk and insurance management; interstate commission on
41 uniform state laws; design-build board; center for professional
42 development and interstate commission on the Potomac River
43 basin.

44 (9) On the first day of July, two thousand five: Board of
45 banking and financial institutions; lending and credit rate board;
46 governor's cabinet on children and families; health care
47 authority; and emergency medical services advisory council.

48 (10) On the first day of July, two thousand six: Family
49 protection services board; medical services fund advisory
50 council; West Virginia stream partners program; Ohio River
51 valley water sanitation commission; and soil conservation
52 committee.

**§4-10-5a. Termination of agencies previously subject to prelimi-
nary performance reviews following compliance
monitoring and further inquiry updates.**

1 The following agencies shall be terminated on the date
2 indicated, but no agency may be terminated under this section
3 unless a compliance monitoring and further inquiry update has
4 been completed on the agency subsequent to the prior comple-
5 tion of a preliminary performance review:

6 (1) On the first day of July, two thousand: State building
7 commission.

8 (2) On the first day of July, two thousand one: State lottery
9 commission; public service commission; oil and gas inspector's
10 examining board; office of water resources of the division of
11 environmental protection; and human rights commission.

12 (3) On the first day of July, two thousand two: Capitol
13 building commission; racing commission; bureau for child
14 support enforcement; parks section and parks functions of the
15 division of natural resources; public defender services and
16 investment management board.

17 (4) On the first day of July, two thousand three: Commis-
18 sion for the deaf and hard-of-hearing.

19 (5) On the first day of July, two thousand four: Office of the
20 environmental advocate.

CHAPTER 225

**(S. B. 226 — By Senators Bowman, Bailey, Dawson, Kessler,
McCabe, Minard, Redd, Walker, Wooton, Boley and Minear)**

[Passed March 6, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article fourteen,
chapter five of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to continuing the commission for the deaf and hard-of-hearing.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 14. WEST VIRGINIA COMMISSION FOR THE DEAF AND
HARD-OF-HEARING.**

**§5-14-12. Termination of the West Virginia commission for the
deaf and hard-of-hearing.**

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the West Virginia commission for the deaf and hard-of-
3 hearing shall continue to exist until the first day of July, two
4 thousand three, unless sooner terminated, continued or reestab-
5 lished pursuant to the provisions of that article.

CHAPTER 226

**(S. B. 398 — By Senators Bowman, Ball, Dawson, Kessler,
McCabe, Minard, Plymale, Redd, Walker, Wooton, Boley and Minear)**

[Passed March 6, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-a, article two, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the department of health and human resources.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 2. DEPARTMENT OF HEALTH AND HUMAN RESOURCES,
AND OFFICE OF COMMISSIONER OF HUMAN SER-
VICES; POWERS, DUTIES AND RESPONSIBILITIES
GENERALLY.**

**§9-2-1a. Department of welfare renamed division of human
services; continuation of the department of health
and human resources and the division of human
services.**

1 The state department of welfare, created pursuant to the
2 provisions of chapter nine of this code, is hereby continued as
3 an official department of the state of West Virginia, but
4 effective the twenty-ninth day of May, one thousand nine
5 hundred eighty-three, its name shall be the division of human
6 services. All references in the code to the department of welfare
7 shall mean the division of human services and all references to
8 the commissioner of the division of human services and for all
9 other legal purposes the department of welfare shall continue as
10 the division of human services.

11 The department of health and human resources and the
12 division of human services within that department shall be
13 charged with the administration of this chapter. The department
14 of health and human resources shall continue to exist and the
15 division of human services shall continue to exist within the
16 department of health and human resources until the first day of
17 July, two thousand one, to permit a review of their functions to
18 be undertaken by the joint committee on government operations
19 as part of the full performance evaluation of the department of
20 health and human resources scheduled to continue during the
21 interim of the Legislature in the year two thousand.

CHAPTER 227

(H. B. 4156 — By Delegates Douglas, Butcher, Caputo,
Prunty, Willison, Varner and Mattaliano)

[Passed February 22, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article four, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the medical services advisory council.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 4. STATE ADVISORY BOARD; MEDICAL SERVICES FUND;
ADVISORY COUNCIL; GENERAL RELIEF FUND.**

§9-4-3. Advisory council.

1 The advisory council, created by chapter one hundred forty-
2 three, acts of the Legislature, regular session, one thousand nine
3 hundred fifty-three, as an advisory body to the state medicaid
4 agency with respect to the medical services fund and disburse-
5 ments therefrom and to advise about health and medical
6 services, is continued so long as the medical services fund
7 remains in existence, and thereafter so long as the state
8 medicaid agency considers the advisory council to be necessary
9 or desirable, and it is organized as provided by this section and
10 applicable federal law and has those advisory powers and duties
11 as are granted and imposed by this section and elsewhere by
12 law: *Provided*, That the continuation of the advisory council is
13 subject to a preliminary performance review pursuant to the

14 provisions of article ten, chapter four of this code, evaluating
15 the effectiveness and efficiency of the advisory council, to be
16 conducted during the interim of the Legislature in the year two
17 thousand six by the joint committee on government operations.

18 The term of office of those members serving on the
19 advisory council, on the effective date of the amendments made
20 to this section by the Legislature during its regular session in
21 the year one thousand nine hundred ninety-eight, shall continue
22 until they are reappointed or replaced in accordance with the
23 provisions of this section.

24 The advisory council shall consist of not less than nine
25 members, nor more than thirteen members, all but two of whom
26 shall be appointed by the state medicaid agency and serve until
27 replaced or reappointed on a rotating basis. The heads of the
28 public health and public welfare agencies are members ex
29 officio. The remaining members comprising the council consist
30 of a person of recognized ability in the field of medicine and
31 surgery with respect to whose appointment the state medical
32 association shall be afforded the opportunity of making
33 nomination of three qualified persons, one member shall be a
34 person of recognized ability in the field of dentistry with
35 respect to whose appointment the state dental association shall
36 be afforded the opportunity of nominating three qualified
37 persons, and the remaining members shall be chosen from
38 persons of recognized ability in the fields of hospital adminis-
39 tration, nursing and allied professions and from consumers
40 groups, including medicaid recipients, members of the West
41 Virginia directors of senior and community services, labor
42 unions, cooperatives and consumer-sponsored prepaid group
43 practices plans.

44 The council shall meet on call of the state medicaid agency.

45 Each member of the advisory council shall receive reim-
46 bursement for reasonable and necessary travel expenses for
47 each day actually served in attendance at meetings of the

48 council in accordance with the state's travel regulations.
49 Requisitions for the expenses shall be accompanied by an
50 itemized statement, which shall be filed with the auditor and
51 preserved as a public record.

52 The advisory council shall assist the state medicaid agency
53 in the establishment of rules, standards and bylaws necessary to
54 carry out the provisions of this section and shall serve as
55 consultants to the state medicaid agency in carrying out the
56 provisions of this section.

CHAPTER 228

(H. B. 4296 — By Delegates Douglas, Butcher,
Caputo, Prunty, Willison, Varner and Stalnaker)

[Passed March 7, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia investment management board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-20. Termination of board.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the West Virginia investment management board shall
3 continue to exist until the first day of July, two thousand two.

CHAPTER 229

(S. B. 451 — By Senators Bowman, Bailey, Ball, Dawson,
Kessler, McCabe, Minard, Redd, Snyder, Boley and Minear)

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

AN ACT to amend and reenact section two, article two, chapter fifteen 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 fifty, relating to continuing the West Virginia state police.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-2. Superintendent; departmental headquarters; continuation of the state police.

§15-2-50. Termination date.

§15-2-2. Superintendent; departmental headquarters; continuation of the state police.

1 The department of public safety, heretofore established,
2 shall be continued and hereafter shall be known as the West
3 Virginia state police. Wherever the words “department of
4 public safety” or “division of public safety” appear in this code,
5 they shall mean the West Virginia state police. The governor
6 shall nominate, and by and with the advice and consent of the
7 Senate, appoint a superintendent to be the executive and

8 administrative head of the department. Notwithstanding any
9 provision of this code to the contrary, the superintendent shall
10 be paid an annual salary of sixty thousand dollars. The superin-
11 tendent shall hold the rank of colonel and is entitled to all
12 rights, benefits and privileges of regularly enlisted members.
13 On the date of his or her appointment, the superintendent shall
14 be at least thirty years of age. Before entering upon the dis-
15 charge of the duties of his or her office, he or she shall execute
16 a bond in the penalty of ten thousand dollars, payable to the
17 state of West Virginia and conditioned upon the faithful
18 performance of his or her duties. Such bond both as to form and
19 security shall be approved as to form by the attorney general,
20 and to sufficiency by the governor.

21 Before entering upon the duties of his or her office the
22 superintendent shall subscribe to the oath hereinafter provided.
23 The headquarters of the department shall be located in Kanawha
24 County.

§15-2-50. Termination date.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the West Virginia state police shall continue to exist until
3 the first day of July, two thousand one, unless sooner termi-
4 nated, continued or reestablished by act of the Legislature.

CHAPTER 230

(S. B. 166 — By Senators Bowman, Bailey, Ball, Dawson,
Kessler, McCabe, Minard, Redd, Wooton, Boley and Minear)

[Passed February 7, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty-one-a,
chapter nineteen of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to continuing the state soil conservation committee.

Be it enacted by the Legislature of West Virginia:

That section four, article twenty-one-a, 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 21A. SOIL CONSERVATION DISTRICTS.

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

1 (a) The state soil conservation committee is continued. It is
2 to serve as an agency of the state and to perform the functions
3 conferred upon it in this article. The committee shall consist of
4 seven members. The following shall serve, ex officio, as
5 members of the committee: The director of the state cooperative
6 extension service; the director of the state agricultural experi-
7 ment station; the director of the division of environmental
8 protection; and the state commissioner of agriculture, who shall
9 be chairman of the committee.

10 The governor shall appoint as additional members of the
11 committee three representative citizens. The term of members
12 thus appointed shall be four years, except that of the first
13 members so appointed, one shall be appointed for a term of two
14 years, one for a term of three years and one for a term of four
15 years. In the event of a vacancy, appointment shall be for the
16 unexpired term.

17 The committee may invite the secretary of agriculture of the
18 United States of America to appoint one person to serve with
19 the committee as an advisory member.

20 The committee shall keep a record of its official actions,
21 shall adopt a seal, which seal shall be judicially noticed, and
22 may perform such acts, hold such public hearings and promul-
23 gate such rules as may be necessary for the execution of its
24 functions under this article.

25 (b) The state soil conservation committee may employ an
26 administrative officer and such technical experts and such other
27 agents and employees, permanent and temporary, as it may
28 require, and shall determine their qualifications, duties and
29 compensation. The committee may call upon the attorney
30 general of the state for such legal services as it may require. It
31 shall have authority to delegate to its chairman, to one or more
32 of its members, or to one or more agents or employees, such
33 powers and duties as it may deem proper. The committee is
34 empowered to secure necessary and suitable office accommoda-
35 tions and the necessary supplies and equipment. Upon request
36 of the committee, for the purpose of carrying out any of its
37 functions, the supervising officer of any state agency or of any
38 state institution of learning shall, insofar as may be possible,
39 under available appropriations, and having due regard to the
40 needs of the agency to which the request is directed, assign or
41 detail to the committee, members of the staff or personnel of
42 such agency or institution of learning and make such special
43 reports, surveys or studies as the committee may request.

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

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

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

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

73 (3) To coordinate the programs of the several soil conserva-
74 tion districts organized hereunder so far as this may be done by
75 advice and consultation;

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

79 (5) To disseminate information throughout the state
80 concerning the activities and programs of the soil conservation
81 districts organized hereunder and to encourage the formation of
82 such districts in areas where their organization is desirable;

83 (6) To accept and receive donations, gifts, contributions,
84 grants and appropriations in money, services, materials or
85 otherwise, from the United States or any of its agencies, from
86 the state of West Virginia or from other sources, and to use or
87 expend such money, services, materials or other contributions
88 in carrying out the policy and provisions of this article, includ-
89 ing the right to allocate such money, services or materials in
90 part to the various soil conservation districts created by this
91 article in order to assist them in carrying on their operations;
92 and

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

107 After having conducted a performance audit through its
108 joint committee on government operations, pursuant to article
109 ten, chapter four of this code, the Legislature hereby finds and
110 declares that the state soil conservation committee should be
111 continued and reestablished. Accordingly, pursuant to the
112 provisions of section five of said article, the state soil conserva-
113 tion committee shall continue to exist until the first day of July,
114 two thousand six, unless sooner terminated, continued or
115 reestablished by act of the Legislature.

CHAPTER 231

(H. B. 4771 — By Delegates Douglas, Butcher,
Caputo, Prunty, Perdue, Stalnaker and Willison)

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

AN ACT to amend and reenact section thirty, article twenty-three,
chapter nineteen of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to continuing the racing commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. HORSE AND DOG RACING.

§19-23-30. Termination of the racing commission.

- 1 Pursuant to the provisions of article ten, chapter four of this
- 2 code, the racing commission shall continue to exist until the
- 3 first day of July, two thousand two, unless sooner terminated,
- 4 continued or reestablished by act of the Legislature.

CHAPTER 232

(H. B. 4297 — By Delegates Douglas, Butcher,
Caputo, Prunty, Willison, Manchin and H. White)

[Passed March 7, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article thirteen, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia stream partners program.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. WEST VIRGINIA STREAM PARTNERS PROGRAM.**§20-13-3. West Virginia stream partners program created; executive committee identified; program coordination.**

1 There is hereby created the West Virginia stream partners
2 program and within the division of natural resources there is
3 hereby created the West Virginia stream partners program fund.
4 Subject to annual appropriation of the Legislature into the West
5 Virginia stream partners program fund, the program shall be
6 jointly administered by the division of natural resources, the
7 division of environmental protection, the division of forestry
8 and the West Virginia state soil conservation agency. The
9 director or commissioner of each of these administering
10 agencies or his or her designee shall collectively constitute an
11 executive committee to oversee the program. The governor
12 shall designate a member of the executive committee to serve
13 as chair. The committee may designate a staff member from the
14 existing staff of one of the administering agencies to coordinate
15 the program on behalf of the executive committee. Pursuant to
16 the provisions of article ten, chapter four of this code, the
17 stream partners program and stream partners program fund
18 shall continue to exist until the first day of July, two thousand
19 six, unless sooner terminated, continued or reestablished by act
20 of the Legislature.

CHAPTER 233

**(H. B. 4772 — By Delegates Douglas, Butcher,
Caputo, Prunty, Manchin, Louisos and Willison)**

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

AN ACT to amend and reenact section four, article one, chapter twenty-two of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to continuing the division of environmental protection.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

§22-1-4. Division of environmental protection continued.

- 1 Pursuant to the provisions of article ten, chapter four of this
- 2 code, the division of environmental protection shall continue to
- 3 exist until the first day of July, two thousand one, unless sooner
- 4 terminated, continued or reestablished by act of the Legislature.

CHAPTER 234

**(S. B. 164 — By Senators Bowman, Bailey, Ball, Dawson,
Kessler, McCabe, Minard, Redd, Wooton, Boley and Minear)**

[Passed February 7, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article twenty, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the environmental advocate.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. ENVIRONMENTAL ADVOCATE.**§22-20-1. Appointment of environmental advocate; powers and duties; salary; continuation of position.**

1 The director of the division of environmental protection
2 shall appoint a person to serve as the environmental advocate
3 within the division of environmental protection, and shall adopt
4 and promulgate rules in accordance with the provisions of
5 article three, chapter twenty-nine-a of this code governing and
6 controlling the qualifications, powers and duties of the person
7 to be appointed to the position of environmental advocate. The
8 environmental advocate shall serve at the will and pleasure of
9 the director, who shall also set the salary of the environmental
10 advocate. All funding for the office of environmental advocate
11 shall be from existing funds of the division of environmental
12 protection. The director shall provide an office and secretarial
13 and support staff as needed. The position of environmental
14 advocate shall continue to exist until the first day of July, two
15 thousand four, pursuant to article ten, chapter four of this code,
16 unless sooner terminated, continued or reestablished by act of
17 the Legislature.

CHAPTER 235

**(S. B. 227 — By Senators Bowman, Bailey, Dawson, Kessler,
McCabe, Minard, Redd, Walker, Wooton, Boley and Minear)**

[Passed March 1, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article three, chapter
twenty-two-b of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to continuing the environmental quality board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ENVIRONMENTAL QUALITY BOARD.

§22B-3-5. Environmental quality board continued.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, and following a preliminary performance review by the
3 joint committee on government operations, the environmental
4 quality board shall continue to exist until the first day of July,
5 two thousand three, unless sooner terminated, continued or
6 reestablished by act of the Legislature.

CHAPTER 236

(H. B. 4770 — By Delegates Douglas, Butcher,
Caputo, Prunty, Angotti, Stalnaker and Willison)

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

AN ACT to amend and reenact section three, article seven, chapter twenty-two-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section four, all relating to continuing the oil and gas inspectors' examining board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. OIL AND GAS INSPECTORS' EXAMINING BOARD.

§22C-7-3. Oil and gas inspectors' examining board created; composition; appointment, term and compensation of members; meetings; powers and duties generally.

§22C-7-4. Termination date.

§22C-7-3. Oil and gas inspectors' examining board created; composition; appointment, term and compensation of members; meetings; powers and duties generally.

1 (a) There is hereby continued an oil and gas inspectors'
2 examining board consisting of five members, two of whom
3 shall be ex officio members and three of whom shall be
4 appointed by the governor, by and with the advice and consent
5 of the Senate. Appointed members may be removed only for the
6 same causes and like manner as elective state officers. One
7 member of the board shall be the representative of the public at
8 large and shall be a person who is knowledgeable about the
9 subject matter of this article and has no direct or indirect
10 financial interest in oil and gas production other than the receipt
11 of royalty payments which do not exceed a five-year average of
12 six hundred dollars per year; one member shall be a person who
13 by reason of previous training and experience may reasonably
14 be said to represent the viewpoint of independent oil and gas
15 operators; and one member shall be a person who by reason of
16 previous training and experience may reasonably be said to
17 represent the viewpoint of major oil and gas producers.

18 The chief of the office of oil and gas of the division of
19 environmental protection and the chief of the office of water

20 resources of the division of environmental protection shall be
21 ex officio members.

22 The appointed members of the board shall be appointed for
23 overlapping terms of six years, except that the original appoint-
24 ments shall be for terms of two, four and six years, respectively.
25 Any member whose term expires may be reappointed by the
26 governor.

27 The board shall pay each member the same compensation
28 and expense reimbursement as is paid to members of the
29 Legislature for their interim duties as recommended by the
30 citizens legislative compensation commission and authorized
31 by law for each day or portion thereof engaged in the discharge
32 of official duties.

33 The chief of the office of oil and gas shall serve as chair of
34 the board. The board shall elect a secretary from its members.

35 Members of the board, before performing any duty, shall
36 take and subscribe to the oath required by section 5, article IV
37 of the constitution of West Virginia.

38 The board shall meet at such times and places as shall be
39 designated by the chair. It is the duty of the chair to call a
40 meeting of the board on the written request of two members.
41 Notice of each meeting shall be given in writing to each
42 member by the secretary at least five days in advance of the
43 meeting. A majority of members is a quorum for the transaction
44 of business.

45 (b) In addition to other powers and duties expressly set
46 forth elsewhere in this article, the board shall:

47 (1) Establish, and from time to time revise, forms of
48 application for employment as an oil and gas inspector and
49 supervising inspector, which shall include the applicant's social

50 security number, and forms for written examinations to test the
51 qualifications of candidates, with such distinctions, if any, in
52 the forms for oil and gas inspector and supervising inspector as
53 the board may from time to time deem necessary or advisable;

54 (2) Adopt and promulgate reasonable rules relating to the
55 examination, qualification and certification of candidates for
56 appointment, and relating to hearings for removal of inspectors
57 or the supervising inspector, required to be held by this article.
58 All of such rules shall be printed and a copy thereof furnished
59 by the secretary of the board to any person upon request;

60 (3) Conduct, after public notice of the time and place
61 thereof, examinations of candidates for appointment. By
62 unanimous agreement of all members of the board, one or more
63 members of the board or an employee of the division of
64 environmental protection may be designated to give to a
65 candidate the written portion of the examination;

66 (4) Prepare and certify to the director of the division of
67 environmental protection a register of qualified eligible
68 candidates for appointment as oil and gas inspectors or as
69 supervising inspectors, with such differentiation, if any,
70 between the certification of candidates for oil and gas inspec-
71 tors and for supervising inspectors as the board may from time
72 to time deem necessary or advisable. The register shall list all
73 qualified eligible candidates in the order of their grades, the
74 candidate with the highest grade appearing at the top of the list.
75 After each meeting of the board held to examine such candi-
76 dates and at least annually, the board shall prepare and submit
77 to the director of the division of environmental protection a
78 revised and corrected register of qualified eligible candidates
79 for appointment, deleting from such revised register all persons:
80 (a) Who are no longer residents of West Virginia; (b) who have
81 allowed a calendar year to expire without, in writing, indicating
82 their continued availability for such appointment; (c) who have

83 been passed over for appointment for three years; (d) who have
84 become ineligible for appointment since the board originally
85 certified that such persons were qualified and eligible for
86 appointment; or (e) who, in the judgment of at least three
87 members of the board, should be removed from the register for
88 good cause;

89 (5) Cause the secretary of the board to keep and preserve
90 the written examination papers, manuscripts, grading sheets and
91 other papers of all applicants for appointment for such period
92 of time as may be established by the board. Specimens of the
93 examinations given, together with the correct solution of each
94 question, shall be preserved permanently by the secretary of the
95 board;

96 (6) Issue a letter or written notice of qualification to each
97 successful eligible candidate;

98 (7) Hear and determine proceedings for the removal of
99 inspectors or the supervising inspector in accordance with the
100 provisions of this article;

101 (8) Hear and determine appeals of inspectors or the
102 supervising inspector from suspension orders made by said
103 director pursuant to the provisions of section two, article six,
104 chapter twenty-two of this code: *Provided*, That in order to
105 appeal from any order of suspension, an aggrieved inspector or
106 supervising inspector shall file such appeal in writing with the
107 oil and gas inspectors' examining board not later than ten days
108 after receipt of the notice of suspension. On such appeal the
109 board shall affirm the action of said director unless it be
110 satisfied from a clear preponderance of the evidence that said
111 director has acted arbitrarily;

112 (9) Make an annual report to the governor concerning the
113 administration of oil and gas inspection personnel in the state

114 service; making such recommendations as the board considers
 115 to be in the public interest; and

116 (10) Render such advice and assistance to the director of the
 117 division of environmental protection as the director shall from
 118 time to time determine necessary or desirable in the perfor-
 119 mance of such duties.

§22C-7-4. Termination date.

1 The oil and gas inspectors' examining board shall terminate
 2 on the first day of July, two thousand one, pursuant to the
 3 provisions of article ten, chapter four of this code, unless sooner
 4 terminated, continued or reestablished pursuant to the provi-
 5 sions of that article.

CHAPTER 237

(S. B. 165 — By Senators Bowman, Bailey, Ball, Dawson, Kessler,
 McCabe, Minard, Redd, Wooton, Boley and Minear)

[Passed February 7, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article twelve, chapter twenty-two-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the membership in the Ohio River valley water sanitation commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. OHIO RIVER VALLEY WATER SANITATION COMMISSION.**§22C-12-6. When article effective; findings; continuation.**

1 This article shall take effect and become operative and the
2 compact be executed for and on behalf of this state only from
3 and after the approval, ratification and adoption and entering
4 into thereof by the states of New York, Pennsylvania, Ohio and
5 Virginia.

6 After having conducted a preliminary performance review
7 through its joint committee on government operations, pursuant
8 to article ten, chapter four of this code, the Legislature hereby
9 finds and declares that West Virginia should remain a member
10 of the compact. Accordingly, notwithstanding the provisions of
11 article ten, chapter four of this code, West Virginia shall
12 continue to be a member of this compact until the first day of
13 July, two thousand six, unless sooner terminated, continued or
14 reestablished by act of the Legislature.

CHAPTER 238

(H. B. 4774 — By Delegates Douglas, Butcher, Caputo,
Prunty, Flanigan, H. White and Willison)

[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 twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the authority of the commissioner of the bureau of employment programs.

Be it enacted by the Legislature of West Virginia:

That section one, article one, chapter twenty-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 ADMINISTRATIVE PROVISIONS.

§23-1-1. Commissioner of the bureau of employment programs; compensation programs performance council; official seal; continuation of authority of commissioner; legal services; rules.

1 (a) The commissioner of the bureau of employment
2 programs appointed under the provisions of section one, article
3 two, chapter twenty-one-a of this code, has the sole responsibil-
4 ity for the administration of this chapter except for such matters
5 as are entrusted to the compensation programs performance
6 council created pursuant to section one, article three, chapter
7 twenty-one-a of this code. In the administration of this chapter,
8 the commissioner shall exercise all the powers and duties
9 described in this chapter and in article two, chapter twenty-one-
10 a of this code.

11 (b) The commissioner is authorized to promulgate rules and
12 regulations to implement the provisions of this chapter.

13 (c) The commissioner shall have an official seal for the
14 authentication of orders and proceedings, upon which seal shall
15 be engraved the words "West Virginia Commissioner of
16 Employment Programs" and such other design as the commis-
17 sioner may prescribe. The courts in this state shall take judicial
18 notice of the seal of the commissioner and in all cases copies of
19 orders, proceedings or records in the office of the West Virginia
20 commissioner of employment programs shall be equal to the
21 original in evidence.

22 (d) Pursuant to the provisions of article ten, chapter four of
23 this code, the commissioner of the bureau of employment

24 programs shall continue to administer this chapter until the first
25 day of July, two thousand four.

26 (e) The attorney general shall perform all legal services
27 required by the commissioner under the provisions of this
28 chapter: *Provided*, That in any case in which an application for
29 review is prosecuted from any final decision of the workers'
30 compensation appeal board to the supreme court of appeals, as
31 provided by section four, article five of this chapter, or in any
32 court proceeding before the workers' compensation appeal
33 board, or in any proceedings before the office of judges, or in
34 any case in which a petition for an extraordinary writ is filed in
35 the supreme court of appeals or in any circuit court, in which
36 such representation shall appear to the commissioner to be
37 desirable, the commissioner may designate a regular employee
38 of this office, qualified to practice before such court to repre-
39 sent the commissioner upon such appeal or proceeding, and in
40 no case shall the person so appearing for the commissioner
41 before the court receive remuneration therefor other than such
42 person's regular salary.

CHAPTER 239

(H. B. 4773 — By Delegates Douglas, Varner,
Butcher, Caputo, Prunty, Willison and L. Smith)

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

AN ACT to amend and reenact section eight, article five, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the office of administrative law judges.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. REVIEW.

§23-5-8. Continuation of office of administrative law judges; powers of chief administrative law judge and said office.

1 (a) The workers' compensation office of administrative law
2 judges previously created pursuant to chapter twelve, acts of the
3 Legislature, one thousand nine hundred ninety, second extraor-
4 dinary session, is hereby continued and designated to be an
5 integral part of the workers' compensation system of this state.
6 The office of judges shall be under the supervision of a chief
7 administrative law judge who shall be appointed by the gover-
8 nor, with the advice and consent of the Senate. The previously
9 appointed incumbent of that position who was serving on the
10 second day of February, one thousand nine hundred ninety-five,
11 shall continue to serve in that capacity unless subsequently
12 removed as provided for in subsection (b) of this section.

13 (b) The chief administrative law judge shall be a person
14 who has been admitted to the practice of law in this state and
15 shall also have had at least four years of experience as an
16 attorney. The chief administrative law judge's salary shall be
17 set by the compensation programs performance council created
18 in section one, article three, chapter twenty-one-a of this code.
19 Said salary shall be within the salary range for comparable chief
20 administrative law judges as determined by the state personnel
21 board created by section six, article six, chapter twenty-nine of
22 this code. The chief administrative law judge may only be
23 removed by a vote of two thirds of the members of the compen-
24 sation programs performance council and shall not be removed
25 except for official misconduct, incompetence, neglect of duty,
26 gross immorality or malfeasance and then only after he or she

27 has been presented in writing with the reasons for his or her
28 removal and is given opportunity to respond and to present
29 evidence. No other provision of this code purporting to limit the
30 term of office of any appointed official or employee or affect-
31 ing the removal of any appointed official or employee shall be
32 applicable to the chief administrative law judge.

33 (c) By and with the consent of the commissioner, the chief
34 administrative law judge shall employ administrative law
35 judges and other personnel as are necessary for the proper
36 conduct of a system of administrative review of orders issued
37 by the workers' compensation division which orders have been
38 objected to by a party, and all such employees shall be in the
39 classified service of the state. Qualifications, compensation and
40 personnel practice relating to the employees of the office of
41 judges, other than the chief administrative law judge, shall be
42 governed by the provisions of the statutes, rules and regulations
43 of the classified service pursuant to article six, chapter
44 twenty-nine of this code. All such additional administrative law
45 judges shall be persons who have been admitted to the practice
46 of law in this state and shall also have had at least two years of
47 experience as an attorney. The chief administrative law judge
48 shall supervise the other administrative law judges and other
49 personnel which collectively shall be referred to in this chapter
50 as the office of judges.

51 (d) The administrative expense of the office of judges shall
52 be included within the annual budget of the workers' compensa-
53 tion division.

54 (e) Subject to the approval of the compensation programs
55 performance council pursuant to subdivisions (b) and (c),
56 section seven, article three, chapter twenty-one-a of this code,
57 the office of judges shall from time to time promulgate rules of
58 practice and procedure for the hearing and determination of all
59 objections to findings or orders of the workers' compensation
60 division pursuant to section one of this article. The office of
61 judges shall not have the power to initiate or to promulgate

62 legislative rules as that phrase is defined in article three, chapter
63 twenty-nine-a of this code.

64 (f) The chief administrative law judge shall continue to
65 have the power to hear and determine all disputed claims in
66 accordance with the provisions of this article, establish a
67 procedure for the hearing of disputed claims, take oaths,
68 examine witnesses, issue subpoenas, establish the amount of
69 witness fees, keep such records and make such reports as are
70 necessary for disputed claims, and exercise such additional
71 powers, including the delegation of such powers to administra-
72 tive law judges or hearing examiners as may be necessary for
73 the proper conduct of a system of administrative review of
74 disputed claims. The chief administrative law judge shall make
75 such reports as may be requested of him or her by the compen-
76 sation programs performance council.

77 (g) Pursuant to the provisions of article ten, chapter four of
78 this code, the office of judges shall continue to exist until the
79 first day of July, two thousand one, unless sooner terminated,
80 continued or reestablished by act of the Legislature.

CHAPTER 240

**(S. B. 396 — By Senators Bowman, Ball, Dawson, Kessler, McCabe,
Minard, Plymale, Redd, Walker, Wooton, Boley and Minear)**

[Passed March 9, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the division of corrections.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-2. Termination of board.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the division of corrections shall continue to exist until the
3 first day of July, two thousand two, unless sooner terminated,
4 continued or reestablished pursuant to the provisions of that
5 article.

CHAPTER 241

(S. B. 449 — By Senators Bowman, Bailey, Ball, Dawson,
Kessler, McCabe, Minard, Redd, Snyder, Boley and Minear)

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

AN ACT to amend and reenact section four, article eighteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twenty-four, all relating to continuing the state rail authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.

§29-18-4. West Virginia state rail authority continued; organization of authority; appointment of members; term of office, compensation and expenses; director of authority; termination date.

§29-18-24. Termination date.

§29-18-4. West Virginia state rail authority continued; organization of authority; appointment of members; term of office, compensation and expenses; director of authority; termination date.

1 (a) The West Virginia railroad maintenance authority,
2 heretofore created and redesignated the West Virginia state rail
3 authority, is hereby continued. References in this code to the
4 West Virginia railroad maintenance authority shall be under-
5 stood and taken to mean the West Virginia state rail authority.
6 Nothing in this article is intended to invalidate any action or
7 obligation of the West Virginia railroad maintenance authority
8 undertaken prior to the effective date of this article. The
9 authority is a governmental instrumentality of the state and a
10 body corporate. The exercise by the authority of the powers
11 conferred by this article and the carrying out of its purposes and
12 duties shall be deemed and held to be, and are hereby deter-
13 mined to be, essential governmental functions and for a public
14 purpose.

15 (b) The authority shall consist of seven members. The
16 secretary of the department of transportation shall be chairman:
17 *Provided*, That the secretary may appoint a designee to act in
18 his or her stead at meetings of the authority. The other six
19 members shall be appointed by the governor, by and with the
20 advice and consent of the Senate, for a term of six years. Of the
21 members of the authority first appointed, two shall be appointed
22 for a term ending on the thirtieth day of June, one thousand nine
23 hundred seventy-seven, two shall be appointed for a term
24 ending two years thereafter and two shall be appointed for a
25 term ending four years thereafter. A person appointed to fill a

26 vacancy occurring prior to the expiration of the term for which
27 his predecessor was appointed shall be appointed only for the
28 remainder of such term. Each authority member shall serve
29 until the appointment and qualification of his successor. No
30 more than three of the appointed authority members shall at any
31 one time belong to the same political party. Appointed authority
32 members may be reappointed to serve additional terms.

33 (c) All members of the authority shall be citizens of the
34 state. Each appointed member of the board, before entering
35 upon his duties, shall comply with the requirements of article
36 one, chapter six of this code and give bond in the sum of
37 twenty-five thousand dollars in the manner provided in article
38 two, chapter six of this code. The governor may remove any
39 authority member as provided in section four, article six,
40 chapter six of this code.

41 (d) Annually the authority shall elect one of its members as
42 vice chairman, and shall appoint a secretary-treasurer, who need
43 not be a member of the authority. Four members of the author-
44 ity shall constitute a quorum and the affirmative vote of four
45 members shall be necessary for any action taken by vote of the
46 authority. No vacancy in the membership of the authority shall
47 impair the rights of a quorum by such vote to exercise all the
48 rights and perform all the duties of the authority. The person
49 appointed as secretary-treasurer, including an authority member
50 if he is so appointed, shall give bond in the sum of fifty
51 thousand dollars in the manner provided in article two, chapter
52 six of this code.

53 (e) The secretary of the department of transportation shall
54 not receive any compensation for serving as the authority
55 chairman. Each of the six appointed members of the authority
56 shall receive the same compensation and expense reimburse-
57 ment as is paid to members of the Legislature for their interim
58 duties as recommended by the citizens legislative compensation
59 commission and authorized by law for each day or substantial

60 portion thereof engaged in the discharge of official duties. All
 61 such compensation and expenses incurred shall be payable
 62 solely from funds of the authority or from funds appropriated
 63 for such purpose by the Legislature and no liability or obliga-
 64 tion shall be incurred by the authority beyond the extent to
 65 which moneys are available from funds of the authority or from
 66 such appropriations.

67 (f) There shall also be a director of the authority appointed
 68 by the authority, with the consent of the secretary.

§29-18-24. Termination date.

1 Pursuant to the provisions of article ten, chapter four of this
 2 code, the West Virginia state rail authority shall continue to
 3 exist until the first day of July, two thousand two, unless sooner
 4 terminated, continued or reestablished by act of the Legislature.

CHAPTER 242

**(S. B. 229 — By Senators Bowman, Bailey, Dawson, Kessler, McCabe,
 Minard, Redd, Walker, Wooton, Boley and Minear)**

[Passed March 9, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the public defender services.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PUBLIC DEFENDER SERVICES.**§29-21-3. Establishment of public defender services, termination date.**

1 There is hereby created an executive agency known as
2 public defender services. The agency shall administer, coordi-
3 nate and evaluate programs by which the state provides legal
4 representation to indigent persons, monitor the progress of
5 various delivery systems and recommend improvements. The
6 agency shall maintain its office at the state capitol.

7 Pursuant to the provisions of article ten, chapter four of this
8 code, public defender services shall continue to exist until the
9 first day of July, two thousand two, unless sooner terminated,
10 continued or reestablished by act of the Legislature.

CHAPTER 243

**(S. B. 450 — By Senators Bowman, Bailey, Ball, Dawson, Kessler,
McCabe, Minard, Redd, Snyder, Boley and Minear)**

[Passed March 7, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the board of medicine.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

***§30-3-18. Continuation of board.**

1 The board of medicine shall continue to exist until the first
2 day of July, two thousand one, pursuant to the provisions of
3 article ten, chapter four of this code, to allow for the completion
4 of a regulatory board review by the joint committee on govern-
5 ment operations.

CHAPTER 244

(H. B. 4158 — By Delegates Douglas, Butcher,
Caputo, Prunty, Willison, Modesitt and Perdue)

[Passed February 22, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article thirty-one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the board of examiners in counseling.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 31. LICENSED PROFESSIONAL COUNSELORS.**§30-31-15. Continuation of board.**

1 Pursuant to article ten, chapter four of this code, the West
2 Virginia board of examiners in counseling shall continue to
3 exist until the first day of July, two thousand six, unless sooner
4 terminated, continued or reestablished by act of the Legislature.

***Clerk's Note:** This section was also amended by H. B. 4060 (Chapter 223), which passed prior to this act.

CHAPTER 245

**(S. B. 228 — By Senators Bowman, Bailey, Dawson, Kessler,
McCabe, Minard, Redd, Walker, Wooton, Boley and Minear)**

[Passed March 6, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two, article thirty-two, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the board of examiners for speech-language pathology and audiology.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 32. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS.

§30-32-22. Termination of board.

1 The West Virginia board of examiners for speech-language
 2 pathology and audiology shall be terminated pursuant to the
 3 provisions of article ten, chapter four of this code on the first
 4 day of July, two thousand two, unless sooner terminated or
 5 unless continued or reestablished pursuant to that article.

CHAPTER 246

(H. B. 4094 — By Delegates Douglas, Kuhn, Hatfield,
Louisos, Mattaliano, Stalnaker and Willison)

[Passed February 22, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article thirty-four, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the board of respiratory care practitioners.

Be it enacted by the Legislature of West Virginia:

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

§30-34-17. Termination.

1 The board provided for in this article shall terminate
2 pursuant to the provisions of article ten, chapter four of this
3 code, on the first day of July, two thousand two, unless termi-
4 nated, continued or reestablished by act of the Legislature.

CHAPTER 247

(H. B. 4410— By Delegates Douglas, Butcher,
Caputo, Willison, Manchin and Perdue)

[Passed March 7, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article thirty-five, chapter thirty of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to continuing the board of examiners for licensed dietitians.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 35. BOARD OF DIETITIANS.

§30-35-15. Termination of board.

1 The board of examiners for licensed dietitians shall be
2 terminated pursuant to the provisions of article ten, chapter four
3 of this code, on the first day of July, two thousand one, unless
4 sooner terminated, continued or reestablished pursuant to the
5 provisions of such article.

CHAPTER 248

(H. B. 4157 — By Delegates Douglas, Butcher,
Caputo, Prunty, Willison, Marshall and Angotti)

[Passed February 22, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article two-c, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the family protection services board.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article two-c, 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 2C. DOMESTIC VIOLENCE ACT.**§48-2C-14. Continuation of board.**

1 After having conducted a performance audit through its
 2 joint committee on government operations, pursuant to article
 3 ten, chapter four of this code, the Legislature hereby finds and
 4 declares that the family protection services board should be
 5 continued and reestablished. Accordingly, notwithstanding the
 6 provisions of said article, the family protection services board
 7 shall continue to exist until the first day of July, two thousand
 8 six, unless sooner terminated, continued or reestablished by act
 9 of the Legislature.

CHAPTER 249

**(S. B. 397 — By Senators Bowman, Ball, Dawson, Kessler, McCabe,
 Minard, Plymale, Redd, Walker, Wooton, Boley and Minear)**

[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 forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the child support enforcement division.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 2. WEST VIRGINIA SUPPORT ENFORCEMENT COMMISSION;
 CHILD SUPPORT ENFORCEMENT DIVISION; ESTABLISHMENT AND ORGANIZATION.**

§48A-2-12. Establishment of the child support enforcement division; cooperation with the division of human services; continuation.

1 (a) Effective the first day of July, one thousand nine
2 hundred ninety-five, there is hereby established in the depart-
3 ment of health and human resources the child support enforce-
4 ment division. The division is under the immediate supervision
5 of the director, who is responsible for the exercise of the duties
6 and powers assigned to the division under the provisions of this
7 chapter. The division is designated as the single and separate
8 organizational unit within this state to administer the state plan
9 for child and spousal support according to 42 U.S.C. §654(3).

10 (b) The division of human services shall cooperate with the
11 child support enforcement division. At a minimum, such
12 cooperation shall require that the division of human services:

13 (1) Notify the child support enforcement division when the
14 division of human services proposes to terminate or provide
15 public assistance payable to any obligee;

16 (2) Receive support payments made on behalf of a former
17 or current recipient to the extent permitted by Title IV-D, Part
18 D of the Social Security Act; and

19 (3) Accept the assignment of the right, title or interest in
20 support payments and forward a copy of the assignment to the
21 child support enforcement division.

22 (c) Pursuant to the provisions of article ten, chapter four of
23 this code, the child support enforcement division shall continue
24 to exist until the first day of July, two thousand two, unless
25 sooner terminated, continued or reestablished by act of the
26 Legislature.

CHAPTER 250

(H. B. 4411 — By Delegates Douglas, Butcher, Caputo,
Prunty, Willison, Angotti and Stalnaker)

[Passed March 7, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four, article four, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the family law masters system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. PROCEEDING BEFORE A FAMILY LAW MASTER.

§48A-4-24. Continuation of family law masters system.

1 After having conducted a performance and fiscal audit
2 through its joint committee on government operations, pursuant
3 to article ten, chapter four of this code, the Legislature hereby
4 finds and declares the family law masters system should be
5 continued and reestablished as recreated in article two-a,
6 chapter fifty-one of this code.

CHAPTER 251

(Com. Sub. for H. B. 4526 — By Delegates Cann, Martin, Michael,
Kominar, Beane, Campbell and Leach)

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

AN ACT to amend and reenact section one-a, article one-c, chapter eleven of the code of West Virginia, one thousand nine hundred

thirty-one, as amended; to amend and reenact section seven-a, article three of said chapter; and to amend and reenact section three, article five of said chapter, all relating to the ad valorem property taxation of chattel interests; and providing for the assessment and taxing of chattel interests in both real and personal property as tangible personal property.

Be it enacted by the Legislature of West Virginia:

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

Article

1C. Fair and Equitable Property Valuation.

3. Assessments Generally.

5. Assessment of Personal Property.

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-1a. Further legislative findings and declarations; effect of declarations and clarification of chattel interests in real or tangible personal property.

1 (a) The Legislature hereby finds that:

2 (1) The voters of this state, in the general election held in
3 the year one thousand nine hundred eighty-four, ratified
4 amendment five to the constitution of West Virginia which
5 essentially provides that once the first statewide reappraisal of
6 property pursuant to section one-b, article ten of the constitu-
7 tion is implemented and first employed to fix values for ad
8 valorem property tax purposes, no intangible personal property
9 shall be subject to ad valorem property taxation except as
10 provided by general law enacted after ratification of amendment
11 five;

12 (2) In ratifying amendment five, the voters intended for
13 intangible personal property to become exempt from ad
14 valorem property tax at some point after ratification, except as
15 provided in general legislation enacted subsequent to ratifica-
16 tion of amendment five;

17 (3) Due to numerous problems, actual or perceived, with
18 the results of the first statewide reappraisal under section one-b,
19 article ten of the constitution, and the public's lack of confi-
20 dence in those results, the first statewide reappraisal was never
21 implemented and results were never employed to fix values for
22 ad valorem property tax purposes;

23 (4) The Legislature responded to these problems, actual or
24 perceived, by enacting this article which, as its primary
25 purpose, resulted in the making of the second statewide
26 reappraisal of property for ad valorem property tax purposes,
27 which now results in all property being assessed and taxed at
28 sixty percent of its market value, except as otherwise provided
29 by general law; and

30 (5) The intent and objective of the voters in causing the first
31 statewide reappraisal to be made under section one-b, article ten
32 of the constitution, has now been achieved, although not in the
33 manner originally intended by the voters when they ratified
34 amendment five, and that the will and objective of the people
35 in ratifying amendment five will unintentionally be circum-
36 vented unless the Legislature acts to prevent such a result.

37 (b) The Legislature, therefore, does hereby declare that:

38 (1) It has the power and authority under the constitution and
39 these circumstances to implement amendment five;

40 (2) The provisions of amendment five shall be implemented
41 beginning tax year one thousand nine hundred ninety-eight and

42 thereafter, notwithstanding any other provision in this article
43 other than section one-b;

44 (3) Chattel interests in real or tangible personal property are
45 tangible property for ad valorem property tax purposes, which
46 shall be assessed and taxed in the levy classification in which
47 tangible personal property is taxed for ad valorem property tax
48 purposes, notwithstanding any other provision in this chapter;
49 and

50 (4) The property of banks and savings and loans shall be
51 assessed and taxed like that of other corporations beginning tax
52 year one thousand nine hundred ninety-eight.

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-7a. Chattel interests in real and tangible personal property.

1 For ad valorem property tax purposes, chattel interests in
2 real property and chattel interest in tangible personal property
3 are hereby defined to be interests in tangible personal property
4 and are to be assessed and taxed as such. As so defined, chattel
5 interest in real property and chattel interests in tangible personal
6 property are not intangible personal property for ad valorem
7 property tax purposes.

ARTICLE 5. ASSESSMENT OF PERSONAL PROPERTY.

§11-5-3. Definitions.

1 The words "personal property," as used in this chapter
2 includes all fixtures attached to land, if not included in the
3 valuation of such land entered in the proper landbook; all things
4 of value, moveable and tangible, which are the subjects of
5 ownership; all chattels real and personal; all notes, bonds, and
6 accounts receivable, stocks and all other intangible property.

7 "Agriculture" means the cultivation of the soil, including
8 the planting and harvesting of crops and the breeding and
9 management of livestock.

10 “Horticulture” means plant production of every character
11 except forestry.

12 “Grazing” means the use of land for pasturage.

13 “Products of agriculture” means those things the existence
14 of which follows directly from the activity of agriculture,
15 horticulture or grazing, including dairy, poultry, bee and any
16 other similar products, whether in the natural form or processed
17 as an incident to the marketing of the raw material.

18 “Producer” means the person who is actually engaged in the
19 agriculture, horticulture and grazing which gives existence and
20 fruition to products of agriculture as distinguished from the
21 broker or middleman.

22 “Tax year” means the calendar year following the July first
23 assessment day or, in the case of a public service business
24 assessed pursuant to article six of this chapter, the calendar year
25 beginning on the January first assessment day.

26 “While owned by the producer” means while title is in the
27 producer as above defined.

28 “Employed exclusively” means that the preponderant and
29 the sole gainful use is for the designated purpose.

CHAPTER 252

**(Com. Sub. for S. B. 79 — By Senators Craigo, Ball, Kessler,
Bowman, Anderson, Dittmar, Ross, Plymale and Sharpe)**

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

AN ACT to amend and reenact section one-b, article three, chapter eleven of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, relating to specifying a fair methodology for the appraisal of real property undergoing development; setting forth definitions; establishing factor for valuation; providing that the sale or development of one lot within a recorded plan shall not be the sole factor in valuing the remaining property for ad valorem real property tax purposes; and setting effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-1b. Recordation of plat or designation of land use not to be basis for assessment; factors for valuation; legislative rule; effective dates.

1 (a) The recordation of a plan or plat, or the designation of
2 proposed land use by a county or municipal planning authority,
3 shall not be used by the assessor as a basis in the valuation or
4 assessment of real property for the purposes of taxation, except
5 as hereafter provided. The valuation of real property contained
6 in a recorded plan or plat is as follows:

7 (1) When a lot or parcel within a recorded plan or plat is
8 sold, that lot shall be revalued by the county assessor or tax
9 commissioner. In no event may the remaining lots within the
10 recorded plan or plat be automatically revalued solely based
11 upon the sale of other lots within the recorded plan or plat.

12 (2) When land contained within a recorded plan or plat is
13 first developed and actually used for a commercial, residential
14 or industrial purpose, the land shall be revalued by the county
15 assessor or the tax commissioner, depending upon whoever has
16 authority over the land, but in no event may the remaining lots
17 within the recorded plan or plat be automatically revalued

18 solely based upon the sale of other lots within the recorded plan
19 or plat.

20 (b) For valuation of the remaining lots or parcels or
21 undeveloped portion within the recorded plan or plat, the
22 following factors shall be taken into consideration in determin-
23 ing the valuation: (1) Availability of improved roads; (2)
24 availability of sewage disposal and drinking water supply,
25 including, but not limited to, the use of such factors as avail-
26 ability of public water and sewage systems, private water
27 systems, water wells, private sewage and septic systems or
28 potential private sewage and septic systems; (3) availability of
29 electrical, telephone and other utility services; and (4) percent-
30 age of completion of improvements and infrastructure develop-
31 ment. The assessor shall annually determine the percentage of
32 completion of improvements and infrastructure development.
33 The tax commissioner shall propose a legislative rule for
34 submission to the Legislature pursuant to the provisions of
35 article three, chapter twenty-nine-a of this code, which rule
36 shall describe in detail the methodology and use of the factors
37 set out above, as well as any other factors determined by the tax
38 commissioner to be applicable, for valuation of percentage of
39 completion of improvements and infrastructure development.
40 The remaining lots or parcels or undeveloped portion within the
41 recorded plan or plat are not managed timberland for purposes
42 of valuation of management timberland under section eleven
43 and eleven-a, article one-c, of this chapter. For purposes of
44 classification of property for levy purposes under section five,
45 article eight of this chapter, developed lots or parcels shall not
46 be reclassified from Class III to Class II or from Class IV to
47 Class II until the developed lot or parcel is used and occupied
48 by the owner thereof exclusively for residential purposes as
49 defined in section three, article four of this chapter.

50 (c) The designation of proposed land use by a county or
51 municipal planning authority may not be used or considered by

52 an assessor in determining the appraised value of property
53 included under a designation of proposed land use by a county
54 or municipal planning authority until such time as the actual use
55 of the real property has changed to correspond to the proposed
56 use. For purposes of this subsection, the actual use of real
57 property shall be treated as having changed to correspond to the
58 proposed use as improvements on the property necessary for the
59 proposed use are completed: *Provided*, That in valuing the
60 property before its change to actual use, the assessor may
61 consider the factors described in subsection (b) of this section.

62 (d) The amendments made to this section by the Legislature
63 in two thousand shall become effective on the first day of July,
64 two thousand, and shall be effective as to all plans or plats filed
65 after the thirtieth day of June, two thousand. The provisions of
66 the amendments made to this section in two thousand do not
67 apply to unsold lots or parcels or undeveloped land contained
68 within recorded plans or plats which were recorded prior to the
69 first day of July, two thousand: *Provided*, That in no event may
70 the appraised value of unsold lots or parcels or undeveloped
71 land contained within these recorded plans or plats be less than
72 their appraised value as of first day of July, two thousand.

CHAPTER 253

(Com. Sub. for S. B. 191 — By Senators Minard and Sharpe)

[Passed March 9, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend and reenact section twenty-seven, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to correcting erroneous assessments generally; providing for the authority of the sheriff

or assessor to initiate an application for relief on behalf of the taxpayer; providing the sheriff or county commission the option of refunding taxes erroneously assessed instead of crediting amount towards future tax liability when more than one year has passed since property books were delivered to the sheriff; limiting the time in which taxpayer is repaid in the form of a credit; and providing for refund of uncredited balance.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-27. Relief in county commission from erroneous assessments.

1 (a) Any taxpayer, or the prosecuting attorney or tax
2 commissioner, upon behalf of the state, county and districts,
3 claiming to be aggrieved by any entry in the property books of
4 the county, including entries with respect to classification and
5 taxability of property, resulting from a clerical error or a
6 mistake occasioned by an unintentional or inadvertent act as
7 distinguished from a mistake growing out of negligence or the
8 exercise of poor judgment, may, within one year from the time
9 the property books are delivered to the sheriff or within one
10 year from the time such clerical error or mistake is discovered
11 or reasonably could have been discovered, apply for relief to
12 the county commission of the county in which such books are
13 made out: *Provided*, That upon the discovery of any such
14 clerical error or mistake by the sheriff or assessor, or either
15 officer having knowledge thereof, the sheriff or assessor shall
16 initiate an application for relief from the erroneous assessment
17 on behalf of the taxpayer or cause notice to be sent to any
18 taxpayer affected by the clerical error or mistake by first-class

19 United States mail advising the taxpayer of the right to make
20 application for relief from the erroneous assessment. Before the
21 application is heard, the taxpayer shall give notice to the
22 prosecuting attorney of the county, or the state shall give notice
23 to the taxpayer, as the case may be. The application, whether by
24 the taxpayer or the state, shall have precedence over all other
25 business before the court; but any order or judgment shall show
26 that either the prosecuting attorney or tax commissioner was
27 present defending the interests of the state, county and districts:
28 *Provided, however,* That the provisions of this section shall not
29 be construed as giving county commissions jurisdiction to
30 consider any question involving the classification or taxability
31 of property which has been the subject matter of an appeal
32 under the provisions of section twenty-four-a of this article; and
33 any other such clerical error or mistake involving the classifica-
34 tion or taxability of property, may be corrected by the county
35 commission under the provisions of this section only when
36 approved, in writing, by the county assessor.

37 (b) In the event it is ascertained that the taxpayer is entitled
38 to relief, any excess taxes already paid shall be refunded and, if
39 charged but not paid, the applicant shall be released from the
40 payment of such excess: *Provided,* That in the event a mistake
41 or error is discovered more than one year after the property
42 books for the year or years in question are delivered to the
43 sheriff, any relief granted to the taxpayer shall be in the form of
44 a credit against taxes owing for up to the following two years:
45 *Provided, however,* That if there are insufficient future taxes to
46 credit or if the sheriff or county commission determines that a
47 refund is appropriate, then the sheriff or county commission
48 shall refund the uncredited balance to the taxpayer.

49 (c) Whenever any correction is made by the county
50 commission, the clerk shall certify copies of the order to the
51 auditor, sheriff and assessor, and in the case of real estate, the
52 assessor shall thereupon make a correction in accordance with

53 the order in his or her landbook for the next year. Any such
54 order delivered to the sheriff or other collecting officer shall
55 restrain him or her from collecting so much as is erroneously
56 charged against the taxpayer, and, if already collected, shall
57 compel him or her to refund the money if such officer has not
58 already paid it into the treasury. In either case, when endorsed
59 by the person exonerated, it shall be sufficient voucher to entitle
60 the officer to a credit for so much in his or her settlement which
61 he or she is required to make. If the applicant is the state, the
62 order certified to the sheriff shall show the correct amount of
63 taxes due the state, county and districts and shall be sufficient
64 to authorize collection in the same manner as for other state,
65 county and district taxes.

CHAPTER 254

(S. B. 421 — By Senators Craig, McCabe,
Dittmar, Unger, Walker, Ross and Boley)

[Passed March 10, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend and reenact section two, article six-f, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to adding “chemical” and “steel” to the description of an alliance zone.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6F. SPECIAL METHOD FOR APPRAISING QUALIFIED CAPITAL ADDITIONS TO MANUFACTURING FACILITIES.

§11-6F-2. Definitions.

1 As used in this article, the term:

2 (a) "Certified capital addition property" means all real
3 property and personal property included within or to be
4 included within a qualified capital addition to a manufacturing
5 facility that has been certified by the state tax commissioner in
6 accordance with section four of this article: *Provided*, That
7 airplanes and motor vehicles licensed by the division of motor
8 vehicles shall in no event constitute certified capital addition
9 property.

10 (b) "Manufacturing facility" means any factory, mill,
11 chemical plant, refinery, warehouse, building or complex of
12 buildings, including land on which it is located, and all machin-
13 ery, equipment, improvements and other real property and
14 personal property located at or within the facility used in
15 connection with the operation of the facility in a manufacturing
16 business.

17 (c) "Personal property" means all property specified in
18 subdivision (q), section ten, article two, chapter two of this code
19 and includes, but is not limited to, furniture, fixtures, machinery
20 and equipment, pollution control equipment, computers and
21 related data processing equipment, spare parts and supplies.

22 (d) "Qualified capital addition to a manufacturing facility"
23 means all real property and personal property, the combined
24 original cost of all of the property which exceeds fifty million
25 dollars to be constructed, located or installed at or within two
26 miles of a manufacturing facility owned or operated by the
27 person making the capital addition that has a total original cost
28 before the capital addition of at least one hundred million
29 dollars: *Provided*, That if the capital addition is made in a steel,
30 chemical or polymer alliance zone as designated from time-to-
31 time by executive order of the governor, then the person

32 making the capital addition may for purposes of satisfying the
33 requirements of this subsection join in a multiparty project with
34 a person owning or operating a manufacturing facility that has
35 a total original cost before the capital addition of at least one
36 hundred million dollars if the capital addition creates additional
37 production capacity of existing or related products or feedstock
38 or derivative products respecting the manufacturing facility.

39 (e) "Real property" means all property specified in subdivi-
40 sion (p), section ten, article two, chapter two of this code and
41 includes, but is not limited to, lands, buildings and improve-
42 ments on the land such as sewers, fences, roads, paving and
43 leasehold improvements.

CHAPTER 255

(Com. Sub. for S. B. 517 — By Senator Ross)

[Passed March 9, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend article six-g, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections three-a and three-b, all relating to paying ad valorem taxes on commercial motor vehicles registered for a proportion of an entire year; ad valorem taxes on transferred vehicles; and the apportionment of the fees.

Be it enacted by the Legislature of West Virginia:

That article six-g, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections three-a and three-b, all to read as follows:

ARTICLE 6G. ASSESSMENT OF INTERSTATE PUBLIC SERVICE CORPORATION MOTOR VEHICLE BUSINESS REGISTERED UNDER A PROPORTIONAL REGISTRATION AGREEMENT.

§11-6G-3a. Reduced fees for portion of year.

§11-6G-3b. Reduced fees for transfer of vehicles.

§11-6G-3a. Reduced fees for portion of year.

1 The ad valorem fees prescribed in section three of this
2 article are for the entire fiscal year: *Provided*, That when
3 application for a proportional registration is made between the
4 first day of August and the thirty-first day of August, inclusive,
5 in any fiscal year, the fee for registration is eleven-twelfths of
6 the yearly fee; when application for the registration is made
7 between the first day of September and the thirtieth day of
8 September, inclusive, in any fiscal year, the fee for registration
9 is ten-twelfths of the yearly fee; when application for the
10 registration is made between the first day of October and the
11 thirty-first day of October, inclusive, in any fiscal year, the fee
12 for registration is nine-twelfths of the yearly fee; when applica-
13 tion for the registration is made between the first day of
14 November and the thirtieth day of November, inclusive, in any
15 fiscal year, the fee for registration is eight-twelfths of the yearly
16 fee; when application for registration is made between the first
17 day of December and the thirty-first day of December, inclu-
18 sive, in any fiscal year, the fee for registration is seven-twelfths
19 of the yearly fee; when application for registration is made
20 between the first day of January and the thirty-first day of
21 January, inclusive, in any fiscal year, the fee for registration is
22 one half of the yearly fee; when application for registration is
23 made between the first day of February and the last day of
24 February, inclusive, in any fiscal year, the fee for registration is
25 five-twelfths of the yearly fee; when application for registration
26 is made between the first day of March and the thirty-first day
27 of March, inclusive, in any fiscal year, the fee for registration
28 is one-third of the yearly fee; when application for registration

29 is made between the first day of April and the thirtieth day of
30 April, inclusive, in any fiscal year, the fee for registration is
31 one-fourth of the yearly fee; when application for registration
32 is made between the first day of May and the thirty-first day of
33 May, inclusive, in any fiscal year, the fee for registration is
34 two-twelfths of the yearly fee; and when application for
35 registration is made between the first day of June and the
36 thirtieth day of June, inclusive, in any fiscal year, the fee for
37 registration is one-twelfth of the yearly fee.

§11-6G-3b. Reduced fees for transfer of vehicles.

1 The ad valorem fees prescribed in sections three and three-a
2 of this article shall be reduced in the amount of ad valorem fees
3 paid on the original vehicle upon the transfer of registration by
4 an owner from the original vehicle to another vehicle of the
5 same class. The reduction in the amount of ad valorem fees paid
6 on the original vehicle shall be prorated monthly up to the
7 amount of ad valorem fees owed on the vehicle to which
8 registration is being transferred. Any remainder of ad valorem
9 fees paid on the original vehicle shall be reviewed by the
10 interstate appeals board, created in section seven of this article.

CHAPTER 256

**(Com. Sub. for S. B. 161 — 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 article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-two, relating generally to requiring certain businesses to file informa-

tion returns to be used solely to analyze the fiscal and economic effects of the recommendations of the governor's commission on fair taxation; information required and deadlines for filing returns; legislative rules; tax credit incentives for filing; penalties for failure to file; confidentiality; and providing that unauthorized disclosure of information returns or information return information is subject to criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-22. Information returns and due date thereof.

1 (a) *Information returns required.* -- The tax commissioner
2 shall develop a representative statistical sample of persons who
3 have business registration certificates under article twelve of
4 this chapter. This sample shall be broad enough to reasonably
5 predict revenues and to project how the recommendations of the
6 governor's commission on fair taxation would impact different
7 classifications of businesses, as well as the various forms of
8 doing business in which those business activities are conducted.
9 Persons included in the sample shall file an information return
10 reporting information for the calendar year ending the thirty-
11 first day of December, one thousand nine hundred ninety-nine,
12 and for the calendar year ending the thirty-first day of Decem-
13 ber, two thousand. When a business files its federal tax returns
14 on a fiscal year basis, the business include in its information
15 return information for its fiscal years ending within the calendar
16 years one thousand nine hundred ninety-nine and two thousand,
17 respectively, except as otherwise prescribed in the rule promul-
18 gated pursuant to subsection (d) of this section.

19 (b) *Due date.* -- Information returns shall be due on the day
20 the federal tax return or federal informational return is due
21 during calendar year two thousand one, determined by includ-
22 ing any extension of time to file the return. This information
23 return shall be filed with the business's West Virginia form
24 112, 112S, 120, 141, or, in the case of a sole proprietor, form
25 140. When the business is not required to file any of these West
26 Virginia forms, the information return shall be filed as a
27 separate document on or before the fifteenth day of the fifth
28 month following the close of its year for tax accounting or
29 financial accounting purposes ending the thirty-first day of
30 December, one thousand nine hundred ninety-nine, or ending
31 within calendar year two thousand but prior to the thirty-first
32 day of December, two thousand, unless the tax commissioner
33 grants an extension of time to file the information return.
34 Information returns shall be filed in the form and pursuant to
35 instructions prescribed by the tax commissioner. These returns
36 shall require information as if the recommendations of the
37 governor's commission on fair taxation were in effect for the
38 period covered by each information return.

39 (c) *Notification.* — On or before the first day of July, two
40 thousand, the tax commissioner shall notify each person
41 selected to be a member of the statistical sample of the selec-
42 tion, and advise the person of the process by which the person
43 will be receiving forms and instructions for filing an informa-
44 tional return after authorization of the same pursuant to
45 subsection (d) of this section.

46 (d) *Legislative rules.* —

47 (1) The tax commissioner shall propose legislative rules for
48 promulgation pursuant to article three, chapter twenty-nine-a of
49 this code. Notwithstanding any provision of article three, chapter
50 twenty-nine-a of this code to the contrary, the tax commissioner
51 shall submit finally approved proposed rules, including amend-
52 ments, to the legislative rule-making and review committee on
53 or before the thirty-first day of August, two thousand.

54 (2) The proposed rules shall include the actual content of
55 information return to be completed and filed by each person
56 selected to be a member of the statistical sample, as well as the
57 actual content of the instructions to used by the person to
58 complete the information return, proposed by the tax commis-
59 sioner. The information required to be provided in the informa-
60 tion return shall be, to the extent possible, only information that
61 can be obtained by a selected member of the statistical sample
62 from other tax or regulatory filings made by the selected
63 member.

64 (3) The proposed rules shall, for the review of the Legisla-
65 ture, separately identify any additional information not obtain-
66 able from the filings described in subdivision (2) of this
67 subsection that can be obtained from a selected member of the
68 statistical sample, in the least expensive and intrusive manner
69 for the selected person, that the tax commissioner determines is
70 necessary for an adequate state fiscal analysis of the impact of
71 the recommendations of the governor's commission on fair
72 taxation.

73 (4) The proposed rules shall, for the review of the Legisla-
74 ture, separately identify any additional information not obtain-
75 able from the filings described in subdivision (2) of this
76 subsection that can be obtained from a selected member of the
77 statistical sample, in the least expensive and intrusive manner
78 for the selected person, that the tax commissioner determines is
79 necessary for an adequate state economic analysis of the impact
80 of the recommendations of the governor's commission on fair
81 taxation.

82 (e) *Incentive to file.* — To encourage the filing of complete
83 and accurate information returns, the tax commissioner shall
84 allow a two hundred dollar tax credit for each required informa-
85 tion return that is filed electronically, within the meaning of
86 article five, chapter thirty-nine of this code, and a credit of one

87 hundred fifty dollars for each such paper return filed. This
88 credit shall be claimed against the person's liability for tax
89 under article twenty-three of this chapter. Unused credit may be
90 claimed against the person's liability for income tax under
91 article twenty-one or twenty-four of this chapter for the tax year
92 of the person in which the information return is filed. Alterna-
93 tively, the tax commissioner may refund the amount of this
94 credit to any person required to file information returns under
95 this section.

96 (f) *Civil money penalty.* -- Any person required to file an
97 information return under this section who fails to file the return
98 timely, determined with regard to any authorized extension of
99 time for filing, or who files a return that is materially incorrect
100 or incomplete shall pay a money penalty of one thousand
101 dollars for each return that is not filed timely or that is filed
102 timely but is materially inaccurate or incomplete. The tax
103 commissioner is authorized to waive this penalty. This penalty
104 shall be collected in the same manner as the penalties imposed
105 by section nineteen of this article are collected.

106 (g) *Confidentiality.* —

107 (1) Information returns and information return information
108 filed under this section shall be treated as returns and return
109 information under the provisions of section five-d of this
110 article. Such returns and return information shall be open to
111 inspection by or disclosure to officers and employees of the
112 department of tax and revenue whose official duties require
113 such inspection or disclosure for the purpose of, but only to the
114 extent necessary in, preparing economic or financial forecasts,
115 projections, analyses, and statistical studies and conducting
116 related activities.

117 (2) Persons authorized to receive information under this
118 subdivision shall be treated as officers and employees of the
119 state under the provisions of section five-d of this article.

120 Inspection or disclosure of information returns and information
121 return information shall also be permitted pursuant to a contract
122 between the proper officer of this state and a university in this
123 state when the purpose of the disclosure is to prepare economic
124 or financial forecasts, projections, analyses, and statistical
125 studies and conducting related activities regarding the recom-
126 mendations of the governor's commission on fair taxation.

127 (3) Except as otherwise provided in this section, no person
128 who receives an information return or information return
129 information under this section shall disclose the return or return
130 information to any person other than the taxpayer to whom it
131 relates except in a form which cannot be associated with, or
132 otherwise identify, directly or indirectly, a particular taxpayer.

CHAPTER 257

(H. B. 4589 — By Delegates Frederick, Yeager, Michael,
Kominar, Stalnaker and Evans)

[Passed March 11, 2000; in effect April 1, 2000. Approved by the Governor.]

AN ACT to amend and reenact section three, article twelve-b, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the minimum severance tax on coal; and providing that the minimum severance tax is not imposed on coal mined from thin seams on which the reduced severance tax rate is imposed.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12B. MINIMUM SEVERANCE TAX ON COAL.**§11-12B-3. Imposition of tax, credit.**

1 (a) *Imposition of tax.* — Upon every person exercising the
2 privilege of engaging within this state in severing, extracting,
3 reducing to possession or producing coal for sale, profit or
4 commercial use, there is hereby imposed an annual minimum
5 severance tax equal to fifty cents per ton of coal produced by
6 the taxpayer for sale, profit or commercial use during the
7 taxable year: *Provided*, That for taxable years ending after the
8 thirty-first day of May, one thousand nine hundred ninety-three,
9 the minimum severance tax imposed on coal produced by the
10 taxpayer for sale, profit or commercial use during such taxable
11 year shall be seventy-five cents per ton, with such rate increase
12 to apply only to tons of coal produced after the thirty-first day
13 of May, one thousand nine hundred ninety-three: *Provided*,
14 *however*, That for taxable years ending after the thirty-first day
15 of December, one thousand nine hundred ninety-nine, the
16 minimum severance tax on coal may not be imposed on any ton
17 of coal produced on or after the first day of April, two thousand,
18 on which the severance tax is imposed by the provisions of
19 subsection (f), section three, article thirteen-a of this chapter.

20 (b) *Credit against article thirteen-a tax.* — A person who
21 pays the minimum severance tax imposed by this article shall
22 be allowed a credit against the severance tax imposed on the
23 privilege of producing coal by section three, article thirteen-a
24 of this chapter, but not including the additional severance tax on
25 coal imposed by section six of article thirteen-a of this chapter
26 or, for taxable years ending after the thirty-first day of Decem-
27 ber, one thousand nine hundred ninety-nine, the severance tax
28 imposed by the provisions of subsection (f), section three,
29 article thirteen-a of this chapter on coal produced on or after the
30 first day of April, two thousand. The amount of credit allowed
31 shall be equal to the liability of the taxpayer for the taxable year
32 for payment of the minimum severance tax on coal imposed by

33 this article: *Provided*, That the amount of credit allowed by this
34 section may not exceed the severance tax liability of the
35 taxpayer for the taxable year determined under section three of
36 that article exclusive of the additional tax on coal imposed by
37 section six of that article and, for taxable years ending after the
38 thirty-first day of December, one thousand nine hundred ninety-
39 nine, of the severance tax imposed by the provisions of subsec-
40 tion (f), section three, article thirteen-a of this chapter on coal
41 produced on or after the first day of April, two thousand, after
42 application of all credits to which the taxpayer may be entitled
43 except any credit allowed pursuant to chapter five-e of this
44 code, any credit for installment payments of estimated tax paid
45 pursuant to section six of this article during the taxable year and
46 any credit for overpayment of article thirteen-a tax. Notwith-
47 standing anything herein to the contrary, in no event may the
48 credit allowed under chapter five-e of this code be allowed as
49 a credit against the minimum severance tax imposed by this
50 article.

CHAPTER 258

(Com. Sub. for H. B. 4418 — By Delegates Caputo, Coleman,
Yeager, Shelton, Staton, Varner and Kuhn)

[Passed March 11, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend and reenact section three, article twelve-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to corporations providing the name and address of the corporation's parent corporation and each subsidiary of the corporation licensed to do business in this state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12C. CORPORATE LICENSE TAX.

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

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

19 (b) *Deposit of money.* — The money so received by the
20 secretary of state and the tax commissioner shall be paid by
21 them into the state treasury.

22 (c) *Returns.* — Payment of the tax and statutory attorney
23 fee required under the provisions of this section shall be
24 accompanied by a return on forms provided by the tax commis-
25 sioner for that purpose. The tax commissioner shall upon
26 completion of processing such return, forward it to the secretary

27 of state, together with a list of all corporations which have paid
28 such tax. Such return shall contain (1) the address of its
29 principal office; (2) the names and mailing addresses of its
30 officers and directors; (3) the name and mailing address of the
31 person on whom notice of process may be served; (4) the name
32 and address of the corporation's parent corporation and of each
33 subsidiary of the corporation licensed to do business in this
34 state and such other information as the tax commissioner deems
35 appropriate. Notwithstanding any other provision of law to the
36 contrary, the secretary of state shall upon request of any person
37 disclose (A) the address of the corporation's principal office;
38 (B) the names and addresses of its officers and directors; (C)
39 the name and mailing address of the person on whom notice of
40 process may be served; and (D) the name and address of each
41 subsidiary of the corporation and the corporation's parent
42 corporation.

CHAPTER 259

(H. B. 4416 — By Delegates Beane, Frederick, Facemyer,
Coleman, Yeager, Michael and Kominar)

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

AN ACT to amend and reenact article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-d, relating to exemptions of coalbed methane production from imposition of the severance tax.

Be it enacted by the Legislature of West Virginia:

That article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be

amended by adding thereto a new section, designated section three-d, to read as follows:

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-3d. Imposition of tax on privilege of severing coalbed methane.

1 (a) The Legislature hereby finds and declares the following:

2 (1) That coalbed methane is underdeveloped and an
3 under-utilized resource within this state which, where practica-
4 ble, should be captured and not be vented or wasted;

5 (2) The health and safety of persons engaged in coal mining
6 is a paramount concern to the state. The Legislature intends to
7 preserve coal seams for future safe mining, to facilitate the
8 expeditious, safe evacuation of coalbed methane from the
9 coalbeds of this state, and to ensure the safety of miners by
10 encouraging the advance removal of coalbed methane;

11 (3) The United States environmental protection agency's
12 coalbed methane outreach program encourages United States
13 coal mines in the United States to remove and use methane that
14 is otherwise wasted during mining. These projects have
15 important economic benefits for the mines and their local
16 economies while they also reduce emissions of methane; and

17 (4) The initial costs of development of coalbed methane
18 wells can be large in comparison to conventional wells and
19 deoxygenation and water removal increase development
20 expenditures.

21 The Legislature, therefore, concludes that an incentive to
22 coalbed methane development should be implemented to
23 encourage capture of methane gas that would otherwise be
24 vented to the atmosphere.

25 (b) *Imposition of tax.* — In lieu of the annual privilege tax
26 imposed on the severance of natural gas or oil pursuant to
27 section three-a, article thirteen-a, for the privilege of engaging
28 or continuing within this state in the business of severing
29 coalbed methane for sale, profit or commercial use, there is
30 hereby levied and shall be collected from every person exercis-
31 ing such privilege an annual privilege tax: *Provided*, That
32 effective for taxable years beginning on or after the first day of
33 January, two thousand one, there is an exemption from the
34 imposition of the tax provided for in this article for a maximum
35 period of five years for all coalbed methane produced from any
36 coalbed methane well placed in service after the first day of
37 January, two thousand. For purposes of this section, the terms
38 “coalbed methane” and “coalbed methane well” have the
39 meaning ascribed to them in section two, article twenty-one,
40 chapter twenty-two of this code. The exemption from tax
41 provided by this section is applicable to any coalbed methane
42 well placed in service before the first day of January, two
43 thousand eleven.

44 (c) *Rate and measure of tax.* — The tax imposed on
45 subsection (b) of this section is five percent of the gross value
46 of the coalbed methane produced, as shown by the gross
47 proceeds derived from the sale thereof by the producer, except
48 as otherwise provided in this article.

49 (d) *Tax in addition to other taxes.* — The tax imposed by
50 this section applies to all persons severing coalbed methane in
51 this state, and is in addition to all other taxes imposed by law.

52 (e) Except as specifically provided in this section, applica-
53 tion of the provisions of this article apply to coalbed methane
54 in the same manner and with like effect as the provisions apply
55 to natural gas.

CHAPTER 260

(H. B. 4090 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed February 21, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine-d and twenty, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three-d, ten and eleven, article fifteen-a of said chapter; and to amend and reenact section seventy-four, article twenty-one of said chapter, all relating to increasing thresholds before small businesses and independent contractors must file monthly or quarterly returns under the consumers sales and service tax, use tax and employer withholding tax and pay taxes due with those returns.

Be it enacted by the Legislature of West Virginia:

That sections nine-d and twenty, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections three-d, ten and eleven, article fifteen-a of said chapter be amended and reenacted; and that section seventy-four, article twenty-one of said chapter be amended and reenacted, all to read as follows:

Article

15. Consumers Sales and Service Tax.

15A. Use Tax.

21. Personal Income Tax.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9d. Direct pay permits.

§11-15-20. Quarterly and annual returns.

§11-15-9d. Direct pay permits.

1 (a) Notwithstanding any other provision of this article, the
2 tax commissioner may, pursuant to rules promulgated by him
3 or her in accordance with article three, chapter twenty-nine-a of
4 this code, authorize a person that is a user, consumer, distribu-
5 tor or lessee to which sales or leases of tangible personal
6 property are made or services provided, to pay any tax levied by
7 this article or article fifteen-a of this chapter directly to the tax
8 commissioner and waive the collection of the tax by that
9 person's vendor. No such authority shall be granted or exer-
10 cised except upon application to the tax commissioner and after
11 issuance by the tax commissioner of a direct pay permit. Each
12 direct pay permit granted pursuant to this section is valid until
13 surrendered by the holder or canceled for cause by the commis-
14 sioner. The commissioner shall prescribe by rules promulgated
15 in accordance with article three, chapter twenty-nine-a of this
16 code, those activities which will cause cancellation of a direct
17 pay permit issued pursuant to this section. Upon issuance of a
18 direct pay permit, payment of the tax imposed or assertion of
19 the exemptions allowed by this article or article fifteen-a of this
20 chapter on sales and leases of tangible personal property and
21 sales of taxable services from the vendors of the personal
22 property or services shall be made directly to the tax commis-
23 sioner by the permit holder.

24 (b) On or before the fifteenth day of each month, every
25 permit holder shall make and file with the tax commissioner a
26 consumers sales and use tax direct pay permit return for the
27 preceding month in the form prescribed by the tax commis-
28 sioner showing the total value of the tangible personal property
29 used, the amount of taxable services purchased, the amount of
30 consumers sales and use taxes due from the permit holder,
31 which shall be paid to the tax commissioner with the return, and
32 any other information as the tax commissioner considers
33 necessary: *Provided*, That if the amount of consumers sales and

34 use taxes due averages less than two hundred fifty dollars per
35 month, the tax commissioner may permit the filing of quarterly
36 returns in lieu of monthly returns and the amount of tax shown
37 on the returns to be due shall be remitted on or before the
38 fifteenth day following the close of the calendar quarter; and if
39 the amount due averages less than one hundred fifty dollars per
40 calendar quarter, the tax commissioner may permit the filing of
41 an annual direct pay permit return and the amount of tax shown
42 on the return to be due shall be remitted on or before the last
43 day of January each year: *Provided, however,* That the tax
44 commissioner may, by nonemergency legislative rules promul-
45 gated pursuant to article three, chapter twenty-nine-a of this
46 code, change the minimum amounts established in this subsec-
47 tion. The tax commissioner, upon written request by the permit
48 holder, may grant a reasonable extension of time, upon such
49 terms as the tax commissioner may require, for the making and
50 filing of direct pay permit returns and paying the tax due.
51 Interest on the tax shall be chargeable on every extended
52 payment at the rate specified in section seventeen, article ten of
53 this chapter.

54 (c) A permit issued pursuant to this section is valid until
55 expiration of the taxpayers registration year under article twelve
56 of this chapter. This permit is automatically renewed when the
57 taxpayers business registration certificate is issued for the next
58 succeeding fiscal year, unless the permit is surrendered by the
59 holder or canceled for cause by the tax commissioner.

60 (d) Persons who hold a direct payment permit which has not
61 been canceled are not required to pay the tax to the vendor as
62 otherwise provided in this article or article fifteen-a of this
63 chapter. They shall notify each vendor from whom tangible
64 personal property is purchased or leased or from whom services
65 are purchased of their direct payment permit number and that
66 the tax is being paid directly to the tax commissioner. Upon
67 receipt of the notice, the vendor is absolved from all duties and

68 liabilities imposed by this chapter for the collection and
69 remittance of the tax with respect to sales of tangible personal
70 property and sales of services to the permit holder. Vendors
71 who make sales upon which the tax is not collected by reason
72 of the provisions of this section shall maintain records in such
73 manner that the amount involved and identity of each purchaser
74 may be ascertained.

75 (e) Upon the expiration, cancellation or surrender of a
76 direct payment permit, the provisions of this chapter, without
77 regard to this section, will thereafter apply to the person who
78 previously held the permit, and that person shall promptly
79 notify in writing vendors from whom tangible personal property
80 or services are purchased or leased of the cancellation or
81 surrender. Upon receipt of the notice, the vendor is subject to
82 the provisions of this chapter, without regard to this section,
83 with respect to all sales, distributions, leases or storage of
84 tangible personal property, thereafter made to or for that person.

85 (f) The amendments to this section enacted in the year two
86 thousand are effective for tax years beginning on or after the
87 first day of January, two thousand one.

§11-15-20. Quarterly and annual returns.

1 (a) When the total consumers sales and use tax remittance
2 for which a person is liable does not exceed an average monthly
3 amount over the taxable year of two hundred fifty dollars, he
4 may pay the tax and make a quarterly return on or before the
5 fifteenth day of the first month in the next succeeding quarter
6 in lieu of monthly returns: *Provided*, That the tax commissioner
7 may, by nonemergency legislative rules promulgated pursuant
8 to article three, chapter twenty-nine-a of this code, change the
9 minimum amount established in this subsection.

10 (b) When the total consumers sales and use tax remittance
11 for which a person is liable does not in the aggregate exceed six

12 hundred dollars for the taxable year, he or she may pay the tax
13 and make an annual return on or before the fifteenth day of the
14 first month next succeeding the end of his taxable year:
15 *Provided*, That the tax commissioner may, by nonemergency
16 legislative rules promulgated pursuant to article three, chapter
17 twenty-nine-a of this code, change the minimum amount
18 established in this subsection.

19 (c) The amendments to this section enacted in the year two
20 thousand are effective for tax years beginning on or after the
21 first day of January, two thousand one.

ARTICLE 15A. USE TAX.

§11-15A-3d. Direct pay permits.

§11-15A-10. Payment to tax commissioner.

§11-15A-11. Liability of user.

§11-15A-3d. Direct pay permits.

1 (a) Notwithstanding any other provision of this article, the
2 tax commissioner may, pursuant to rules promulgated by him
3 or her in accordance with article three, chapter twenty-nine-a of
4 this code, authorize a person (as defined in section two of
5 article fifteen) that is a user, consumer, distributor or lessee to
6 which sales or leases of tangible personal property are made or
7 services provided to pay any tax levied by this article or article
8 fifteen of this chapter directly to the tax commissioner and
9 waive the collection of the tax by that person's vendor. This
10 authority is not to be granted or exercised except upon applica-
11 tion to the tax commissioner and after issuance by the tax
12 commissioner of a direct pay permit. Each direct pay permit
13 granted pursuant to this section shall continue to be valid until
14 surrendered by the holder or canceled for cause by the commis-
15 sioner. The commissioner shall prescribe by rules promulgated
16 in accordance with article three, chapter twenty-nine-a of this
17 code, those activities which will cause cancellation of a direct
18 pay permit issued pursuant to this section. Upon issuance of the

19 direct pay permit, payment of the tax imposed or assertion of
20 the exemptions allowed by this article or article fifteen of this
21 chapter on sales and leases of tangible personal property and
22 sales of taxable services from the vendors thereof shall be made
23 directly to the tax commissioner by the permit holder.

24 (b) On or before the fifteenth day of each month, every
25 permit holder shall make and file with the tax commissioner a
26 consumers sales and use tax direct pay permit return for the
27 preceding month in the form prescribed by the tax commis-
28 sioner showing the total value of the tangible personal property
29 so used, the amount of taxable services purchased, the amount
30 of tax due from the permit holder, which amount shall be paid
31 to the tax commissioner with the return, and any other informa-
32 tion the tax commissioner deems necessary: *Provided*, That if
33 the amount of consumers sales and use taxes due averages less
34 than two hundred fifty dollars per month, the tax commissioner
35 may permit the filing of quarterly returns in lieu of monthly
36 returns and the amount of tax shown thereon to be due shall be
37 remitted on or before the fifteenth day following the close of
38 the calendar quarter; and if the amount due averages less than
39 one hundred fifty dollars per calendar quarter, the tax commis-
40 sioner may permit the filing of an annual direct pay permit
41 return and the amount of tax shown thereon to be due are to be
42 remitted on or before the last day of January each year: *Pro-*
43 *vided, however*, That the tax commissioner may, by
44 nonemergency legislative rules promulgated pursuant to article
45 three, chapter twenty-nine-a of this code, change the minimum
46 amounts established in this subsection. The tax commissioner,
47 upon written request filed by the permit holder before the due
48 date of the return, may grant a reasonable extension of time,
49 upon the terms the tax commissioner may require, for the
50 making and filing of direct pay permit returns and paying the
51 tax due. Interest on the tax shall be chargeable on every
52 extended payment at the rate specified in section seventeen,
53 article ten of this chapter.

54 (c) A permit issued pursuant to this section is to be valid
55 until expiration of the taxpayer's registration year under article
56 twelve of this chapter. This permit is automatically renewed
57 when the taxpayer's business registration certificate is issued
58 for the next succeeding fiscal year, unless the permit is surren-
59 dered by the holder or canceled for cause by the tax commis-
60 sioner.

61 (d) Persons who hold a direct payment permit which has not
62 been canceled are not required to pay the tax to the vendor as
63 otherwise provided in this article or article fifteen of this
64 chapter. These persons shall notify each vendor from whom
65 tangible personal property is purchased or leased or from whom
66 services are purchased of their direct payment permit number
67 and that the tax is being paid directly to the tax commissioner.
68 Upon receipt of the notice, the vendor is absolved from all
69 duties and liabilities imposed by this chapter for the collection
70 and remittance of the tax with respect to sales, distributions,
71 leases or storage of tangible personal property and sales of
72 services to the permit holder. Vendors who make sales upon
73 which the tax is not collected by reason of the provisions of this
74 section shall maintain records in a manner by which the amount
75 involved and identity of each purchaser may be ascertained.

76 (e) Upon the expiration, cancellation or surrender of a
77 direct payment permit, the provisions of this chapter, without
78 regard to this section, shall thereafter apply to the person who
79 previously held the permit, and the person shall promptly notify
80 in writing vendors from whom tangible personal property or
81 services are purchased of the cancellation or surrender. Upon
82 receipt of the notice, the vendor is subject to the provisions of
83 this chapter, without regard to this section, with respect to all
84 sales of tangible personal property or taxable services, thereaf-
85 ter made to or for the person.

86 (f) The amendments to this section enacted in the year two
87 thousand are effective for tax years beginning on or after the
88 first day of January, two thousand one.

§11-15A-10. Payment to tax commissioner.

1 Each retailer required or authorized, pursuant to sections six
2 or seven, to collect the tax herein imposed, is required to pay to
3 the tax commissioner the amount of the tax on or before the
4 fifteenth day of the month next succeeding each quarterly
5 period. At that time, each retailer shall file with the tax commis-
6 sioner a return for the preceding quarterly period in the form
7 prescribed by the tax commissioner showing the sales price of
8 any or all tangible personal property sold by the retailer during
9 the preceding quarterly period, the use of which is subject to the
10 tax imposed by this article, and any other information the tax
11 commissioner may deem necessary for the proper administra-
12 tion of this article. The return shall be accompanied by a
13 remittance of the amount of the tax, for the period covered by
14 the return: *Provided*, That where the tangible personal property
15 is sold under a conditional sales contract, or under any other
16 form of sale wherein the payment of the principal sum, or a part
17 of the sum is extended over a period longer than sixty days
18 from the date of the sale, the retailer may collect and remit each
19 quarterly period that portion of the tax equal to six percent of
20 that portion of the purchase price actually received during the
21 quarterly period. The tax commissioner, if he or she deems it
22 necessary in order to ensure payment to the state of the amount
23 of the tax, may in any or all cases require returns and payments
24 of the amount to be made for other than quarterly periods. The
25 tax commissioner may, upon request and a proper showing of
26 the necessity to do so, grant an extension of time not to exceed
27 thirty days for making any return and payment. Returns shall be
28 signed by the retailer or his or her duly authorized agent, and
29 must be certified by him or her to be correct.

§11-15A-11. Liability of user.

1 (a) Any person who uses any tangible personal property
2 upon which the tax herein imposed has not been paid either to
3 a retailer or direct to the tax commissioner is liable for the
4 amount of the nonpayment, and persons required by law to hold
5 a West Virginia business registration certificate shall on or
6 before the fifteenth day of the month next succeeding each
7 quarterly period pay the tax herein imposed upon all the
8 property used by him or her during the preceding quarterly
9 period and accompanied by returns the tax commissioner
10 prescribes: *Provided*, That if the aggregate annual tax liability
11 of any person under this article is six hundred dollars or less,
12 the person shall, in lieu of the quarterly payment and filing, pay
13 the tax on or before the fifteenth day of the first month next
14 succeeding the end of his or her taxable year, and shall file the
15 annual return as may be prescribed by the tax commissioner.
16 The tax commissioner may, by nonemergency legislative rules
17 promulgated pursuant to article three, chapter twenty-nine-a of
18 this code, change the foregoing minimum amounts.

19 (b) Any individual who is not required by law to hold a
20 West Virginia business registration certificate, who uses any
21 tangible personal property or taxable service upon which the
22 West Virginia use tax has not been paid either to a retailer or
23 directly to the tax commissioner is liable for the West Virginia
24 use tax upon property or taxable services and, notwithstanding
25 the amount of the annual aggregate annual tax liability, shall
26 pay the use tax imposed upon all property or taxable services
27 used by him or her during the taxpayer's federal taxable year on
28 or before the fifteenth day of April of the taxpayer's next
29 succeeding federal tax year, and shall file the annual return
30 therewith as the tax commissioner may authorize or require.

31 (c) All of the provisions of section ten with reference to
32 quarterly or annual returns and payments are applicable to the
33 returns and payments required under this section.

34 (d) The amendments to this section enacted in the year two
35 thousand are effective for tax years beginning on or after the
36 first day of January, two thousand one.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-74. Employer's return and payment of withheld taxes.

1 (a) *General.*—Every employer required to deduct and
2 withhold tax under this article shall, for each calendar quarter,
3 on or before the last day of the month following the close of
4 such calendar quarter, file a withholding return as prescribed by
5 the tax commissioner and pay over to the tax commissioner the
6 taxes so required to be deducted and withheld. Where the
7 average quarterly amount so deducted and withheld by any
8 employer is less than one hundred fifty dollars and the aggre-
9 gate for the calendar year can reasonably be expected to be less
10 than six hundred dollars, the tax commissioner may by regula-
11 tion permit an employer to file an annual return and pay over to
12 the tax commissioner the taxes deducted and withheld on or
13 before the last day of the month following the close of the
14 calendar year: *Provided*, That the tax commissioner may, by
15 nonemergency legislative rules promulgated pursuant to article
16 three, chapter twenty-nine-a of this code, change the minimum
17 amounts established by this subsection. The tax commissioner
18 may, if he or she believes such action necessary for the protec-
19 tion of the revenues, require any employer to make the return
20 and pay to him or her the tax deducted and withheld at any
21 time, or from time to time.

22 (b) *Monthly returns and payments of withheld tax on and*
23 *after the first day of January, two thousand one.* — Notwith-
24 standing the provisions of subsection (a), on and after the first

25 day of January, two thousand one, every employer required to
26 deduct and withhold tax under this article shall, for each of the
27 first eleven months of the calendar year, on or before the
28 twentieth day of the succeeding month and for the last calendar
29 month of the year, on or before the last day of the succeeding
30 month, file a withholding return as prescribed by the tax
31 commissioner and pay over to the tax commissioner the taxes
32 so required to be deducted and withheld, if such withheld taxes
33 aggregate two hundred fifty dollars or more for the month;
34 except any employer with respect to whom the tax commis-
35 sioner may have by regulation provided otherwise in accor-
36 dance with the provisions of subsection (a) of this section.

37 (c) *Annual returns and payments of withheld tax of certain*
38 *domestic and household employees.* — Employers of domestic
39 and household employees whose withholdings of federal
40 income tax are annually paid and reported by the employer
41 pursuant to the filing of Schedule H of federal form 1040,
42 1040A, 1040NR, 1040NR-EZ, 1040SS or 1041 may, on or
43 before the thirty-first day of January next succeeding the end of
44 the calendar year for which withholdings are deducted and
45 withheld, file an annual withholding return with the tax
46 commissioner and annually remit to the tax commissioner West
47 Virginia personal income taxes deducted and withheld for the
48 employees. The tax commissioner may promulgate legislative
49 or other rules pursuant to article three, chapter twenty-nine-a of
50 this code for implementation of this subsection.

51 (d) *Deposit in trust for tax commissioner.* — Whenever any
52 employer fails to collect, truthfully account for, or pay over the
53 tax, or to make returns of the tax as required in this section, the
54 tax commissioner may serve a notice requiring the employer to
55 collect the taxes which become collectible after service of the
56 notice, to deposit the taxes in a bank approved by the tax
57 commissioner, in a separate account, in trust for and payable to
58 the tax commissioner, and to keep the amount of the tax in the

59 separate account until payment over to the tax commissioner.
60 The notice shall remain in effect until a notice of cancellation
61 is served by the tax commissioner.

62 (e) *Accelerated payment.*

63 (1) Notwithstanding the provisions of subsections (a) and
64 (b) of this section, for calendar years beginning after the
65 thirty-first day of December, one thousand nine hundred ninety,
66 every employer required to deduct and withhold tax whose
67 average payment per calendar month for the preceding calendar
68 year under subsection (b) of this section exceeded one hundred
69 thousand dollars shall remit the tax attributable to the first
70 fifteen days of June each year on or before the twenty-third day
71 of June.

72 (2) For purposes of complying with subdivision (1) of this
73 subsection (e), the employer shall remit an amount equal to the
74 withholding tax due under this article on employee compensa-
75 tion subject to withholding tax payable or paid to employees for
76 the first fifteen days of June or, at the employer's election, the
77 employer may remit an amount equal to fifty percent of the
78 employer's liability for withholding tax under this article on
79 compensation payable or paid to employees for the preceding
80 month of May.

81 (3) For an employer which has not been in business for a
82 full calendar year, the total amount the employer was required
83 to deduct and withhold under subsection (b) of this section for
84 the prior calendar year shall be divided by the number of
85 months, including fractions of a month, that it was in business
86 during the prior calendar year, and if that amount exceeds one
87 hundred thousand dollars, the employer shall remit the tax
88 attributable to the first fifteen days of June each year on or
89 before the twenty-third day of June, as provided in subdivision
90 (2) of this subsection (e).

91 (4) When an employer required to make an advanced
92 payment of withholding tax under subdivision (1) of this
93 subsection (e) makes out its return for the month of June, which
94 is due on the twentieth day of July, that employer may claim as
95 a credit against its liability under this article for tax on em-
96 ployee compensation paid or payable for employee services
97 rendered during the month of June the amount of the advanced
98 payment of tax made under subdivision (1) of this subsection
99 (e).

100 (f) The amendments to this section enacted in the year two
101 thousand are effective for tax years beginning on or after the
102 first day of January, two thousand one.

CHAPTER 261

(H. B. 4639 — By Delegates Rowe, Manuel, Doyle,
Pino, Wills, Mahan and Webb)

[Passed March 7, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend and reenact section eight-g, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the personal income tax credit for qualified rehabilitated residential building investment; and removing the requirement that the national park service be involved in the designation and certification of historic structures eligible for the credit.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.**§11-21-8g. Credit for qualified rehabilitated residential building investment.**

1 (a) A credit against the tax imposed by the provisions of
2 this article is allowed for residential certified historic structures.
3 The credit is equal to twenty percent of eligible rehabilitation
4 expenses in the rehabilitation of a certified historic structure.
5 The credit is available for residential certified historic structures
6 located in this state that are reviewed by the West Virginia
7 division of culture and history and are determined to be listed
8 on the national register of historic places either individually or
9 as a contributing building within a historical district that is
10 listed on the national register of historic places.

11 (b)(1) "Certified historic structure" means any building
12 located in this state that is determined to be listed individually
13 in the national register of historic places or located in a regis-
14 tered historic district, during the review by the West Virginia
15 division of culture and history.

16 (2) "Certified rehabilitation" means any rehabilitation of a
17 certified historic structure that is reviewed by the West Virginia
18 division of culture and history, and is determined by the
19 division of culture and history to be consistent with the historic
20 character of the property and, where applicable, the district in
21 which it is located.

22 (3) "Eligible rehabilitation expenses" means expenses
23 incurred in the material rehabilitation of a certified historic
24 structure and added to the property's basis for income tax
25 purposes.

26 (4) "Historic district" means a group of buildings, structures
27 or sites that taken together make up a coherent whole with
28 similar historic or architectural meaning that is listed in the
29 national register of historic places.

30 (5) "Historic preservation application" means application
31 forms published by the national park service, United States
32 department of the interior, Parts 1, 2 and 3, Form No. 1-168, or
33 its successor, or comparable application forms prepared by the
34 division of culture and history.

35 (6) "Material rehabilitation" means improvements, repairs,
36 alterations or additions consistent with the "secretary of the
37 interior's standards for rehabilitation," the actual cost of which
38 amounts to at least twenty percent of the assessed value of a
39 certified historic structure for ad valorem real estate tax
40 purposes for the year before such rehabilitation expenses were
41 incurred, exclusive of the assessed value of the land.

42 (7) "Residential certified historic structure" means any
43 certified historic structure that is:

44 (A) Classified as Class II property for levy purposes
45 pursuant to section five, article eight, chapter eleven of this
46 code for the year in which the rehabilitation expenses are
47 incurred; or

48 (B) Not classified as Class II property for levy purposes for
49 the year in which the rehabilitation expenses are incurred but
50 will satisfy the requirements for classification as Class II for
51 real property assessment purposes pursuant to section five,
52 article eight, chapter eleven of this code as of the first day of
53 July of the year following the year in which the rehabilitation
54 expenses are incurred.

55 (8) "Secretary of the interior standards" means standards
56 and guidelines adopted and published by the national park
57 service, United States department of the interior, for rehabilita-
58 tion of historic properties.

59 (9) "State historic preservation officer" means the state
60 official designated by the governor pursuant to provisions in the

61 national historic preservation act of 1966, as amended and
62 further defined in section six, article one, chapter twenty-nine
63 of this code.

64 (c)(1) Application and processing procedures for provisions
65 of this section shall be the same or substantially similar as any
66 required under provisions of 36 C.F.R., Part 67, and to the
67 extent applicable, 26 C.F.R., Part 1. Obtaining historic preser-
68 vation certification by proper application automatically
69 qualifies the applicant to be considered for tax credits under this
70 section.

71 (2) The state historic preservation officer's role in the
72 application procedure shall be identical, or substantially similar,
73 to that in 36 C.F.R., Part 67 and 26 C.F.R., Part 1, to the extent
74 applicable.

75 (d) All standards including the secretary of the interior
76 standards and provisions in 36 C.F.R., Part 67 and 26 C.F.R.,
77 Part 1 that apply to tax credits available from the United States
78 government apply to this section, except that the property
79 eligible for the tax credit under this section may not be income
80 producing property or property for which depreciation is
81 allowed under 26 U.S.C. §168.

82 (e) If the amount of the credit for qualified rehabilitated
83 residential building investment exceeds the taxpayer's tax
84 liability for the taxable year to which the credit applies, the
85 amount that exceeds the tax liability for the taxable year may be
86 carried over for credits against the income taxes of the taxpayer
87 in each of the ensuing five tax years or until the full credit is
88 used, whichever occurs first. In no event may the amount of the
89 credit taken in a taxable year exceed the tax liability due for the
90 taxable year.

91 (f) The tax commissioner shall require disclosure of
92 information regarding credits granted pursuant to this section in

93 accordance with the provisions of section five-s, article ten of
94 this chapter. The commissioner of the West Virginia division of
95 culture and history may establish by rule the requirements to
96 implement the credit for qualified rehabilitated residential
97 building investment, including reasonable fees to defray the
98 necessary expenses of administration of the credit.

99 (g) The credit authorized by this section is available for tax
100 years beginning after the thirty-first day of December, one
101 thousand nine hundred ninety-nine.

CHAPTER 262

(S. B. 143 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed February 7, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating the meaning of certain terms used in the West Virginia personal income tax act by bringing them into conformity with their meanings for federal income tax purposes; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

1 (a) Any term used in this article has the same meaning as
2 when used in a comparable context in the laws of the United

3 States relating to income taxes, unless a different meaning is
4 clearly required. Any reference in this article to the laws of the
5 United States means the provisions of the Internal Revenue
6 Code of 1986, as amended, and any other provisions of the laws
7 of the United States that relate to the determination of income
8 for federal income tax purposes. All amendments made to the
9 laws of the United States after the thirty-first day of December,
10 one thousand nine hundred ninety-eight, but prior to the first
11 day of January, two thousand, shall be given effect in determin-
12 ing the taxes imposed by this article to the same extent those
13 changes are allowed for federal income tax purposes, whether
14 the changes are retroactive or prospective, but no amendment
15 to the laws of the United States made on or after the first day of
16 January, two thousand, shall be given any effect.

17 (b) *Medical savings accounts.* — The term “taxable trust”
18 does not include a medical savings account established pursuant
19 to section twenty, article fifteen, chapter thirty-three of this
20 code or section fifteen, article sixteen of said chapter. Employer
21 contributions to a medical savings account established pursuant
22 to said sections, are not “wages” for purposes of withholding
23 under section seventy-one of this article.

24 (c) *Surtax.* — The term “surtax” means the twenty percent
25 additional tax imposed on taxable withdrawals from a medical
26 savings account under section twenty, article fifteen, chapter
27 thirty-three of this code, and the twenty percent additional tax
28 imposed on taxable withdrawals from a medical savings
29 account under section fifteen, article sixteen of said chapter,
30 which are collected by the tax commissioner as tax collected
31 under this article.

32 (d) *Effective date.* — The amendments to this section
33 enacted in the year two thousand, are retroactive to the extent
34 allowable under federal income tax law. With respect to taxable
35 years that begin prior to the first day of January, one thousand
36 nine hundred ninety-nine, the law in effect for each of those
37 years shall be fully preserved as to that year, except as provided
38 in this section.

CHAPTER 263

**(S. B. 669 — By Senators Plymale, Craigo, Anderson, Bailey,
Bowman, Chafin, Edgell, Helmick, Jackson, Love,
Prezioso, Sharpe, Unger, Walker, Boley, Minear and Sprouse)**

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

AN ACT to amend and reenact section twelve, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to setting forth a formula to exempt military retirement from the personal income tax; providing that the formula applies to up to thirty thousand dollars of military retirement income; setting forth effective date and applicable time periods; setting forth the types of military income which may be exempted; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12. West Virginia adjusted gross income of resident individual.

1 (a) *General.* — The West Virginia adjusted gross income
2 of a resident individual means his federal adjusted gross income
3 as defined in the laws of the United States for the taxable year
4 with the modifications specified in this section.

5 (b) *Modifications increasing federal adjusted gross income.*
6 — There shall be added to federal adjusted gross income unless
7 already included therein the following items:

8 (1) Interest income on obligations of any state other than
9 this state or of a political subdivision of any other state unless
10 created by compact or agreement to which this state is a party;

11 (2) Interest or dividend income on obligations or securities
12 of any authority, commission or instrumentality of the United
13 States, which the laws of the United States exempt from federal
14 income tax but not from state income taxes;

15 (3) Any deduction allowed when determining federal
16 adjusted gross income for federal income tax purposes for the
17 taxable year that is not allowed as a deduction under this article
18 for the taxable year;

19 (4) Interest on indebtedness incurred or continued to
20 purchase or carry obligations or securities the income from
21 which is exempt from tax under this article, to the extent
22 deductible in determining federal adjusted gross income;

23 (5) Interest on a depository institution tax-exempt savings
24 certificate which is allowed as an exclusion from federal gross
25 income under Section 128 of the Internal Revenue Code, for the
26 federal taxable year;

27 (6) The amount of a lump sum distribution for which the
28 taxpayer has elected under Section 402(e) of the Internal
29 Revenue Code of 1986, as amended, to be separately taxed for
30 federal income tax purposes; and

31 (7) Amounts withdrawn from a medical savings account
32 established by or for an individual under section twenty, article
33 fifteen or section fifteen, article sixteen, both of chapter thirty-
34 three of this code, that are used for a purpose other than
35 payment of medical expenses, as defined in those sections.

36 (c) *Modifications reducing federal adjusted gross income.*
37 — There shall be subtracted from federal adjusted gross income
38 to the extent included therein:

39 (1) Interest income on obligations of the United States and
40 its possessions to the extent includable in gross income for
41 federal income tax purposes;

42 (2) Interest or dividend income on obligations or securities
43 of any authority, commission or instrumentality of the United
44 States or of the state of West Virginia to the extent includable
45 in gross income for federal income tax purposes but exempt
46 from state income taxes under the laws of the United States or
47 of the state of West Virginia, including federal interest or
48 dividends paid to shareholders of a regulated investment
49 company, under Section 852 of the Internal Revenue Code for
50 taxable years ending after the thirtieth day of June, one thou-
51 sand nine hundred eighty-seven;

52 (3) Any amount included in federal adjusted gross income
53 for federal income tax purposes for the taxable year that is not
54 included in federal adjusted gross income under this article for
55 the taxable year;

56 (4) The amount of any refund or credit for overpayment of
57 income taxes imposed by this state, or any other taxing jurisdic-
58 tion, to the extent properly included in gross income for federal
59 income tax purposes;

60 (5) Annuities, retirement allowances, returns of contribu-
61 tions and any other benefit received under the West Virginia
62 public employees retirement system, the West Virginia state
63 teachers retirement system and all forms of military retirement,
64 including regular armed forces, reserves and national guard,
65 including any survivorship annuities derived therefrom, to the
66 extent includable in gross income for federal income tax
67 purposes: *Provided*, That notwithstanding any provisions in this
68 code to the contrary this modification shall be limited to the
69 first two thousand dollars of benefits received under the West
70 Virginia public employees retirement system, the West Virginia
71 state teachers retirement system and, including any survivorship
72 annuities derived therefrom, to the extent includable in gross
73 income for federal income tax purposes for taxable years

74 beginning after the thirty-first day of December, one thousand
75 nine hundred eighty-six; and the first two thousand dollars of
76 benefits received under any federal retirement system to which
77 Title 4 U.S.C. § 111 applies: *Provided, however*, That the total
78 modification under this paragraph shall not exceed two thou-
79 sand dollars per person receiving retirement benefits and this
80 limitation shall apply to all returns or amended returns filed
81 after the last day of December, one thousand nine hundred
82 eighty-eight;

83 (6) Retirement income received in the form of pensions and
84 annuities after the thirty-first day of December, one thousand
85 nine hundred seventy-nine, under any West Virginia police,
86 West Virginia firemen's retirement system or the West Virginia
87 state police death, disability and retirement fund, the West
88 Virginia state police retirement system, or the West Virginia
89 deputy sheriff retirement system, including any survivorship
90 annuities derived any of these programs, to the extent
91 includable in gross income for federal income tax purposes;

92 (7) An amount equal to two percent multiplied by the
93 number of years of active duty in the armed forces of the United
94 States of America with the product thereof multiplied by the
95 first thirty thousand dollars of military retirement income,
96 including retirement income from the regular armed forces,
97 reserves and national guard paid by the United States or by this
98 state after the thirty-first day of December, two thousand
99 including any survivorship annuities, to the extent included in
100 gross income for federal income tax purposes for the taxable
101 year: *Provided*, That in the event that any of the provisions of
102 this subdivision are found by a court of competent jurisdiction
103 to violate either the constitution of this state or of the United
104 States, or is held to be extended to persons other than specified
105 in this subdivision, this subdivision shall become null and void
106 by operation of law.

107 (8) Federal adjusted gross income in the amount of eight
108 thousand dollars received from any source after the thirty-first

109 day of December, one thousand nine hundred eighty-six, by any
110 person who has attained the age of sixty-five on or before the
111 last day of the taxable year, or by any person certified by proper
112 authority as permanently and totally disabled, regardless of age,
113 on or before the last day of the taxable year, to the extent
114 includable in federal adjusted gross income for federal tax
115 purposes: *Provided*, That if a person has a medical certification
116 from a prior year and he is still permanently and totally
117 disabled, a copy of the original certificate is acceptable as proof
118 of disability. A copy of the form filed for the federal disability
119 income tax exclusion is acceptable: *Provided, however*, That:

120 (i) Where the total modification under subdivisions (1), (2),
121 (5), (6) and (7) of this subsection is eight thousand dollars per
122 person or more, no deduction shall be allowed under this
123 subdivision; and

124 (ii) Where the total modification under subdivisions (1),
125 (2), (5), (6) and (7) of this subsection is less than eight thousand
126 dollars per person, the total modification allowed under this
127 subdivision for all gross income received by that person shall
128 be limited to the difference between eight thousand dollars and
129 the sum of modifications under subdivisions (1), (2), (5), (6)
130 and (7) of this subsection;

131 (9) Federal adjusted gross income in the amount of eight
132 thousand dollars received from any source after the thirty-first
133 day of December, one thousand nine hundred eighty-six, by the
134 surviving spouse of any person who had attained the age of
135 sixty-five or who had been certified as permanently and totally
136 disabled, to the extent includable in federal adjusted gross
137 income for federal tax purposes: *Provided*, That:

138 (i) Where the total modification under subdivisions (1), (2),
139 (5), (6), (7) and (8) of this subsection is eight thousand dollars
140 or more, no deduction shall be allowed under this subdivision;
141 and

142 (ii) Where the total modification under subdivisions (1),
143 (2), (5), (6), (7) and (8) of this subsection is less than eight
144 thousand dollars per person, the total modification allowed
145 under this subdivision for all gross income received by that
146 person shall be limited to the difference between eight thousand
147 dollars and the sum of subdivisions (1), (2), (5), (6), (7) and (8)
148 of this subsection;

149 (10) Contributions from any source to a medical savings
150 account established by or for the individual pursuant to section
151 twenty, article fifteen or section fifteen, article sixteen, chapter
152 thirty-three of this code, plus interest earned on the account, to
153 the extent includable in federal adjusted gross income for
154 federal tax purposes: *Provided*, That the amount subtracted
155 pursuant to this subdivision for any one taxable year may not
156 exceed two thousand dollars plus interest earned on the account.
157 For married individuals filing a joint return, the maximum
158 deduction is computed separately for each individual; and

159 (11) Any other income which this state is prohibited from
160 taxing under the laws of the United States.

161 (d) *Modification for West Virginia fiduciary adjustment.*—
162 There shall be added to or subtracted from federal adjusted
163 gross income, as the case may be, the taxpayer's share, as
164 beneficiary of an estate or trust, of the West Virginia fiduciary
165 adjustment determined under section nineteen of this article.

166 (e) *Partners and S corporation shareholders.* — The
167 amounts of modifications required to be made under this
168 section by a partner or an S corporation shareholder, which
169 relate to items of income, gain, loss or deduction of a partner-
170 ship or an S corporation, shall be determined under section
171 seventeen of this article.

172 (f) *Husband and wife.* — If husband and wife determine
173 their federal income tax on a joint return but determine their
174 West Virginia income taxes separately, they shall determine

175 their West Virginia adjusted gross incomes separately as if their
176 federal adjusted gross incomes had been determined separately.

177 (g) *Effective date.* — Changes in the language of this
178 section enacted in the year two thousand shall apply to taxable
179 years beginning after the thirty-first day of December, two
180 thousand.

CHAPTER 264

(H. B. 4354 — By Delegates Cann, Michael, Campbell,
Kominar, Hall, Fletcher and Houston)

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

AN ACT to amend article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve-c, relating to deduction of premium paid for long-term care insurance from federal adjusted gross income.

Be it enacted by the Legislature of West Virginia:

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

PART I. GENERAL.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12c. Deduction for long-term care insurance.

1 For taxable years beginning on and after the first day of
2 January, two thousand, in addition to amounts authorized to be
3 subtracted from federal adjusted gross income pursuant to
4 subsection (c), section twelve of this article, any payment
5 during the taxable year for premiums for a long-term care

6 insurance policy as defined in section four, article fifteen-a,
7 chapter thirty-three of this code that offers coverage to either
8 the taxpayer, the taxpayer's spouse, parent or a dependent as
9 defined in section 152 of the Internal Revenue Code of 1986, as
10 amended, is an authorized modification reducing federal
11 adjusted gross income, but only to the extent the amount is not
12 allowable as a deduction when arriving at the taxpayer's federal
13 adjusted gross income for the taxable year in which the pay-
14 ment is made.

CHAPTER 265

(S. B. 144 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed February 7, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating the meaning of certain terms used in the West Virginia corporation net income tax act by bringing them into conformity with their meanings for federal income tax purposes; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

1 (a) Any term used in this article has the same meaning as
2 when used in a comparable context in the laws of the United
3 States relating to federal income taxes, unless a different
4 meaning is clearly required by the context or by definition in

5 this article. Any reference in this article to the laws of the
6 United States means the provisions of the Internal Revenue
7 Code of 1986, as amended, and any other provisions of the laws
8 of the United States that relate to the determination of income
9 for federal income tax purposes. All amendments made to the
10 laws of the United States after the thirty-first day of December,
11 one thousand nine hundred ninety-eight, but prior to the first
12 day of January, two thousand, shall be given effect in determin-
13 ing the taxes imposed by this article to the same extent those
14 changes are allowed for federal income tax purposes, whether
15 the changes are retroactive or prospective, but no amendment
16 to the laws of the United States made on or after the first day of
17 January, two thousand, shall be given any effect.

18 (b) The term “Internal Revenue Code of 1986” means the
19 Internal Revenue Code of the United States enacted by the
20 “Federal Tax Reform Act of 1986” and includes the provisions
21 of law formerly known as the Internal Revenue Code of 1954,
22 as amended, and in effect when the “Federal Tax Reform Act
23 of 1986” was enacted, that were not amended or repealed by the
24 “Federal Tax Reform Act of 1986”. Except when inappropriate,
25 any references in any law, executive order or other document:

26 (1) To the Internal Revenue Code of 1954 includes refer-
27 ence to the Internal Revenue Code of 1986; and

28 (2) To the Internal Revenue Code of 1986 shall include a
29 reference to the provisions of law formerly known as the
30 Internal Revenue Code of 1954.

31 (c) *Effective date.* — The amendments to this section
32 enacted in the year two thousand, are retroactive to the extent
33 allowable under federal income tax law. With respect to taxable
34 years that begin prior to the first day of January, one thousand
35 nine hundred ninety-nine, the law in effect for each of those
36 years shall be fully preserved as to that year, except as provided
37 in this section.

CHAPTER 266

(Com. Sub. for H. B. 4533 — By Delegates Stalnaker and Davis)

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

AN ACT to amend and reenact sections two, five, eighteen, twenty-seven, forty-five, forty-six and forty-eight, article three, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to real property tax liens sold by sheriff for delinquent ad valorem taxes; hours of sale; forfeiture of purchaser's rights because of the expiration of the tax lien; limitation on the time to apply for quitclaim deed; publication of notice of auction; and auction without additional advertising.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHEATED AND WASTE AND UNAPPROPRIATED LANDS.

- §11A-3-2. Second publication of list of delinquent real estate; notice.
- §11A-3-5. Sale by sheriff; immunity; penalty; mandamus.
- §11A-3-18. Limitations on tax certificates.
- §11A-3-27. Deed to purchaser; record.
- §11A-3-45. Deputy commissioner to hold annual auction.
- §11A-3-46. Publication of notice of auction.
- §11A-3-48. Unsold lands subject to sale without auction or additional advertising.

§11A-3-2. Second publication of list of delinquent real estate; notice.

- 1 (a) On or before the tenth day of September of each year,
- 2 the sheriff shall prepare a second list of delinquent lands, which

3 shall include all real estate in his county remaining delinquent
 4 as of the first day of September, together with a notice of sale,
 5 in form or effect as follows:

6 Notice is hereby given that tax liens for the following
 7 described tracts or lots of land or undivided interests therein in
 8 the County of _____ which are delinquent for the
 9 nonpayment of taxes for the year (or years) 19____, will be
 10 offered for sale by the undersigned sheriff (or collector) at
 11 public auction at the front door of the courthouse of the county,
 12 between the hours of nine in the morning and four in the
 13 afternoon, on the ____ day of _____, 19_____.

14 Tax liens on each unredeemed tract or lot, or each unre-
 15 deemed part thereof or undivided interest therein, will be sold
 16 at public auction to the highest bidder in an amount which shall
 17 not be less than the taxes, interest and charges which shall be
 18 due thereon to the date of sale, as set forth in the following
 19 table:

20 21 22	Name of person charged with taxes	Quantity of land	Local description	Total amount of taxes, interest and charges due to date of sale
23				

24 Any of the aforesaid tracts or lots, or part thereof or an
 25 undivided interest therein, may be redeemed by the payment to
 26 the undersigned sheriff (or collector) before sale, of the total
 27 amount of taxes, interest and charges due thereon up to the date
 28 of redemption.

29 Given under my hand this _____ day of
 30 _____, 19_____.

31 _____
 32 Sheriff (or collector).

33 The sheriff shall publish the list and notice prior to the sale
34 date fixed in the notice as a Class III-0 legal advertisement in
35 compliance with the provisions of article three, chapter fifty-
36 nine of this code, and the publication area for such publication
37 shall be the county.

38 (b) In addition to such publication, no less than thirty days
39 prior to the sale the sheriff shall send a notice of the delin-
40 quency and the date of sale by certified mail: (1) To the last
41 known address of each person listed in the land books whose
42 taxes are delinquent; (2) to each person having a lien on real
43 property upon which the taxes are due as disclosed by a
44 statement filed with the sheriff pursuant to the provisions of
45 section three of this article; (3) to each other person with an
46 interest in the property or with a fiduciary relationship to a
47 person with an interest in the property who has in writing
48 delivered to the sheriff on a form prescribed by the tax commis-
49 sioner a request for such notice of delinquency; and (4) in the
50 case of property which includes a mineral interest but does not
51 include an interest in the surface other than an interest for the
52 purpose of developing the minerals, to each person who has in
53 writing delivered to the sheriff, on a form prescribed by the tax
54 commissioner, a request for such notice which identifies the
55 person as an owner of an interest in the surface of real property
56 that is included in the boundaries of such property: *Provided,*
57 That in a case where one owner owns more than one parcel of
58 real property upon which taxes are delinquent, the sheriff may,
59 at his option, mail separate notices to the owner and each
60 lienholder for each parcel or may prepare and mail to the owner
61 and each lienholder a single notice which pertains to all such
62 delinquent parcels. If the sheriff elects to mail only one notice,
63 that notice shall set forth a legally sufficient description of all
64 parcels of property on which taxes are delinquent. In no event
65 shall failure to receive the mailed notice by the landowner or
66 lienholder affect the validity of the title of the property con-

67 veyed if it is conveyed pursuant to section twenty-seven or
68 fifty-nine of this article.

69 (c) (1) To cover the cost of preparing and publishing the
70 second delinquent list, a charge of twelve dollars and fifty cents
71 shall be added to the taxes, interest and charges already due on
72 each item and all such charges shall be stated in the list as a part
73 of the total amount due.

74 (2) To cover the cost of preparing and mailing notice to the
75 landowner, lienholder or any other person entitled thereto
76 pursuant to this section, a charge of five dollars per addressee
77 shall be added to the taxes, interest and charges already due on
78 each item and all such charges shall be stated in the list as a part
79 of the total amount due.

80 (d) Any person whose taxes were delinquent on the first day
81 of September may have his or her name removed from the
82 delinquent list prior to the time the same is delivered to the
83 newspapers for publication by paying to the sheriff the full
84 amount of taxes and costs owed by the person at the date of
85 such redemption. In such case, the sheriff shall include but three
86 dollars of the costs provided in this section in making such
87 redemption. Costs collected by the sheriff hereunder which are
88 not expended for publication and mailing shall be paid into the
89 general county fund.

§11A-3-5. Sale by sheriff; immunity; penalty; mandamus.

1 (a) The tax lien on each unredeemed tract or lot, or each
2 unredeemed part thereof or undivided interest therein shall be
3 sold by the sheriff, in the same order as set forth in the list and
4 notice prescribed in section two of this article, at public auction
5 to the highest bidder, between the hours of nine in the morning
6 and four in the afternoon on any business working day after the
7 fourteenth day of October and before the twenty-third day of
8 November: *Provided*, That no tax lien for such unredeemed

9 tract or lot or undivided interest therein shall be sold upon any
10 bid or for any sum less than the total amount of taxes, interest
11 and charges then due: *Provided, however,* That at any such sale,
12 the tax lien for each unredeemed tract or lot, or undivided
13 interest therein, shall be offered for sale and sold for the
14 entirety of such tract or lot or undivided interest therein as the
15 same is described and constituted as a unit or entity in the list
16 and notice prescribed in section two of this article. If the sale
17 shall not be completed on the day designated in the notice for
18 the holding of such sale, it shall be continued from day to day
19 between the same hours until disposition shall have been made
20 of all the land. The payment for any tax lien purchased at a sale
21 shall be made by check or money order payable to the sheriff of
22 the county and delivered before the close of business on the day
23 of the sale.

24 (b) Each sheriff is immune from liability if a loss or claim
25 results from the sale of a tax lien conducted pursuant to the
26 provisions of this article or from any subsequent conveyance of
27 the property to which the lien attaches: *Provided,* That where a
28 sheriff fails or refuses to sell said tax lien pursuant to the
29 provisions of this article for reasons other than those provided
30 by section seven of this article, the sheriff may be compelled by
31 mandamus to sell the same upon the petition of the auditor or
32 any taxpayer of the county in a court of competent jurisdiction.

§11A-3-18. Limitations on tax certificates.

1 (a) No lien upon real property evidenced by a tax certificate
2 of sale issued by a sheriff on account of any delinquent property
3 taxes may remain a lien thereon for a period longer than
4 eighteen months after the original issuance thereof.

5 (b) All rights of a purchaser shall be deemed forfeited and
6 expired and no tax deed is to be issued on any tax sale evi-
7 denced by a tax certificate of sale where the certificate has
8 ceased to be a lien pursuant to the provisions of this section and

9 application for the tax deed, pursuant to the provisions of
10 section twenty-seven of this article, is not pending at the time
11 of the expiration of the limitation period provided for in this
12 section.

13 (c) Whenever a lien evidenced by a tax certificate of sale
14 has expired by reason of the provisions of this section, the
15 county clerk shall immediately issue and record a certificate of
16 cancellation describing the real estate included in the certificate
17 of purchase or tax certificate and giving the date of cancellation
18 and the clerk shall also make proper entries in his or her
19 records. The clerk shall also present a copy of every such
20 certificate of cancellation to the sheriff who shall enter the same
21 in the sheriff's records and the certificate and the record are
22 prima facie evidence of the cancellation of the certificate of sale
23 and of the release of the lien of the certificate on the lands
24 therein described. Failure to record the certificate of cancella-
25 tion does not extend the lien evidenced by the certificate of sale.
26 The sheriff and county clerk are not entitled to any fees for the
27 issuing of the certificate of cancellation nor for the entries in
28 their books made under the provisions of this subsection.

§11A-3-27. Deed to purchaser; record.

1 If the real estate described in the notice is not redeemed
2 within the time specified therein, but in no event prior to the
3 first day of April of the second year following the sheriff's sale,
4 the person entitled thereto shall thereafter, but prior to the
5 expiration of the lien evidenced by a tax certificate of sale
6 issued by a sheriff for such real estate as provided in section
7 eighteen of this article, make and deliver to the clerk of the
8 county commission subject to the provisions of section eighteen
9 of this article, a quitclaim deed for the real estate in form or
10 effect as follows:

11 This deed made this _____ day of _____,
12 19____, by and between _____, clerk of the

13 county commission of _____ County,
14 West Virginia, (or by and between _____, a
15 commissioner appointed by the Circuit Court of
16 _____ County, West Virginia) grantor, and
17 _____, purchaser, (or _____, heir,
18 devisee or assignee of _____, purchaser),
19 grantee, witnesseth, that:

20 Whereas, In pursuance of the statutes in such case made
21 and provided, _____, Sheriff of _____
22 County, (or _____, deputy for _____,
23 Sheriff of _____ County), (or _____,
24 collector of _____ County), did, in the month of
25 _____, in the year 19____, sell the tax lien(s) on real
26 estate, hereinafter mentioned and described, for the taxes
27 delinquent thereon for the year (or years) 19____, and
28 _____, (here insert name of purchaser) for the sum
29 of \$_____, that being the amount of purchase money
30 paid to the sheriff, did become the purchaser of the tax lien(s)
31 on such real estate (or on _____ acres, part of the tract or
32 land, or on an undivided _____ interest in such real
33 estate) which was returned delinquent in the name of
34 _____; and

35 Whereas, The clerk of the county commission has caused
36 the notice to redeem to be served on all persons required by law
37 to be served therewith; and

38 Whereas, The tax lien(s) on the real estate so purchased has
39 not been redeemed in the manner provided by law and the time
40 for redemption set in such notice has expired;

41 Now, therefore, the grantor, for and in consideration of the
42 premises and in pursuance of the statutes, doth grant unto
43 _____, grantee, his heirs and assigns forever, the real
44 estate on which the tax lien(s) so purchased existed, situate in

45 the county of _____, bounded and described
46 as follows: _____

47 Witness the following signature: _____

48 Clerk of the County Commission of _____
49 County.

50 Except when ordered to do so, as provided in section
51 twenty-eight of this article, no clerk of the county commission
52 may execute and deliver such a deed more than thirty days after
53 the person entitled to the deed delivers the same and requests
54 the execution thereof. Upon the clerk's determination that the
55 deed presented substantially complies with the requirements of
56 this section, the clerk shall execute the deed and acknowledge
57 the same, record the deed in the clerk's office and deliver the
58 original thereof to the purchaser.

59 For the execution of the deed and for all the recording
60 required by this section, a fee of seven dollars and fifty cents
61 and the recording expenses shall be charged, to be paid by the
62 grantee upon delivery of the deed. The deed, when duly
63 acknowledged or proven, shall be recorded by the clerk of the
64 county commission in the deed book in the clerk's office,
65 together with assignment from the purchaser, if one was made,
66 the notice to redeem, the return of service of the notice, the
67 affidavit of publication, if the notice was served by publication,
68 and any return receipts for notices sent by certified mail.

§11A-3-45. Deputy commissioner to hold annual auction.

1 (a) Each tract or lot certified to the deputy commissioner
2 pursuant to the preceding section shall be sold by the deputy
3 commissioner at public auction at the courthouse of the county
4 to the highest bidder between the hours of nine in the morning
5 and four in the afternoon on any business working day within
6 one hundred twenty days after the auditor has certified the lands

7 to the deputy commissioner as required by the preceding
8 section. The payment for any tract or lot purchased at a sale
9 shall be made by check or money order payable to the sheriff of
10 the county and delivered before the close of business on the day
11 of sale. No part or interest in any tract or lot subject to such
12 sale, or any part thereof of interest therein, that is less than the
13 entirety of such unredeemed tract, lot or interest, as the same is
14 described and constituted as a unit or entity in said list, shall be
15 offered for sale or sold at such sale. If the sale shall not be
16 completed on the first day of the sale, it shall be continued from
17 day to day between the same hours until all the land shall have
18 been offered for sale.

19 (b) A private, nonprofit, charitable corporation, incorpo-
20 rated in this state, which has been certified as a nonprofit
21 corporation pursuant to the provisions of Section 501(c)(3) of
22 the federal Internal Revenue Code, as amended, which has as its
23 principal purpose the construction of housing or other public
24 facilities and which notifies the deputy commissioner of an
25 intention to bid and subsequently submits a bid that is not more
26 than five percent lower than the highest bid submitted by any
27 person or organization which is not a private, nonprofit,
28 charitable corporation as defined in this subsection, shall be
29 sold the property offered for sale by the deputy commissioner
30 pursuant to the provisions of this section at the public auction
31 as opposed to the highest bidder.

32 The nonprofit corporation referred to in this subsection
33 does not include a business organized for profit, a labor union,
34 a partisan political organization or an organization engaged in
35 religious activities and it does not include any other group
36 which does not have as its principal purpose the construction of
37 housing or public facilities.

§11A-3-46. Publication of notice of auction.

1 Once a week for three consecutive weeks prior to the
2 auction required in the preceding section, the deputy commis-
3 sioner shall publish notice of the auction as a Class III-0 legal
4 advertisement in compliance with the provisions of article
5 three, chapter fifty-nine of this code, and the publication area
6 for such publication shall be the county.

7 The notice shall be in form or effect as follows:

8 Notice is hereby given that the following described tracts or
9 lots of land in the County of _____, have been certified
10 by the Auditor of the State of West Virginia to
11 _____, Deputy Commissioner of Delinquent and
12 Nonentered Lands of said County, for sale at public auction.
13 The lands will be offered for sale by the undersigned deputy
14 commissioner at public auction in (specify location) the
15 courthouse of _____ County between the hours of nine in the
16 morning and four in the afternoon, on the _____ day of
17 _____, 19____.

18 Each tract or lot as described below will be sold to the
19 highest bidder. The payment for any tract or lot purchased at a
20 sale shall be made by check or money order payable to the
21 sheriff of the county and delivered before the close of business
22 on the day of the sale. If any of said tracts or lots remain unsold
23 following the auction, they will be subject to sale by the deputy
24 commissioner without additional advertising or public auction.
25 The deputy commissioner sale may include tracts or lots
26 remaining unsold from a previous auction not required by law
27 to be readvertised and described for this subsequent auction of
28 those same tracts and lots. All sales are subject to the approval
29 of the auditor of the state of West Virginia.

30 (here insert description of advertised lands to be sold)

31 Any of the aforesaid tracts or lots may be redeemed by any
32 person entitled to pay the taxes thereon at any time prior to the

33 sale by payment to the deputy commissioner of the total amount
34 of taxes, interest and charges due thereon up to the date of
35 redemption. Lands listed above as escheated or waste and
36 unappropriated lands may not be redeemed.

37 Given under my hand this _____ day of _____,
38 19_____.

39 _____ Deputy Commissioner of
40 Delinquent and Nonentered Lands of _____
41 County.

42 The description of lands required in the notice shall be in
43 the same form as the list certifying said lands to the deputy
44 commissioner for sale. If the deputy commissioner is required
45 to auction lands certified to him in any previous years, pursuant
46 to section forty-eight of this article, he shall include such lands
47 in the auction without further advertisement, with reference to
48 the year of certification and the item number of the tract or
49 interest.

50 To cover the cost of preparing and publishing the notice, a
51 charge of thirty dollars shall be added to the taxes, interest and
52 charges due on the delinquent and nonentered property.

§11A-3-48. Unsold lands subject to sale without auction or additional advertising.

1 If any of the lands which have been offered for sale at the
2 public auction provided in section forty-five of this article shall
3 remain unsold following such auction, or if the auditor refuses
4 to approve the sale pursuant to section fifty-one of this article,
5 the deputy commissioner may sell such lands at any time
6 subsequent to such auction, without any further public auction
7 or additional advertising of such land, to any party willing to
8 purchase such property. The price of such property shall be as
9 agreed upon by the deputy commissioner and purchaser, subject
10 to approval by the auditor as provided in section fifty-one of
11 this article.

CHAPTER 267

(S. B. 475 — By Senators Tomblin, Mr. President, Anderson, Bailey, Ball, Boley, Bowman, Chafin, Craigo, Dawson, Deem, Dittmar, Edgell, Fanning, Hunter, Jackson, Kessler, Love, McCabe, McKenzie, Minard, Minear, Mitchell, Oliverio, Plymale, Prezioso, Redd, Ross, Sharpe, Snyder, Sprouse, Walker, Wooton, Unger and Helmick)

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

AN ACT to amend and reenact section four-a, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter sixty of said code by adding thereto a new article, designated article nine, all relating to additional requirements for the sale of cigarettes and other tobacco products; requiring sellers of the same to be licensed; providing criminal penalties for failure to obtain a license; prohibiting certain types of sales; providing for restrictions with respect to distributors; providing for criminal penalties for committing prohibited acts; providing for civil administrative penalties; providing that certain acts shall constitute certain unfair or deceptive acts or practices; providing for seizure and forfeiture of contraband; providing for powers, duties, and authority of the state tax commissioner and alcohol beverage control commissioner with respect to the foregoing; and creating a private cause of action to enforce provisions of article.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 11. TAXATION.**Chapter****11. Taxation.****60. State Control of Alcoholic Liquors.****ARTICLE 12. BUSINESS REGISTRATION TAX.****§11-12-4a. Sellers of cigarettes, tobacco products or cigarette wrappers required to be licensed; business registration certificate is license; criminal penalties.**

1 (a) For registration years beginning on or after the first day
2 of July, two thousand, each person who sells cigarettes, or other
3 tobacco products or cigarette wrappers at wholesale or retail
4 shall apply for and receive a license to sell cigarettes or other
5 tobacco products or cigarette wrappers. The cigarette license
6 application shall be a part of the business registration certificate
7 application or the renewal application for a business registration
8 certificate.

9 (b) The license shall be printed on the business registration
10 certificate or certificates issued under the provisions of subsec-
11 tion (a), section four of this article.

12 (c) Any person or company who sells any cigarettes, or
13 other tobacco products or cigarette wrappers at wholesale or
14 retail after the first day of July, two thousand one, without
15 obtaining the license specified in subsection (a) of this section
16 is guilty of a misdemeanor and, upon conviction thereof, shall
17 be fined not less than one hundred dollars nor more than two
18 hundred fifty dollars.

**CHAPTER 60. STATE CONTROL OF
ALCOHOLIC LIQUORS.****ARTICLE 9. CIGARETTES PRODUCED FOR EXPORT; IMPORTED
CIGARETTES.**

§60-9-1. Definitions.

§60-9-2. Cigarettes produced for export — prohibitions.

§60-9-3. Imported cigarettes — requirements.

§60-9-4. Criminal penalties.

§60-9-5. Administrative sanctions.

§60-9-6. Unfair trade practices.

§60-9-7. Unfair cigarette sales.

§60-9-8. General enforcement provisions.

§60-9-9. Applicability.

§60-9-1. Definitions.

1 (a) As used in this article:

2 (1) “Package” means a pack, carton or container of any
3 kind in which cigarettes are offered for sale, sold, or otherwise
4 distributed, or intended for distribution, to consumers.

5 (2) “Importer” means “importer” as that term is defined in
6 26 U.S.C. 5702(1).

7 (3) “Person” means and includes any individual, firm,
8 association, company, partnership, corporation, joint-stock
9 company, club, agency, syndicate, municipal corporation or
10 other political subdivision of this state, trust, receiver, trustee,
11 fiduciary or conservator, and when used in connection with any
12 penalties imposed by this article, means and includes officers,
13 directors, trustees or members of any firm, copartnership,
14 association, corporation, trust or any other unit acting as a
15 group.

16 (4) “Retailer” means and includes every person in this state,
17 other than a wholesaler or subjobber, as defined in section two,
18 article seventeen, chapter eleven of this code, engaged in the
19 selling of cigarettes at retail to a consumer or to any person for
20 any purpose other than resale.

§60-9-2. Cigarettes produced for export — prohibitions.

1 (a) It is unlawful for any person:

2 (1) To sell or distribute to consumers in this state, to
3 acquire, hold, own, possess or transport, for sale or distribution
4 in this state, or to import, or cause to be imported, into this state
5 for sale or distribution in this state:

6 (A) Any cigarettes the package of which:

7 (i) Bears any statement, label, stamp, sticker, or notice
8 indicating that the manufacturer did not intend the cigarettes to
9 be sold, distributed, or used in the United States, including, but
10 not limited to, labels stating "for export only," "U.S.
11 tax-exempt," "for use outside U.S." or similar wording; or

12 (ii) Does not comply with:

13 (I) All requirements imposed by or pursuant to federal law
14 regarding warnings and other information on packages of
15 cigarettes manufactured, packaged or imported for sale,
16 distribution, or use in the United States, including, but not
17 limited to, the precise warning labels specified in the Federal
18 Cigarette Labeling and Advertising Act, 15 U.S.C. 1333; and

19 (II) All federal trademark and copyright laws;

20 (B) Any cigarettes imported into the United States in
21 violation of 26 U.S.C. 5754 or any other federal law or the
22 implementing federal regulations;

23 (C) Any cigarettes that the person otherwise knows or has
24 reason to know the manufacturer did not intend to be sold,
25 distributed or used in the United States; or

26 (D) Any cigarettes for which there has not been submitted
27 to the secretary of the United States department of health and
28 human services, the list or lists of the ingredients added to
29 tobacco in the manufacture of such cigarettes required by the
30 Federal Cigarette Labeling and Advertising Act, 15 U.S.C.
31 1355a;

32 (2) To alter the package of any cigarettes, prior to sale or
33 distribution to the ultimate consumer, so as to remove, conceal
34 or obscure:

35 (A) Any statement, label, stamp, sticker or notice described
36 in subparagraph (i), paragraph (A), subdivision (1), subsection
37 (a) of this section; or

38 (B) Any health warning that is not specified in, or does not
39 conform with the requirements of, the Federal Cigarette
40 Labeling and Advertising Act, 15 U.S.C. 1333; or

41 (3) To affix any stamp required pursuant to article seven-
42 teen, chapter eleven of this code to the package of any ciga-
43 rattes described in subdivision (1), subsection (a) of this section
44 or altered in violation of subdivision (2), subsection (a) of this
45 section.

§60-9-3. Imported cigarettes — requirements.

1 On the first business day of each month, each person
2 authorized to affix the state tax stamp to cigarettes shall file
3 with the state tax commissioner, for all cigarettes imported into
4 the United States to which the person has affixed the tax stamp
5 in the preceding month, the following:

6 (1) A copy of the permit issued pursuant to the Internal
7 Revenue Code, 26 U.S.C. 5713, to the person importing the
8 cigarettes into the United States allowing such person to import
9 the cigarettes; and

10 (2) A copy of the customs form containing, with respect to
11 the cigarettes, the internal revenue tax information required by
12 the U.S. bureau of alcohol, tobacco and firearms; and

13 (3) A statement, signed by the person under penalty of
14 perjury, which shall be treated as confidential by the commis-
15 sioner and exempt from disclosure under the freedom of

16 information act, article one, chapter twenty-nine-b of this code,
17 identifying the brand and brand styles of all the cigarettes, the
18 quantity of each brand style of such cigarettes, the supplier of
19 the cigarettes, and the person or person, if any, to whom the
20 cigarettes have been conveyed for resale; and a separate
21 statement signed by the individual under penalty of perjury,
22 which shall not be treated as confidential or exempt from
23 disclosure, separately identifying the brands and brand styles of
24 the cigarettes; and

25 (4) A statement, signed by an officer of the manufacturer or
26 importer under penalty of perjury, certifying that the manufac-
27 turer or importer has complied with:

28 (A) The package health warning and ingredient reporting
29 requirements of the Federal Cigarette Labeling and Advertising
30 Act, 15 U.S.C. 1333 and 1335a, with respect to the cigarettes;
31 and

32 (B) The provisions of article nine-b, chapter sixteen of this
33 code, including a statement indicating whether the manufacturer
34 is, or is not, a participating tobacco manufacturer within the
35 meaning of that statute.

§60-9-4. Criminal penalties.

1 Any person that commits any of the acts prohibited by
2 section two of this article, either knowing or having reason to
3 know he or she is doing so, or that fails to comply with any of
4 the requirements of section three of this article, is guilty of a
5 felony and, upon conviction thereof, shall be fined not more
6 than five thousand dollars, or imprisoned in a state correctional
7 facility not more than five years, or both fined and imprisoned.

§60-9-5. Administrative sanctions.

1 (a) The state tax commissioner may revoke or suspend the
2 authorization to affix the tax stamp of any person for a violation

3 of this article or any legislative rule related to this article that is
4 promulgated by the commissioner pursuant to chapter twenty-
5 nine-a of this code and, in conjunction, the alcohol beverage
6 control commissioner may impose on the person a civil penalty
7 in an amount not to exceed the greater of five hundred percent
8 of the retail value of the cigarettes involved or five thousand
9 dollars, upon finding a violation by such person of this enact-
10 ment, or the rules promulgated by the commissioner.

11 (b) Cigarettes that are acquired, held, owned, possessed,
12 transported in, imported into or sold or distributed in this state
13 in violation of this article are considered contraband under
14 article seventeen, chapter eleven of this code and are subject to
15 seizure and forfeiture as provided therein. Such cigarettes are
16 considered contraband whether the violation of this article is
17 knowing or otherwise.

18 (c) The state tax commissioner may assess tax due, penalty,
19 and interest on any product acquired, possessed, sold, or offered
20 for sale in violation of this article.

21 (d) Any monetary penalty assessed and collected by the
22 alcohol beverage control commissioner shall be transmitted to
23 the state treasurer for deposit into the state treasury to the credit
24 of "the alcohol beverage control enforcement fund," established
25 pursuant to section thirteen, article seven, chapter sixty of this
26 code. All moneys collected, received and deposited in the
27 "alcohol beverage control enforcement fund" shall be kept and
28 maintained for expenditures by the commissioner for the
29 purpose of enforcement of this article and rules pertaining to
30 cigarettes and shall not be treated by the state treasurer or state
31 auditor as any part of the general revenue of the state.

32 (e) Any person aggrieved by the imposition of a civil
33 penalty pursuant to this article may request a hearing, within ten
34 days of receipt of the notice imposing penalties, before the
35 alcohol beverage control commissioner in the manner set forth

36 herein. The commissioner may not hold a hearing or impose
37 any civil penalties until after at least ten days' notice to the
38 person of the time and place of such hearing, which notice shall
39 contain a statement or specification of the charges, grounds or
40 reasons for such penalty, and which shall be served upon the
41 person as notices under the West Virginia rules of civil proce-
42 dure or by certified mail, return receipt requested; at which time
43 and place, so designated in the notice, the person has the right
44 to appear and produce evidence in his or her behalf, and to be
45 represented by counsel.

46 The commissioner may summon witnesses in the hearing
47 before him or her, and fees of witnesses summoned on behalf
48 of the state in proceedings shall be treated as a part of the
49 expenses of administration and enforcement. The fees shall be
50 the same as those in similar hearings in the circuit courts of this
51 state. The commissioner may, upon a finding of violation,
52 assess a sum, not to exceed two hundred dollars per violation,
53 to reimburse the commissioner for expenditures of witness fees,
54 court reporter fees and travel costs incurred in holding the
55 hearing. Any moneys so assessed shall be transferred to the
56 alcohol beverage control enforcement fund.

57 The action of the commissioner imposing a civil penalty is
58 subject to review by the circuit court of Kanawha County, West
59 Virginia, in the manner provided in chapter twenty-nine-a of
60 this code. Petition for such review must be filed with the circuit
61 court within a period of thirty days from and after the date final
62 imposition of the civil penalty following hearing, if any, and
63 any person obtaining an order for such review shall be required
64 to pay the costs and fees incident to transcribing, certifying and
65 transmitting the records pertaining to such matter to the circuit
66 court. An application to the supreme court of appeals of West
67 Virginia for a writ of error from any final order of the circuit
68 court in any matter shall be made within thirty days from and
69 after the entry of the final order. All hearings before the

70 commissioner shall be held in the offices of the commissioner
71 in Charleston, Kanawha County, West Virginia, unless other-
72 wise provided in the notice, or agreed upon between the person
73 and the commissioner; and when the hearing is held elsewhere
74 than in the commissioner's office, the person may be required
75 to make deposits of the estimated costs of such hearing.

§60-9-6. Unfair trade practices.

1 A violation of section two or section three of this article
2 constitutes an unlawful trade practice as provided in article
3 eleven-a, chapter forty-seven of this code and, in addition to
4 any remedies or penalties set forth in this article, is subject to
5 any remedies or penalties for a violation of that article.

6 The alcohol beverage control commissioner shall enforce
7 each and every provision of the unfair trade practices act set
8 forth in article eleven-a, chapter forty-seven of this code with
9 respect to packages of cigarettes with like effect as if said
10 article were set forth in extenso herein.

§60-9-7. Unfair cigarette sales.

1 For purposes of this article, cigarettes imported or reim-
2 ported into the United States for sale or distribution under any
3 trade name, trade dress, or trademark that is the same as, or is
4 confusingly similar to, any trade name, trade dress, or trade-
5 mark used for cigarettes manufactured in the United States for
6 sale or distribution in the United States shall be presumed to
7 have been purchased outside of the ordinary channels of trade.

§60-9-8. General enforcement provisions.

1 (a) This article shall be enforced by the state tax commis-
2 sioner and the alcohol beverage control commissioner and for
3 the purpose of enforcing this article, the commissioners may
4 request information from any state agency, constitutional
5 officer or local agency and, notwithstanding the provisions of

6 section five-d, article ten, chapter eleven of this code or any
7 other provision of this code, may share information with, and
8 request information from, any federal agency and any agency
9 or constitutional officer of this or any other state or any local
10 agency thereof.

11 (b) A person that acquires, holds, owns, possesses, trans-
12 ports in or imports into this state cigarettes that are subject to
13 this article shall, with respect to the cigarettes, maintain and
14 keep all records required pursuant to article seventeen, chapter
15 eleven of this code.

16 (c) In addition to any other remedy provided by law, any
17 person may bring an action for appropriate injunctive or other
18 equitable relief for a violation of this article; actual damages, if
19 any, sustained by reason of the violation; and, as determined by
20 the court, interest on the damages from the date of complaint,
21 taxable costs, and reasonable attorney's fees. If the trier of fact
22 finds that the violation is flagrant, it may increase recovery to
23 an amount not in excess of three times the actual damages
24 sustained by reason of the violation.

§60-9-9. Applicability.

1 This article does not apply to cigarettes allowed to be
2 imported or brought into the United States for personal use, and
3 cigarettes sold or intended to be sold as duty-free merchandise
4 by a duty-free sales enterprise in accordance with the provisions
5 of 19 U.S.C. 1555(b) and any implementing regulations:
6 *Provided*, That this article does apply to any cigarettes that are
7 brought back into the customs territory for resale within the
8 customs territory. The penalties provided in this article are in
9 addition to any other penalties imposed under other law.

CHAPTER 268

(Com. Sub. for S. B. 126 — By Senators Mitchell, Dawson, Unger, Hunter, Kessler, Ball, McKenzie, Minear, Minard, Redd, Bowman, Ross and Sharpe)

[Passed March 11, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article nine-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to sale of tobacco products to minors and use of tobacco products by minors; increasing penalties for firm or individual selling tobacco or tobacco-related products to minors; and increasing penalties for minors possessing tobacco products.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§16-9A-2. Sale or gift of cigarette, cigarette paper, pipe, cigar, snuff, or chewing tobacco to persons under eighteen; penalties for first and subsequent offense.

§16-9A-3. Use or possession of tobacco or tobacco products by persons under the age of eighteen years; penalties.

§16-9A-2. Sale or gift of cigarette, cigarette paper, pipe, cigar, snuff, or chewing tobacco to persons under eighteen; penalties for first and subsequent offense.

- 1 (a) No person, firm, corporation or business entity may sell,
- 2 give or furnish, or cause to be sold, given or furnished, to any
- 3 person under the age of eighteen years:

4 (1) Any pipe, cigarette paper or any other paper prepared,
5 manufactured or made for the purpose of smoking any tobacco
6 or tobacco product; or

7 (2) Any cigar, cigarette, snuff, chewing tobacco or tobacco
8 product, in any form.

9 (b) Any firm or corporation that violates any of the provi-
10 sions of subdivision (1) or (2), subsection (a) of this section and
11 any individual who violates any of the provisions of subdivision
12 (1), subsection (a) of this section is guilty of a misdemeanor
13 and, upon conviction thereof, shall be fined twenty-five dollars
14 for the first offense. Upon any subsequent violation at the same
15 location or operating unit, the firm, corporation or individual
16 shall be fined as follows: At least one hundred dollars but not
17 more than two hundred dollars for the second offense, if it
18 occurs within two years of the first conviction; at least two
19 hundred fifty dollars but not more than five hundred dollars for
20 the third offense, if it occurs within two years of the first
21 conviction; at least two hundred fifty dollars but not more than
22 five hundred dollars for the fourth offense, if it occurs within
23 five years of the first conviction; and at least one thousand
24 dollars but not more than five thousand dollars for the fifth and
25 any subsequent offenses, if the fifth or subsequent offense
26 occurs within five years of the first conviction.

27 (c) Any individual who knowingly and intentionally sells,
28 gives or furnishes or causes to be sold, given or furnished to
29 any person under the age of eighteen years any cigar, cigarette,
30 snuff, chewing tobacco or tobacco product, in any form, is
31 guilty of a misdemeanor and, upon conviction thereof, for the
32 first offense shall be fined not more than one hundred dollars;
33 upon conviction thereof for a second or subsequent offense, is
34 guilty of a misdemeanor and shall be fined not less than one
35 hundred nor more than five hundred dollars.

§16-9A-3. Use or possession of tobacco or tobacco products by persons under the age of eighteen years; penalties.

1 No person under the age of eighteen years shall have on or
2 about his or her person or premises or use any cigarette, or
3 cigarette paper or any other paper prepared, manufactured or
4 made for the purpose of smoking any tobacco products, in any
5 form; or, any pipe, snuff, chewing tobacco or tobacco product:
6 *Provided*, That minors participating in the inspection of
7 locations where tobacco products are sold or distributed
8 pursuant to section seven of this article shall not be deemed to
9 violate the provisions of this section. Any person violating the
10 provisions of this section shall for the first violation be fined
11 twenty-five dollars and be required to serve eight hours of
12 community service; for a second violation, the person shall be
13 fined fifty dollars and be required to serve sixteen hours of
14 community service; and for a third and each subsequent
15 violation, the person shall be fined one hundred dollars and be
16 required to serve twenty-four hours of community service.
17 Notwithstanding the provisions of section two, article five,
18 chapter forty-nine, the magistrate court shall have concurrent
19 jurisdiction.

CHAPTER 269

(Com. Sub. for H. B. 4183 — By Delegates Rowe, C. White,
Ashley, Manuel, Hunt, Webb and J. Smith)

[Passed March 9, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article nine-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight, relating to prohibiting the sale of tobacco products in vending machines.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§16-9A-8. Selling of tobacco products in vending machines prohibited except in certain places.

1 No person or business entity may offer for sale any ciga-
2 rette or other tobacco product in a vending machine. Any
3 person or business entity which violates the provisions of this
4 section is guilty of a misdemeanor and, upon conviction
5 thereof, shall be fined two hundred fifty dollars: *Provided*, That
6 an establishment is exempt from this prohibition if individuals
7 under the age of eighteen years are not permitted to be in the
8 establishment or if the establishment is licensed by the alcohol
9 beverage control commissioner as a class A licensee. The
10 alcohol beverage control commissioner shall promulgate rules
11 pursuant to article three, chapter twenty-nine-a of this code
12 prior to the first day of July, two thousand, which rules shall
13 establish standards for the location and control of the vending
14 machines in class A licensed establishments for the purpose of
15 restricting access by minors.

CHAPTER 270

(Com. Sub. for S. B. 206 — By Senators Ross, Sharpe, Anderson, Ball, Dittmar,
Kessler, Love, McKenzie, Oliverio, Plymale and Redd)

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

AN ACT to amend and reenact section one, article six, chapter
seventeen-c of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to excluding owners or drivers who have been issued a commercial driver's license from certain provisions relating to penalties for violation of speed limits.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. SPEED RESTRICTIONS.

§17C-6-1. Speed limitations generally; penalty.

1 (a) No person may drive a vehicle on a highway at a speed
2 greater than is reasonable and prudent under the existing
3 conditions and the actual and potential hazards. In every event
4 speed shall be so controlled as may be necessary to avoid
5 colliding with any person, vehicle or other conveyance on or
6 entering the highways in compliance with legal requirements
7 and the duty of all persons to use due care.

8 (b) Where no special hazard exists that requires lower speed
9 for compliance with subsection (a) of this section, the speed of
10 any vehicle not in excess of the limits specified in this section
11 or established as hereinafter authorized is lawful, but any speed
12 in excess of the limits specified in this subsection or established
13 as hereinafter authorized is unlawful.

14 (1) Fifteen miles per hour in a school zone during school
15 recess or while children are going to or leaving school during
16 opening or closing hours. A school zone is all school property
17 including school grounds and any street or highway abutting
18 such school grounds and extending one hundred twenty-five
19 feet along such street or highway from the school grounds. The
20 speed restriction does not apply to vehicles traveling on a
21 controlled-access highway which is separated from the school

22 or school grounds by a fence or barrier approved by the division
23 of highways;

24 (2) Twenty-five miles per hour in any business or residence
25 district;

26 (3) Fifty-five miles per hour on open country highways,
27 except as otherwise provided by this chapter.

28 The speeds set forth in this section may be altered as
29 authorized in sections two and three of this article.

30 (c) The driver of every vehicle shall, consistent with the
31 requirements of subsection (a) of this section, drive at an
32 appropriate reduced speed when approaching and crossing an
33 intersection or railway grade crossing, when approaching and
34 going around a curve, when approaching a hill crest, when
35 traveling upon any narrow or winding roadway and when
36 special hazard exists with respect to pedestrians or other traffic
37 or by reason of weather or highway conditions.

38 (d) The speed limit on controlled-access highways and
39 interstate highways, where no special hazard exists that requires
40 a lower speed, shall be not less than fifty-five miles per hour
41 and the speed limits specified in subsection (b) of this section
42 do not apply.

43 (e) Unless otherwise provided in this section, any person
44 who violates the provisions of this section is guilty of a
45 misdemeanor and, upon conviction thereof, shall be fined not
46 more than one hundred dollars; upon a second conviction within
47 one year thereafter, shall be fined not more than two hundred
48 dollars; and, upon a third or subsequent conviction within two
49 years thereafter, shall be fined not more than five hundred
50 dollars: *Provided*, That if such third or subsequent conviction
51 is based upon a violation of the provisions of this section where
52 the offender exceeded the speed limit by fifteen miles per hour
53 or more, then upon conviction, shall be fined not more than five

54 hundred dollars or confined in the county or regional jail for not
55 more than six months, or both.

56 (f) Any person who violates the provisions of subdivision
57 (1), subsection (b) of this section is guilty of a misdemeanor
58 and, upon conviction thereof, shall be fined not less than one
59 hundred dollars nor more than five hundred dollars: *Provided*,
60 That if such conviction is based upon a violation of the provi-
61 sions of subdivision (1), subsection (b) of this section where the
62 offender exceeded the speed limit by fifteen miles per hour or
63 more in the presence of one or more children, then upon
64 conviction, shall be fined not less than one hundred dollars nor
65 more than five hundred dollars or confined in the regional or
66 county jail for not more than six months, or both.

67 (g) If an owner or driver is arrested under the provisions of
68 this section for the offense of driving above the posted speed
69 limit on a controlled-access highway or interstate highway, and
70 if the evidence shall show that the motor vehicle was being
71 operated at ten miles per hour or less above said speed limit,
72 then, upon conviction thereof, such person shall be fined not
73 more than five dollars, plus court costs.

74 If an owner or driver is convicted under the provisions of
75 this section for the offense of driving above the speed limit on
76 a controlled-access highway or interstate highway of this state,
77 and if the evidence shall show that the motor vehicle was being
78 operated at ten miles per hour or less above said speed limit,
79 then notwithstanding the provisions of section four, article
80 three, chapter seventeen-b of this code, a certified abstract of
81 the judgment on such conviction shall not be transmitted to the
82 division of motor vehicles: *Provided*, That the provisions of this
83 subsection do not apply to conviction of owners or drivers who
84 have been issued a commercial driver's license as defined in
85 chapter seventeen-e of this code, if the offense was committed
86 while operating a commercial vehicle.

87 (h) If an owner or driver is convicted in another state for the
88 offense of driving above the maximum speed limit on a
89 controlled-access highway or interstate highway, and if the
90 maximum speed limit in such other state is less than the
91 maximum speed limit for a comparable controlled-access
92 highway or interstate highway in this state, and if the evidence
93 shall show that the motor vehicle was being operated at ten
94 miles per hour or less above what would be the maximum speed
95 limit for a comparable controlled-access highway or interstate
96 highway in this state, then notwithstanding the provisions of
97 section four, article three, chapter seventeen-b of this code, a
98 certified abstract of the judgment on such conviction shall not
99 be transmitted to the division of motor vehicles, or, if transmit-
100 ted, shall not be recorded by the division, unless within a
101 reasonable time after conviction, the person convicted has
102 failed to pay all fines and costs imposed by the other state:
103 *Provided*, That the provisions of this subsection do not apply to
104 conviction of owners or drivers who have been issued a
105 commercial driver's license as defined in chapter seventeen-e
106 of this code, if the offense was committed while operating a
107 commercial vehicle.

CHAPTER 271

(H. B. 4536 — By Delegate Warner)

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

AN ACT to amend and reenact section three, article thirteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibiting placing of vehicle in wheelchair accessible area marked with blue paint.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. STOPPING, STANDING AND PARKING.

§17C-13-3. Stopping, standing or parking prohibited in specified places; penalty.

1 (a) No person shall stop, stand or park a vehicle, except
2 when necessary to avoid conflict with other traffic or in
3 compliance with law or the directions of a police officer or
4 traffic-control device, in any of the following places:

5 (1) On a sidewalk;

6 (2) In front of a public or private driveway;

7 (3) Within an intersection;

8 (4) Within fifteen feet of a fire hydrant;

9 (5) In a properly designated fire lane;

10 (6) On a crosswalk;

11 (7) Within twenty feet of a crosswalk at an intersection;

12 (8) Within thirty feet upon the approach to any flashing
13 beacon, stop sign or traffic-control signal located at the side of
14 a roadway;

15 (9) Between a safety zone and the adjacent curb or within
16 thirty feet of points on the curb immediately opposite the ends
17 of a safety zone, unless a different length is indicated by signs
18 or markings;

19 (10) Within fifty feet of the nearest rail of a railroad
20 crossing;

21 (11) Within twenty feet of the driveway entrance to any fire
22 station and on the side of a street opposite the entrance to any

23 fire station within seventy-five feet of the entrance (when
24 properly signposted);

25 (12) Alongside or opposite any street excavation or
26 obstruction when stopping, standing or parking would obstruct
27 traffic;

28 (13) On the roadway side of any vehicle stopped or parked
29 at the edge or curb of a street;

30 (14) On any bridge or other elevated structure on a highway
31 or within a highway tunnel;

32 (15) At any place where official signs prohibit stopping;

33 (16) Within twenty feet of any mail receptacle served
34 regularly by a carrier using a motor vehicle for daily deliveries,
35 if the parking interferes with or causes delay in the carrier's
36 schedule;

37 (17) On any controlled-access highway;

38 (18) At any place on any highway where the safety and
39 convenience of the traveling public is thereby endangered;

40 (19) In front of a wheelchair accessible ramp or curb cut
41 which is part of a sidewalk designed for use by the general
42 public when the ramp or curb cut is properly marked with blue
43 paint.

44 (b) No person shall move a vehicle not lawfully under his
45 or her control into any prohibited area or away from a curb such
46 distance as is unlawful.

47 (c) Any person violating the provisions of this section is
48 guilty of a misdemeanor and, upon conviction thereof, shall be
49 fined not more than one hundred dollars; upon a second
50 conviction within one year thereafter, shall be fined not more
51 than two hundred dollars; and upon a third or subsequent
52 conviction, shall be fined not more than five hundred dollars.

CHAPTER 272

**(Com. Sub. for S. B. 469 — By Senators Minard, Redd, Anderson,
Bowman, Dawson, Unger and Minear)**

[Passed March 3, 2000; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one hundred five and two hundred one, article one, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one hundred three, two hundred ten, three hundred twenty-six, five hundred two and seven hundred sixteen, article two of said chapter; to amend and reenact sections one hundred three, three hundred three, three hundred seven and three hundred nine, article two-a of said chapter; to amend and reenact section two hundred ten, article four of said chapter; to amend and reenact section one hundred eighteen, article five of said chapter; to amend and reenact section five hundred three, article seven of said chapter; to amend and reenact sections one hundred three, one hundred six, one hundred ten, three hundred one, three hundred two and five hundred ten, article eight of said chapter; to amend and reenact article nine of said chapter; and to amend article two, chapter forty-six-a of said code by adding thereto a new section, designated section one hundred nineteen-a, all relating generally to secured transactions; revising the secured transaction provisions of the uniform commercial code; revising conforming provisions of the uniform commercial code; establishing applicable law; redefining terms; providing for sales; establishing definitions by reference; providing for delegation of power and assignment of rights; clarifying certain types of sales; establishing buyer's rights when seller fails to perform; providing for the buyer's right of replevin; providing for leases; establishing definitions by reference; setting forth rights of parties; providing

for lien priority; establishing rights of parties when goods become fixtures; revising code references for purposes of bank deposits; providing for letters of credit and establishing priorities of security interests therein; revising code references pertaining to warehouse receipts; revising code references pertaining to investment securities; updating provisions governing “control” of security entitlement; clarifying governing law; establishing requirements for transfer of certificated and uncertificated securities; providing for rights of purchasers; establishing new provisions for transactions secured by personal property; setting forth short title; defining terms; providing for purchase-money security interests; providing for a security interest in crops; setting forth requirements to control deposit accounts, electronic chattel paper, investment property and letter-of-credit rights; providing for the sufficiency of descriptions; establishing scope of article; providing for security interests and the effectiveness thereof; establishing that title to collateral is immaterial; providing for the attachment and enforceability of security interest proceeds; providing for a security interest in after-acquired collateral; authorizing use or disposition of collateral; providing for security interest in purchase or delivery of financial asset; setting forth rights and duties of secured party; authorizing certain requests for accounting; establishing perfection and priority of security interests generally and in agricultural liens, goods covered by a certificate of title, deposit accounts, investment property and letter-of-credit rights; providing for the location of debtor; providing for the perfection of security interests and agricultural liens; establishing perfection upon attachment; requiring filing to perfect certain liens; providing for perfection when security interest subject to another law; providing for additional methods of perfection; providing for perfection by possession, by delivery to a third party or by control; establishing secured party’s or by control; establishing secured party’s rights on disposition of collateral; providing for continued perfection of security interest when governing law changes; establishing lien priority; providing

that no interest retained in right to payment that is sold; establishing rights and title of consignees; providing for the buyer of goods and for licensees; establishing priorities among conflicting interests, future advances, purchase-money security interests, agricultural liens, transferred collateral, security interests created by a new debtor, deposit accounts, investment property, letter-of-credit rights, purchaser of chattel paper or instrument and priority of rights of purchasers; providing for the transfer of funds; establishing priority of liens arising by operation of law and security interests in fixtures and crops; authorizing creation of security interest by accession; providing for commingled goods; establishing priority of certain security interests; providing for subordination; establishing rights of bank; providing for rights of third parties; setting forth restrictions; providing for filing offices and financing statements; establishing duties and operation of filing office; providing uniform financing statement and amendment forms; setting forth procedures for default and enforcement of security interests; establishing contents and forms of notification of disposition of collateral; providing for the disposition of collateral and the rights and duties subsequent thereto; establishing remedies for noncompliance; limiting liability; establishing transition provisions including certain operative dates; establishing priority of certain security interests; and providing for the use of price guide value in calculating deficiency or surplus in secured transactions in which the collateral is primarily for personal, family, household or agricultural purposes.

Be it enacted by the Legislature of West Virginia:

That sections one hundred five and two hundred one, article one, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one hundred three, two hundred ten, three hundred twenty-six, five hundred two and seven hundred sixteen, article two of said chapter be amended and reenacted; that sections one hundred three, three hundred three, three hundred seven and three hundred nine,

article two-a of said chapter be amended and reenacted; that section two hundred ten, article four of said chapter be amended and reenacted; that section one hundred eighteen, article five of said chapter be amended and reenacted; that section five hundred three, section seven of said chapter be amended and reenacted; that sections one hundred three, one hundred six, one hundred ten, three hundred one, three hundred two and five hundred ten, article eight of said chapter be amended and reenacted; that article nine of said chapter be amended and reenacted; and that article two, chapter forty-six-a of said code be amended by adding thereto a new section, designated section one hundred nineteen, all to read as follows:

Chapter

46. Uniform Commercial Code.

46A. West Virginia Consumer Credit and Protection Act.

CHAPTER 46. UNIFORM COMMERCIAL CODE.

Article

- 1. General Provisions.**
- 2. Sales.**
- 2A. Leases.**
- 4. Bank Deposits and Collections.**
- 5. Letters of Credit.**
- 7. Warehouse Receipts, Bills of Lading and Other Documents of Title.**
- 8. Investment Securities.**
- 9. Secured Transactions.**

ARTICLE 1. GENERAL PROVISIONS.

§46-1-105. Territorial application of this chapter; parties' power to choose applicable law.

§46-1-201. General definitions.

***§46-1-105. Territorial application of this chapter; parties' power to choose applicable law.**

- 1 (1) Except as provided hereafter in this section, when a
- 2 transaction bears a reasonable relation to this state and also to
- 3 another state or nation the parties may agree that the law either

***Clerk's Note:** This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.

4 of this state or of such other state or nation shall govern their
5 rights and duties. Failing such agreement this chapter applies to
6 transactions bearing an appropriate relation to this state.

7 (2) Where one of the following provisions of this chapter
8 specifies the applicable law, that provision governs and a
9 contrary agreement is effective only to the extent permitted by
10 the law (including the conflict of laws rules) so specified:

11 Sections 2A-105 and 2A-106, applicability of the article on
12 leases.

13 Section 2-402, rights of creditors against sold goods.

14 Section 4-102, applicability of the article on bank deposits
15 and collections.

16 Section 5-116, letters of credit.

17 Section 8-106, applicability of the article on investment
18 securities.

19 Sections 9-301 through 9-307. Law governing perfection,
20 the effect of perfection or nonperfection, and the priority of
21 security interest and agricultural liens.

PART 2. GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION.

***§46-1-201. General definitions.**

1 Subject to additional definitions contained in the subse-
2 quent articles of this chapter which are applicable to specific
3 articles or parts thereof, and unless the context otherwise
4 requires, in this chapter:

5 (1) "Action" in the sense of a judicial proceeding includes
6 recoupment, counterclaim, setoff, suit in equity and any other
7 proceedings in which rights are determined.

***Clerk's Note:** This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.

8 (2) "Aggrieved party" means a party entitled to resort to a
9 remedy.

10 (3) "Agreement" means the bargain of the parties in fact as
11 found in their language or by implication from other circum-
12 stances including course of dealing or usage of trade or course
13 of performance as provided in this chapter (sections 1-205 and
14 2-208). Whether an agreement has legal consequences is
15 determined by the provisions of this chapter, if applicable;
16 otherwise by the law of contracts (section 1-103). (Compare
17 "Contract".)

18 (4) "Bank" means any person engaged in the business of
19 banking.

20 (5) "Bearer" means the person in possession of an instru-
21 ment, document of title, or certificated security payable to
22 bearer or indorsed in blank.

23 (6) "Bill of lading" means a document evidencing the
24 receipt of goods for shipment issued by a person engaged in the
25 business of transporting or forwarding goods and includes an
26 airbill. "Airbill" means a document serving for air transporta-
27 tion as a bill of lading for marine or rail transportation and
28 includes an air consignment note or air waybill.

29 (7) "Branch" includes a separately incorporated foreign
30 branch of a bank.

31 (8) "Burden of establishing a fact" means the burden of
32 persuading the triers of fact that the existence of the fact is
33 more probable than its nonexistence.

34 (9) "Buyer in ordinary course of business" means a person
35 that buys goods in good faith, without knowledge that the sale
36 violates the rights of another person in the goods, and in the
37 ordinary course from a person, other than a pawnbroker, in the
38 business of selling goods of that kind. A person buys goods in
39 the ordinary course if the sale to the person comports with the

40 usual or customary practices in the kind of business in which
41 the seller is engaged or with the seller's own usual or customary
42 practices. A person that sells oil, gas or other minerals at the
43 wellhead or minehead is a person in the business of selling
44 goods of that kind. A buyer in the ordinary course of business
45 may buy for cash, by exchange of other property, or on secured
46 or unsecured credit, and may acquire goods or documents of
47 title under a preexisting contract for sale. Only a buyer that
48 takes possession of the goods or has a right to recover the goods
49 from the seller under article two may be a buyer in the ordinary
50 course of business. A person that acquires goods in a transfer in
51 bulk or as security for or in total or partial satisfaction of a
52 money debt is not a buyer in ordinary course of business.

53 (10) "Conspicuous" means a term or clause is conspicuous
54 when it is so written that a reasonable person against whom it
55 is to operate ought to have noticed it. A printed heading in
56 capitals (as: NONNEGOTIABLE BILL OF LADING) is
57 conspicuous. Language in the body of a form is "conspicuous"
58 if it is in larger or other contrasting type or color. But in a
59 telegram any stated term is "conspicuous". Whether a term or
60 clause is "conspicuous" or not is for decision by the court.

61 (11) "Contract" means the total legal obligation which
62 results from the parties' agreement as affected by this chapter
63 and any other applicable rules of law. (Compare "Agreement".)

64 (12) "Creditor" includes a general creditor, a secured
65 creditor, a lien creditor and any representative of creditors,
66 including an assignee for the benefit of creditors, a trustee in
67 bankruptcy, a receiver in equity and an executor or administra-
68 tor of an insolvent debtor's or assignor's estate.

69 (13) "Defendant" includes a person in the position of
70 defendant in a cross action or counterclaim.

71 (14) "Delivery" with respect to instruments, documents of
72 title, chattel paper or certificated securities means voluntary
73 transfer of possession.

74 (15) "Document of title" includes bill of lading, dock
75 warrant, dock receipt, warehouse receipt or order for the
76 delivery of goods, and also any other document which in the
77 regular course of business or financing is treated as adequately
78 evidencing that the person in possession of it is entitled to
79 receive, hold and dispose of the document and the goods it
80 covers. To be a document of title a document must purport to be
81 issued by or addressed to a bailee and purport to cover goods in
82 the bailee's possession which are either identified or are
83 fungible portions of an identified mass.

84 (16) "Fault" means wrongful act, omission or breach.

85 (17) "Fungible" with respect to goods or securities means
86 goods or securities of which any unit is, by nature or usage of
87 trade, the equivalent of any other like unit. Goods which are not
88 fungible shall be deemed fungible for the purposes of this
89 chapter to the extent that under a particular agreement or
90 document unlike units are treated as equivalents.

91 (18) "Genuine" means free of forgery or counterfeiting.

92 (19) "Good faith" means honesty in fact in the conduct or
93 transaction concerned.

94 (20) "Holder" with respect to a negotiable instrument
95 means the person in possession if the instrument is payable to
96 bearer or, in the case of an instrument payable to an identified
97 person, if the identified person is in possession. "Holder" with
98 respect to a document of title means the person in possession if
99 the goods are deliverable to the bearer or to the order of the
100 person in possession.

101 (21) To “honor” is to pay or to accept and pay, or where a
102 credit so engages to purchase or discount a draft complying
103 with the terms of the credit.

104 (22) “Insolvency proceedings” includes any assignment for
105 the benefit of creditors or other proceedings intended to
106 liquidate or rehabilitate the estate of the person involved.

107 (23) A person is “insolvent” who either has ceased to pay
108 his or her debts in the ordinary course of business or cannot pay
109 his or her debts as they become due or is insolvent within the
110 meaning of the Federal Bankruptcy Law.

111 (24) “Money” means a medium of exchange authorized or
112 adopted by a domestic or foreign government and includes a
113 monetary unit of account established by an intergovernmental
114 organization or by agreement between two or more nations.

115 (25) A person has “notice” of a fact when:

116 (a) He has actual knowledge of it; or

117 (b) He has received a notice or notification of it; or

118 (c) From all the facts and circumstances known to him or
119 her at the time in question he or she has reason to know that it
120 exists. A person “knows” or has “knowledge” of a fact when he
121 or she has actual knowledge of it. “Discover” or “learn” or a
122 word or phrase of similar import refers to knowledge rather
123 than to reason to know. The time and circumstances under
124 which a notice or notification may cease to be effective are not
125 determined by this chapter.

126 (26) A person “notifies” or “gives” a notice or notification
127 to another by taking such steps as may be reasonably required
128 to inform the other in ordinary course whether or not such other
129 actually comes to know of it. A person “receives” a notice or
130 notification when:

131 (a) It comes to his or her attention; or

132 (b) It is duly delivered at the place of business through
133 which the contract was made or at any other place held out by
134 him or her as the place for receipt of such communications.

135 (27) Notice, knowledge or a notice or notification received
136 by an organization is effective for a particular transaction from
137 the time when it is brought to the attention of the individual
138 conducting that transaction and in any event from the time
139 when it would have been brought to his attention if the organi-
140 zation had exercised due diligence. An organization exercises
141 due diligence if it maintains reasonable routines for communi-
142 cating significant information to the person conducting the
143 transaction and there is reasonable compliance with the
144 routines. Due diligence does not require an individual acting for
145 the organization to communicate information unless such
146 communication is part of his or her regular duties or unless he
147 or she has reason to know of the transaction and that the
148 transaction would be materially affected by the information.

149 (28) "Organization" includes a corporation, government or
150 governmental subdivision or agency, business trust, estate,
151 trust, partnership or association, two or more persons having a
152 joint or common interest, or any other legal or commercial
153 entity.

154 (29) "Party," as distinct from "third party," means a person
155 who has engaged in a transaction or made an agreement within
156 this chapter.

157 (30) "Person" includes an individual or an organization (see
158 section 1-102).

159 (31) "Presumption" or "presumed" means that the trier of
160 fact must find the existence of the fact presumed unless and
161 until evidence is introduced which would support a finding of
162 its nonexistence.

163 (32) "Purchase" includes taking by sale, discount, negotia-
164 tion, mortgage, pledge, lien, security interest, issue or reissue,
165 gift or any other voluntary transaction creating an interest in
166 property.

167 (33) "Purchaser" means a person who takes by purchase.

168 (34) "Remedy" means any remedial right to which an
169 aggrieved party is entitled with or without resort to a tribunal.

170 (35) "Representative" includes an agent, an officer of a
171 corporation or association, and a trustee, executor or adminis-
172 trator of an estate, or any other person empowered to act for
173 another.

174 (36) "Rights" includes remedies.

175 (37) "Security interest" means an interest in personal
176 property or fixtures which secures payment or performance of
177 an obligation. The term also includes any interest of consignor
178 and a buyer of accounts, chattel paper, a payment intangible or
179 a promissory note in a transaction that is subject to article nine.
180 The special property interest of a buyer of goods on identifica-
181 tion of those goods to a contract for sale under section 2-401 is
182 not a "security interest", but a buyer may also acquire a
183 "security interest" by complying with article nine. Except as
184 otherwise provided in section 2-505, the right of a seller or
185 lessor of goods under article two or two-a of this chapter to
186 retain or acquire possession of the goods is not a "security
187 interest", but a seller or lessor may also acquire a "security
188 interest" by complying with article nine of this chapter. The
189 retention or reservation of title by a seller of goods notwith-
190 standing shipment or delivery to the buyer (section 2-401) is
191 limited in effect to a reservation of a "security interest".

192 (a) Whether a transaction creates a lease or security interest
193 is determined by the facts of each case; however, a transaction
194 creates a security interest if the consideration the lessee is to

195 pay the lessor for the right to possession and use of the goods
196 is an obligation for the term of the lease not subject to termina-
197 tion by the lessee, and:

198 (i) The original term of the lease is equal to or greater than
199 the remaining economic life of the goods;

200 (ii) The lessee is bound to renew the lease for the remaining
201 economic life of the goods or is bound to become the owner of
202 the goods;

203 (iii) The lessee has an option to renew the lease for the
204 remaining economic life of the goods for no additional consid-
205 eration or nominal additional consideration upon compliance
206 with the lease agreement; or

207 (iv) The lessee has an option to become the owner of the
208 goods for no additional consideration or nominal additional
209 consideration upon compliance with the lease agreement.

210 (b) A transaction does not create a security interest merely
211 because it provides that:

212 (i) The present value of the consideration the lessee is
213 obligated to pay the lessor for the right to possession and use of
214 the goods is substantially equal to or is greater than the fair
215 market value of the goods at the time the lease is entered into;

216 (ii) The lessee assumes risk of loss of the goods, or agrees
217 to pay taxes, insurance, filing, recording or registration fees, or
218 service or maintenance costs with respect to the goods;

219 (iii) The lessee has an option to renew the lease or to
220 become the owner of the goods;

221 (iv) The lessee has an option to renew the lease for a fixed
222 rent that is equal to or greater than the reasonably predictable
223 fair market rent for the use of the goods for the term of the
224 renewal at the time the option is to be performed; or

225 (v) The lessee has an option to become the owner of the
226 goods for a fixed price that is equal to or greater than the
227 reasonably predictable fair market value of the goods at the
228 time the option is to be performed.

229 (c) For purposes of this subsection (37):

230 (i) Additional consideration is not nominal if: (i) When the
231 option to renew the lease is granted to the lessee the rent is
232 stated to be the fair market rent for the use of the goods for the
233 term of the renewal determined at the time the option is to be
234 performed; or (ii) when the option to become the owner of the
235 goods is granted to the lessee the price is stated to be the fair
236 market value of the goods determined at the time the option is
237 to be performed. Additional consideration is nominal if it is less
238 than the lessee's reasonably predictable cost of performing
239 under the lease agreement if the option is not exercised;

240 (ii) "Reasonably predictable" and "remaining economic life
241 of the goods" are to be determined with reference to the facts
242 and circumstances at the time the transaction is entered into;
243 and

244 (iii) "Present value" means the amount as of a date certain
245 of one or more sums payable in the future, discounted to the
246 date certain. The discount is determined by the interest rate
247 specified by the parties if the rate is not manifestly unreason-
248 able at the time the transaction is entered into; otherwise, the
249 discount is determined by a commercially reasonable rate that
250 takes into account the facts and circumstances of each case at
251 the time the transaction was entered into.

252 (38) "Send" in connection with any writing or notice means
253 to deposit in the mail or deliver for transmission by any other
254 usual means of communication with postage or cost of trans-
255 mission provided for and properly addressed and in the case of
256 an instrument to an address specified thereon or otherwise
257 agreed, or if there be none to any address reasonable under the

258 circumstances. The receipt of any writing or notice within the
259 time at which it would have arrived if properly sent has the
260 effect of a proper sending.

261 (39) "Signed" includes any symbol executed or adopted by
262 a party with present intention to authenticate a writing.

263 (40) "Surety" includes guarantor.

264 (41) "Telegram" includes a message transmitted by radio,
265 teletype, cable, any mechanical method of transmission, or the
266 like.

267 (42) "Term" means that portion of an agreement which
268 relates to a particular matter.

269 (43) "Unauthorized signature" means one made without
270 actual, implied or apparent authority and includes a forgery.

271 (44) "Value". Except as otherwise provided with respect to
272 negotiable instruments and bank collections (sections 3-303,
273 4-208 and 4-209), a person gives "value" for rights if he
274 acquires them:

275 (a) In return for a binding commitment to extend credit or
276 for the extension of immediately available credit whether or not
277 drawn upon and whether or not a chargeback is provided for in
278 the event of difficulties in collection; or

279 (b) As security for or in total or partial satisfaction of a
280 preexisting claim; or

281 (c) By accepting delivery pursuant to a preexisting contract
282 for purchase; or

283 (d) Generally, in return for any consideration sufficient to
284 support a simple contract.

285 (45) "Warehouse receipt" means a receipt issued by a
286 person engaged in the business of storing goods for hire.

287 (46) "Written" or "writing" includes printing, typewriting
288 or any other intentional reduction to tangible form.

ARTICLE 2. SALES.

- §46-2-103. Definitions and index of definitions.
§46-2-210. Delegation of performance; assignment of rights.
§46-2-326. Sale on approval and sale or return; rights of creditors.
§46-2-502. Buyer's right to goods on seller's repudiation, failure to deliver, or insolvency.
§46-2-716. Buyer's right to specific performance or replevin.

***§46-2-103. Definitions and index of definitions.**

- 1 (1) In this article unless the context otherwise requires:
2 (a) "Buyer" means a person who buys or contracts to buy
3 goods.
4 (b) "Good faith" in the case of a merchant means honesty
5 in fact and the observance of reasonable commercial standards
6 of fair dealing in the trade.
7 (c) "Receipt" of goods means taking physical possession of
8 them.
9 (d) "Seller" means a person who sells or contracts to sell
10 goods.
11 (2) Other definitions applying to this article or to specified
12 parts thereof, and the sections in which they appear are:
13 "Acceptance". Section 2-606.
14 "Banker's credit". Section 2-325.
15 "Between merchants". Section 2-104.
16 "Cancellation". Section 2-106 (4).
17 "Commercial unit". Section 2-105.
18 "Confirmed credit". Section 2-325.
19 "Conforming to contract". Section 2-106.

***Clerk's Note:** This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.

- 20 “Contract for sale”. Section 2-106.
- 21 “Cover”. Section 2-712.
- 22 “Entrusting”. Section 2-403.
- 23 “Financing agency”. Section 2-104.
- 24 “Future goods”. Section 2-105.
- 25 “Goods”. Section 2-105.
- 26 “Identification”. Section 2-501.
- 27 “Installment contract”. Section 2-612.
- 28 “Letter of credit”. Section 2-325.
- 29 “Lot”. Section 2-105.
- 30 “Merchant”. Section 2-104.
- 31 “Overseas”. Section 2-323.
- 32 “Person in position of seller”. Section 2-707.
- 33 “Present sale”. Section 2-106.
- 34 “Sale”. Section 2-106.
- 35 “Sale on approval”. Section 2-326.
- 36 “Sale or return”. Section 2-326.
- 37 “Termination”. Section 2-106.
- 38 (3) The following definitions in other articles of this chapter
39 apply to this article:
- 40 “Check.” Section 3-104.
- 41 “Consignee.” Section 7-102.
- 42 “Consignor.” Section 7-102.
- 43 “Consumer goods.” Section 9-102.

44 “Dishonor.” Section 3-502.

45 “Draft.” Section 3-104.

46 (4) In addition article one of this chapter contains general
47 definitions and principles of construction and interpretation
48 applicable throughout this article.

***§46-2-210. Delegation of performance; assignment of rights.**

1 (1) A party may perform his duty through a delegate unless
2 otherwise agreed or unless the other party has a substantial
3 interest in having his original promisor perform or control the
4 acts required by the contract. No delegation of performance
5 relieves the party delegating of any duty to perform or any
6 liability for breach.

7 (2) Unless otherwise agreed, all rights of either seller or
8 buyer can be assigned except where the assignment would
9 materially change the duty of the other party, or increase
10 materially the burden or risk imposed on him by his contract, or
11 impair materially his chance of obtaining return performance.
12 A right to damages for breach of the whole contract or a right
13 arising out of the assignor’s due performance of his entire
14 obligation can be assigned despite agreement otherwise.

15 (3) The creation, attachment, perfection or enforcement of
16 a security interest in the seller’s interest under a contract is not
17 a transfer that materially changes the duty of or increases
18 materially the burden or risk imposed on the buyer or impairs
19 materially the buyer’s chance of obtaining return performance
20 within the purview of subsection (2) of this article unless, and
21 then only to the extent that, enforcement actually results in a
22 delegation of material performance of the seller. Even in that
23 event, the creation, attachment, perfection and enforcement of
24 the security interest remains effective, but: (i) The seller is
25 liable to the buyer for damages caused by the delegation to the

***Clerk’s Note:** This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.

26 extent that the damages could not reasonably be prevented by
27 the buyer; and (ii) a court having jurisdiction may grant other
28 appropriate relief, including cancellation of the contract for sale
29 or an injunction against enforcement of the security interest or
30 consummation of the enforcement.

31 (4) Unless the circumstances indicate the contrary a
32 prohibition of assignment of “the contract” is to be construed as
33 barring only the delegation to the assignee of the assignor’s
34 performance.

35 (5) An assignment of “the contract” or of “all my rights
36 under the contract” or an assignment in similar general terms is
37 an assignment of rights and unless the language or the circum-
38 stances (as in an assignment for security) indicate the contrary,
39 it is a delegation of performance of the duties of the assignor
40 and its acceptance by the assignee constitutes a promise by him
41 to perform those duties. This promise is enforceable by either
42 the assignor or the other party to the original contract.

43 (6) The other party may treat any assignment which
44 delegates performance as creating reasonable grounds for
45 insecurity and may without prejudice to his rights against the
46 assignor demand assurances from the assignee (section 2-609).

***§46-2-326. Sale on approval and sale or return; rights of credi-
tors.**

1 (1) Unless otherwise agreed, if delivered goods may be
2 returned by the buyer even though they conform to the contract,
3 the transaction is:

4 (a) A “sale on approval” if the goods are delivered primar-
5 ily for use, and

6 (b) A “sale or return” if the goods are delivered primarily
7 for resale.

***Clerk’s Note:** This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.

8 (2) Goods held on approval are not subject to the claims of
9 the buyer's creditors until acceptance; goods held on sale or
10 return are subject to such claims while in the buyer's posses-
11 sion.

12 (3) Any "or return" term of a contract for sale is to be
13 treated as a separate contract for sale within the statute of frauds
14 section of this article (section 2-201) and as contradicting the
15 sale aspect of the contract within the provisions of this article
16 on parol or extrinsic evidence (section 2-202).

***§46-2-502. Buyer's right to goods on seller's repudiation, failure to deliver, or insolvency.**

1 (1) Subject to subsections (2) and (3) of this section, and
2 even though the goods have not been shipped, a buyer who has
3 paid a part or all of the price of goods in which he has a special
4 property under the provisions of the immediately preceding
5 section may on making and keeping good a tender of any
6 unpaid portion of their price recover them from the seller if:

7 (a) In the case of goods bought for personal, family, or
8 household purposes, the seller repudiates or fails to deliver as
9 required by the contract; or

10 (b) In all cases, the seller becomes insolvent within ten days
11 after receipt of the first installment on their price.

12 (2) The buyer's right to recover the goods under subsection
13 (1)(a) vests upon acquisition of a special property, even if the
14 seller had not then repudiated or failed to deliver.

15 (3) If the identification creating his special property has
16 been made by the buyer he acquires the right to recover the
17 goods only if they conform to the contract for sale.

***§46-2-716. Buyer's right to specific performance or replevin.**

***Clerk's Note:** This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.

1 (1) Specific performance may be decreed where the goods
2 are unique or in other proper circumstances.

3 (2) The decree for specific performance may include such
4 terms and conditions as to payment of the price, damages, or
5 other relief as the court may deem just.

6 (3) The buyer has a right of replevin for goods identified to
7 the contract if after reasonable effort he is unable to effect cover
8 for such goods or the circumstances reasonably indicate that
9 such effort will be unavailing or if the goods have been shipped
10 under reservation and satisfaction of the security interest in
11 them has been made or tendered. In the case of goods bought
12 for personal, family, or household purposes, the buyer's right
13 of replevin vests upon acquisition of a special property, even if
14 the seller had not then repudiated or failed to deliver.

ARTICLE 2A. LEASES.

§46-2A-103. Definitions and index of definitions.

§46-2A-303. Alienability of party's interest under lease contract or of lessor's residual interest in goods; delegation of performance; transfer of rights.

§46-2A-307. Priority of liens arising by attachment or levy on, security interest in, and other claims to goods.

§46-2A-309. Lessor's and lessee's rights when goods become fixtures.

***§46-2A-103. Definitions and index of definitions.**

1 (1) In this article unless the context otherwise requires:

2 (a) "Buyer in ordinary course of business" means a person
3 who in good faith and without knowledge that the sale to him
4 or her is in violation of the ownership rights or security interest
5 or leasehold interest of a third party in the goods, buys in
6 ordinary course from a person in the business of selling goods
7 of that kind but does not include a pawnbroker. "Buying" may
8 be for cash or by exchange of other property or on secured or
9 unsecured credit and includes receiving goods or documents of
10 title under a preexisting contract for sale but does not include a

***Clerk's Note:** This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.

11 transfer in bulk or as security for or in total or partial satisfac-
12 tion of a money debt.

13 (b) "Cancellation" occurs when either party puts an end to
14 the lease contract for default by the other party.

15 (c) "Commercial unit" means such a unit of goods as by
16 commercial usage is a single whole for purposes of lease and
17 division of which materially impairs its character or value on
18 the market or in use. A commercial unit may be a single article,
19 as a machine, or a set of articles, as a suite of furniture or a line
20 of machinery, or a quantity, as a gross or carload, or any other
21 unit treated in use or in the relevant market as a single whole.

22 (d) "Conforming" goods or performance under a lease
23 contract means goods or performance that are in accordance
24 with the obligations under the lease contract.

25 (e) "Consumer lease" shall have the same meaning as that
26 ascribed to it in section one hundred two, article one, chapter
27 forty-six-a of this code.

28 (f) "Fault" means wrongful act, omission, breach or default.

29 (g) "Finance lease" means a lease with respect to which:

30 (i) The lessor does not select, manufacture or supply the
31 goods;

32 (ii) The lessor acquires the goods or the right to possession
33 and use of the goods in connection with the lease; and

34 (iii) One of the following occurs:

35 (A) The lessee receives a copy of the contract by which the
36 lessor acquired the goods or the right to possession and use of
37 the goods before signing the lease contract;

38 (B) The lessee's approval of the contract by which the
39 lessor acquired the goods or the right to possession and use of
40 the goods is a condition to effectiveness of the lease contract;

41 (C) The lessee, before signing the lease contract, receives
42 an accurate and complete statement designating the promises
43 and warranties, and any disclaimers of warranties, limitations
44 or modifications of remedies, or liquidated damages, including
45 those of a third party, such as the manufacturer of the goods,
46 provided to the lessor by the person supplying the goods in
47 connection with or as part of the contract by which the lessor
48 acquired the goods or the right to possession and use of the
49 goods; or

50 (D) If the lease is not a consumer lease, the lessor, before
51 the lessee signs the lease contract, informs the lessee in writing:
52 (a) Of the identity of the person supplying the goods to the
53 lessor, unless the lessee has selected that person and directed
54 the lessor to acquire the goods or the right to possession and use
55 of the goods from that person; (b) that the lessee is entitled
56 under this article to the promises and warranties, including
57 those of any third party, provided to the lessor by the person
58 supplying the goods in connection with or as part of the
59 contract by which the lessor acquired the goods or the right to
60 possession and use of the goods; and (c) that the lessee may
61 communicate with the person supplying the goods to the lessor
62 and receive an accurate and complete statement of those
63 promises and warranties, including any disclaimers and
64 limitations of them or of remedies.

65 (h) “Goods” means all things that are movable at the time
66 of identification to the lease contract, or are fixtures
67 (section 2A-309), but the term does not include money,
68 documents, instruments, accounts, chattel paper, general
69 intangibles or minerals or the like, including oil and gas, before
70 extraction. The term also includes the unborn young of animals.

71 (i) “Installment lease contract” means a lease contract that
72 authorizes or requires the delivery of goods in separate lots to
73 be separately accepted, even though the lease contract contains
74 a clause “each delivery is a separate lease” or its equivalent.

75 (j) "Lease" means a transfer of the right to possession and
76 use of goods for a term in return for consideration, but a sale,
77 including a sale on approval or a sale or return, or retention or
78 creation of a security interest is not a lease. Unless the context
79 clearly indicates otherwise, the term includes a sublease.

80 (k) "Lease agreement" means the bargain, with respect to
81 the lease, of the lessor and the lessee in fact as found in their
82 language or by implication from other circumstances including
83 course of dealing or usage of trade or course of performance as
84 provided in this article. Unless the context clearly indicates
85 otherwise, the term includes a sublease agreement.

86 (l) "Lease contract" means the total legal obligation that
87 results from the lease agreement as affected by this article and
88 any other applicable rules of law. Unless the context clearly
89 indicates otherwise, the term includes a sublease contract.

90 (m) "Leasehold interest" means the interest of the lessor or
91 the lessee under a lease contract.

92 (n) "Lessee" means a person who acquires the right to
93 possession and use of goods under a lease. Unless the context
94 clearly indicates otherwise, the term includes a sublessee.

95 (o) "Lessee in ordinary course of business" means a person
96 who in good faith and without knowledge that the lease to him
97 or her is in violation of the ownership rights or security interest
98 or leasehold interest of a third party in the goods leases in
99 ordinary course from a person in the business of selling or
100 leasing goods of that kind but does not include a pawnbroker.
101 "Leasing" may be for cash or by exchange of other property or
102 on secured or unsecured credit and includes receiving goods or
103 documents of title under a preexisting lease contract but does
104 not include a transfer in bulk or as security for or in total or
105 partial satisfaction of a money debt.

106 (p) “Lessor” means a person who transfers the right to
107 possession and use of goods under a lease. Unless the context
108 clearly indicates otherwise, the term includes a sublessor.

109 (q) “Lessor’s residual interest” means the lessor’s interest
110 in the goods after expiration, termination or cancellation of the
111 lease contract.

112 (r) “Lien” means a charge against or interest in goods to
113 secure payment of a debt or performance of an obligation, but
114 the term does not include a security interest.

115 (s) “Lot” means a parcel or a single article that is the
116 subject matter of a separate lease or delivery, whether or not it
117 is sufficient to perform the lease contract.

118 (t) “Merchant lessee” means a lessee that is a merchant with
119 respect to goods of the kind subject to the lease.

120 (u) “Present value” means the amount as of a date certain
121 of one or more sums payable in the future, discounted to the
122 date certain. The discount is determined by the interest rate
123 specified by the parties if the rate was not manifestly unreason-
124 able at the time the transaction was entered into; otherwise, the
125 discount is determined by a commercially reasonable rate that
126 takes into account the facts and circumstances of each case at
127 the time the transaction was entered into.

128 (v) “Purchase” includes taking by sale, lease, mortgage,
129 security interest, pledge, gift or any other voluntary transaction
130 creating an interest in goods.

131 (w) “Sublease” means a lease of goods the right to posses-
132 sion and use of which was acquired by the lessor as a lessee
133 under an existing lease.

134 (x) “Supplier” means a person from whom a lessor buys or
135 leases goods to be leased under a finance lease.

136 (y) "Supply contract" means a contract under which a lessor
137 buys or leases goods to be leased.

138 (z) "Termination" occurs when either party pursuant to a
139 power created by agreement or law puts an end to the lease
140 contract otherwise than for default.

141 (2) Other definitions applying to this article and the sections
142 in which they appear are:

143 "Accessions". Section 2A-310(1).

144 "Construction mortgage". Section 2A-309(1)(d).

145 "Encumbrance". Section 2A-309(1)(e).

146 "Fixtures". Section 2A-309(1)(a).

147 "Fixture filing". Section 2A-309(1)(b).

148 "Purchase money lease". Section 2A-309(1)(c).

149 (3) The following definitions in other articles apply to this
150 article:

151 "Account". Section 9-102(a)(2).

152 "Between merchants". Section 2-104(3).

153 "Buyer". Section 2-103(1)(a).

154 "Chattel paper". Section 9-102(a)(11).

155 "Consumer goods". Section 9-102(a)(23).

156 "Document". Section 9-102(a)(30).

157 "Entrusting". Section 2-403(3).

158 "General intangible". Section 9-102(a)(42).

159 "Good faith". Section 2-103(1)(b).

160 "Instrument". Section 9-102(a)(47).

- 161 “Merchant”. Section 2-104(1).
162 “Mortgage”. Section 9-102(a)(55).
163 “Pursuant to commitment”. Section 9-102(a)(68).
164 “Receipt”. Section 2-103(1)(c).
165 “Sale”. Section 2-106(1).
166 “Sale on approval”. Section 2-326.
167 “Sale or return”. Section 2-326.
168 “Seller”. Section 2-103(1)(d).
169 (4) In addition, article one contains general definitions and
170 principles of construction and interpretation applicable through-
171 out this article.

***§46-2A-303. Alienability of party’s interest under lease contract
or of lessor’s residual interest in goods; delegation
of performance; transfer of rights.**

- 1 (1) As used in this section, “creation of a security interest”
2 includes the sale of a lease contract that is subject to article
3 nine, secured transactions, by reason of section 9-109(a)(3).
4 (2) Except as provided in subsection (3) and section 9-407,
5 a provision in a lease agreement which: (i) Prohibits the
6 voluntary or involuntary transfer, including a transfer by sale,
7 sublease, creation or enforcement of a security interest, or
8 attachment, levy, or other judicial process, of an interest of a
9 party under the lease contract or of the lessor’s residual interest
10 in the goods; or (ii) makes such a transfer an event of default,
11 gives rise to the rights and remedies provided in subsection (5)
12 of this section, but a transfer that is prohibited or is an event of
13 default under the lease agreement is otherwise effective.

***Clerk’s Note:** This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.

14 (3) A provision in a lease agreement which: (i) Prohibits a
15 transfer of a right to damages for default with respect to the
16 whole lease contract or of a right to payment arising out of the
17 transferor's due performance of the transferor's entire obliga-
18 tion; or (ii) makes such a transfer an event of default, is not
19 enforceable, and such a transfer is not a transfer that materially
20 impairs the prospect of obtaining return performance by,
21 materially changes the duty of, or materially increases the
22 burden or risk imposed on, the other party to the lease contract
23 within the purview of subsection (4).

24 (4) Subject to subsection (3) of this section and section 9-
25 407:

26 (a) If a transfer is made which is made an event of default
27 under a lease agreement, the party to the lease contract not
28 making the transfer, unless that party waives the default or
29 otherwise agrees, has the rights and remedies described in
30 section 2A-501(2);

31 (b) If paragraph (a) is not applicable and if a transfer is
32 made that: (i) Is prohibited under a lease agreement; or (ii)
33 materially impairs the prospect of obtaining return performance
34 by, materially changes the duty of, or materially increases the
35 burden or risk imposed on, the other party to the lease contract,
36 unless the party not making the transfer agrees at any time to
37 the transfer in the lease contract or otherwise, then, except as
38 limited by contract: (i) The transferor is liable to the party not
39 making the transfer for damages caused by the transfer to the
40 extent that the damages could not reasonably be prevented by
41 the party not making the transfer; and (ii) a court having
42 jurisdiction may grant other appropriate relief, including
43 cancellation of the lease contract or an injunction against the
44 transfer.

45 (5) A transfer of "the lease" or of "all my rights under the
46 lease", or a transfer in similar general terms, is a transfer of

47 rights and, unless the language or the circumstances, as in a
48 transfer for security, indicate the contrary, the transfer is a
49 delegation of duties by the transferor to the transferee. Accep-
50 tance by the transferee constitutes a promise by the transferee
51 to perform those duties. The promise is enforceable by either
52 the transferor or the other party to the lease contract.

53 (6) Unless otherwise agreed by the lessor and the lessee, a
54 delegation of performance does not relieve the transferor as
55 against the other party of any duty to perform or of any liability
56 for default.

57 (7) In a consumer lease, to prohibit the transfer of an
58 interest of a party under the lease contract or to make a transfer
59 an event of default, the language must be specific, by a writing,
60 and conspicuous.

***§46-2A-307. Priority of liens arising by attachment or levy on,
security interests in, and other claims to goods.**

1 (1) Except as otherwise provided in section 2A-306, a
2 creditor of a lessee takes subject to the lease contract.

3 (2) Except as otherwise provided in subsection (3) of this
4 section and in sections 2A-306 and 2A-308, a creditor of a
5 lessor takes subject to the lease contract unless the creditor
6 holds a lien that attached to the goods before the lease contract
7 became enforceable.

8 (3) Except as otherwise provided in sections 9-317, 9-321,
9 and 9-323, a lessee takes a leasehold interest subject to a
10 security interest held by a creditor of the lessor.

***§46-2A-309. Lessor's and lessee's rights when goods become
fixtures.**

1 (1) In this section:

***Clerk's Note:** This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.

2 (a) Goods are “fixtures” when they become so related to
3 particular real estate that an interest in them arises under real
4 estate law;

5 (b) A “fixture filing” is the filing, in the office where a
6 mortgage on the real estate would be filed or recorded, of a
7 financing statement covering goods that are or are to become
8 fixtures and conforming to the requirements of section 9-502(a)
9 and (b);

10 (c) A lease is a “purchase money lease” unless the lessee
11 has possession or use of the goods or the right to possession or
12 use of the goods before the lease agreement is enforceable;

13 (d) A mortgage is a “construction mortgage” to the extent
14 it secures an obligation incurred for the construction of an
15 improvement on land including the acquisition cost of the land,
16 if the recorded writing so indicates; and

17 (e) “Encumbrance” includes real estate mortgages and other
18 liens on real estate and all other rights in real estate that are not
19 ownership interests.

20 (2) Under this article a lease may be of goods that are
21 fixtures or may continue in goods that become fixtures, but no
22 lease exists under this article of ordinary building materials
23 incorporated into an improvement on land.

24 (3) This article does not prevent creation of a lease of
25 fixtures pursuant to real estate law.

26 (4) The perfected interest of a lessor of fixtures has priority
27 over a conflicting interest of an encumbrancer or owner of the
28 real estate if:

29 (a) The lease is a purchase money lease, the conflicting
30 interest of the encumbrancer or owner arises before the goods
31 become fixtures, the interest of the lessor is perfected by a
32 fixture filing before the goods become fixtures or within ten

33 days thereafter, and the lessee has an interest of record in the
34 real estate or is in possession of the real estate; or

35 (b) The interest of the lessor is perfected by a fixture filing
36 before the interest of the encumbrancer or owner is of record,
37 the lessor's interest has priority over any conflicting interest of
38 a predecessor in title of the encumbrancer or owner, and the
39 lessee has an interest of record in the real estate or is in posses-
40 sion of the real estate.

41 (5) The interest of a lessor of fixtures, whether or not
42 perfected, has priority over the conflicting interest of an
43 encumbrancer or owner of the real estate if:

44 (a) The fixtures are readily removable factory or office
45 machines, readily removable equipment that is not primarily
46 used or leased for use in the operation of the real estate, or
47 readily removable replacements of domestic appliances that are
48 goods subject to a consumer lease and before the goods become
49 fixtures the lease contract is enforceable; or

50 (b) The conflicting interest is a lien on the real estate
51 obtained by legal or equitable proceedings after the lease
52 contract is enforceable; or

53 (c) The encumbrancer or owner has consented in writing to
54 the lease or has disclaimed an interest in the goods as fixtures;
55 or

56 (d) The lessee has a right to remove the goods as against the
57 encumbrancer or owner. If the lessee's right to remove termi-
58 nates, the priority of the interest of the lessor continues for a
59 reasonable time.

60 (6) Notwithstanding subsection (4)(a) of this section but
61 otherwise subject to subsections (4) and (5) of this section, the
62 interest of a lessor of fixtures, including the lessor's residual
63 interest, is subordinate to the conflicting interest of an encum-
64 brancer of the real estate under a construction mortgage

65 recorded before the goods become fixtures if the goods become
66 fixtures before the completion of the construction. To the extent
67 given to refinance a construction mortgage, the conflicting
68 interest of an encumbrancer of the real estate under a mortgage
69 has this priority to the same extent as the encumbrancer of the
70 real estate under the construction mortgage.

71 (7) In cases not within the preceding subsections, priority
72 between the interest of a lessor of fixtures, including the
73 lessor's residual interest, and the conflicting interest of an
74 encumbrancer or owner of the real estate who is not the lessee
75 is determined by the priority rules governing conflicting
76 interests in real estate.

77 (8) If the interest of a lessor of fixtures, including the
78 lessor's residual interest, has priority over all conflicting
79 interests of all owners and encumbrancers of the real estate, the
80 lessor or the lessee may: (i) On default, expiration, termination
81 or cancellation of the lease agreement but subject to the lease
82 agreement and this article; or (ii) if necessary to enforce other
83 rights and remedies of the lessor or lessee under this article,
84 remove the goods from the real estate, free and clear of all
85 conflicting interests of all owners and encumbrancers of the real
86 estate, but the lessor or lessee must reimburse any encum-
87 brancer or owner of the real estate who is not the lessee and
88 who has not otherwise agreed for the cost of repair of any
89 physical injury, but not for any diminution in value of the real
90 estate caused by the absence of the goods removed or by any
91 necessity of replacing them. A person entitled to reimbursement
92 may refuse permission to remove until the party seeking
93 removal gives adequate security for the performance of this
94 obligation.

95 (9) Even though the lease agreement does not create a
96 security interest, the interest of a lessor of fixtures, including
97 the lessor's residual interest, is perfected by filing a financing
98 statement as a fixture filing for leased goods that are or are to

99 become fixtures in accordance with the relevant provisions of
100 the article on secured transactions (article nine).

ARTICLE 4. BANK DEPOSITS AND COLLECTIONS.

***§46-4-210. Security interest of collecting bank in items, accompanying documents and proceeds.**

1 (a) A collecting bank has a security interest in an item and
2 any accompanying documents or the proceeds of either:

3 (1) In case of an item deposited in an account, to the extent
4 to which credit given for the item has been withdrawn or
5 applied;

6 (2) In case of an item for which it has given credit available
7 for withdrawal as of right, to the extent of the credit given,
8 whether or not the credit is drawn upon or there is a right of
9 charge-back; or

10 (3) If it makes an advance on or against the item.

11 (b) If credit given for several items received at one time or
12 pursuant to a single agreement is withdrawn or applied in part,
13 the security interest remains upon all the items, any accompa-
14 nying documents or the proceeds of either. For the purpose of
15 this section, credits first given are first withdrawn.

16 (c) Receipt by a collecting bank of a final settlement for an
17 item is a realization on its security interest in the item, accom-
18 panying documents and proceeds. So long as the bank does not
19 receive final settlement for the item or give up possession of the
20 item or accompanying documents for purposes other than
21 collection, the security interest continues to that extent and is
22 subject to article nine but:

23 (1) No security agreement is necessary to make the security
24 interest enforceable (section 9-203(b)(3)(A));

***Clerk's Note:** This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.

25 (2) No filing is required to perfect the security interest; and

26 (3) The security interest has priority over conflicting
27 perfected security interests in the item, accompanying docu-
28 ments or proceeds.

ARTICLE 5. LETTERS OF CREDIT.

***§46-5-118. Security interest of issuer or nominated persons.**

1 (a) An issuer or nominated person has a security interest in
2 a document presented under a letter of credit to the extent that
3 the issuer or nominated person honors or gives value for the
4 presentation.

5 (b) So long as and to the extent that an issuer or nominated
6 person has not been reimbursed or has not otherwise recovered
7 the value given with respect to a security interest in a document
8 under subsection (a), the security interest continues and is
9 subject to article nine, but:

10 (1) A security agreement is not necessary to make the
11 security interest enforceable under section 9-203(b)(3);

12 (2) If the document is presented in a medium other than a
13 written or other tangible medium, the security interest is
14 perfected; and

15 (3) If the document is presented in a written or other
16 tangible medium and is not a certificated security, chattel paper,
17 a document of title, an instrument, or a letter of credit, the
18 security interest is perfected and has priority over a conflicting
19 security interest in the document so long as the debtor does not
20 have possession of the document.

ARTICLE 7. WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE.

***Clerk's Note:** This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.

***§46-7-503. Document of title to goods defeated in certain cases.**

1 (1) A document of title confers no right in goods against a
2 person who before issuance of the document had a legal interest
3 or a perfected security interest in them and who neither:

4 (a) Delivered or entrusted them or any document of title
5 covering them to the bailor or his nominee with actual or
6 apparent authority to ship, store or sell or with power to obtain
7 delivery under this article (section 7-403) or with power of
8 disposition under this chapter (sections 2-403 and 9-320) or
9 other statute or rule of law; nor

10 (b) Acquiesced in the procurement by the bailor or his
11 nominee of any document of title.

12 (2) Title to goods based upon an unaccepted delivery order
13 is subject to the rights of anyone to whom a negotiable ware-
14 house receipt or bill of lading covering the goods has been duly
15 negotiated. Such a title may be defeated under the next section
16 to the same extent as the rights of the issuer or a transferee from
17 the issuer.

18 (3) Title to goods based upon a bill of lading issued to a
19 freight forwarder is subject to the rights of anyone to whom a
20 bill issued by the freight forwarder is duly negotiated; but
21 delivery by the carrier in accordance with part 4 of this article
22 pursuant to its own bill of lading discharges the carrier's
23 obligation to deliver.

ARTICLE 8. INVESTMENT SECURITIES.

§46-8-103. Rules for determining whether certain obligations and interests are securities or financial assets.

§46-8-106. Control.

§46-8-110. Applicability; choice of law.

§46-8-301. Delivery.

§46-8-302. Rights of purchaser.

§46-8-510. Rights of purchaser of security entitlement from entitlement holder.

***Clerk's Note:** This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.

***§46-8-103. Rules for determining whether certain obligations and interests are securities or financial assets.**

1 (a) A share or similar equity interest issued by a corpora-
2 tion, business trust, joint stock company or similar entity is a
3 security.

4 (b) An “investment company security” is a security.
5 “Investment company security” means a share or similar equity
6 interest issued by an entity that is registered as an investment
7 company under the federal investment company laws, an
8 interest in a unit investment trust that is so registered or a face-
9 amount certificate issued by a face-amount certificate company
10 that is so registered. Investment company security does not
11 include an insurance policy or endowment policy or annuity
12 contract issued by an insurance company.

13 (c) An interest in a partnership or limited liability company
14 is not a security unless it is dealt in or traded on securities
15 exchanges or in securities markets, its terms expressly provide
16 that it is a security governed by this article or it is an investment
17 company security. However, an interest in a partnership or
18 limited liability company is a financial asset if it is held in a
19 securities account.

20 (d) A writing that is a security certificate is governed by
21 this article and not by article three of this chapter, even though
22 it also meets the requirements of that article. However, a
23 negotiable instrument governed by article three is a financial
24 asset if it is held in a securities account.

25 (e) An option or similar obligation issued by a clearing
26 corporation to its participants is not a security, but is a financial
27 asset.

28 (f) A commodity contract, as defined in section 9-
29 102(a)(15), is not a security or a financial asset.

***Clerk’s Note:** This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.

***§46-8-106. Control.**

1 (a) A purchaser has “control” of a certificated security in
2 bearer form if the certificated security is delivered to the
3 purchaser.

4 (b) A purchaser has “control” of a certificated security in
5 registered form if the certificated security is delivered to the
6 purchaser and:

7 (1) The certificate is indorsed to the purchaser or in blank
8 by an effective indorsement;

9 (2) The certificate is registered in the name of the pur-
10 chaser, upon original issue or registration of transfer by the
11 issuer; or

12 (3) Another person has control of the security entitlement
13 on behalf of the purchaser or, having previously acquired
14 control of the security entitlement, acknowledges that it has
15 control on behalf of the purchaser.

16 (c) A purchaser has “control” of an uncertificated security
17 if:

18 (1) The uncertificated security is delivered to the purchaser;
19 or

20 (2) The issuer has agreed that it will comply with instruc-
21 tions originated by the purchaser without further consent by the
22 registered owner.

23 (d) A purchaser has “control” of a security entitlement if:

24 (1) The purchaser becomes the entitlement holder; or

25 (2) The securities intermediary has agreed that it will
26 comply with entitlement orders originated by the purchaser
27 without further consent by the entitlement holder.

***Clerk's Note:** This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.

28 (e) If an interest in a security entitlement is granted by the
29 entitlement holder to the entitlement holder's own securities
30 intermediary, the securities intermediary has control.

31 (f) A purchaser who has satisfied the requirements of
32 subdivision (2), subsection (c) of this section or subdivision (2),
33 subsection (d) of this section has control even if the registered
34 owner in the case of subdivision (2), subsection (c) of this
35 section, subsection (c) of this section or the entitlement holder
36 in the case of subdivision (2), subsection (d) of this section
37 retains the right to make substitutions for the uncertificated
38 security or security entitlement, to originate instructions or
39 entitlement orders to the issuer or securities intermediary, or
40 otherwise to deal with the uncertificated security or security
41 entitlement.

42 (g) An issuer or a securities intermediary may not enter into
43 an agreement of the kind described in subdivision (2), subsection
44 (c) of this section or subdivision (2), subsection (d) of this
45 section without the consent of the registered owner or entitle-
46 ment holder, but an issuer or a securities intermediary is not
47 required to enter into such an agreement even though the
48 registered owner or entitlement holder so directs. An issuer or
49 securities intermediary that has entered into such an agreement
50 is not required to confirm the existence of the agreement to
51 another party unless requested to do so by the registered owner
52 or entitlement holder.

***§46-8-110. Applicability; choice of law.**

1 (a) The local law of the issuer's jurisdiction, as specified in
2 subsection (d) of this section governs:

3 (1) The validity of a security;

4 (2) The rights and duties of the issuer with respect to
5 registration of transfer;

***Clerk's Note:** This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.

6 (3) The effectiveness of registration of transfer by the
7 issuer;

8 (4) Whether the issuer owes any duties to an adverse
9 claimant to a security; and

10 (5) Whether an adverse claim can be asserted against a
11 person to whom transfer of a certificated or uncertificated
12 security is registered or a person who obtains control of an
13 uncertificated security.

14 (b) The local law of the securities intermediary's jurisdic-
15 tion, as specified in subsection (e) of this section, governs:

16 (1) Acquisition of a security entitlement from the securities
17 intermediary;

18 (2) The rights and duties of the securities intermediary and
19 entitlement holder arising out of a security entitlement;

20 (3) Whether the securities intermediary owes any duties to
21 an adverse claimant to a security entitlement; and

22 (4) Whether an adverse claim can be asserted against a
23 person who acquires a security entitlement from the securities
24 intermediary or a person who purchases a security entitlement
25 or interest therein from an entitlement holder.

26 (c) The local law of the jurisdiction in which a security
27 certificate is located at the time of delivery governs whether an
28 adverse claim can be asserted against a person to whom the
29 security certificate is delivered.

30 (d) "Issuer's jurisdiction" means the jurisdiction under
31 which the issuer of the security is organized or, if permitted by
32 the law of that jurisdiction, the law of another jurisdiction
33 specified by the issuer. An issuer organized under the law of
34 this state may specify the law of another jurisdiction as the law
35 governing the matters specified in subdivisions (2) through (5),
36 inclusive, subsection (a) of this section.

37 (e) The following rules determine a “securities intermedi-
38 ary’s jurisdiction” for purposes of this section:

39 (1) If an agreement between the securities intermediary and
40 its entitlement holder governing the securities account expressly
41 provides that a particular jurisdiction is the securities intermedi-
42 ary’s jurisdiction for purposes of this part, this article, or this
43 chapter, that jurisdiction is the securities intermediary’s
44 jurisdiction.

45 (2) If subdivision (1) does not apply and an agreement
46 between the securities intermediary and its entitlement holder
47 governing the securities account expressly provides that the
48 agreement is governed by the law of a particular jurisdiction,
49 the jurisdiction is the securities intermediary’s jurisdiction.

50 (3) If neither subdivision (1) nor subdivision (2) of this
51 subsection applies and an agreement between the securities
52 intermediary and its entitlement holder governing the securities
53 account expressly provides that the securities account is
54 maintained at an office in a particular jurisdiction, that jurisdic-
55 tion is the securities intermediary’s jurisdiction.

56 (4) If none of the preceding subdivisions apply, the securi-
57 ties intermediary’s jurisdiction is the jurisdiction in which the
58 office identified in an account statement as the office serving
59 the entitlement holder’s account is located.

60 (5) If an agreement between the securities intermediary and
61 its entitlement holder does not specify a jurisdiction as provided
62 in subdivision (1) or (2) of this subsection and an account
63 statement does not identify an office serving the entitlement
64 holder’s account as provided in subdivision (3) of this subsec-
65 tion, the securities intermediary’s jurisdiction is the jurisdiction
66 in which is located the chief executive office of the securities
67 intermediary.

68 (f) A securities intermediary's jurisdiction is not deter-
69 mined by the physical location of certificates representing
70 financial assets, or by the jurisdiction in which is organized the
71 issuer of the financial asset with respect to which an entitlement
72 holder has a security entitlement or by the location of facilities
73 for data processing or other record keeping concerning the
74 account.

PART 3. TRANSFER OF CERTIFICATED
AND UNCERTIFICATED SECURITIES.

***§46-8-301. Delivery.**

1 (a) Delivery of a certificated security to a purchaser occurs
2 when:

3 (1) The purchaser acquires possession of the security
4 certificate;

5 (2) Another person, other than a securities intermediary,
6 either acquires possession of the security certificate on behalf
7 of the purchaser or, having previously acquired possession of
8 the certificate, acknowledges that it holds for the purchaser; or

9 (3) A securities intermediary acting on behalf of the
10 purchaser acquires possession of the security certificate, only if
11 the certificate is in registered form and is: (i) Registered in the
12 name of the purchaser; (ii) payable to the order of the pur-
13 chaser; or (iii) specially endorsed to the purchaser by an
14 effective endorsement and has not been endorsed to the
15 securities intermediary or in blank.

16 (b) Delivery of an uncertificated security to a purchaser
17 occurs when:

18 (1) The issuer registers the purchaser as the registered
19 owner, upon original issue or registration of transfer; or

***Clerk's Note:** This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.

20 (2) Another person, other than a securities intermediary,
21 either becomes the registered owner of the uncertificated
22 security on behalf of the purchaser or, having previously
23 become the registered owner, acknowledges that it holds for the
24 purchaser.

***§46-8-302. Rights of purchaser.**

1 (a) Except as otherwise provided in subsections (b) and (c)
2 of this section, a purchaser of a certificated or uncertificated
3 security acquires all rights in the security that the transferor had
4 or had power to transfer.

5 (b) A purchaser of a limited interest acquires rights only to
6 the extent of the interest purchased.

7 (c) A purchaser of a certificated security who as a previous
8 holder had notice of an adverse claim does not improve its
9 position by taking from a protected purchaser.

***§46-8-510. Rights of purchaser of security entitlement from
entitlement holder.**

1 (a) In a case not covered by the priority rules in article nine
2 or the rules stated in subsection (c) of this section, an action
3 based on an adverse claim to a financial asset or security
4 entitlement, whether framed in conversion, replevin, construc-
5 tive trust, equitable lien or other theory, may not be asserted
6 against a person who purchases a security entitlement, or an
7 interest therein, from an entitlement holder if the purchaser
8 gives value, does not have notice of the adverse claim, and
9 obtains control.

10 (b) If an adverse claim could not have been asserted against
11 an entitlement holder under section 8-502, the adverse claim
12 cannot be asserted against a person who purchases a security
13 entitlement, or an interest therein, from the entitlement holder.

***Clerk's Note:** This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.

14 (c) In a case not covered by the priority rules in article nine,
15 a purchaser for value of a security entitlement, or an interest
16 therein, who obtains control has priority over a purchaser of a
17 security entitlement, or an interest therein, who does not obtain
18 control. Except as otherwise provided in subsection (d) of this
19 section, purchasers who have control rank according to priority
20 in time of:

21 (1) The purchaser's becoming the person for whom the
22 securities account, in which the security entitlement is carried,
23 is maintained, if the purchaser obtained control under section 8-
24 106(d)(1);

25 (2) The securities intermediary's agreement to comply with
26 the purchaser's entitlement orders with respect to security
27 entitlements carried or to be carried in the securities account in
28 which the security entitlement is carried, if the purchaser
29 obtained control under section 8-106(d)(2); or

30 (3) If the purchaser obtained control through another person
31 under section 8-106(d)(3), the time on which priority would be
32 based under this subsection if the other person were the secured
33 party.

34 (d) A securities intermediary as purchaser has priority over
35 a conflicting purchaser who has control unless otherwise agreed
36 by the securities intermediary.

ARTICLE 9. SECURED TRANSACTIONS.

PART 1. GENERAL PROVISIONS.

SUBPART 1. SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS.

§46-9-101. Short title.

§46-9-102. Definitions and index of definitions.

***Clerk's Note:** This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.

- §46-9-103. Purchase-money security interest; application of payments; burden of establishing.
- §46-9-103a. “Production-money crops”; “production-money obligation”; production-money security interest; burden of establishing.
- §46-9-104. Control of deposit account.
- §46-9-105. Control of electronic chattel paper.
- §46-9-106. Control of investment property.
- §46-9-107. Control of letter-of-credit right.
- §46-9-108. Sufficiency of description.
- §46-9-109. Scope.
- §46-9-110. Security interests arising under article two or two-a.
- §46-9-201. General effectiveness of security agreement.
- §46-9-202. Title to collateral immaterial.
- §46-9-203. Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.
- §46-9-204. After-acquired property; future advances.
- §46-9-205. Use or disposition of collateral permissible.
- §46-9-206. Security interest arising in purchase or delivery of financial asset.
- §46-9-207. Rights and duties of secured party having possession or control of collateral.
- §46-9-208. Additional duties of secured party having control of collateral.
- §46-9-209. Duties of secured party if account debtor has been notified of assignment.
- §46-9-210. Request for accounting; request regarding list of collateral or statement of account.
- §46-9-301. Law governing perfection and priority of security interests.
- §46-9-302. Law governing perfection and priority of agricultural liens.
- §46-9-303. Law governing perfection and priority of security interests in goods covered by a certificate of title.
- §46-9-304. Law governing perfection and priority of security interests in deposit accounts.
- §46-9-305. Law governing perfection and priority of security interests in investment property.
- §46-9-306. Law governing perfection and priority of security interests in letter-of-credit rights.
- §46-9-307. Location of debtor.
- §46-9-308. When security interest or agricultural lien is perfected; continuity of perfection.
- §46-9-309. Security interest perfected upon attachment.
- §46-9-310. When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.

- §46-9-311. Perfection of security interests in property subject to certain statutes, regulations and treaties.
- §46-9-312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.
- §46-9-313. When possession by or delivery to secured party perfects security interest without filing.
- §46-9-314. Perfection by control.
- §46-9-315. Secured party's rights on disposition of collateral and in proceeds.
- §46-9-316. Continued perfection of security interest following change in governing law.
- §46-9-317. Interest that take priority over or take free of security interest or agricultural lien.
- §46-9-318. No interest retained in right to payment that is sold; rights and title of seller of account or chattel paper with respect to creditors and purchasers.
- §46-9-319. Rights and title of cosignee with respect to creditors and purchasers.
- §46-9-320. Buyer of goods.
- §46-9-321. Licensee of general intangible and lessee of goods in ordinary course of business.
- §46-9-322. Priorities among conflicting security interests in and agricultural liens on same collateral.
- §46-9-323. Future advances.
- §46-9-324. Priority of purchase-money security interests.
- §46-9-324a. Priority of production-money security interests and agricultural liens.
- §46-9-325. Priority of security interests in transferred collateral.
- §46-9-326. Priority of security interests created by new debtor.
- §46-9-327. Priority of security interests in deposit account.
- §46-9-328. Priority of security interests in investment property.
- §46-9-329. Priority of security interests in letter-of-credit right.
- §46-9-330. Priority of purchaser of chattel paper or instrument.
- §46-9-331. Priority of rights of purchasers of instruments, documents, and securities under other articles; priority of interests in financial assets and security entitlements under article eight.
- §46-9-332. Transfer of money; transfer of funds from deposit account.
- §46-9-333. Priority of certain liens arising by operation of law.
- §46-9-334. Priority of security interests in fixtures and crops.
- §46-9-335. Accessions.
- §46-9-336. Commingled goods.
- §46-9-337. Priority of security interests in goods covered by certificate of title.
- §46-9-338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.

- §46-9-339. Priority subject to subordination.
- §46-9-340. Effectiveness of right of recoupment or set-off against deposit account.
- §46-9-341. Bank's rights and duties with respect to deposit account.
- §46-9-342. Bank's right to refuse to enter into or disclose existence of control agreement.
- §46-9-401. Alienability of debtor's rights.
- §46-9-402. Secured party not obligated on contract of debtor or in tort.
- §46-9-403. Agreement not to assert defenses against assignee.
- §46-9-404. Rights acquired by assignee; claims and defenses against assignee.
- §46-9-405. Modification of assigned contract.
- §46-9-406. Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles and promissory notes ineffective.
- §46-9-407. Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest.
- §46-9-408. Restrictions on assignment of promissory notes, health-care-insurance receivables and certain general intangibles ineffective.
- §46-9-409. Restrictions on assignment of letter-of-credit rights ineffective.
- §46-9-501. Filing office.
- §46-9-502. Contents of financing statement; record of mortgage as financing statement; time of filing financing statement.
- §46-9-503. Name of debtor and secured party.
- §46-9-504. Indication of collateral.
- §46-9-505. Filing and compliance with other statutes and treaties for consignments, leases, other bailments and other transactions.
- §46-9-506. Effect of errors or omissions.
- §46-9-507. Effect of certain events on effectiveness of financing statement.
- §46-9-508. Effectiveness of financing statement if new debtor becomes bound by security agreement.
- §46-9-509. Persons entitled to file a record.
- §46-9-510. Effectiveness of filed record.
- §46-9-511. Secured party of record.
- §46-9-512. Amendment of financing statement.
- §46-9-513. Termination statement.
- §46-9-514. Assignment of powers of secured party of record.
- §46-9-515. Duration and effectiveness of financing statement; effect of lapsed financing statement.
- §46-9-516. What constitutes filing; effectiveness of filing.
- §46-9-517. Effect of indexing errors.
- §46-9-518. Claim concerning inaccurate or wrongfully filed record.
- §46-9-519. Numbering, maintaining and indexing records; communicating information provided in records.
- §46-9-520. Acceptance and refusal to accept record.

- §46-9-521. Uniform form of written financing statement and amendment.
- §46-9-522. Maintenance and destruction of records.
- §46-9-523. Information from filing office; sale or license of records.
- §46-9-524. Delay by filing office.
- §46-9-525. Fees.
- §46-9-526. Filing-office rules.
- §46-9-527. Duty to report.
- §46-9-601. Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles or promissory notes.
- §46-9-602. Waiver and variance of rights and duties.
- §46-9-603. Agreement on standards concerning rights and duties.
- §46-9-604. Procedure if security agreement covers real property or fixtures.
- §46-9-605. Unknown debtor or secondary obligor.
- §46-9-606. Time of default for agricultural lien.
- §46-9-607. Collection and enforcement by secured party.
- §46-9-608. Application of proceeds of collection or enforcement; liability for deficiency and right to surplus.
- §46-9-609. Secured party's right to take possession after default.
- §46-9-610. Disposition of collateral after default.
- §46-9-611. Notification before disposition of collateral.
- §46-9-612. Timeliness of notification before disposition of collateral.
- §46-9-613. Contents and form of notification before disposition of collateral: general.
- §46-9-614. Contents and form of notification before disposition of collateral: consumer-goods transaction.
- §46-9-615. Application of proceeds of disposition; liability for deficiency and right to surplus.
- §46-9-616. Explanation of calculation of surplus or deficiency.
- §46-9-617. Rights of transferee of collateral.
- §46-9-618. Rights and duties of certain secondary obligors.
- §46-9-619. Transfer of record or legal title.
- §46-9-620. Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral.
- §46-9-621. Notification of proposal to accept collateral.
- §46-9-622. Effect of acceptance of collateral.
- §46-9-623. Right to redeem collateral.
- §46-9-624. Waiver.
- §46-9-625. Remedies for secured party's failure to comply with article.
- §46-9-626. Action in which deficiency or surplus is in issue.
- §46-9-627. Determination of whether conduct was commercially reasonable.
- §46-9-628. Nonliability and limitation on liability of secured party; liability of secondary obligor.
- §46-9-701. Effective date.

§46-9-702. Savings clause.

§46-9-703. Security interest perfected before effective date.

§46-9-704. Security interest unperfected before effective date.

§46-9-705. Effectiveness of action taken before effective date.

§46-9-706. When initial financing statement suffices to continue effectiveness of financing statement.

§46-9-707. Amendment of pre-effective-date financing statement.

§46-9-708. Persons entitled to file initial financing statement or continuation statement.

§46-9-709. Priority.

§46-9-101. Short title.

- 1 This article may be cited as Uniform Commercial
- 2 Code–Secured Transactions.

§46-9-102. Definitions and index of definitions.

- 1 (a) **Article 9 definitions.** In this article:

- 2 (1) “Accession” means goods that are physically united
- 3 with other goods in such a manner that the identity of the
- 4 original goods is not lost.

- 5 (2) “Account”, except as used in “account for”, means a
- 6 right to payment of a monetary obligation, whether or not
- 7 earned by performance: (i) For property that has been or is to be
- 8 sold, leased, licensed, assigned or otherwise disposed of; (ii) for
- 9 services rendered or to be rendered; (iii) for a policy of insur-
- 10 ance issued or to be issued; (iv) for a secondary obligation
- 11 incurred or to be incurred; (v) for energy provided or to be
- 12 provided; (vi) for the use or hire of a vessel under a charter or
- 13 other contract; (vii) arising out of the use of a credit or charge
- 14 card or information contained on or for use with the card; or
- 15 (viii) as winnings in a lottery or other game of chance operated
- 16 or sponsored by a state, governmental unit of a state or person
- 17 licensed or authorized to operate the game by a state or govern-
- 18 mental unit of a state. The term includes health-care-insurance
- 19 receivables. The term does not include: (i) Rights to payment
- 20 evidenced by chattel paper or an instrument; (ii) commercial
- 21 tort claims; (iii) deposit accounts; (iv) investment property; (v)
- 22 letter-of-credit rights or letters of credit; or (vi) rights to
- 23 payment for money or funds advanced or sold, other than rights

24 arising out of the use of a credit or charge card or information
25 contained on or for use with the card.

26 (3) "Account debtor" means a person obligated on an
27 account, chattel paper or general intangible. The term does not
28 include persons obligated to pay a negotiable instrument, even
29 if the instrument constitutes part of chattel paper.

30 (4) "Accounting", except as used in "accounting for",
31 means a record:

32 (A) Authenticated by a secured party;

33 (B) Indicating the aggregate unpaid secured obligations as
34 of a date not more than thirty-five days earlier or thirty-five
35 days later than the date of the record; and

36 (C) Identifying the components of the obligations in
37 reasonable detail.

38 (5) "Agricultural lien" means an interest, other than a
39 security interest, in farm products:

40 (A) Which secures payment or performance of an obliga-
41 tion for:

42 (i) Goods or services furnished in connection with a
43 debtor's farming operation; or

44 (ii) Rent on real property leased by a debtor in connection
45 with its farming operation;

46 (B) Which is created by statute in favor of a person that:

47 (i) In the ordinary course of its business furnished goods or
48 services to a debtor in connection with a debtor's farming
49 operation; or

50 (ii) Leased real property to a debtor in connection with the
51 debtor's farming operation; and

52 (C) Whose effectiveness does not depend on the person's
53 possession of the personal property.

54 (6) "As-extracted collateral" means:

55 (A) Oil, gas or other minerals that are subject to a security
56 interest that:

57 (i) Is created by a debtor having an interest in the minerals
58 before extraction; and

59 (ii) Attaches to the minerals as extracted; or

60 (B) Accounts arising out of the sale at the wellhead or
61 minehead of oil, gas or other minerals in which the debtor had
62 an interest before extraction.

63 (7) “Authenticate” means:

64 (A) To sign; or

65 (B) To execute or otherwise adopt a symbol, or encrypt or
66 similarly process a record, in whole or in part, with the present
67 intent of the authenticating person to identify the person and
68 adopt or accept a record.

69 (8) “Bank” means an organization that is engaged in the
70 business of banking. The term includes savings banks, savings
71 and loan associations, credit unions and trust companies.

72 (9) “Cash proceeds” means proceeds that are money,
73 checks, deposit accounts or the like.

74 (10) “Certificate of title” means a certificate of title with
75 respect to which a statute provides for the security interest in
76 question to be indicated on the certificate as a condition or
77 result of the security interest’s obtaining priority over the rights
78 of a lien creditor with respect to the collateral.

79 (11) “Chattel paper” means a record or records that
80 evidence both a monetary obligation and a security interest in
81 specific goods, a security interest in specific goods and software
82 used in the goods, a security interest in specific goods and
83 license of software used in the goods, a lease of specific goods
84 or a lease of specific goods and license of software used in the
85 goods. In this paragraph, “monetary obligation” means a
86 monetary obligation secured by the goods or owed under a lease
87 of the goods and includes a monetary obligation with respect to
88 software used in the goods. The term does not include: (i)

89 Charters or other contracts involving the use or hire of a vessel;
90 or (ii) records that evidence a right to payment arising out of the
91 use of a credit or charge card or information contained on or for
92 use with the card. If a transaction is evidenced by records that
93 include an instrument or series of instruments, the group of
94 records taken together constitutes chattel paper.

95 (12) "Collateral" means the property subject to a security
96 interest or agricultural lien. The term includes:

97 (A) Proceeds to which a security interest attaches;

98 (B) Accounts, chattel paper, payment intangibles and
99 promissory notes that have been sold; and

100 (C) Goods that are the subject of a consignment.

101 (13) "Commercial tort claim" means a claim arising in tort
102 with respect to which:

103 (A) The claimant is an organization; or

104 (B) The claimant is an individual and the claim:

105 (i) Arose in the course of the claimant's business or
106 profession; and

107 (ii) Does not include damages arising out of personal injury
108 to or the death of an individual.

109 (14) "Commodity account" means an account maintained
110 by a commodity intermediary in which a commodity contract
111 is carried for a commodity customer.

112 (15) "Commodity contract" means a commodity futures
113 contract, an option on a commodity futures contract, a com-
114 modity option or another contract if the contract or option is:

115 (A) Traded on or subject to the rules of a board of trade that
116 has been designated as a contract market for such a contract
117 pursuant to federal commodities laws; or

118 (B) Traded on a foreign commodity board of trade, ex-
119 change or market and is carried on the books of a commodity
120 intermediary for a commodity customer.

121 (16) “Commodity customer” means a person for which a
122 commodity intermediary carries a commodity contract on its
123 books.

124 (17) “Commodity intermediary” means a person that:

125 (A) Is registered as a futures commission merchant under
126 federal commodities law; or

127 (B) In the ordinary course of its business provides clearance
128 or settlement services for a board of trade that has been
129 designated as a contract market pursuant to federal commo-
130 dities law.

131 (18) “Communicate” means:

132 (A) To send a written or other tangible record;

133 (B) To transmit a record by any means agreed upon by the
134 persons sending and receiving the record; or

135 (C) In the case of transmission of a record to or by a filing
136 office, to transmit a record by any means prescribed by filing-
137 office rule.

138 (19) “Consignee” means a merchant to which goods are
139 delivered in a consignment.

140 (20) “Consignment” means a transaction, regardless of its
141 form, in which a person delivers goods to a merchant for the
142 purpose of sale and:

143 (A) The merchant:

144 (i) Deals in goods of that kind under a name other than the
145 name of the person making delivery;

146 (ii) Is not an auctioneer; and

147 (iii) Is not generally known by its creditors to be substan-
148 tially engaged in selling the goods of others;

149 (B) With respect to each delivery, the aggregate value of
150 the goods is one thousand dollars or more at the time of
151 delivery;

152 (C) The goods are not consumer goods immediately before
153 delivery; and

154 (D) The transaction does not create a security interest that
155 secures an obligation.

156 (21) "Consignor" means a person that delivers goods to a
157 consignee in a consignment.

158 (22) "Consumer debtor" means a debtor in a consumer
159 transaction.

160 (23) "Consumer goods" means goods that are used or
161 bought for use primarily for personal, family or household
162 purposes.

163 (24) "Consumer-goods transaction" means a consumer
164 transaction in which:

165 (A) An individual incurs an obligation primarily for
166 personal, family or household purposes; and

167 (B) A security interest in consumer goods secures the
168 obligation.

169 (25) "Consumer obligor" means an obligor who is an
170 individual and who incurred the obligation as part of a transac-
171 tion entered into primarily for personal, family or household
172 purposes.

173 (26) "Consumer transaction" means a transaction in which:
174 (i) An individual incurs an obligation primarily for personal,
175 family or household purposes; (ii) a security interest secures the
176 obligation; and (iii) the collateral is held or acquired primarily
177 for personal, family or household purposes. The term includes
178 consumer-goods transactions.

179 (27) "Continuation statement" means an amendment of a
180 financing statement which:

181 (A) Identifies, by its file number, the initial financing
182 statement to which it relates; and

183 (B) Indicates that it is a continuation statement for, or that
184 it is filed to continue the effectiveness of, the identified
185 financing statement.

186 (28) “Debtor” means:

187 (A) A person having an interest, other than a security
188 interest or other lien, in the collateral, whether or not the person
189 is an obligor;

190 (B) A seller of accounts, chattel paper, payment intangibles
191 or promissory notes; or

192 (C) A consignee.

193 (29) “Deposit account” means a demand, time, savings,
194 passbook or similar account maintained with a bank. The term
195 does not include investment property or accounts evidenced by
196 an instrument.

197 (30) “Document” means a document of title or a receipt of
198 the type described in section 7-201(2).

199 (31) “Electronic chattel paper” means chattel paper
200 evidenced by a record or records consisting of information
201 stored in an electronic medium.

202 (32) “Encumbrance” means a right, other than an ownership
203 interest, in real property. The term includes mortgages and
204 other liens on real property.

205 (33) “Equipment” means goods other than inventory, farm
206 products or consumer goods.

207 (34) “Farm products” means goods, other than standing
208 timber, with respect to which the debtor is engaged in a farming
209 operation and which are:

210 (A) Crops grown, growing or to be grown, including:

211 (i) Crops produced on trees, vines and bushes; and

212 (ii) Aquatic goods produced in aquacultural operations;

213 (B) Livestock, born or unborn, including aquatic goods
214 produced in aquacultural operations;

215 (C) Supplies used or produced in a farming operation; or

216 (D) Products of crops or livestock in their unmanufactured
217 states.

218 (35) "Farming operation" means raising, cultivating,
219 propagating, fattening, grazing or any other farming, livestock
220 or aquacultural operation.

221 (36) "File number" means the number assigned to an initial
222 financing statement pursuant to section 9-519(a).

223 (37) "Filing office" means an office designated in section
224 9-501 as the place to file a financing statement.

225 (38) "Filing-office rule" means a rule adopted pursuant to
226 section 9-526.

227 (39) "Financing statement" means a record or records
228 composed of an initial financing statement and any filed record
229 relating to the initial financing statement.

230 (40) "Fixture filing" means the filing of a financing
231 statement covering goods that are or are to become fixtures and
232 satisfying section 9-502(a) and (b). The term includes the filing
233 of a financing statement covering goods of a transmitting utility
234 which are or are to become fixtures.

235 (41) "Fixtures" means goods that have become so related to
236 particular real property that an interest in them arises under real
237 property law.

238 (42) "General intangible" means any personal property,
239 including things in action, other than accounts, chattel paper,
240 commercial tort claims, deposit accounts, documents, goods,
241 instruments, investment property, letter-of-credit rights, letters
242 of credit, money and oil, gas or other minerals before extrac-
243 tion. The term includes payment intangibles and software.

244 (43) "Good faith" means honesty in fact and the observance
245 of reasonable commercial standards of fair dealing.

246 (44) "Goods" means all things that are movable when a
247 security interest attaches. The term includes: (i) Fixtures; (ii)

248 standing timber that is to be cut and removed under a convey-
249 ance or contract for sale; (iii) the unborn young of animals; (iv)
250 crops grown, growing or to be grown, even if the crops are
251 produced on trees, vines or bushes; and (v) manufactured
252 homes. The term also includes a computer program embedded
253 in goods and any supporting information provided in connec-
254 tion with a transaction relating to the program if: (i) The
255 program is associated with the goods in such a manner that it
256 customarily is considered part of the goods; or (ii) by becoming
257 the owner of the goods, a person acquires a right to use the
258 program in connection with the goods. The term does not
259 include a computer program embedded in goods that consist
260 solely of the medium in which the program is embedded. The
261 term also does not include accounts, chattel paper, commercial
262 tort claims, deposit accounts, documents, general intangibles,
263 instruments, investment property, letter-of-credit rights, letters
264 of credit, money or oil, gas, or other minerals before extraction.

265 (45) "Governmental unit" means a subdivision, agency,
266 department, county, parish, municipality or other unit of the
267 government of the United States, a state or a foreign country.
268 The term includes an organization having a separate corporate
269 existence if the organization is eligible to issue debt on which
270 interest is exempt from income taxation under the laws of the
271 United States.

272 (46) "Health-care-insurance receivable" means an interest
273 in or claim under a policy of insurance which is a right to
274 payment of a monetary obligation for health-care goods or
275 services provided.

276 (47) "Instrument" means a negotiable instrument or any
277 other writing that evidences a right to the payment of a mone-
278 tary obligation, is not itself a security agreement or lease, and
279 is of a type that in ordinary course of business is transferred by
280 delivery with any necessary indorsement or assignment. The
281 term does not include: (i) Investment property; (ii) letters of
282 credit; or (iii) writings that evidence a right to payment arising
283 out of the use of a credit or charge card or information con-
284 tained on or for use with the card.

285 (48) "Inventory" means goods, other than farm products,
286 which:

287 (A) Are leased by a person as lessor;

288 (B) Are held by a person for sale or lease or to be furnished
289 under a contract of service;

290 (C) Are furnished by a person under a contract of service;
291 or

292 (D) Consist of raw materials, work in process or materials
293 used or consumed in a business.

294 (49) "Investment property" means a security, whether
295 certificated or uncertificated, security entitlement, securities
296 account, commodity contract or commodity account.

297 (50) "Jurisdiction of organization", with respect to a
298 registered organization, means the jurisdiction under whose law
299 the organization is organized.

300 (51) "Letter-of-credit right" means a right to payment or
301 performance under a letter of credit, whether or not the benefi-
302 ciary has demanded or is at the time entitled to demand
303 payment or performance. The term does not include the right of
304 a beneficiary to demand payment or performance under a letter
305 of credit.

306 (52) "Lien creditor" means:

307 (A) A creditor that has acquired a lien on the property
308 involved by attachment, levy or the like;

309 (B) An assignee for benefit of creditors from the time of
310 assignment;

311 (C) A trustee in bankruptcy from the date of the filing of
312 the petition; or

313 (D) A receiver in equity from the time of appointment.

314 (53) "Manufactured home" means a structure, transportable
315 in one or more sections, which, in the traveling mode, is eight
316 body feet or more in width or forty body feet or more in length,

317 or, when erected on site, is three hundred twenty or more square
318 feet, and which is built on a permanent chassis and designed to
319 be used as a dwelling with or without a permanent foundation
320 when connected to the required utilities, and includes the
321 plumbing, heating, air-conditioning and electrical systems
322 contained therein. The term includes any structure that meets all
323 of the requirements of this paragraph except the size require-
324 ments and with respect to which the manufacturer voluntarily
325 files a certification required by the United States secretary of
326 housing and urban development and complies with the stan-
327 dards established under Title 42 of the United States Code.

328 (54) "Manufactured-home transaction" means a secured
329 transaction:

330 (A) That creates a purchase-money security interest in a
331 manufactured home, other than a manufactured home held as
332 inventory; or

333 (B) In which a manufactured home, other than a manufac-
334 tured home held as inventory, is the primary collateral.

335 (55) "Mortgage" means a consensual interest in real
336 property, including fixtures, which secures payment or perfor-
337 mance of an obligation.

338 (56) "New debtor" means a person that becomes bound as
339 debtor under section 9-203(d) by a security agreement previ-
340 ously entered into by another person.

341 (57) "New value" means: (i) Money; (ii) money's worth in
342 property, services or new credit; or (iii) release by a transferee
343 of an interest in property previously transferred to the trans-
344 feree. The term does not include an obligation substituted for
345 another obligation.

346 (58) "Noncash proceeds" means proceeds other than cash
347 proceeds.

348 (59) "Obligor" means a person that, with respect to an
349 obligation secured by a security interest in or an agricultural
350 lien on the collateral: (i) Owes payment or other performance
351 of the obligation; (ii) has provided property other than the

352 collateral to secure payment or other performance of the
353 obligation; or (iii) is otherwise accountable, in whole or in part,
354 for payment or other performance of the obligation. The term
355 does not include issuers or nominated persons under a letter of
356 credit.

357 (60) "Original debtor" except as used in section 9-310(c),
358 means a person that, as debtor, entered into a security agree-
359 ment to which a new debtor has become bound under section
360 9-203(d).

361 (61) "Payment intangible" means a general intangible under
362 which the account debtor's principal obligation is a monetary
363 obligation.

364 (62) "Person related to", with respect to an individual,
365 means:

366 (A) The spouse of the individual;

367 (B) A brother, brother-in-law, sister or sister-in-law of the
368 individual;

369 (C) An ancestor or lineal descendant of the individual or the
370 individual's spouse; or

371 (D) Any other relative, by blood or marriage, of the
372 individual or the individual's spouse who shares the same home
373 with the individual.

374 (63) "Person related to", with respect to an organization,
375 means:

376 (A) A person directly or indirectly controlling, controlled
377 by or under common control with the organization;

378 (B) An officer or director of, or a person performing similar
379 functions with respect to, the organization;

380 (C) An officer or director of, or a person performing similar
381 functions with respect to, a person described in subparagraph
382 (A);

383 (D) The spouse of an individual described in subparagraph
384 (A), (B) or (C); or

385 (E) An individual who is related by blood or marriage to an
386 individual described in subparagraph (A), (B), (C) or (D) and
387 shares the same home with the individual.

388 (64) "Proceeds", except as used in section 9-609(b), means
389 the following property:

390 (A) Whatever is acquired upon the sale, lease, license,
391 exchange or other disposition of collateral;

392 (B) Whatever is collected on, or distributed on account of,
393 collateral;

394 (C) Rights arising out of collateral;

395 (D) To the extent of the value of collateral, claims arising
396 out of the loss, nonconformity, or interference with the use of,
397 defects or infringement of rights in, or damage to, the collateral;
398 or

399 (E) To the extent of the value of collateral and to the extent
400 payable to the debtor or the secured party, insurance payable by
401 reason of the loss or nonconformity of, defects or infringement
402 of rights in, or damage to, the collateral.

403 (65) "Production-money crops" means crops that secure a
404 production-money obligation incurred with respect to the
405 production of those crops.

406 (66) "Production-money obligation" means an obligation of
407 an obligor incurred for new value given to enable the debtor to
408 produce crops if the value is in fact used for the production of
409 the crops.

410 (67) "Production of crops" includes tilling and otherwise
411 preparing land for growing, planting, cultivating, fertilizing,
412 irrigating, harvesting and gathering crops and protecting them
413 from damage or disease.

414 (68) "Promissory note" means an instrument that evidences
415 a promise to pay a monetary obligation, does not evidence an
416 order to pay, and does not contain an acknowledgment by a
417 bank that the bank has received for deposit a sum of money or
418 funds.

419 (69) "Proposal" means a record authenticated by a secured
420 party which includes the terms on which the secured party is
421 willing to accept collateral in full or partial satisfaction of the
422 obligation it secures pursuant to sections 9-620, 9-621 and
423 9-622.

424 (70) "Public-finance transaction" means a secured transac-
425 tion in connection with which:

426 (A) Debt securities are issued;

427 (B) All or a portion of the securities issued have an initial
428 stated maturity of at least twenty years; and

429 (C) The debtor, obligor, secured party, account debtor or
430 other person obligated on collateral, assignor or assignee of a
431 secured obligation, or assignor or assignee of a security interest
432 is a state or a governmental unit of a state.

433 (71) "Pursuant to commitment", with respect to an advance
434 made or other value given by a secured party, means pursuant
435 to the secured party's obligation, whether or not a subsequent
436 event of default or other event not within the secured party's
437 control has relieved or may relieve the secured party from its
438 obligation.

439 (72) "Record", except as used in "for record", "of record",
440 "record or legal title" and "record owner", means information
441 that is inscribed on a tangible medium or which is stored in an
442 electronic or other medium and is retrievable in perceivable
443 form.

444 (73) "Registered organization" means an organization
445 organized solely under the law of a single state or the United
446 States and as to which the state or the United States must
447 maintain a public record showing the organization to have been
448 organized.

449 (74) "Secondary obligor" means an obligor to the extent
450 that:

451 (A) The obligor's obligation is secondary; or

452 (B) The obligor has a right of recourse with respect to an
453 obligation secured by collateral against the debtor, another
454 obligor or property of either.

455 (75) "Secured party" means:

456 (A) A person in whose favor a security interest is created or
457 provided for under a security agreement, whether or not any
458 obligation to be secured is outstanding;

459 (B) A person that holds an agricultural lien;

460 (C) A consignor;

461 (D) A person to which accounts, chattel paper, payment
462 intangibles or promissory notes have been sold;

463 (E) A trustee, indenture trustee, agent, collateral agent or
464 other representative in whose favor a security interest or
465 agricultural lien is created or provided for; or

466 (F) A person that holds a security interest arising under
467 section 2-401, 2-505, 2-711(3), 2A-508(5), 4-210 or 5-118.

468 (76) "Security agreement" means an agreement that creates
469 or provides for a security interest.

470 (77) "Send", in connection with a record or notification,
471 means:

472 (A) To deposit in the mail, deliver for transmission, or
473 transmit by any other usual means of communication, with
474 postage or cost of transmission provided for, addressed to any
475 address reasonable under the circumstances; or

476 (B) To cause the record or notification to be received within
477 the time that it would have been received if properly sent under
478 paragraph (A).

479 (78) "Software" means a computer program and any
480 supporting information provided in connection with a transac-
481 tion relating to the program. The term does not include a
482 computer program that is included in the definition of goods.

483 (79) "State" means a state of the United States, the District
484 of Columbia, Puerto Rico, the United States Virgin Islands or
485 any territory or insular possession subject to the jurisdiction of
486 the United States.

487 (80) "Supporting obligation" means a letter-of-credit right
488 or secondary obligation that supports the payment or perfor-
489 mance of an account, chattel paper, a document, a general
490 intangible, an instrument or investment property.

491 (81) "Tangible chattel paper" means chattel paper evi-
492 denced by a record or records consisting of information that is
493 inscribed on a tangible medium.

494 (82) "Termination statement" means an amendment of a
495 financing statement which:

496 (A) Identifies, by its file number, the initial financing
497 statement to which it relates; and

498 (B) Indicates either that it is a termination statement or that
499 the identified financing statement is no longer effective.

500 (83) "Transmitting utility" means a person primarily
501 engaged in the business of:

502 (A) Operating a railroad, subway, street railway or trolley
503 bus;

504 (B) Transmitting communications electrically, electromag-
505 netically or by light;

506 (C) Transmitting goods by pipeline or sewer; or

507 (D) Transmitting or producing and transmitting electricity,
508 steam, gas, or water.

509 (b) **Definitions in other articles.** The following definitions
510 in other articles apply to this article:

511 "Applicant" Section 5-102.

512 "Beneficiary" Section 5-102.

513 "Broker" Section 8-102.

514	“Certificated security”	Section 8-102.
515	“Check”	Section 3-104.
516	“Clearing corporation”	Section 8-102.
517	“Contract for sale”	Section 2-106.
518	“Customer”	Section 4-104.
519	“Entitlement holder”	Section 8-102.
520	“Financial asset”	Section 8-102.
521	“Holder in due course”	Section 3-302.
522	“Issuer” (with respect to a letter of	
523	credit or letter-of-credit right)	Section 5-102.
524	“Issuer” (with respect to a security)	Section 8-201.
525	“Lease”	Section 2A-103.
526	“Lease agreement”	Section 2A-103.
527	“Lease contract”	Section 2A-103.
528	“Leasehold interest”	Section 2A-103.
529	“Lessee”	Section 2A-103.
530	“Lessee in ordinary course of business”	Section 2A-103.
531	“Lessor”	Section 2A-103.
532	“Lessor’s residual interest”	Section 2A-103.
533	“Letter of credit”	Section 5-102.
534	“Merchant”	Section 2-104.
535	“Negotiable instrument”	Section 3-104.
536	“Nominated person”	Section 5-102.
537	“Note”	Section 3-104.
538	“Proceeds of a letter of credit”	Section 5-114.
539	“Prove”	Section 3-103.

540	“Sale”	Section 2-106.
541	“Securities account”	Section 8-501.
542	“Securities intermediary”	Section 8-102.
543	“Security”	Section 8-102.
544	“Security certificate”	Section 8-102.
545	“Security entitlement”	Section 8-102.
546	“Uncertificated security”	Section 8-102.
547	(c) Article 1 definitions and principles. Article 1 contains	
548	general definitions and principles of construction and interpre-	
549	tation applicable throughout this article.	

§46-9-103. Purchase-money security interest; application of payments; burden of establishing.

1 (a) **Definitions.** In this section:

2 (1) “Purchase-money collateral” means goods or software
3 that secures a purchase-money obligation incurred with respect
4 to that collateral; and

5 (2) “Purchase-money obligation” means an obligation of an
6 obligor incurred as all or part of the price of the collateral or for
7 value given to enable the debtor to acquire rights in or the use
8 of the collateral if the value is in fact so used.

9 (b) **Purchase-money security interest in goods.** A security
10 interest in goods is a purchase-money security interest:

11 (1) To the extent that the goods are purchase-money
12 collateral with respect to that security interest;

13 (2) If the security interest is in inventory that is or was
14 purchase-money collateral, also to the extent that the security
15 interest secures a purchase-money obligation incurred with
16 respect to other inventory in which the secured party holds or
17 held a purchase-money security interest; and

18 (3) Also to the extent that the security interest secures a
19 purchase-money obligation incurred with respect to software in

20 which the secured party holds or held a purchase-money
21 security interest.

22 (c) **Purchase-money security interest in software.** A
23 security interest in software is a purchase-money security
24 interest to the extent that the security interest also secures a
25 purchase-money obligation incurred with respect to goods in
26 which the secured party holds or held a purchase-money
27 security interest if:

28 (1) The debtor acquired its interest in the software in an
29 integrated transaction in which it acquired an interest in the
30 goods; and

31 (2) The debtor acquired its interest in the software for the
32 principal purpose of using the software in the goods.

33 (d) **Consignor's inventory purchase-money security**
34 **interest.** The security interest of a consignor in goods that are
35 the subject of a consignment is a purchase-money security
36 interest in inventory.

37 (e) **Application of payment in non-consumer-goods**
38 **transaction.** In a transaction other than a consumer-goods
39 transaction, if the extent to which a security interest is a
40 purchase-money security interest depends on the application of
41 a payment to a particular obligation, the payment must be
42 applied:

43 (1) In accordance with any reasonable method of applica-
44 tion to which the parties agree;

45 (2) In the absence of the parties' agreement to a reasonable
46 method, in accordance with any intention of the obligor
47 manifested at or before the time of payment; or

48 (3) In the absence of an agreement to a reasonable method
49 and a timely manifestation of the obligor's intention, in the
50 following order:

51 (A) To obligations that are not secured; and

52 (B) If more than one obligation is secured, to obligations
53 secured by purchase-money security interests in the order in
54 which those obligations were incurred.

55 (f) **No loss of status of purchase-money security interest**
56 **in non-consumer-goods transaction.** In a transaction other
57 than a consumer-goods transaction, a purchase-money security
58 interest does not lose its status as such, even if:

59 (1) The purchase-money collateral also secures an obliga-
60 tion that is not a purchase-money obligation;

61 (2) Collateral that is not purchase-money collateral also
62 secures the purchase-money obligation; or

63 (3) The purchase-money obligation has been renewed,
64 refinanced, consolidated or restructured.

65 (g) **Burden of proof in non-consumer-goods transaction.**
66 In a transaction other than a consumer-goods transaction, a
67 secured party claiming a purchase-money security interest has
68 the burden of establishing the extent to which the security
69 interest is a purchase-money security interest.

70 (h) **Non-consumer-goods transactions; no inference.** The
71 limitation of the rules in subsections (e), (f) and (g) of this
72 section to transactions other than consumer-goods transactions
73 is intended to leave to the court the determination of the proper
74 rules in consumer-goods transactions. The court may not infer
75 from that limitation the nature of the proper rule in consumer-
76 goods transactions and may continue to apply established
77 approaches.

**§46-9-103a. “Production-money crops”; “production-money
obligation”; production-money security interest;
burden of establishing.**

1 (a) A security interest in crops is a production-money
2 security interest to the extent that the crops are production-
3 money crops.

4 (b) If the extent to which a security interest is a production-
5 money security interest depends on the application of a pay-
6 ment to a particular obligation, the payment must be applied:

7 (1) In accordance with any reasonable method of applica-
8 tion to which the parties agree;

9 (2) In the absence of the parties' agreement to a reasonable
10 method, in accordance with any intention of the obligor
11 manifested at or before the time of payment; or

12 (3) In the absence of an agreement to a reasonable method
13 and a timely manifestation of the obligor's intention, in the
14 following order:

15 (A) To obligations that are not secured; and

16 (B) If more than one obligation is secured, to obligations
17 secured by production-money security interests in the order in
18 which those obligations were incurred.

19 (c) A production-money security interest does not lose its
20 status as such, even if:

21 (1) The production-money crops also secure an obligation
22 that is not a production-money obligation;

23 (2) Collateral that is not production-money crops also
24 secures the production-money obligation; or

25 (3) The production-money obligation has been renewed,
26 refinanced, or restructured.

27 (d) A secured party claiming a production-money security
28 interest has the burden of establishing the extent to which the
29 security interest is a production-money security interest.

§46-9-104. Control of deposit account.

1 (a) **Requirements for control.** A secured party has control
2 of a deposit account if:

3 (1) The secured party is the bank with which the deposit
4 account is maintained;

5 (2) The debtor, secured party and bank have agreed in an
6 authenticated record that the bank will comply with instructions
7 originated by the secured party directing disposition of the
8 funds in the deposit account without further consent by the
9 debtor; or

10 (3) The secured party becomes the bank's customer with
11 respect to the deposit account.

12 (b) **Debtor's right to direct disposition.** A secured party
13 that has satisfied subsection (a) has control, even if the debtor
14 retains the right to direct the disposition of funds from the
15 deposit account.

§46-9-105. Control of electronic chattel paper.

1 A secured party has control of electronic chattel paper if the
2 record or records comprising the chattel paper are created,
3 stored, and assigned in such a manner that:

4 (1) A single authoritative copy of the record or records
5 exists which is unique, identifiable and, except as otherwise
6 provided in paragraphs (4), (5) and (6) of this section, unalter-
7 able;

8 (2) The authoritative copy identifies the secured party as the
9 assignee of the record or records;

10 (3) The authoritative copy is communicated to and main-
11 tained by the secured party or its designated custodian;

12 (4) Copies or revisions that add or change an identified
13 assignee of the authoritative copy can be made only with the
14 participation of the secured party;

15 (5) Each copy of the authoritative copy and any copy of a
16 copy is readily identifiable as a copy that is not the authoritative
17 copy; and

18 (6) Any revision of the authoritative copy is readily
19 identifiable as an authorized or unauthorized revision.

§46-9-106. Control of investment property.

1 (a) **Control under section 8-106.** A person has control of
2 a certificated security, uncertificated security, or security
3 entitlement as provided in section 8-106.

4 (b) **Control of commodity contract.** A secured party has
5 control of a commodity contract if:

6 (1) The secured party is the commodity intermediary with
7 which the commodity contract is carried; or

8 (2) The commodity customer, secured party and commodity
9 intermediary have agreed that the commodity intermediary will
10 apply any value distributed on account of the commodity
11 contract as directed by the secured party without further consent
12 by the commodity customer.

13 (c) **Effect of control of securities account or commodity**
14 **account.** A secured party having control of all security
15 entitlements or commodity contracts carried in a securities
16 account or commodity account has control over the securities
17 account or commodity account.

§46-9-107. Control of letter-of-credit right.

1 A secured party has control of a letter-of-credit right to the
2 extent of any right to payment or performance by the issuer or
3 any nominated person if the issuer or nominated person has
4 consented to an assignment of proceeds of the letter of credit
5 under section 5-114(c) or otherwise applicable law or practice.

§46-9-108. Sufficiency of description.

1 (a) **Sufficiency of description.** Except as otherwise
2 provided in subsections (c), (d) and (e) of this section, a
3 description of personal or real property is sufficient, whether or
4 not it is specific, if it reasonably identifies what is described.

5 (b) **Examples of reasonable identification.** Except as
6 otherwise provided in subsection (d), a description of collateral
7 reasonably identifies the collateral if it identifies the collateral
8 by:

9 (1) Specific listing;

10 (2) Category;

11 (3) Except as otherwise provided in subsection (e) of this
12 section, a type of collateral defined in the Uniform Commercial
13 Code;

14 (4) Quantity;

15 (5) Computational or allocational formula or procedure; or

16 (6) Except as otherwise provided in subsection (c), any
17 other method, if the identity of the collateral is objectively
18 determinable.

19 (c) **Supergeneric description not sufficient.** A description
20 of collateral as “all the debtor’s assets” or “all the debtor’s
21 personal property” or using words of similar import does not
22 reasonably identify the collateral.

23 (d) **Investment property.** Except as otherwise provided in
24 subsection (e), a description of a security entitlement, securities
25 account or commodity account is sufficient if it describes:

26 (1) The collateral by those terms or as investment property;
27 or

28 (2) The underlying financial asset or commodity contract.

29 (e) **When description by type insufficient.** A description
30 only by type of collateral defined in the Uniform Commercial
31 Code is an insufficient description of:

32 (1) A commercial tort claim; or

33 (2) In a consumer transaction, consumer goods, a security
34 entitlement, a securities account or a commodity account.

SUBPART 2. APPLICABILITY OF ARTICLE.

§46-9-109. Scope.

1 (a) **General scope of article.** Except as otherwise provided
2 in subsections (c) and (d) of this section, this article applies to:

3 (1) A transaction, regardless of its form, that creates a
4 security interest in personal property or fixtures by contract;

5 (2) An agricultural lien;

6 (3) A sale of accounts, chattel paper, payment intangibles
7 or promissory notes;

8 (4) A consignment;

9 (5) A security interest arising under section 2-401, 2-505,
10 2-711(3) or 2A-508(5) as provided in section 9-110; and

11 (6) A security interest arising under section 4-210 or 5-118.

12 (b) **Security interest in secured obligation.** The applica-
13 tion of this article to a security interest in a secured obligation
14 is not affected by the fact that the obligation is itself secured by
15 a transaction or interest to which this article does not apply.

16 (c) **Extent to which article does not apply.** This article
17 does not apply to the extent that:

18 (1) A statute, regulation or treaty of the United States
19 preempts this article;

20 (2) Another statute of this state expressly governs the
21 creation, perfection, priority or enforcement of a security
22 interest created by this state or a governmental unit of this state;

23 (3) A statute of another state, a foreign country or a
24 governmental unit of another state or a foreign country, other
25 than a statute generally applicable to security interests, ex-
26 pressly governs creation, perfection, priority or enforcement of
27 a security interest created by the state, country or governmental
28 unit; or

29 (4) The rights of a transferee beneficiary or nominated
30 person under a letter of credit are independent and superior
31 under section 5-114.

32 (d) **Inapplicability of article.** This article does not apply
33 to:

34 (1) A landlord's lien, other than an agricultural lien;

35 (2) A lien, other than an agricultural lien, given by statute
36 or other rule of law for services or materials, but section 9-333
37 applies with respect to priority of the lien;

38 (3) An assignment of a claim for wages, salary or other
39 compensation of an employee;

40 (4) A sale of accounts, chattel paper, payment intangibles
41 or promissory notes as part of a sale of the business out of
42 which they arose;

43 (5) An assignment of accounts, chattel paper, payment
44 intangibles or promissory notes which is for the purpose of
45 collection only;

46 (6) An assignment of a right to payment under a contract to
47 an assignee that is also obligated to perform under the contract;

48 (7) An assignment of a single account, payment intangible
49 or promissory note to an assignee in full or partial satisfaction
50 of a preexisting indebtedness;

51 (8) A transfer of an interest in or an assignment of a claim
52 under a policy of insurance, other than an assignment by or to
53 a health-care provider of a health-care-insurance receivable and
54 any subsequent assignment of the right to payment, but sections
55 9-315 and 9-322 apply with respect to proceeds and priorities
56 in proceeds;

57 (9) An assignment of a right represented by a judgment,
58 other than a judgment taken on a right to payment that was
59 collateral;

60 (10) A right of recoupment or set-off, but:

61 (A) Section 9-340 applies with respect to the effectiveness
62 of rights of recoupment or set-off against deposit accounts; and

63 (B) Section 9-404 applies with respect to defenses or claims
64 of an account debtor;

65 (11) The creation or transfer of an interest in or lien on real
66 property, including a lease or rents thereunder, except to the
67 extent that provision is made for:

- 68 (A) Liens on real property in sections 9-203 and 9-308;
69 (B) Fixtures in section 9-334;
70 (C) Fixture filings in sections 9-501, 9-502, 9-512, 9-516,
71 and 9-519; and
72 (D) Security agreements covering personal and real
73 property in section 9-604;
- 74 (12) An assignment of a claim arising in tort, other than a
75 commercial tort claim, but sections 9-315 and 9-322 apply with
76 respect to proceeds and priorities in proceeds; or
77 (13) An assignment of a deposit account in a consumer
78 transaction, but sections 9-315 and 9-322 apply with respect to
79 proceeds and priorities in proceeds.

§46-9-110. Security interests arising under article two or two-a.

1 A security interest arising under section 2-401, 2-505,
2 2-711(3) or 2A-508(5) is subject to this article. However, until
3 the debtor obtains possession of the goods:

- 4 (1) The security interest is enforceable, even if section
5 9-203(b)(3) has not been satisfied;
6 (2) Filing is not required to perfect the security interest;
7 (3) The rights of the secured party after default by the
8 debtor are governed by article two or two-a; and
9 (4) The security interest has priority over a conflicting
10 security interest created by the debtor.

PART 2. EFFECTIVENESS OF SECURITY AGREEMENT;
ATTACHMENT OF SECURITY INTEREST;
RIGHTS OF PARTIES TO SECURITY AGREEMENT.

SUBPART 1. EFFECTIVENESS AND ATTACHMENT.

§46-9-201. General effectiveness of security agreement.

- 1 (a) **General effectiveness.** Except as otherwise provided in
2 the Uniform Commercial Code, a security agreement is

3 effective according to its terms between the parties, against
4 purchasers of the collateral, and against creditors.

5 (b) **Applicable consumer laws and other law.** A transac-
6 tion subject to this article is subject to any applicable rule of
7 law which establishes a different rule for consumers, to any
8 other statute or regulation of this state that regulates the rates,
9 charges, agreements, and practices for loans, credit sales or
10 other extensions of credit, and to any consumer-protection
11 statute or regulation of this state.

12 (c) **Other applicable law controls.** In case of conflict
13 between this article and a rule of law, statute or regulation
14 described in subsection (b) of this section, the rule of law,
15 statute or regulation controls. Failure to comply with a statute
16 or regulation described in subsection (b) of this section has only
17 the effect the statute or regulation specifies.

18 (d) **Further deference to other applicable law.** This
19 article does not:

20 (1) Validate any rate, charge, agreement or practice that
21 violates a rule of law, statute or regulation described in subsec-
22 tion (b) of this section; or

23 (2) Extend the application of the rule of law, statute, or
24 regulation to a transaction not otherwise subject to it.

§46-9-202. Title to collateral immaterial.

1 Except as otherwise provided with respect to consignments
2 or sales of accounts, chattel paper, payment intangibles or
3 promissory notes, the provisions of this article with regard to
4 rights and obligations apply whether title to collateral is in the
5 secured party or the debtor.

§46-9-203. Attachment and enforceability of security interest; proceeds; supporting obligations; formal requi- sites.

1 (a) **Attachment.** A security interest attaches to collateral
2 when it becomes enforceable against the debtor with respect to

3 the collateral, unless an agreement expressly postpones the time
4 of attachment.

5 (b) **Enforceability.** Except as otherwise provided in
6 subsections (c) through (i), inclusive, of this section, a security
7 interest is enforceable against the debtor and third parties with
8 respect to the collateral only if:

9 (1) Value has been given;

10 (2) The debtor has rights in the collateral or the power to
11 transfer rights in the collateral to a secured party; and

12 (3) One of the following conditions is met:

13 (A) The debtor has authenticated a security agreement that
14 provides a description of the collateral and, if the security
15 interest covers timber to be cut, a description of the land
16 concerned;

17 (B) The collateral is not a certificated security and is in the
18 possession of the secured party under section 9-313 pursuant to
19 the debtor's security agreement;

20 (C) The collateral is a certificated security in registered
21 form and the security certificate has been delivered to the
22 secured party under section 8-301 pursuant to the debtor's
23 security agreement; or

24 (D) The collateral is deposit accounts, electronic chattel
25 paper, investment property or letter-of-credit rights, and the
26 secured party has control under section 9-104, 9-105, 9-106 or
27 9-107 pursuant to the debtor's security agreement.

28 (c) **Other UCC provisions.** Subsection (b) of this section
29 is subject to section 4-210 on the security interest of a collect-
30 ing bank, section 5-118 on the security interest of a letter-of-
31 credit issuer or nominated person, section 9-110 on a security
32 interest arising under article two or two-a of this chapter and
33 section 9-206 on security interests in investment property.

34 (d) **When person becomes bound by another person's**
35 **security.** A person becomes bound as debtor by a security

36 agreement entered into by another person if, by operation of
37 law other than this article or by contract:

38 (1) The security agreement becomes effective to create a
39 security interest in the person's property; or

40 (2) The person becomes generally obligated for the obliga-
41 tions of the other person, including the obligation secured under
42 the security agreement, and acquires or succeeds to all or
43 substantially all of the assets of the other person.

44 (e) **Effect of new debtor becoming bound.** If a new debtor
45 becomes bound as debtor by a security agreement entered into
46 by another person:

47 (1) The agreement satisfies subsection (b)(3) of this section
48 with respect to existing or after-acquired property of the new
49 debtor to the extent the property is described in the agreement;
50 and

51 (2) Another agreement is not necessary to make a security
52 interest in the property enforceable.

53 (f) **Proceeds and supporting obligations.** The attachment
54 of a security interest in collateral gives the secured party the
55 rights to proceeds provided by section 9-315 and is also
56 attachment of a security interest in a supporting obligation for
57 the collateral.

58 (g) **Lien securing right to payment.** The attachment of a
59 security interest in a right to payment or performance secured
60 by a security interest or other lien on personal or real property
61 is also attachment of a security interest in the security interest,
62 mortgage or other lien.

63 (h) **Security entitlement carried in securities account.**
64 The attachment of a security interest in a securities account is
65 also attachment of a security interest in the security
66 entitlements carried in the securities account.

67 (i) **Commodity contracts carried in commodity account.**
68 The attachment of a security interest in a commodity account is

69 also attachment of a security interest in the commodity con-
70 tracts carried in the commodity account.

§46-9-204. After-acquired property; future advances.

1 (a) **After-acquired collateral.** Except as otherwise
2 provided in subsection (b), a security agreement may create or
3 provide for a security interest in after-acquired collateral.

4 (b) **When after-acquired property clause not effective.**
5 A security interest does not attach under a term constituting an
6 after-acquired property clause to:

7 (1) Consumer goods, other than an accession when given as
8 additional security, unless the debtor acquires rights in them
9 within ten days after the secured party gives value; or

10 (2) A commercial tort claim.

11 (c) **Future advances and other value.** A security agree-
12 ment may provide that collateral secures, or that accounts,
13 chattel paper, payment intangibles or promissory notes are sold
14 in connection with, future advances or other value, whether or
15 not the advances or value are given pursuant to commitment.

§46-9-205. Use or disposition of collateral permissible.

1 (a) **When security interest not invalid or fraudulent.** A
2 security interest is not invalid or fraudulent against creditors
3 solely because:

4 (1) The debtor has the right or ability to:

5 (A) Use, commingle or dispose of all or part of the collat-
6 eral, including returned or repossessed goods;

7 (B) Collect, compromise, enforce or otherwise deal with
8 collateral;

9 (C) Accept the return of collateral or make repossessions;
10 or

11 (D) Use, commingle or dispose of proceeds; or

12 (2) The secured party fails to require the debtor to account
13 for proceeds or replace collateral.

14 (b) **Requirements of possession not relaxed.** This section
15 does not relax the requirements of possession if attachment,
16 perfection or enforcement of a security interest depends upon
17 possession of the collateral by the secured party.

**§46-9-206. Security interest arising in purchase or delivery of
financial asset.**

1 (a) **Security interest when person buys through securi-**
2 **ties intermediary.** A security interest in favor of a securities
3 intermediary attaches to a person's security entitlement if:

4 (1) The person buys a financial asset through the securities
5 intermediary in a transaction in which the person is obligated to
6 pay the purchase price to the securities intermediary at the time
7 of the purchase; and

8 (2) The securities intermediary credits the financial asset to
9 the buyer's securities account before the buyer pays the
10 securities intermediary.

11 (b) **Security interest secures obligation to pay for**
12 **financial asset.** The security interest described in subsection (a)
13 secures the person's obligation to pay for the financial asset.

14 (c) **Security interest in payment against delivery trans-**
15 **action.** A security interest in favor of a person that delivers a
16 certificated security or other financial asset represented by a
17 writing attaches to the security or other financial asset if:

18 (1) The security or other financial asset:

19 (A) In the ordinary course of business is transferred by
20 delivery with any necessary indorsement or assignment; and

21 (B) Is delivered under an agreement between persons in the
22 business of dealing with such securities or financial assets; and

23 (2) The agreement calls for delivery against payment.

24 (d) **Security interest secures obligation to pay for**
25 **delivery.** The security interest described in subsection (c) of
26 this section secures the obligation to make payment for the
27 delivery.

28 SUBPART 2. RIGHTS AND DUTIES.

§46-9-207. Rights and duties of secured party having possession or control of collateral.

1 (a) **Duty of care when secured party in possession.**
2 Except as otherwise provided in subsection (d), a secured party
3 shall use reasonable care in the custody and preservation of
4 collateral in the secured party's possession. In the case of
5 chattel paper or an instrument, reasonable care includes taking
6 necessary steps to preserve rights against prior parties unless
7 otherwise agreed.

8 (b) **Expenses, risks, duties and rights when secured**
9 **party in possession.** Except as otherwise provided in subsec-
10 tion (d), if a secured party has possession of collateral:

11 (1) Reasonable expenses, including the cost of insurance
12 and payment of taxes or other charges, incurred in the custody,
13 preservation, use or operation of the collateral are chargeable to
14 the debtor and are secured by the collateral;

15 (2) The risk of accidental loss or damage is on the debtor to
16 the extent of a deficiency in any effective insurance coverage;

17 (3) The secured party shall keep the collateral identifiable,
18 but fungible collateral may be commingled; and

19 (4) The secured party may use or operate the collateral:

20 (A) For the purpose of preserving the collateral or its value;

21 (B) As permitted by an order of a court having competent
22 jurisdiction; or

23 (C) Except in the case of consumer goods, in the manner
24 and to the extent agreed by the debtor.

25 (c) **Duties and rights when secured party in possession**
26 **or control.** Except as otherwise provided in subsection (d) of
27 this section, a secured party having possession of collateral or
28 control of collateral under section 9-104, 9-105, 9-106 or 9-107:

29 (1) May hold as additional security any proceeds, except
30 money or funds, received from the collateral;

31 (2) Shall apply money or funds received from the collateral
32 to reduce the secured obligation, unless remitted to the debtor;
33 and

34 (3) May create a security interest in the collateral.

35 (d) **Buyer of certain rights to payment.** If the secured
36 party is a buyer of accounts, chattel paper, payment intangibles,
37 or promissory notes or a consignor:

38 (1) Subsection (a) of this section does not apply unless the
39 secured party is entitled under an agreement:

40 (A) To charge back uncollected collateral; or

41 (B) Otherwise to full or limited recourse against the debtor
42 or a secondary obligor based on the nonpayment or other
43 default of an account debtor or other obligor on the collateral;
44 and

45 (2) Subsections (b) and (c) of this section do not apply.

§46-9-208. Additional duties of secured party having control of collateral.

1 (a) **Applicability of section.** This section applies to cases
2 in which there is no outstanding secured obligation and the
3 secured party is not committed to make advances, incur
4 obligations, or otherwise give value.

5 (b) **Duties of secured party after receiving demand from**
6 **debtor.** Within ten days after receiving an authenticated
7 demand by the debtor:

8 (1) A secured party having control of a deposit account
9 under section 9-104(a)(2) shall send to the bank with which the
10 deposit account is maintained an authenticated statement that
11 releases the bank from any further obligation to comply with
12 instructions originated by the secured party;

13 (2) A secured party having control of a deposit account
14 under section 9-104(a)(3) shall:

15 (A) Pay the debtor the balance on deposit in the deposit
16 account; or

17 (B) Transfer the balance on deposit into a deposit account
18 in the debtor's name;

19 (3) A secured party, other than a buyer, having control of
20 electronic chattel paper under section 9-105 shall:

21 (A) Communicate the authoritative copy of the electronic
22 chattel paper to the debtor or its designated custodian;

23 (B) If the debtor designates a custodian that is the desig-
24 nated custodian with which the authoritative copy of the
25 electronic chattel paper is maintained for the secured party,
26 communicate to the custodian an authenticated record releasing
27 the designated custodian from any further obligation to comply
28 with instructions originated by the secured party and instructing
29 the custodian to comply with instructions originated by the
30 debtor; and

31 (C) Take appropriate action to enable the debtor or its
32 designated custodian to make copies of or revisions to the
33 authoritative copy which add or change an identified assignee
34 of the authoritative copy without the consent of the secured
35 party;

36 (4) A secured party having control of investment property
37 under section 8-106(d)(2) or 9-106(b) shall send to the securi-
38 ties intermediary or commodity intermediary with which the
39 security entitlement or commodity contract is maintained an
40 authenticated record that releases the securities intermediary or
41 commodity intermediary from any further obligation to comply
42 with entitlement orders or directions originated by the secured
43 party; and

44 (5) A secured party having control of a letter-of-credit right
45 under section 9-107 shall send to each person having an
46 unfulfilled obligation to pay or deliver proceeds of the letter of
47 credit to the secured party an authenticated release from any
48 further obligation to pay or deliver proceeds of the letter of
49 credit to the secured party.

§46-9-209. Duties of secured party if account debtor has been notified of assignment.

1 (a) **Applicability of section.** Except as otherwise provided
2 in subsection (c), this section applies if:

3 (1) There is no outstanding secured obligation; and

4 (2) The secured party is not committed to make advances,
5 incur obligations or otherwise give value.

6 (b) **Duties of secured party after receiving demand from**
7 **debtor.** Within ten days after receiving an authenticated
8 demand by the debtor, a secured party shall send to an account
9 debtor that has received notification of an assignment to the
10 secured party as assignee under section 9-406(a) an authenti-
11 cated record that releases the account debtor from any further
12 obligation to the secured party.

13 (c) **Inapplicability to sales.** This section does not apply to
14 an assignment constituting the sale of an account, chattel paper
15 or payment intangible.

**§46-9-210. Request for accounting; request regarding list of
collateral or statement of account.**

1 (a) **Definitions.** In this section:

2 (1) “Request” means a record of a type described in
3 paragraph (2), (3) or (4) of this subsection.

4 (2) “Request for an accounting” means a record authenti-
5 cated by a debtor requesting that the recipient provide an
6 accounting of the unpaid obligations secured by collateral and
7 reasonably identifying the transaction or relationship that is the
8 subject of the request.

9 (3) “Request regarding a list of collateral” means a record
10 authenticated by a debtor requesting that the recipient approve
11 or correct a list of what the debtor believes to be the collateral
12 securing an obligation and reasonably identifying the transac-
13 tion or relationship that is the subject of the request.

14 (4) “Request regarding a statement of account” means a
15 record authenticated by a debtor requesting that the recipient
16 approve or correct a statement indicating what the debtor
17 believes to be the aggregate amount of unpaid obligations

18 secured by collateral as of a specified date and reasonably
19 identifying the transaction or relationship that is the subject of
20 the request.

21 **(b) Duty to respond to requests.** Subject to subsections
22 (c), (d), (e) and (f) of this section, a secured party, other than a
23 buyer of accounts, chattel paper, payment intangibles, or
24 promissory notes or a consignor, shall comply with a request
25 within fourteen days after receipt:

26 (1) In the case of a request for an accounting, by authenti-
27 cating and sending to the debtor an accounting; and

28 (2) In the case of a request regarding a list of collateral or
29 a request regarding a statement of account, by authenticating
30 and sending to the debtor an approval or correction.

31 **(c) Request regarding list of collateral; statement**
32 **concerning type of collateral.** A secured party that claims a
33 security interest in all of a particular type of collateral owned by
34 the debtor may comply with a request regarding a list of
35 collateral by sending to the debtor an authenticated record
36 including a statement to that effect within fourteen days after
37 receipt.

38 **(d) Request regarding list of collateral; no interest**
39 **claimed.** A person that receives a request regarding a list of
40 collateral, claims no interest in the collateral when it receives
41 the request and claimed an interest in the collateral at an earlier
42 time shall comply with the request within fourteen days after
43 receipt by sending to the debtor an authenticated record:

44 (1) Disclaiming any interest in the collateral; and

45 (2) If known to the recipient, providing the name and
46 mailing address of any assignee of or successor to the recipi-
47 ent's interest in the collateral.

48 **(e) Request for accounting or regarding statement of**
49 **account; no interest in obligation claimed.** A person that
50 receives a request for an accounting or a request regarding a
51 statement of account, claims no interest in the obligations when
52 it receives the request and claimed an interest in the obligations

53 at an earlier time shall comply with the request within fourteen
54 days after receipt by sending to the debtor an authenticated
55 record:

56 (1) Disclaiming any interest in the obligations; and

57 (2) If known to the recipient, providing the name and
58 mailing address of any assignee of or successor to the recipi-
59 ent's interest in the obligations.

60 (f) **Charges for responses.** A debtor is entitled without
61 charge to one response to a request under this section during
62 any six-month period. The secured party may require payment
63 of a charge not exceeding twenty-five dollars for each addi-
64 tional response.

PART 3. PERFECTION AND PRIORITY.

SUBPART 1. LAW GOVERNING PERFECTION AND PRIORITY.

§46-9-301. Law governing perfection and priority of security interests.

1 Except as otherwise provided in sections 9-303 through
2 9-306, the following rules determine the law governing perfec-
3 tion, the effect of perfection or nonperfection and the priority of
4 a security interest in collateral:

5 (1) Except as otherwise provided in this section, while a
6 debtor is located in a jurisdiction, the local law of that jurisdic-
7 tion governs perfection, the effect of perfection or
8 nonperfection, and the priority of a security interest in collat-
9 eral.

10 (2) While collateral is located in a jurisdiction, the local law
11 of that jurisdiction governs perfection, the effect of perfection
12 or nonperfection, and the priority of a possessory security
13 interest in that collateral.

14 (3) Except as otherwise provided in paragraph (4) of this
15 section, while negotiable documents, goods, instruments,
16 money or tangible chattel paper is located in a jurisdiction, the
17 local law of that jurisdiction governs:

18 (A) Perfection of a security interest in the goods by filing
19 a fixture filing;

20 (B) Perfection of a security interest in timber to be cut; and

21 (C) The effect of perfection or nonperfection and the
22 priority of a nonpossessory security interest in the collateral.

23 (4) The local law of the jurisdiction in which the wellhead
24 or minehead is located governs perfection, the effect of perfec-
25 tion or nonperfection, and the priority of a security interest in
26 as-extracted collateral.

§46-9-302. Law governing perfection and priority of agricultural liens.

1 While farm products are located in a jurisdiction, the local
2 law of that jurisdiction governs perfection, the effect of
3 perfection or nonperfection, and the priority of an agricultural
4 lien on the farm products.

§46-9-303. Law governing perfection and priority of security interests in goods covered by a certificate of title.

1 (a) **Applicability of section.** This section applies to goods
2 covered by a certificate of title, even if there is no other
3 relationship between the jurisdiction under whose certificate of
4 title the goods are covered and the goods or the debtor.

5 (b) **When goods covered by certificate of title.** Goods
6 become covered by a certificate of title when a valid application
7 for the certificate of title and the applicable fee are delivered to
8 the appropriate authority. Goods cease to be covered by a
9 certificate of title at the earlier of the time the certificate of title
10 ceases to be effective under the law of the issuing jurisdiction
11 or the time the goods become covered subsequently by a
12 certificate of title issued by another jurisdiction.

13 (c) **Applicable law.** The local law of the jurisdiction under
14 whose certificate of title the goods are covered governs
15 perfection, the effect of perfection or nonperfection, and the
16 priority of a security interest in goods covered by a certificate
17 of title from the time the goods become covered by the certifi-

18 cate of title until the goods cease to be covered by the certifi-
19 cate of title.

§46-9-304. Law governing perfection and priority of security interests in deposit accounts.

1 (a) The local law of a bank's jurisdiction governs perfec-
2 tion, the effect of perfection or nonperfection, and the priority
3 of a security interest in a deposit account maintained with that
4 bank.

5 (b) **Bank's jurisdiction.** The following rules determine a
6 bank's jurisdiction for purposes of this part:

7 (1) If an agreement between the bank and the debtor
8 governing the deposit account expressly provides that a
9 particular jurisdiction is the bank's jurisdiction for purposes of
10 this part, this article, or the Uniform Commercial Code, that
11 jurisdiction is the bank's jurisdiction.

12 (2) If paragraph (1) of this subsection does not apply and an
13 agreement between the bank and its customer governing the
14 deposit account expressly provides that the agreement is
15 governed by the law of a particular jurisdiction, that jurisdiction
16 is the bank's jurisdiction.

17 (3) If neither paragraph (1) nor paragraph (2) of this
18 subsection applies and an agreement between the bank and its
19 customer governing the deposit account expressly provides that
20 the deposit account is maintained at an office in a particular
21 jurisdiction, that jurisdiction is the bank's jurisdiction.

22 (4) If none of the preceding paragraphs applies, the bank's
23 jurisdiction is the jurisdiction in which the office identified in
24 an account statement as the office serving the customer's
25 account is located.

26 (5) If none of the preceding paragraphs applies, the bank's
27 jurisdiction is the jurisdiction in which the chief executive
28 office of the bank is located.

§46-9-305. Law governing perfection and priority of security interests in investment property.

1 (a) **Governing law: general rules.** Except as otherwise
2 provided in subsection (c) of this section, the following rules
3 apply:

4 (1) While a security certificate is located in a jurisdiction,
5 the local law of that jurisdiction governs perfection, the effect
6 of perfection or nonperfection, and the priority of a security
7 interest in the certificated security represented thereby.

8 (2) The local law of the issuer's jurisdiction as specified in
9 section 8-110(d) governs perfection, the effect of perfection or
10 nonperfection, and the priority of a security interest in an
11 uncertificated security.

12 (3) The local law of the securities intermediary's jurisdic-
13 tion as specified in section 8-110(e) governs perfection, the
14 effect of perfection or nonperfection, and the priority of a
15 security interest in a security entitlement or securities account.

16 (4) The local law of the commodity intermediary's jurisdic-
17 tion governs perfection, the effect of perfection or
18 nonperfection, and the priority of a security interest in a
19 commodity contract or commodity account.

20 (b) **Commodity intermediary's jurisdiction.** The follow-
21 ing rules determine a commodity intermediary's jurisdiction for
22 purposes of this part:

23 (1) If an agreement between the commodity intermediary
24 and commodity customer governing the commodity account
25 expressly provides that a particular jurisdiction is the commod-
26 ity intermediary's jurisdiction for purposes of this part, this
27 article, or the Uniform Commercial Code, that jurisdiction is
28 the commodity intermediary's jurisdiction.

29 (2) If paragraph (1) of this subsection does not apply and an
30 agreement between the commodity intermediary and commod-
31 ity customer governing the commodity account expressly
32 provides that the agreement is governed by the law of a
33 particular jurisdiction, that jurisdiction is the commodity
34 intermediary's jurisdiction.

35 (3) If neither paragraph (1) nor paragraph (2) of this
36 subsection applies and an agreement between the commodity
37 intermediary and commodity customer governing the commod-
38 ity account expressly provides that the commodity account is
39 maintained at an office in a particular jurisdiction, that jurisdic-
40 tion is the commodity intermediary's jurisdiction.

41 (4) If none of the preceding paragraphs applies, the com-
42modity intermediary's jurisdiction is the jurisdiction in which
43 the office identified in an account statement as the office
44 serving the commodity customer's account is located.

45 (5) If none of the preceding paragraphs applies, the com-
46modity intermediary's jurisdiction is the jurisdiction in which
47 the chief executive office of the commodity intermediary is
48 located.

49 (c) **When perfection governed by law of jurisdiction**
50 **when debtor located.** The local law of the jurisdiction in which
51 the debtor is located governs:

52 (1) Perfection of a security interest in investment property
53 by filing;

54 (2) Automatic perfection of a security interest in investment
55 property created by a broker or securities intermediary; and

56 (3) Automatic perfection of a security interest in a com-
57modity contract or commodity account created by a commodity
58 intermediary.

**§46-9-306. Law governing perfection and priority of security
interests in letter-of-credit rights.**

1 (a) **Governing law: issuer's or nominated person's**
2 **jurisdiction.** Subject to subsection (c) of this section, the local
3 law of the issuer's jurisdiction or a nominated person's jurisdic-
4 tion governs perfection, the effect of perfection or
5 nonperfection, and the priority of a security interest in a letter-
6 of-credit right if the issuer's jurisdiction or nominated person's
7 jurisdiction is a state.

8 **(b) Issuer's or nominated person's jurisdiction.** For
9 purposes of this part, an issuer's jurisdiction or nominated
10 person's jurisdiction is the jurisdiction whose law governs the
11 liability of the issuer or nominated person with respect to the
12 letter-of-credit right as provided in section 5-116.

13 **(c) When section not applicable.** This section does not
14 apply to a security interest that is perfected only under section
15 9-308(d).

§46-9-307. Location of debtor.

1 **(a) "Place of business."** In this section, "place of business"
2 means a place where a debtor conducts its affairs.

3 **(b) Debtor's location: general rules.** Except as otherwise
4 provided in this section, the following rules determine a
5 debtor's location:

6 (1) A debtor who is an individual is located at the individ-
7 ual's principal residence.

8 (2) A debtor that is an organization and has only one place
9 of business is located at its place of business.

10 (3) A debtor that is an organization and has more than one
11 place of business is located at its chief executive office.

12 **(c) Limitation of applicability of subsection (b).** Subsec-
13 tion (b) of this section applies only if a debtor's residence, place
14 of business or chief executive office, as applicable, is located in
15 a jurisdiction whose law generally requires information
16 concerning the existence of a nonpossessory security interest to
17 be made generally available in a filing, recording or registration
18 system as a condition or result of the security interest's obtain-
19 ing priority over the rights of a lien creditor with respect to the
20 collateral. If subsection (b) does not apply, the debtor is located
21 in the District of Columbia.

22 **(d) Continuation of location: cessation of existence, etc.**
23 A person that ceases to exist, have a residence or have a place
24 of business continues to be located in the jurisdiction specified
25 by subsections (b) and (c) of this section.

26 **(e) Location of registered organization organized under**
27 **state law.** A registered organization that is organized under the
28 law of a state is located in that state.

29 **(f) Location of registered organization organized under**
30 **federal law; bank branches and agencies.** Except as other-
31 wise provided in subsection (i) of this section, a registered
32 organization that is organized under the law of the United States
33 and a branch or agency of a bank that is not organized under the
34 law of the United States or a state are located:

35 (1) In the state that the law of the United States designates,
36 if the law designates a state of location;

37 (2) In the state that the registered organization, branch or
38 agency designates, if the law of the United States authorizes the
39 registered organization, branch, or agency to designate its state
40 of location; or

41 (3) In the District of Columbia, if neither paragraph (1) nor
42 paragraph (2) of this subsection applies.

43 **(g) Continuation of location: changed in status of**
44 **registered organization.** A registered organization continues
45 to be located in the jurisdiction specified by subsection (e) or (f)
46 notwithstanding:

47 (1) The suspension, revocation, forfeiture or lapse of the
48 registered organization's status as such in its jurisdiction of
49 organization; or

50 (2) The dissolution, winding up or cancellation of the
51 existence of the registered organization.

52 **(h) Location of United States.** The United States is located
53 in the District of Columbia.

54 **(i) Location of foreign bank branch or agency if licensed**
55 **in only one state.** A branch or agency of a bank that is not
56 organized under the law of the United States or a state is located
57 in the state in which the branch or agency is licensed, if all
58 branches and agencies of the bank are licensed in only one
59 state.

60 (j) **Location of foreign air carrier.** A foreign air carrier
61 under the Federal Aviation Act of 1958, as amended, is located
62 at the designated office of the agent upon which service of
63 process may be made on behalf of the carrier.

64 (k) **Section applies only to this part.** This section applies
65 only for purposes of this part.

66 SUBPART 2. PERFECTION.

**§46-9-308. When security interest or agricultural lien is per-
fected; continuity of perfection.**

1 (a) **Perfection of security interest.** Except as otherwise
2 provided in this section and section 9-309, a security interest is
3 perfected if it has attached and all of the applicable require-
4 ments for perfection in sections 9-310 through 9-316 have been
5 satisfied. A security interest is perfected when it attaches if the
6 applicable requirements are satisfied before the security interest
7 attaches.

8 (b) **Perfection of agricultural lien.** An agricultural lien is
9 perfected if it has become effective and all of the applicable
10 requirements for perfection in section 9-310 have been satis-
11 fied. An agricultural lien is perfected when it becomes effective
12 if the applicable requirements are satisfied before the agricul-
13 tural lien becomes effective.

14 (c) **Continuous perfection; perfection by different**
15 **methods.** A security interest or agricultural lien is perfected
16 continuously if it is originally perfected by one method under
17 this article and is later perfected by another method under this
18 article, without an intermediate period when it was unperfected.

19 (d) **Supporting obligation.** Perfection of a security interest
20 in collateral also perfects a security interest in a supporting
21 obligation for the collateral.

22 (e) **Lien securing right to payment.** Perfection of a
23 security interest in a right to payment or performance also
24 perfects a security interest in a security interest, mortgage or
25 other lien on personal or real property securing the right.

26 (f) **Security entitlement carried in securities account.**
27 Perfection of a security interest in a securities account also
28 perfects a security interest in the security entitlements carried
29 in the securities account.

30 (g) **Commodity contract carried in commodity account.**
31 Perfection of a security interest in a commodity account also
32 perfects a security interest in the commodity contracts carried
33 in the commodity account.

§46-9-309. Security interest perfected upon attachment.

1 The following security interests are perfected when they
2 attach:

3 (1) A purchase-money security interest in consumer goods,
4 except as otherwise provided in section 9-311(b) with respect
5 to consumer goods that are subject to a statute or treaty de-
6 scribed in section 9-311(a);

7 (2) An assignment of accounts or payment intangibles
8 which does not by itself or in conjunction with other assign-
9 ments to the same assignee transfer a significant part of the
10 assignor's outstanding accounts or payment intangibles;

11 (3) A sale of a payment intangible;

12 (4) A sale of a promissory note;

13 (5) A security interest created by the assignment of a
14 health-care-insurance receivable to the provider of the health-
15 care goods or services;

16 (6) A security interest arising under section 2-401, 2-505,
17 2-711(3) or 2A-508(5), until the debtor obtains possession of
18 the collateral;

19 (7) A security interest of a collecting bank arising under
20 section 4-210;

21 (8) A security interest of an issuer or nominated person
22 arising under section 5-118;

23 (9) A security interest arising in the delivery of a financial
24 asset under section 9-206(c);

25 (10) A security interest in investment property created by
26 a broker or securities intermediary;

27 (11) A security interest in a commodity contract or a
28 commodity account created by a commodity intermediary;

29 (12) An assignment for the benefit of all creditors of the
30 transferor and subsequent transfers by the assignee thereunder;
31 and

32 (13) A security interest created by an assignment of a
33 beneficial interest in a decedent's estate.

**§46-9-310. When filing required to perfect security interest or
agricultural lien; security interests and agricul-
tural liens to which filing provisions do not apply.**

1 (a) **General rule: perfection by filing.** Except as otherwise
2 provided in subsection (b) of this section and section 9-312(b),
3 a financing statement must be filed to perfect all security
4 interests and agricultural liens.

5 (b) **Exceptions: filing not necessary.** The filing of a
6 financing statement is not necessary to perfect a security
7 interest:

8 (1) That is perfected under section 9-308(d), (e), (f) or (g);

9 (2) That is perfected under section 9-309 when it attaches;

10 (3) In property subject to a statute, regulation or treaty
11 described in section 9-311(a);

12 (4) In goods in possession of a bailee which is perfected
13 under section 9-312(d)(1) or (2);

14 (5) In certificated securities, documents, goods or instru-
15 ments which is perfected without filing or possession under
16 section 9-312(e), (f) or (g);

17 (6) In collateral in the secured party's possession under
18 section 9-313;

19 (7) In a certificated security which is perfected by delivery
20 of the security certificate to the secured party under section
21 9-313;

22 (8) In deposit accounts, electronic chattel paper, investment
23 property or letter-of-credit rights which is perfected by control
24 under section 9-314;

25 (9) In proceeds which is perfected under section 9-315; or

26 (10) That is perfected under section 9-316.

27 (c) **Assignment of perfected security interest.** If a secured
28 party assigns a perfected security interest or agricultural lien, a
29 filing under this article is not required to continue the perfected
30 status of the security interest against creditors of and transferees
31 from the original debtor.

**§46-9-311. Perfection of security interests in property subject to
certain statutes, regulations and treaties.**

1 (a) **Security interest subject to other law.** Except as
2 otherwise provided in subsection (d) of this section, the filing
3 of a financing statement is not necessary or effective to perfect
4 a security interest in property subject to:

5 (1) A statute, regulation or treaty of the United States
6 whose requirements for a security interest's obtaining priority
7 over the rights of a lien creditor with respect to the property
8 preempt section 9-310(a);

9 (2) The following statute of this state: Chapter seventeen-a
10 of this code: *Provided*, That during any period in which
11 collateral is inventory: (i) Held for sale by a person who is in
12 the business of selling goods of that kind; or (ii) held for lease
13 by a vehicle rental agency or similar person engaged solely in
14 the business of leasing vehicles, the filing provision of this
15 article apply to a security interest in that collateral created by
16 such person as a debtor or obligor, as appropriate; or

17 (3) A certificate-of-title statute of another jurisdiction
18 which provides for a security interest to be indicated on the
19 certificate as a condition or result of the security interest's

20 obtaining priority over the rights of a lien creditor with respect
21 to the property.

22 **(b) Compliance with other law.** Compliance with the
23 requirements of a statute, regulation or treaty described in
24 subsection (a) of this section for obtaining priority over the
25 rights of a lien creditor is equivalent to the filing of a financing
26 statement under this article. Except as otherwise provided in
27 subsection (d) of this section and sections 9-313 and 9-316(d)
28 and (e) for goods covered by a certificate of title, a security
29 interest in property subject to a statute, regulation or treaty
30 described in subsection (a) may be perfected only by compli-
31 ance with those requirements, and a security interest so per-
32 fected remains perfected notwithstanding a change in the use or
33 transfer of possession of the collateral.

34 **(c) Duration and renewal of perfection.** Except as
35 otherwise provided in subsection (d) of this section and section
36 9-316(d) and (e), duration and renewal of perfection of a
37 security interest perfected by compliance with the requirements
38 prescribed by a statute, regulation or treaty described in
39 subsection (a) are governed by the statute, regulation or treaty.
40 In other respects, the security interest is subject to this article.

41 **(d) Inapplicability to certain inventory.** During any
42 period in which collateral subject to a statute specified in
43 subsection (a)(2) of this section is inventory held for sale or
44 lease by a person or leased by that person as lessor and that
45 person is in the business of selling goods of that kind, this
46 section does not apply to a security interest in that collateral
47 created by that person.

**§46-9-312. Perfection of security interests in chattel paper, de-
posit accounts, documents, goods covered by
documents, instruments, investment property,
letter-of-credit rights and money; perfection by
permissive filing; temporary perfection without
filing or transfer of possession.**

1 (a) **Perfection by filing permitted.** A security interest in
2 chattel paper, negotiable documents, instruments or investment
3 property may be perfected by filing.

4 (b) **Control or possession of certain collateral.** Except as
5 otherwise provided in section 9-315(c) and (d) for proceeds:

6 (1) A security interest in a deposit account may be per-
7 fected only by control under section 9-314; and

8 (2) Except as otherwise provided in section 9-308(d), a
9 security interest in a letter-of-credit right may be perfected only
10 by control under section 9-314; and

11 (3) A security interest in money may be perfected only by
12 the secured party's taking possession under section 9-313.

13 (c) **Goods covered by negotiable document.** While goods
14 are in the possession of a bailee that has issued a negotiable
15 document covering the goods:

16 (1) A security interest in the goods may be perfected by
17 perfecting a security interest in the document; and

18 (2) A security interest perfected in the document has
19 priority over any security interest that becomes perfected in the
20 goods by another method during that time.

21 (d) **Goods covered by nonnegotiable document.** While
22 goods are in the possession of a bailee that has issued a nonne-
23 gotiable document covering the goods, a security interest in the
24 goods may be perfected by:

25 (1) Issuance of a document in the name of the secured
26 party;

27 (2) The bailee's receipt of notification of the secured
28 party's interest; or

29 (3) Filing as to the goods.

30 (e) **Temporary perfection: new value.** A security interest
31 in certificated securities, negotiable documents or instruments
32 is perfected without filing or the taking of possession for a
33 period of twenty days from the time it attaches to the extent that

34 it arises for new value given under an authenticated security
35 agreement.

36 **(f) Temporary perfection: goods or documents made**
37 **available to debtor.** A perfected security interest in a negotia-
38 ble document or goods in possession of a bailee, other than one
39 that has issued a negotiable document for the goods, remains
40 perfected for twenty days without filing if the secured party
41 makes available to the debtor the goods or documents repre-
42 senting the goods for the purpose of:

43 (1) Ultimate sale or exchange; or

44 (2) Loading, unloading, storing, shipping, transshipping,
45 manufacturing, processing or otherwise dealing with them in a
46 manner preliminary to their sale or exchange.

47 **(g) Temporary perfection: delivery of security certifi-**
48 **cate or instrument to debtor.** A perfected security interest in
49 a certificated security or instrument remains perfected for
50 twenty days without filing if the secured party delivers the
51 security certificate or instrument to the debtor for the purpose
52 of:

53 (1) Ultimate sale or exchange; or

54 (2) Presentation, collection, enforcement, renewal or
55 registration of transfer.

56 **(h) Expiration of temporary perfection.** After the
57 twenty-day period specified in subsection (e), (f) or (g) of this
58 section expires, perfection depends upon compliance with this
59 article.

**§46-9-313. When possession by or delivery to secured party
perfects security interest without filing.**

1 **(a) Perfection by possession or delivery.** Except as
2 otherwise provided in subsection (b) of this section, a secured
3 party may perfect a security interest in negotiable documents,
4 goods, instruments, money or tangible chattel paper by taking
5 possession of the collateral. A secured party may perfect a

6 security interest in certificated securities by taking delivery of
7 the certificated securities under section 8-301.

8 **(b) Goods covered by certificate of title.** With respect to
9 goods covered by a certificate of title issued by this state, a
10 secured party may perfect a security interest in the goods by
11 taking possession of the goods only in the circumstances
12 described in section 9-316(d).

13 **(c) Collateral in possession of person other than debtor.**
14 With respect to collateral other than certificated securities and
15 goods covered by a document, a secured party takes possession
16 of collateral in the possession of a person other than the debtor,
17 the secured party or a lessee of the collateral from the debtor in
18 the ordinary course of the debtor's business, when:

19 (1) The person in possession authenticates a record ac-
20 knowledging that it holds possession of the collateral for the
21 secured party's benefit; or

22 (2) The person takes possession of the collateral after
23 having authenticated a record acknowledging that it will hold
24 possession of collateral for the secured party's benefit.

25 **(d) Time of perfection by possession; continuation of**
26 **perfection.** If perfection of a security interest depends upon
27 possession of the collateral by a secured party, perfection
28 occurs no earlier than the time the secured party takes posses-
29 sion and continues only while the secured party retains posses-
30 sion.

31 **(e) Time of perfection by delivery; continuation of**
32 **perfection.** A security interest in a certificated security in
33 registered form is perfected by delivery when delivery of the
34 certificated security occurs under section 8-301 and remains
35 perfected by delivery until the debtor obtains possession of the
36 security certificate.

37 **(f) Acknowledgment not required.** A person in possession
38 of collateral is not required to acknowledge that it holds
39 possession for a secured party's benefit.

40 (g) **Effectiveness of acknowledgment; no duties or**
41 **confirmation.** If a person acknowledges that it holds posses-
42 sion for the secured party's benefit:

43 (1) The acknowledgment is effective under subsection (c)
44 of this section or section 8-301(a), even if the acknowledgment
45 violates the rights of a debtor; and

46 (2) Unless the person otherwise agrees or law other than
47 this article otherwise provides, the person does not owe any
48 duty to the secured party and is not required to confirm the
49 acknowledgment to another person.

50 (h) **Secured party's delivery to person other than debtor.**
51 A secured party having possession of collateral does not
52 relinquish possession by delivering the collateral to a person
53 other than the debtor or a lessee of the collateral from the
54 debtor in the ordinary course of the debtor's business if the
55 person was instructed before the delivery or is instructed
56 contemporaneously with the delivery:

57 (1) **Effect of delivery under subsection (h); no duties or**
58 **confirmation.** To hold possession of the collateral for the
59 secured party's benefit; or

60 (2) To redeliver the collateral to the secured party.

61 (i) **A secured party does not relinquish possession, even**
62 **if a delivery under subsection (h) of this section violates the**
63 **rights of a debtor.** A person to which collateral is delivered
64 under subsection (h) of this section does not owe any duty to
65 the secured party and is not required to confirm the delivery to
66 another person unless the person otherwise agrees or law other
67 than this article otherwise provides.

§46-9-314. Perfection by control.

1 (a) **Perfection by control.** A security interest in investment
2 property, deposit accounts, letter-of-credit rights or electronic
3 chattel paper may be perfected by control of the collateral under
4 section 9-104, 9-105, 9-106 or 9-107.

5 **(b) Specified collateral: time of perfection by control;**
6 **continuation of perfection.** A security interest in deposit
7 accounts, electronic chattel paper or letter-of-credit rights is
8 perfected by control under section 9-104, 9-105 or 9-107 when
9 the secured party obtains control and remains perfected by
10 control only while the secured party retains control.

11 **(c) Investment property: time of perfection by control;**
12 **continuation of perfection.** A security interest in investment
13 property is perfected by control under section 9-106 from the
14 time the secured party obtains control and remains perfected by
15 control until:

16 (1) The secured party does not have control; and

17 (2) One of the following occurs:

18 (A) If the collateral is a certificated security, the debtor has
19 or acquires possession of the security certificate;

20 (B) If the collateral is an uncertificated security, the issuer
21 has registered or registers the debtor as the registered owner; or

22 (C) If the collateral is a security entitlement, the debtor is
23 or becomes the entitlement holder.

**§46-9-315. Secured party's rights on disposition of collateral and
in proceeds.**

1 **(a) Disposition of collateral: continuation of security**
2 **interest or agricultural lien; proceeds.** Except as otherwise
3 provided in this article and in section 2-403(2):

4 (1) A security interest or agricultural lien continues in
5 collateral notwithstanding sale, lease, license, exchange or other
6 disposition thereof unless the secured party authorized the
7 disposition free of the security interest or agricultural lien; and

8 (2) A security interest attaches to any identifiable proceeds
9 of collateral.

10 **(b) When commingled proceeds identifiable.** Proceeds
11 that are commingled with other property are identifiable
12 proceeds:

13 (1) If the proceeds are goods, to the extent provided by
14 section 9-336; and

15 (2) If the proceeds are not goods, to the extent that the
16 secured party identifies the proceeds by a method of tracing,
17 including application of equitable principles, that is permitted
18 under law other than this article with respect to commingled
19 property of the type involved.

20 (c) **Perfection of security interest in proceeds.** A security
21 interest in proceeds is a perfected security interest if the
22 security interest in the original collateral was perfected.

23 (d) **Continuation of perfection.** A perfected security
24 interest in proceeds becomes unperfected on the twenty-first
25 day after the security interest attaches to the proceeds unless:

26 (1) The following conditions are satisfied:

27 (A) A filed financing statement covers the original collat-
28 eral;

29 (B) The proceeds are collateral in which a security interest
30 may be perfected by filing in the office in which the financing
31 statement has been filed; and

32 (C) The proceeds are not acquired with cash proceeds;

33 (2) The proceeds are identifiable cash proceeds; or

34 (3) The security interest in the proceeds is perfected other
35 than under subsection (c) of this section when the security
36 interest attaches to the proceeds or within twenty days thereaf-
37 ter.

38 (e) **When perfected security interest in proceeds be-**
39 **comes unperfected.** If a filed financing statement covers the
40 original collateral, a security interest in proceeds which remains
41 perfected under subsection (d)(1) of this section becomes
42 unperfected at the later of:

43 (1) When the effectiveness of the filed financing statement
44 lapses under section 9-515 or is terminated under section 9-513;
45 or

46 (2) The twenty-first day after the security interest attaches
47 to the proceeds.

**§46-9-316. Continued perfection of security interest following
change in governing law.**

1 (a) **General rule: effect on perfection of change in**
2 **governing law.** A security interest perfected pursuant to the law
3 of the jurisdiction designated in section 9-301(1) or 9-305(c)
4 remains perfected until the earliest of:

5 (1) The time perfection would have ceased under the law of
6 that jurisdiction;

7 (2) The expiration of four months after a change of the
8 debtor's location to another jurisdiction; or

9 (3) The expiration of one year after a transfer of collateral
10 to a person that thereby becomes a debtor and is located in
11 another jurisdiction.

12 (b) **Security interest perfected or unperfected under law**
13 **of new jurisdiction.** If a security interest described in subsection
14 (a) of this section becomes perfected under the law of the
15 other jurisdiction before the earliest time or event described in
16 said subsection, it remains perfected thereafter. If the security
17 interest does not become perfected under the law of the other
18 jurisdiction before the earliest time or event, it becomes
19 unperfected and is deemed never to have been perfected as
20 against a purchaser of the collateral for value.

21 (c) **Possessory security interest in collateral moved to**
22 **new jurisdiction.** A possessory security interest in collateral,
23 other than goods covered by a certificate of title and as-ex-
24 tracted collateral consisting of goods, remains continuously
25 perfected if:

26 (1) The collateral is located in one jurisdiction and subject
27 to a security interest perfected under the law of that jurisdiction;

28 (2) Thereafter the collateral is brought into another jurisdic-
29 tion; and

30 (3) Upon entry into the other jurisdiction, the security
31 interest is perfected under the law of the other jurisdiction.

32 (d) **Goods covered by certificate of title from this state.**
33 Except as otherwise provided in subsection (e) of this section,
34 a security interest in goods covered by a certificate of title
35 which is perfected by any method under the law of another
36 jurisdiction when the goods become covered by a certificate of
37 title from this state remains perfected until the security interest
38 would have become unperfected under the law of the other
39 jurisdiction had the goods not become so covered.

40 (e) **When subsection (d) security interest becomes**
41 **unperfected against purchasers.** A security interest described
42 in subsection (d) of this section becomes unperfected as against
43 a purchaser of the goods for value and is deemed never to have
44 been perfected as against a purchaser of the goods for value if
45 the applicable requirements for perfection under section
46 9-311(b) or 9-313 are not satisfied before the earlier of:

47 (1) The time the security interest would have become
48 unperfected under the law of the other jurisdiction had the
49 goods not become covered by a certificate of title from this
50 state; or

51 (2) The expiration of four months after the goods had
52 become so covered.

53 (f) **Change in jurisdiction of bank, issuer, nominated**
54 **person, securities intermediary or commodity intermediary.**
55 A security interest in deposit accounts, letter-of-credit rights, or
56 investment property which is perfected under the law of the
57 bank's jurisdiction, the issuer's jurisdiction, a nominated
58 person's jurisdiction, the securities intermediary's jurisdiction
59 or the commodity intermediary's jurisdiction, as applicable,
60 remains perfected until the earlier of:

61 (1) The time the security interest would have become
62 unperfected under the law of that jurisdiction; or

63 (2) The expiration of four months after a change of the
64 applicable jurisdiction to another jurisdiction.

65 (g) **Subsection (f) security interest perfected or**
66 **unperfected under law of new jurisdiction.** If a security
67 interest described in subsection (f) of this section becomes
68 perfected under the law of the other jurisdiction before the
69 earlier of the time or the end of the period described in that
70 subsection, it remains perfected thereafter. If the security
71 interest does not become perfected under the law of the other
72 jurisdiction before the earlier of that time or the end of that
73 period, it becomes unperfected and is deemed never to have
74 been perfected as against a purchaser of the collateral for value.

75 SUBPART 3. PRIORITY.

§46-9-317. Interests that take priority over or take free of security interest or agricultural lien.

1 (a) **Conflicting security interests and rights of lien**
2 **creditors.** A security interest or agricultural lien is subordinate
3 to the rights of:

4 (1) A person entitled to priority under section 9-322; and

5 (2) Except as otherwise provided in subsection (e) of this
6 section, a person that becomes a lien creditor before the earlier
7 of the time: (A) The security interest or agricultural lien is
8 perfected; or (B) one of the conditions specified in section 9-
9 203(b)(3) is met and a financing statement covering the
10 collateral is filed.

11 (b) **Buyers that receive delivery.** Except as otherwise
12 provided in subsection (e) of this section, a buyer, other than a
13 secured party, of tangible chattel paper, documents, goods,
14 instruments or a security certificate takes free of a security
15 interest or agricultural lien if the buyer gives value and receives
16 delivery of the collateral without knowledge of the security
17 interest or agricultural lien and before it is perfected.

18 (c) **Lessees that receive delivery.** Except as otherwise
19 provided in subsection (e) of this section, a lessee of goods
20 takes free of a security interest or agricultural lien if the lessee
21 gives value and receives delivery of the collateral without

22 knowledge of the security interest or agricultural lien and
23 before it is perfected.

24 (d) **Licensees and buyers of certain collateral.** A licensee
25 of a general intangible or a buyer, other than a secured party, of
26 accounts, electronic chattel paper, general intangibles or
27 investment property other than a certificated security takes free
28 of a security interest if the licensee or buyer gives value without
29 knowledge of the security interest and before it is perfected.

30 (e) **Purchase-money security interest.** Except as otherwise
31 provided in sections 9-320 and 9-321, if a person files a
32 financing statement with respect to a purchase-money security
33 interest before or within twenty days after the debtor receives
34 delivery of the collateral, the security interest takes priority
35 over the rights of a buyer, lessee or lien creditor which arise
36 between the time the security interest attaches and the time of
37 filing.

**§46-9-318. No interest retained in right to payment that is sold;
rights and title of seller of account or chattel
paper with respect to creditors and purchasers.**

1 (a) **Seller retains no interest.** A debtor that has sold an
2 account, chattel paper, payment intangible, or promissory note
3 does not retain a legal or equitable interest in the collateral sold.

4 (b) **Deemed rights of debtor if buyer's security interest**
5 **unperfected.** For purposes of determining the rights of credi-
6 tors of, and purchasers for, value of an account or chattel paper
7 from, a debtor that has sold an account or chattel paper, while
8 the buyer's security interest is unperfected, the debtor is
9 deemed to have rights and title to the account or chattel paper
10 identical to those the debtor sold.

**§46-9-319. Rights and title of consignee with respect to creditors
and purchasers.**

1 (a) **Consignee has consignor's rights.** Except as otherwise
2 provided in subsection (b) of this section, for purposes of
3 determining the rights of creditors of, and purchasers for value
4 of goods from, a consignee, while the goods are in the posses-

5 sion of the consignee, the consignee is deemed to have rights
6 and title to the goods identical to those the consignor had or had
7 power to transfer.

8 (b) **Applicability of other law.** For purposes of determin-
9 ing the rights of a creditor of a consignee, law other than this
10 article determines the rights and title of a consignee while
11 goods are in the consignee's possession if, under this part, a
12 perfected security interest held by the consignor would have
13 priority over the rights of the creditor.

§46-9-320. Buyer of goods.

1 (a) **Buyer in ordinary course of business.** Except as
2 otherwise provided in subsection (e) of this section, a buyer in
3 ordinary course of business, other than a person buying farm
4 products from a person engaged in farming operations, takes
5 free of a security interest created by the buyer's seller, even if
6 the security interest is perfected and the buyer knows of its
7 existence.

8 (b) **Buyer of consumer goods.** Except as otherwise
9 provided in subsection (e) of this section, a buyer of goods from
10 a person who used or bought the goods for use primarily for
11 personal, family or household purposes takes free of a security
12 interest, even if perfected, if the buyer buys:

13 (1) Without knowledge of the security interest;

14 (2) For value;

15 (3) Primarily for the buyer's personal, family or household
16 purposes; and

17 (4) Before the filing of a financing statement covering the
18 goods.

19 (c) **Effectiveness of filing for subsection (b).** To the extent
20 that it affects the priority of a security interest over a buyer of
21 goods under subsection (b) of this section, the period of
22 effectiveness of a filing made in the jurisdiction in which the
23 seller is located is governed by section 9-316(a) and (b).

24 (d) **Buyer in ordinary course of business at wellhead or**
25 **minehead.** A buyer in ordinary course of business buying oil,
26 gas or other minerals at the wellhead or minehead or after
27 extraction takes free of an interest arising out of an encum-
28 brance.

29 (e) **Possessory security interest not affected.** Subsections
30 (a) and (b) do not affect a security interest in goods in the
31 possession of the secured party under section 9-313.

**§46-9-321. Licensee of general intangible and lessee of goods in
ordinary course of business.**

1 (a) **“Licensee in ordinary course of business.”** In this
2 section, “licensee in ordinary course of business” means a
3 person that becomes a licensee of a general intangible in good
4 faith, without knowledge that the license violates the rights of
5 another person in the general intangible, and in the ordinary
6 course from a person in the business of licensing general
7 intangibles of that kind. A person becomes a licensee in the
8 ordinary course if the license to the person comports with the
9 usual or customary practices in the kind of business in which
10 the licensor is engaged or with the licensor’s own usual or
11 customary practices.

12 (b) **Rights of licensee in ordinary course of business.** A
13 licensee in ordinary course of business takes its rights under a
14 nonexclusive license free of a security interest in the general
15 intangible created by the licensor, even if the security interest
16 is perfected and the licensee knows of its existence.

17 (c) **Rights of lessee in ordinary course of business.** A
18 lessee in ordinary course of business takes its leasehold interest
19 free of a security interest in the goods created by the lessor,
20 even if the security interest is perfected and the lessee knows of
21 its existence.

**§46-9-322. Priorities among conflicting security interests in and
agricultural liens on same collateral.**

1 (a) **General priority rules.** Except as otherwise provided
2 in this section, priority among conflicting security interests and

3 agricultural liens in the same collateral is determined according
4 to the following rules:

5 (1) Conflicting perfected security interests and agricultural
6 liens rank according to priority in time of filing or perfection.
7 Priority dates from the earlier of the time a filing covering the
8 collateral is first made or the security interest or agricultural
9 lien is first perfected, if there is no period thereafter when there
10 is neither filing nor perfection.

11 (2) A perfected security interest or agricultural lien has
12 priority over a conflicting unperfected security interest or
13 agricultural lien.

14 (3) The first security interest or agricultural lien to attach or
15 become effective has priority if conflicting security interests
16 and agricultural liens are unperfected.

17 (b) **Time of perfection: proceeds and supporting obliga-**
18 **tions.** For the purposes of subsection (a)(1) of this section:

19 (1) The time of filing or perfection as to a security interest
20 in collateral is also the time of filing or perfection as to a
21 security interest in proceeds; and

22 (2) The time of filing or perfection as to a security interest
23 in collateral supported by a supporting obligation is also the
24 time of filing or perfection as to a security interest in the
25 supporting obligation.

26 (c) **Special priority rules: proceeds and supporting**
27 **obligations.** Except as otherwise provided in subsection (f) of
28 this section, a security interest in collateral which qualifies for
29 priority over a conflicting security interest under section 9-327,
30 9-328, 9-329, 9-330 or 9-331 also has priority over a conflicting
31 security interest in:

32 (1) Any supporting obligation for the collateral; and

33 (2) Proceeds of the collateral if:

34 (A) The security interest in proceeds is perfected;

35 (B) The proceeds are cash proceeds or of the same type as
36 the collateral; and

37 (C) In the case of proceeds that are proceeds of proceeds,
38 all intervening proceeds are cash proceeds, proceeds of the
39 same type as the collateral or an account relating to the collat-
40 eral.

41 (d) **First-to-file priority rule for certain collateral.**
42 Subject to subsection (e) of this section and except as otherwise
43 provided in subsection (f) of this section, if a security interest
44 in chattel paper, deposit accounts, negotiable documents,
45 instruments, investment property or letter-of-credit rights is
46 perfected by a method other than filing, conflicting perfected
47 security interests in proceeds of the collateral rank according to
48 priority in time of filing.

49 (e) **Applicability of subsection (d).** Subsection (d) of this
50 section applies only if the proceeds of the collateral are not cash
51 proceeds, chattel paper, negotiable documents, instruments,
52 investment property or letter-of-credit rights.

53 (f) **Limitations on subsections (a) through (e).** Subsec-
54 tions (a) through (e), inclusive, of this section are subject to:

55 (1) Subsection (g) of this section and the other provisions
56 of this part;

57 (2) Section 4-210 with respect to a security interest of a
58 collecting bank;

59 (3) Section 5-118 with respect to a security interest of an
60 issuer or nominated person; and

61 (4) Section 9-110 with respect to a security interest arising
62 under article two or two-a.

63 (g) **Priority under agricultural lien statute.** A perfected
64 agricultural lien on collateral has priority over a conflicting
65 security interest in or agricultural lien on the same collateral if
66 the statute creating the agricultural lien so provides.

§46-9-323. Future advances.

1 (a) **When priority based on time of advance.** Except as
2 otherwise provided in subsection (c) of this section, for pur-
3 poses of determining the priority of a perfected security interest
4 under section 9-322(a)(1), perfection of the security interest
5 dates from the time an advance is made to the extent that the
6 security interest secures an advance that:

7 (1) Is made while the security interest is perfected only:

8 (A) Under section 9-309 when it attaches; or

9 (B) Temporarily under section 9-312(e), (f) or (g); and

10 (2) Is not made pursuant to a commitment entered into
11 before or while the security interest is perfected by a method
12 other than under section 9-309 or 9-312(e), (f) or (g).

13 (b) **Lien creditor.** Except as otherwise provided in subsec-
14 tion (c) of this section, a security interest is subordinate to the
15 rights of a person that becomes a lien creditor to the extent that
16 the security interest secures an advance made more than forty-
17 five days after the person becomes a lien creditor unless the
18 advance is made:

19 (1) Without knowledge of the lien; or

20 (2) Pursuant to a commitment entered into without knowl-
21 edge of the lien.

22 (c) **Buyer of receivables.** Subsections (a) and (b) of this
23 section do not apply to a security interest held by a secured
24 party that is a buyer of accounts, chattel paper, payment
25 intangibles or promissory notes or a consignor.

26 (d) **Buyer of goods.** Except as otherwise provided in
27 subsection (e) of this section, a buyer of goods other than a
28 buyer in ordinary course of business takes free of a security
29 interest to the extent that it secures advances made after the
30 earlier of:

31 (1) The time the secured party acquires knowledge of the
32 buyer's purchase; or

33 (2) Forty-five days after the purchase.

34 (e) **Advances made pursuant to commitment: priority of**
35 **buyer of goods.** Subsection (d) of this section does not apply if
36 the advance is made pursuant to a commitment entered into
37 without knowledge of the buyer's purchase and before the
38 expiration of the forty-five-day period.

39 (f) **Lessee of goods.** Except as otherwise provided in
40 subsection (g) of this section, a lessee of goods, other than a
41 lessee in ordinary course of business, takes the leasehold
42 interest free of a security interest to the extent that it secures
43 advances made after the earlier of:

44 (1) The time the secured party acquires knowledge of the
45 lease; or

46 (2) Forty-five days after the lease contract becomes
47 enforceable.

48 (g) **Advances made pursuant to commitment: priority of**
49 **lessee of goods.** Subsection (f) of this section does not apply if
50 the advance is made pursuant to a commitment entered into
51 without knowledge of the lease and before the expiration of the
52 forty-five-day period.

§46-9-324. **Priority of purchase-money security interests.**

1 (a) **General rule: purchase-money priority.** Except as
2 otherwise provided in subsection (g) of this section, a perfected
3 purchase-money security interest in goods other than inventory
4 or livestock has priority over a conflicting security interest in
5 the same goods, and, except as otherwise provided in section
6 9-327, a perfected security interest in its identifiable proceeds
7 also has priority, if the purchase-money security interest is
8 perfected when the debtor receives possession of the collateral
9 or within twenty days thereafter.

10 (b) **Inventory purchase-money priority.** Subject to
11 subsection (c) and except as otherwise provided in subsection
12 (g) of this section, a perfected purchase-money security interest
13 in inventory has priority over a conflicting security interest in
14 the same inventory, has priority over a conflicting security
15 interest in chattel paper or an instrument constituting proceeds

16 of the inventory and in proceeds of the chattel paper, if so
17 provided in section 9-330, and, except as otherwise provided in
18 section 9-327, also has priority in identifiable cash proceeds of
19 the inventory to the extent the identifiable cash proceeds are
20 received on or before the delivery of the inventory to a buyer,
21 if:

22 (1) The purchase-money security interest is perfected when
23 the debtor receives possession of the inventory;

24 (2) The purchase-money secured party sends an authenti-
25 cated notification to the holder of the conflicting security
26 interest;

27 (3) The holder of the conflicting security interest receives
28 the notification within five years before the debtor receives
29 possession of the inventory; and

30 (4) The notification states that the person sending the
31 notification has or expects to acquire a purchase-money security
32 interest in inventory of the debtor and describes the inventory.

33 (c) **Holders of conflicting inventory security interests to**
34 **be notified.** Subsection (b)(2) through (4), inclusive, of this
35 section apply only if the holder of the conflicting security
36 interest had filed a financing statement covering the same types
37 of inventory:

38 (1) If the purchase-money security interest is perfected by
39 filing, before the date of the filing; or

40 (2) If the purchase-money security interest is temporarily
41 perfected without filing or possession under section 9-312(f),
42 before the beginning of the twenty-day period thereunder.

43 (d) **Livestock purchase-money priority.** Subject to
44 subsection (e) of this section and except as otherwise provided
45 in subsection (g) of this section, a perfected purchase-money
46 security interest in livestock that are farm products has priority
47 over a conflicting security interest in the same livestock, and,
48 except as otherwise provided in section 9-327, a perfected
49 security interest in their identifiable proceeds and identifiable
50 products in their unmanufactured states also has priority, if:

51 (1) The purchase-money security interest is perfected when
52 the debtor receives possession of the livestock;

53 (2) The purchase-money secured party sends an authenti-
54 cated notification to the holder of the conflicting security
55 interest;

56 (3) The holder of the conflicting security interest receives
57 the notification within six months before the debtor receives
58 possession of the livestock; and

59 (4) The notification states that the person sending the
60 notification has or expects to acquire a purchase-money security
61 interest in livestock of the debtor and describes the livestock.

62 (e) **Holders of conflicting livestock security interests to**
63 **be notified.** Subsection (d)(2) through (4), inclusive, of this
64 section apply only if the holder of the conflicting security
65 interest had filed a financing statement covering the same types
66 of livestock:

67 (1) If the purchase-money security interest is perfected by
68 filing, before the date of the filing; or

69 (2) If the purchase-money security interest is temporarily
70 perfected without filing or possession under section 9-312(f),
71 before the beginning of the twenty-day period thereunder.

72 (f) **Software purchase-money priority.** Except as other-
73 wise provided in subsection (g) of this section, a perfected
74 purchase-money security interest in software has priority over
75 a conflicting security interest in the same collateral, and, except
76 as otherwise provided in section 9-327, a perfected security
77 interest in its identifiable proceeds also has priority, to the
78 extent that the purchase-money security interest in the goods in
79 which the software was acquired for use has priority in the
80 goods and proceeds of the goods under this section.

81 (g) **Conflicting purchase-money security interests.** If
82 more than one security interest qualifies for priority in the same
83 collateral under subsection (a), (b), (d) or (f) of this section:

84 (1) A security interest securing an obligation incurred as all
85 or part of the price of the collateral has priority over a security
86 interest securing an obligation incurred for value given to
87 enable the debtor to acquire rights in or the use of collateral;
88 and

89 (2) In all other cases, section 9-322(a) applies to the
90 qualifying security interests.

**§46-9-324a. Priority of production-money security interests and
agricultural liens.**

1 (a) Except as otherwise provided in subsections (c), (d), and
2 (e) of this section, if the requirements of subsection (b) of this
3 section are satisfied, a perfected production-money security
4 interest in production-money crops has priority over a conflict-
5 ing security interest in the same crops and, except as otherwise
6 provided in section 9-327, also has priority in their identifiable
7 proceeds.

8 (b) A production-money security interest has priority under
9 subsection (a) of this section if:

10 (1) The production-money security interest is perfected by
11 filing when the production-money secured party first gives new
12 value to enable the debtor to produce the crops;

13 (2) The production-money secured party sends an authenti-
14 cated notification to the holder of the conflicting security
15 interest not less than ten or more than thirty days before the
16 production-money secured party first gives new value to enable
17 the debtor to produce the crops if the holder had filed a financ-
18 ing statement covering the crops before the date of the filing
19 made by the production-money secured party; and

20 (3) The notification states that the production-money
21 secured party has or expects to acquire a production-money
22 security interest in the debtor's crops and provides a description
23 of the crops.

24 (c) Except as otherwise provided in subsection (d) or (e) of
25 this section, if more than one security interest qualifies for
26 priority in the same collateral under subsection (a) of this

27 section, the security interests rank according to priority in time
28 of filing under section 9-322(a).

29 (d) To the extent that a person holding a perfected security
30 interest in production-money crops that are the subject of a
31 production-money security interest gives new value to enable
32 the debtor to produce the production-money crops and the value
33 is in fact used for the production of the production-money
34 crops, the security interests rank according to priority in time of
35 filing under section 9-322(a).

36 (e) To the extent that a person holds both an agricultural
37 lien and a production-money security interest in the same
38 collateral securing the same obligations, the rules of priority
39 applicable to agricultural liens govern priority.

§46-9-325. Priority of security interests in transferred collateral.

1 (a) **Subordination of security interest in transferred**
2 **collateral.** Except as otherwise provided in subsection (b) of
3 this section, a security interest created by a debtor is subordi-
4 nate to a security interest in the same collateral created by
5 another person if:

6 (1) The debtor acquired the collateral subject to the security
7 interest created by the other person;

8 (2) The security interest created by the other person was
9 perfected when the debtor acquired the collateral; and

10 (3) There is no period thereafter when the security interest
11 is unperfected.

12 (b) **Limitation of subsection (a) subordination.** Subsec-
13 tion (a) of this section subordinates a security interest only if
14 the security interest:

15 (1) Otherwise would have priority solely under section
16 9-322(a) or 9-324; or

17 (2) Arose solely under section 2-711(3) or 2A-508(5).

§46-9-326. Priority of security interests created by new debtor.

1 (a) **Subordination of security interest created by new**
2 **debtor.** Subject to subsection (b) of this section, a security
3 interest created by a new debtor which is perfected by a filed
4 financing statement that is effective solely under section 9-508
5 in collateral in which a new debtor has or acquires rights is
6 subordinate to a security interest in the same collateral which is
7 perfected other than by a filed financing statement that is
8 effective solely under section 9-508.

9 (b) **Priority under other provisions; multiple original**
10 **debtors.** The other provisions of this part determine the priority
11 among conflicting security interests in the same collateral
12 perfected by filed financing statements that are effective solely
13 under section 9-508. However, if the security agreements to
14 which a new debtor became bound as debtor were not entered
15 into by the same original debtor, the conflicting security
16 interests rank according to priority in time of the new debtor's
17 having become bound.

§46-9-327. Priority of security interests in deposit account.

1 The following rules govern priority among conflicting
2 security interests in the same deposit account:

3 (1) A security interest held by a secured party having
4 control of the deposit account under section 9-104 has priority
5 over a conflicting security interest held by a secured party that
6 does not have control.

7 (2) Except as otherwise provided in paragraphs (3) and (4)
8 of this section, security interests perfected by control under
9 section 9-314 rank according to priority in time of obtaining
10 control.

11 (3) Except as otherwise provided in paragraph (4) of this
12 section, a security interest held by the bank with which the
13 deposit account is maintained has priority over a conflicting
14 security interest held by another secured party.

15 (4) A security interest perfected by control under section
16 9-104(a)(3) has priority over a security interest held by the bank
17 with which the deposit account is maintained.

§46-9-328. Priority of security interests in investment property.

1 The following rules govern priority among conflicting
2 security interests in the same investment property:

3 (1) A security interest held by a secured party having
4 control of investment property under section 9-106 has priority
5 over a security interest held by a secured party that does not
6 have control of the investment property.

7 (2) Except as otherwise provided in paragraphs (3) and (4)
8 of this section, conflicting security interests held by secured
9 parties each of which has control under section 9-106 rank
10 according to priority in time of:

11 (A) If the collateral is a security, obtaining control;

12 (B) If the collateral is a security entitlement carried in a
13 securities account and:

14 (i) If the secured party obtained control under section
15 8-106(d)(1), the secured party's becoming the person for which
16 the securities account is maintained;

17 (ii) If the secured party obtained control under section
18 8-106(d)(2), the securities intermediary's agreement to comply
19 with the secured party's entitlement orders with respect to
20 security entitlements carried or to be carried in the securities
21 account; or

22 (iii) If the secured party obtained control through another
23 person under section 8-106(d)(3), the time on which priority
24 would be based under this paragraph if the other person were
25 the secured party; or

26 (C) If the collateral is a commodity contract carried with a
27 commodity intermediary, the satisfaction of the requirement for
28 control specified in section 9-106(b)(2) with respect to com-
29modity contracts carried or to be carried with the commodity
30 intermediary.

31 (3) A security interest held by a securities intermediary in
32 a security entitlement or a securities account maintained with

33 the securities intermediary has priority over a conflicting
34 security interest held by another secured party.

35 (4) A security interest held by a commodity intermediary in
36 a commodity contract or a commodity account maintained with
37 the commodity intermediary has priority over a conflicting
38 security interest held by another secured party.

39 (5) A security interest in a certificated security in registered
40 form which is perfected by taking delivery under section
41 9-313(a) and not by control under section 9-314 has priority
42 over a conflicting security interest perfected by a method other
43 than control.

44 (6) Conflicting security interests created by a broker,
45 securities intermediary or commodity intermediary which are
46 perfected without control under section 9-106 rank equally.

47 (7) In all other cases, priority among conflicting security
48 interests in investment property is governed by sections 9-322
49 and 9-323.

§46-9-329. Priority of security interests in letter-of-credit right.

1 The following rules govern priority among conflicting
2 security interests in the same letter-of-credit right:

3 (1) A security interest held by a secured party having
4 control of the letter-of-credit right under section 9-107 has
5 priority to the extent of its control over a conflicting security
6 interest held by a secured party that does not have control.

7 (2) Security interests perfected by control under section
8 9-314 rank according to priority in time of obtaining control.

§46-9-330. Priority of purchaser of chattel paper or instrument.

1 (a) **Purchaser's priority: security interest claimed**
2 **merely as proceeds.** A purchaser of chattel paper has priority
3 over a security interest in the chattel paper which is claimed
4 merely as proceeds of inventory subject to a security interest if:

5 (1) In good faith and in the ordinary course of the pur-
6 chaser's business, the purchaser gives new value and takes

7 possession of the chattel paper or obtains control of the chattel
8 paper under section 9-105; and

9 (2) The chattel paper does not indicate that it has been
10 assigned to an identified assignee other than the purchaser.

11 (b) **Purchaser's priority: other security interests.** A
12 purchaser of chattel paper has priority over a security interest
13 in the chattel paper which is claimed other than merely as
14 proceeds of inventory subject to a security interest if the
15 purchaser gives new value and takes possession of the chattel
16 paper or obtains control of the chattel paper under section 9-105
17 in good faith, in the ordinary course of the purchaser's business,
18 and without knowledge that the purchase violates the rights of
19 the secured party.

20 (c) **Chattel paper purchaser's priority in proceeds.**
21 Except as otherwise provided in section 9-327, a purchaser
22 having priority in chattel paper under subsection (a) or (b) of
23 this section also has priority in proceeds of the chattel paper to
24 the extent that:

25 (1) Section 9-322 provides for priority in the proceeds; or

26 (2) The proceeds consist of the specific goods covered by
27 the chattel paper or cash proceeds of the specific goods, even if
28 the purchaser's security interest in the proceeds is unperfected.

29 (d) **Instrument purchaser's priority.** Except as otherwise
30 provided in section 9-331(a), a purchaser of an instrument has
31 priority over a security interest in the instrument perfected by
32 a method other than possession if the purchaser gives value and
33 takes possession of the instrument in good faith and without
34 knowledge that the purchase violates the rights of the secured
35 party.

36 (e) **Holder of purchase-money security interest gives**
37 **new value.** For purposes of subsections (a) and (b) of this
38 section, the holder of a purchase-money security interest in
39 inventory gives new value for chattel paper constituting
40 proceeds of the inventory.

41 (f) **Indication of assignment gives knowledge.** For
42 purposes of subsections (b) and (d) of this section, if chattel
43 paper or an instrument indicates that it has been assigned to an
44 identified secured party other than the purchaser, a purchaser of
45 the chattel paper or instrument has knowledge that the purchase
46 violates the rights of the secured party.

§46-9-331. Priority of rights of purchasers of instruments, documents, and securities under other articles; priority of interests in financial assets and security entitlements under article eight.

1 (a) **Rights under articles three, seven and eight not**
2 **limited.** This article does not limit the rights of a holder in due
3 course of a negotiable instrument, a holder to which a negotia-
4 ble document of title has been duly negotiated, or a protected
5 purchaser of a security. These holders or purchasers take
6 priority over an earlier security interest, even if perfected, to the
7 extent provided in articles three, seven and eight.

8 (b) **Protection under article eight.** This article does not
9 limit the rights of or impose liability on a person to the extent
10 that the person is protected against the assertion of an adverse
11 claim under article eight.

12 (c) **Filing not notice.** Filing under this article does not
13 constitute notice of a claim or defense to the holders, or
14 purchasers, or persons described in subsections (a) and (b) of
15 this section.

§46-9-332. Transfer of money; transfer of funds from deposit account.

1 (a) **Transferee of money.** A transferee of money takes the
2 money free of a security interest unless the transferee acts in
3 collusion with the debtor in violating the rights of the secured
4 party.

5 (b) **Transferee of funds from deposit account.** A trans-
6 feree of funds from a deposit account takes the funds free of a
7 security interest in the deposit account unless the transferee acts

8 in collusion with the debtor in violating the rights of the secured
9 party.

§46-9-333. Priority of certain liens arising by operation of law.

1 (a) **“Possessory lien.”** In this section, “possessory lien”
2 means an interest, other than a security interest or an agricul-
3 tural lien:

4 (1) Which secures payment or performance of an obligation
5 for services or materials furnished with respect to goods by a
6 person in the ordinary course of the person’s business;

7 (2) Which is created by statute or rule of law in favor of the
8 person; and

9 (3) Whose effectiveness depends on the person’s possession
10 of the goods.

11 (b) **Priority of possessory lien.** A possessory lien on goods
12 has priority over a security interest in the goods unless the lien
13 is created by a statute that expressly provides otherwise.

§46-9-334. Priority of security interests in fixtures and crops.

1 (a) **Security interest in fixtures under this article.** A
2 security interest under this article may be created in goods that
3 are fixtures or may continue in goods that become fixtures. A
4 security interest does not exist under this article in ordinary
5 building materials incorporated into an improvement on land.

6 (b) **Security interest in fixtures under real-property law.**
7 This article does not prevent creation of an encumbrance upon
8 fixtures under real property law.

9 (c) **General rule: subordination of security interest in**
10 **fixtures.** In cases not governed by subsections (d) through (h),
11 inclusive, of this section, a security interest in fixtures is
12 subordinate to a conflicting interest of an encumbrancer or
13 owner of the related real property other than the debtor.

14 (d) **Fixtures purchase-money priority.** Except as other-
15 wise provided in subsection (h) of this section, a perfected
16 security interest in fixtures has priority over a conflicting

17 interest of an encumbrancer or owner of the real property if the
18 debtor has an interest of record in or is in possession of the real
19 property and:

20 (1) The security interest is a purchase-money security
21 interest;

22 (2) The interest of the encumbrancer or owner arises before
23 the goods become fixtures; and

24 (3) The security interest is perfected by a fixture filing
25 before the goods become fixtures or within twenty days
26 thereafter.

27 (e) **Priority of security interest in fixtures over interests**
28 **in real property.** A perfected security interest in fixtures has
29 priority over a conflicting interest of an encumbrancer or owner
30 of the real property if:

31 (1) The debtor has an interest of record in the real property
32 or is in possession of the real property and the security interest:

33 (A) Is perfected by a fixture filing before the interest of the
34 encumbrancer or owner is of record; and

35 (B) Has priority over any conflicting interest of a predeces-
36 sor in title of the encumbrancer or owner;

37 (2) Before the goods become fixtures, the security interest
38 is perfected by any method permitted by this article and the
39 fixtures are readily removable:

40 (A) Factory or office machines;

41 (B) Equipment that is not primarily used or leased for use
42 in the operation of the real property; or

43 (C) Replacements of domestic appliances that are consumer
44 goods;

45 (3) The conflicting interest is a lien on the real property
46 obtained by legal or equitable proceedings after the security
47 interest was perfected by any method permitted by this article;
48 or

49 (4) The security interest is:

50 (A) Created in a manufactured home in a manufactured-
51 home transaction; and

52 (B) Perfected pursuant to a statute described in section
53 9-311(a)(2).

54 (f) **Priority based on consent, disclaimer or right to**
55 **remove.** A security interest in fixtures, whether or not per-
56 fected, has priority over a conflicting interest of an encum-
57 brancer or owner of the real property if:

58 (1) The encumbrancer or owner has, in an authenticated
59 record, consented to the security interest or disclaimed an
60 interest in the goods as fixtures; or

61 (2) The debtor has a right to remove the goods as against
62 the encumbrancer or owner.

63 (g) **Continuation of subsection (f) priority.** The priority
64 of the security interest under subsection (f)(2) of this section
65 continues for a reasonable time if the debtor's right to remove
66 the goods as against the encumbrancer or owner terminates.

67 (h) **Priority of construction mortgage.** A mortgage is a
68 construction mortgage to the extent that it secures an obligation
69 incurred for the construction of an improvement on land,
70 including the acquisition cost of the land, if a recorded record
71 of the mortgage so indicates. Except as otherwise provided in
72 subsections (e) and (f) of this section, a security interest in
73 fixtures is subordinate to a construction mortgage if a record of
74 the mortgage is recorded before the goods become fixtures and
75 the goods become fixtures before the completion of the
76 construction. A mortgage has this priority to the same extent as
77 a construction mortgage to the extent that it is given to refi-
78 nance a construction mortgage.

79 (i) **Priority of security interest in crops.** A perfected
80 security interest in crops growing on real property has priority
81 over a conflicting interest of an encumbrancer or owner of the
82 real property if the debtor has an interest of record in or is in
83 possession of the real property.

84 (j) **Subsection (i) prevails.** Subsection (i) of this section
85 prevails over any inconsistent provision of an existing or future
86 statute, rule or regulation of this state unless the provision is
87 contained in a statute of this state, refers expressly to this
88 section and states that the provision prevails over this section.

§46-9-335. Accessions.

1 (a) **Creation of security interest in accession.** A security
2 interest may be created in an accession and continues in
3 collateral that becomes an accession.

4 (b) **Perfection of security interest.** If a security interest is
5 perfected when the collateral becomes an accession, the
6 security interest remains perfected in the collateral.

7 (c) **Priority of security interest.** Except as otherwise
8 provided in subsection (d) of this section, the other provisions
9 of this part determine the priority of a security interest in an
10 accession.

11 (d) **Compliance with certificate-of-title statute.** A
12 security interest in an accession is subordinate to a security
13 interest in the whole which is perfected by compliance with the
14 requirements of a certificate-of-title statute under section
15 9-311(b).

16 (e) **Removal of accession after default.** After default,
17 subject to part 6, a secured party may remove an accession from
18 other goods if the security interest in the accession has priority
19 over the claims of every person having an interest in the whole.

20 (f) **Reimbursement following removal.** A secured party
21 that removes an accession from other goods under subsection
22 (e) of this section shall promptly reimburse any holder of a
23 security interest or other lien on, or owner of, the whole or of
24 the other goods, other than the debtor, for the cost of repair of
25 any physical injury to the whole or the other goods. The secured
26 party need not reimburse the holder or owner for any diminu-
27 tion in value of the whole or the other goods caused by the
28 absence of the accession removed or by any necessity for
29 replacing it. A person entitled to reimbursement may refuse

30 permission to remove until the secured party gives adequate
31 assurance for the performance of the obligation to reimburse.

§46-9-336. Commingled goods.

1 (a) **“Commingled goods.”** In this section, “commingled
2 goods” means goods that are physically united with other goods
3 in such a manner that their identity is lost in a product or mass.

4 (b) **No security interest in commingled goods as such.** A
5 security interest does not exist in commingled goods as such.
6 However, a security interest may attach to a product or mass
7 that results when goods become commingled goods.

8 (c) **Attachment of security interest to product or mass.**
9 If collateral becomes commingled goods, a security interest
10 attaches to the product or mass.

11 (d) **Perfection of security interest.** If a security interest in
12 collateral is perfected before the collateral becomes commin-
13 gled goods, the security interest that attaches to the product or
14 mass under subsection (c) of this section is perfected.

15 (e) **Priority of security interest.** Except as otherwise
16 provided in subsection (f) of this section, the other provisions
17 of this part determine the priority of a security interest that
18 attaches to the product or mass under subsection (c) of this
19 section.

20 (f) **Conflicting security interests in product or mass.** If
21 more than one security interest attaches to the product or mass
22 under subsection (c) of this section, the following rules deter-
23 mine priority:

24 (1) A security interest that is perfected under subsection (d)
25 has priority over a security interest that is unperfected at the
26 time the collateral becomes commingled goods.

27 (2) If more than one security interest is perfected under
28 subsection (d) of this section, the security interests rank equally
29 in proportion to value of the collateral at the time it became
30 commingled goods.

§46-9-337. Priority of security interests in goods covered by certificate of title.

1 If, while a security interest in goods is perfected by any
2 method under the law of another jurisdiction, this state issues a
3 certificate of title that does not show that the goods are subject
4 to the security interest or contain a statement that they may be
5 subject to security interests not shown on the certificate:

6 (1) A buyer of the goods, other than a person in the
7 business of selling goods of that kind, takes free of the security
8 interest if the buyer gives value and receives delivery of the
9 goods after issuance of the certificate and without knowledge
10 of the security interest; and

11 (2) The security interest is subordinate to a conflicting
12 security interest in the goods that attaches, and is perfected
13 under section 9-311(b), after issuance of the certificate and
14 without the conflicting secured party's knowledge of the
15 security interest.

§46-9-338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.

1 If a security interest or agricultural lien is perfected by a
2 filed financing statement providing information described in
3 section 9-516(b)(5) which is incorrect at the time the financing
4 statement is filed:

5 (1) The security interest or agricultural lien is subordinate
6 to a conflicting perfected security interest in the collateral to the
7 extent that the holder of the conflicting security interest gives
8 value in reasonable reliance upon the incorrect information; and

9 (2) A purchaser, other than a secured party, of the collateral
10 takes free of the security interest or agricultural lien to the
11 extent that, in reasonable reliance upon the incorrect informa-
12 tion, the purchaser gives value and, in the case of chattel paper,
13 documents, goods, instruments, or a security certificate,
14 receives delivery of the collateral.

§46-9-339. Priority subject to subordination.

1 This article does not preclude subordination by agreement
2 by a person entitled to priority.

SUBPART 4. RIGHTS OF BANK.

§46-9-340. Effectiveness of right of recoupment or set-off against deposit account.

1 (a) **Exercise of recoupment or set-off.** Except as otherwise
2 provided in subsection (c) of this section, a bank with which a
3 deposit account is maintained may exercise any right of
4 recoupment or set-off against a secured party that holds a
5 security interest in the deposit account.

6 (b) **Recoupment or set-off not affected by security**
7 **interest.** Except as otherwise provided in subsection (c) of this
8 section, the application of this article to a security interest in a
9 deposit account does not affect a right of recoupment or set-off
10 of the secured party as to a deposit account maintained with the
11 secured party.

12 (c) **When set-off ineffective.** The exercise by a bank of a
13 set-off against a deposit account is ineffective against a secured
14 party that holds a security interest in the deposit account which
15 is perfected by control under section 9-104(a)(3), if the set-off
16 is based on a claim against the debtor.

§46-9-341. Bank's rights and duties with respect to deposit account.

1 Except as otherwise provided in section 9-340(c), and
2 unless the bank otherwise agrees in an authenticated record, a
3 bank's rights and duties with respect to a deposit account
4 maintained with the bank are not terminated, suspended or
5 modified by:

6 (1) The creation, attachment or perfection of a security
7 interest in the deposit account;

8 (2) The bank's knowledge of the security interest; or

9 (3) The bank's receipt of instructions from the secured
10 party.

§46-9-342. Bank's right to refuse to enter into or disclose existence of control agreement.

1 This article does not require a bank to enter into an agree-
2 ment of the kind described in section 9-104(a)(2), even if its
3 customer so requests or directs. A bank that has entered into
4 such an agreement is not required to confirm the existence of
5 the agreement to another person unless requested to do so by its
6 customer.

PART 4. RIGHTS OF THIRD PARTIES.

§46-9-401. Alienability of debtor's rights.

1 (a) **Other law governs alienability; exceptions.** Except as
2 otherwise provided in subsection (b) of this section and sections
3 9-406, 9-407, 9-408 and 9-409, whether a debtor's rights in
4 collateral may be voluntarily or involuntarily transferred is
5 governed by law other than this article.

6 (b) **Agreement does not prevent transfer.** An agreement
7 between the debtor and secured party which prohibits a transfer
8 of the debtor's rights in collateral or makes the transfer a
9 default does not prevent the transfer from taking effect.

§46-9-402. Secured party not obligated on contract of debtor or in tort.

1 The existence of a security interest, agricultural lien, or
2 authority given to a debtor to dispose of or use collateral,
3 without more, does not subject a secured party to liability in
4 contract or tort for the debtor's acts or omissions.

§46-9-403. Agreement not to assert defenses against assignee.

1 (a) **"Value."** In this section, "value" has the meaning
2 provided in section 3-303(a).

3 (b) **Agreement not to assert claim or defense.** Except as
4 otherwise provided in this section, an agreement between an
5 account debtor and an assignor not to assert against an assignee
6 any claim or defense that the account debtor may have against
7 the assignor is enforceable by an assignee that takes an assign-
8 ment:

9 (1) For value;

10 (2) In good faith;

11 (3) Without notice of a claim of a property or possessory
12 right to the property assigned; and

13 (4) Without notice of a defense or claim in recoupment of
14 the type that may be asserted against a person entitled to
15 enforce a negotiable instrument under section 3-305(a).

16 (c) **When subsection (b) not applicable.** Subsection (b) of
17 this section does not apply to defenses of a type that may be
18 asserted against a holder in due course of a negotiable instru-
19 ment under section 3-305(b).

20 (d) **Omission of required statement in consumer trans-**
21 **action.** In a consumer transaction, if a record evidences the
22 account debtor's obligation, law other than this article requires
23 that the record include a statement to the effect that the rights
24 of an assignee are subject to claims or defenses that the account
25 debtor could assert against the original obligee and the record
26 does not include such a statement:

27 (1) The record has the same effect as if the record included
28 such a statement; and

29 (2) The account debtor may assert against an assignee those
30 claims and defenses that would have been available if the
31 record included such a statement.

32 (e) **Rule for individual under other law.** This section is
33 subject to law other than this article which establishes a
34 different rule for an account debtor who is an individual and
35 who incurred the obligation primarily for personal, family, or
36 household purposes.

37 (f) **Other law not displaced.** Except as otherwise provided
38 in subsection (d) of this section, this section does not displace
39 law other than this article which gives effect to an agreement by
40 an account debtor not to assert a claim or defense against an
41 assignee.

§46-9-404. Rights acquired by assignee; claims and defenses against assignee.

1 (a) **Assignee's rights subject to terms, claims and**
2 **defenses; exceptions.** Unless an account debtor has made an
3 enforceable agreement not to assert defenses or claims, and
4 subject to subsections (b) through (e), inclusive, of this section,
5 the rights of an assignee are subject to:

6 (1) All terms of the agreement between the account debtor
7 and assignor and any defense or claim in recoupment arising
8 from the transaction that gave rise to the contract; and

9 (2) Any other defense or claim of the account debtor against
10 the assignor which accrues before the account debtor receives
11 a notification of the assignment authenticated by the assignor or
12 the assignee.

13 (b) **Account debtor's claim reduces amount owed to**
14 **assignee.** Subject to subsection (c) of this section and except as
15 otherwise provided in subsection (d) of this section, the claim
16 of an account debtor against an assignor may be asserted
17 against an assignee under subsection (a) of this section only to
18 reduce the amount the account debtor owes.

19 (c) **Rule for individual under other law.** This section is
20 subject to law other than this article which establishes a
21 different rule for an account debtor who is an individual and
22 who incurred the obligation primarily for personal, family or
23 household purposes.

24 (d) **Omission of required statement in consumer trans-**
25 **action.** In a consumer transaction, if a record evidences the
26 account debtor's obligation, law other than this article requires
27 that the record include a statement to the effect that the account
28 debtor's recovery against an assignee with respect to claims and
29 defenses against the assignor may not exceed amounts paid by
30 the account debtor under the record, and the record does not
31 include such a statement, the extent to which a claim of an
32 account debtor against the assignor may be asserted against an
33 assignee is determined as if the record included such a state-
34 ment.

35 (e) **Inapplicability to health-care-insurance receivable.**
36 This section does not apply to an assignment of a health-care-
37 insurance receivable.

§46-9-405. Modification of assigned contract.

1 (a) **Effect of modification on assignee.** A modification of
2 or substitution for an assigned contract is effective against an
3 assignee if made in good faith. The assignee acquires corre-
4 sponding rights under the modified or substituted contract. The
5 assignment may provide that the modification or substitution is
6 a breach of contract by the assignor. This subsection is subject
7 to subsections (b) through (d), inclusive, of this section.

8 (b) **Applicability of subsection (a).** Subsection (a) applies
9 to the extent that:

10 (1) The right to payment or a part thereof under an assigned
11 contract has not been fully earned by performance; or

12 (2) The right to payment or a part thereof has been fully
13 earned by performance and the account debtor has not received
14 notification of the assignment under section 9-406(a).

15 (c) **Rule for individual under other law.** This section is
16 subject to law other than this article which establishes a
17 different rule for an account debtor who is an individual and
18 who incurred the obligation primarily for personal, family or
19 household purposes.

20 (d) **Inapplicability to health-care-insurance receivable.**
21 This section does not apply to an assignment of a health-care-
22 insurance receivable.

**§46-9-406. Discharge of account debtor; notification of assign-
ment; identification and proof of assignment;
restrictions on assignment of accounts, chattel
paper, payment intangibles and promissory notes
ineffective.**

1 (a) **Discharge of account debtor; effect of notification.**
2 Subject to subsections (b) through (i), an account debtor on an
3 account, chattel paper or a payment intangible may discharge

4 its obligation by paying the assignor until, but not after, the
5 account debtor receives a notification, authenticated by the
6 assignor or the assignee, that the amount due or to become due
7 has been assigned and that payment is to be made to the
8 assignee. After receipt of the notification, the account debtor
9 may discharge its obligation by paying the assignee and may
10 not discharge the obligation by paying the assignor.

11 (b) **When notification ineffective.** Subject to subsection
12 (h) of this section, notification is ineffective under subsection
13 (a) of this section:

14 (1) If it does not reasonably identify the rights assigned;

15 (2) To the extent that an agreement between an account
16 debtor and a seller of a payment intangible limits the account
17 debtor's duty to pay a person other than the seller and the
18 limitation is effective under law other than this article; or

19 (3) At the option of an account debtor, if the notification
20 notifies the account debtor to make less than the full amount of
21 any installment or other periodic payment to the assignee, even
22 if:

23 (A) Only a portion of the account, chattel paper or payment
24 intangible has been assigned to that assignee;

25 (B) A portion has been assigned to another assignee; or

26 (C) The account debtor knows that the assignment to that
27 assignee is limited.

28 (c) **Proof of assignment.** Subject to subsection (h) of this
29 section, if requested by the account debtor, an assignee shall
30 seasonably furnish reasonable proof that the assignment has
31 been made. Unless the assignee complies, the account debtor
32 may discharge its obligation by paying the assignor, even if the
33 account debtor has received a notification under subsection (a)
34 of this section.

35 (d) **Term restricting assignment generally ineffective.**
36 Except as otherwise provided in subsection (e) of this section
37 and sections 2A-303 and 9-407, and subject to subsection (h) of

38 this section, a term in an agreement between an account debtor
39 and an assignor or in a promissory note is ineffective to the
40 extent that it:

41 (1) Prohibits, restricts or requires the consent of the account
42 debtor or person obligated on the promissory note to the
43 assignment or transfer of, or the creation, attachment, perfection
44 or enforcement of a security interest in, the account, chattel
45 paper, payment intangible or promissory note; or

46 (2) Provides that the assignment or transfer or the creation,
47 attachment, perfection or enforcement of the security interest
48 may give rise to a default, breach, right of recoupment, claim,
49 defense, termination, right of termination or remedy under the
50 account, chattel paper, payment intangible or promissory note.

51 (e) **Inapplicability of subsection (d) to certain sales.**
52 Subsection (d) of this section does not apply to the sale of a
53 payment intangible or promissory note.

54 (f) **Legal restrictions on assignment generally ineffec-**
55 **tive.** Except as otherwise provided in sections 2A-303 and 9-
56 407 and subject to subsections (h) and (i) of this section, a rule
57 of law, statute or regulation that prohibits, restricts or requires
58 the consent of a government, governmental body or official, or
59 account debtor to the assignment or transfer of, or creation of
60 a security interest in, an account or chattel paper is ineffective
61 to the extent that the rule of law, statute or regulation:

62 (1) Prohibits, restricts or requires the consent of the
63 government, governmental body or official, or account debtor
64 to the assignment or transfer of, or the creation, attachment,
65 perfection or enforcement of a security interest in the account
66 or chattel paper; or

67 (2) Provides that the assignment or transfer or the creation,
68 attachment, perfection or enforcement of the security interest
69 may give rise to a default, breach, right of recoupment, claim,
70 defense, termination, right of termination or remedy under the
71 account or chattel paper.

72 (g) **Subsection (b)(3) not waivable.** Subject to subsection
73 (h) of this section, an account debtor may not waive or vary its
74 option under subsection (b)(3) of this section.

75 (h) **Rule for individual under other law.** This section is
76 subject to law other than this article which establishes a
77 different rule for an account debtor who is an individual and
78 who incurred the obligation primarily for personal, family or
79 household purposes.

80 (i) **Inapplicability to health-care-insurance receivable.**
81 This section does not apply to an assignment of a health-care-
82 insurance receivable.

83 (j) **Section prevails over specified inconsistent law.** This
84 section prevails over any inconsistent provision of an existing
85 or future statute, rule or regulation of this state unless the
86 provision is contained in a statute of this state, refers expressly
87 to this section and states that the provision prevails over this
88 section.

**§46-9-407. Restrictions on creation or enforcement of security
interest in leasehold interest or in lessor's residual
interest.**

1 (a) **Term restricting assignment generally ineffective.**
2 Except as otherwise provided in subsection (b) of this section,
3 a term in a lease agreement is ineffective to the extent that it:

4 (1) Prohibits, restricts or requires the consent of a party to
5 the lease to the assignment or transfer of, or the creation,
6 attachment, perfection, or enforcement of a security interest in,
7 an interest of a party under the lease contract or in the lessor's
8 residual interest in the goods; or

9 (2) Provides that the assignment or transfer or the creation,
10 attachment, perfection, or enforcement of the security interest
11 may give rise to a default, breach, right of recoupment, claim,
12 defense, termination, right of termination or remedy under the
13 lease.

14 (b) **Effectiveness of certain terms.** Except as otherwise
15 provided in section 2A-303(7), a term described in subsection
16 (a)(2) is effective to the extent that there is:

17 (1) A transfer by the lessee of the lessee's right of posses-
18 sion or use of the goods in violation of the term; or

19 (2) A delegation of a material performance of either party
20 to the lease contract in violation of the term.

21 (c) **Security interest not material impairment.** The
22 creation, attachment, perfection or enforcement of a security
23 interest in the lessor's interest under the lease contract or the
24 lessor's residual interest in the goods is not a transfer that
25 materially impairs the lessee's prospect of obtaining return
26 performance or materially changes the duty of or materially
27 increases the burden or risk imposed on the lessee within the
28 purview of section 2A-303(4) unless, and then only to the
29 extent that, enforcement actually results in a delegation of
30 material performance of the lessor.

**§46-9-408. Restrictions on assignment of promissory notes,
health-care-insurance receivables and certain
general intangibles ineffective.**

1 (a) **Term restricting assignment generally ineffective.**
2 Except as otherwise provided in subsection (b) of this section,
3 a term in a promissory note or in an agreement between an
4 account debtor and a debtor which relates to a health-care-
5 insurance receivable or a general intangible, including a
6 contract, permit, license or franchise, and which term prohibits,
7 restricts or requires the consent of the person obligated on the
8 promissory note or the account debtor to, the assignment or
9 transfer of, or creation, attachment or perfection of a security
10 interest in, the promissory note, health-care-insurance receiv-
11 able, or general intangible, is ineffective to the extent that the
12 term:

13 (1) Would impair the creation, attachment or perfection of
14 a security interest; or

15 (2) Provides that the assignment or transfer or the creation,
16 attachment or perfection of the security interest may give rise
17 to a default, breach, right of recoupment, claim, defense,
18 termination, right of termination, or remedy under the promis-
19 sory note, health-care-insurance receivable or general intangi-
20 ble.

21 **(b) Applicability of subsection (a) to sales of certain**
22 **rights to payment.** Subsection (a) of this section applies to a
23 security interest in a payment intangible or promissory note
24 only if the security interest arises out of a sale of the payment
25 intangible or promissory note.

26 **(c) Legal restrictions on assignment generally ineffec-**
27 **tive.** A rule of law, statute or regulation that prohibits, restricts
28 or requires the consent of a government, governmental body or
29 official, person obligated on a promissory note, or account
30 debtor to the assignment or transfer of, or creation of a security
31 interest in, a promissory note, health-care-insurance receivable
32 or general intangible, including a contract, permit, license or
33 franchise between an account debtor and a debtor, is ineffective
34 to the extent that the rule of law, statute or regulation:

35 (1) Would impair the creation, attachment or perfection of
36 a security interest; or

37 (2) Provides that the assignment or transfer or the creation,
38 attachment or perfection of the security interest may give rise
39 to a default, breach, right of recoupment, claim, defense,
40 termination, right of termination or remedy under the promis-
41 sory note, health-care-insurance receivable or general intangi-
42 ble.

43 **(d) Limitation on ineffectiveness under subsections (a)**
44 **and (c).** To the extent that a term in a promissory note or in an
45 agreement between an account debtor and a debtor which
46 relates to a health-care-insurance receivable or general intangi-
47 ble or a rule of law, statute or regulation described in subsection
48 (c) of this section would be effective under law other than this
49 article but is ineffective under subsection (a) or (c) of this
50 section, the creation, attachment or perfection of a security

51 interest in the promissory note, health-care-insurance receivable
52 or general intangible:

53 (1) Is not enforceable against the person obligated on the
54 promissory note or the account debtor;

55 (2) Does not impose a duty or obligation on the person
56 obligated on the promissory note or the account debtor;

57 (3) Does not require the person obligated on the promissory
58 note or the account debtor to recognize the security interest, pay
59 or render performance to the secured party, or accept payment
60 or performance from the secured party;

61 (4) Does not entitle the secured party to use or assign the
62 debtor's rights under the promissory note, health-care-insurance
63 receivable or general intangible, including any related informa-
64 tion or materials furnished to the debtor in the transaction
65 giving rise to the promissory note, health-care-insurance
66 receivable or general intangible;

67 (5) Does not entitle the secured party to use, assign, possess
68 or have access to any trade secrets or confidential information
69 of the person obligated on the promissory note or the account
70 debtor; and

71 (6) Does not entitle the secured party to enforce the security
72 interest in the promissory note, health-care-insurance receivable
73 or general intangible.

74 (e) **Section prevails over specified inconsistent law.** This
75 section prevails over any inconsistent provisions of an existing
76 or future statute, rule or regulation of this state unless the
77 provision is contained in a statute of this state, refers expressly
78 to this section and states that the provision prevails over this
79 section.

**§46-9-409. Restrictions on assignment of letter-of-credit rights
ineffective.**

1 (a) **Term or law restricting assignment generally**
2 **ineffective.** A term in a letter of credit or a rule of law, statute,
3 regulation, custom or practice applicable to the letter of credit

4 which prohibits, restricts or requires the consent of an applicant,
5 issuer or nominated person to a beneficiary's assignment of or
6 creation of a security interest in a letter-of-credit right is
7 ineffective to the extent that the term or rule of law, statute,
8 regulation, custom or practice:

9 (1) Would impair the creation, attachment or perfection of
10 a security interest in the letter-of-credit right; or

11 (2) Provides that the assignment or the creation, attachment
12 or perfection of the security interest may give rise to a default,
13 breach, right of recoupment, claim, defense, termination, right
14 of termination or remedy under the letter-of-credit right.

15 (b) **Limitation on ineffectiveness under subsection (a).**
16 To the extent that a term in a letter of credit is ineffective under
17 subsection (a) of this section but would be effective under law
18 other than this article or a custom or practice applicable to the
19 letter of credit, to the transfer of a right to draw or otherwise
20 demand performance under the letter of credit, or to the
21 assignment of a right to proceeds of the letter of credit, the
22 creation, attachment, or perfection of a security interest in the
23 letter-of-credit right:

24 (1) Is not enforceable against the applicant, issuer, nomi-
25 nated person or transferee beneficiary;

26 (2) Imposes no duties or obligations on the applicant,
27 issuer, nominated person or transferee beneficiary; and

28 (3) Does not require the applicant, issuer, nominated person
29 or transferee beneficiary to recognize the security interest, pay
30 or render performance to the secured party, or accept payment
31 or other performance from the secured party.

PART 5. FILING.

SUBPART 1. FILING OFFICE; CONTENTS AND EFFECTIVENESS OF FINANCING STATEMENT.

§46-9-501. Filing office.

1 (a) **Filing offices.** Except as otherwise provided in subsec-
2 tion (b) of this section, if the local law of this state governs
3 perfection of a security interest or agricultural lien, the office in
4 which to file a financing statement to perfect the security
5 interest or agricultural lien is:

6 (1) The office designated for the filing or recording of a
7 record of a mortgage on the related real property, if:

8 (A) The collateral is as-extracted collateral or timber to be
9 cut; or

10 (B) The financing statement is filed as a fixture filing and
11 the collateral is goods that are or are to become fixtures; or

12 (2) The office of the secretary of state, in all other cases,
13 including a case in which the collateral is goods that are or are
14 to become fixtures and the financing statement is not filed as a
15 fixture filing.

16 (b) **Filing office for transmitting utilities.** The office in
17 which to file a financing statement to perfect a security interest
18 in collateral, including fixtures, of a transmitting utility is the
19 office of secretary of state. The financing statement also
20 constitutes a fixture filing as to the collateral indicated in the
21 financing statement which is or is to become fixtures.

**§46-9-502. Contents of financing statement; record of mortgage
as financing statement; time of filing financing
statement.**

1 (a) **Sufficiency of financing statement.** Subject to subsec-
2 tion (b), a financing statement is sufficient only if it:

3 (1) Provides the name of the debtor;

4 (2) Provides the name of the secured party or a representa-
5 tive of the secured party; and

6 (3) Indicates the collateral covered by the financing
7 statement.

8 (b) **Real-property-related financing statements.** Except
9 as otherwise provided in section 9-501(b), to be sufficient, a

10 financing statement that covers as-extracted collateral or timber
11 to be cut, or which is filed as a fixture filing and covers goods
12 that are or are to become fixtures, must satisfy subsection (a) of
13 this section and also:

14 (1) Indicate that it covers this type of collateral;

15 (2) Indicate that it is to be filed for record in the real
16 property records;

17 (3) Provide a description of the real property to which the
18 collateral is related sufficient to give constructive notice of a
19 mortgage under the law of this state if the description were
20 contained in a record of the mortgage of the real property; and

21 (4) If the debtor does not have an interest of record in the
22 real property, provide the name of a record owner.

23 (c) **Record of mortgage as financing statement.** A record
24 of a mortgage is effective, from the date of recording, as a
25 financing statement filed as a fixture filing or as a financing
26 statement covering as-extracted collateral or timber to be cut
27 only if:

28 (1) The record indicates the goods or accounts that it
29 covers;

30 (2) The goods are or are to become fixtures relate to the real
31 property described in the record or the collateral is related to the
32 real property described in the record and is as-extracted
33 collateral or timber to be cut;

34 (3) The record satisfies the requirements for a financing
35 statement in this section other than an indication that it is to be
36 filed in the real property records; and

37 (4) The record is duly recorded.

38 (d) **Filing before security agreement or attachment.** A
39 financing statement may be filed before a security agreement is
40 made or a security interest otherwise attaches.

§46-9-503. Name of debtor and secured party.

1 (a) **Sufficiency of debtor's name.** A financing statement
2 sufficiently provides the name of the debtor:

3 (1) If the debtor is a registered organization, only if the
4 financing statement provides the name of the debtor indicated
5 on the public record of the debtor's jurisdiction of organization
6 which shows the debtor to have been organized;

7 (2) If the debtor is a decedent's estate, only if the financing
8 statement provides the name of the decedent and indicates that
9 the debtor is an estate;

10 (3) If the debtor is a trust or a trustee acting with respect to
11 property held in trust, only if the financing statement:

12 (A) Provides the name specified for the trust in its organic
13 documents or, if no name is specified, provides the name of the
14 settlor and additional information sufficient to distinguish the
15 debtor from other trusts having one or more of the same
16 settlors; and

17 (B) Indicates, in the debtor's name or otherwise, that the
18 debtor is a trust or is a trustee acting with respect to property
19 held in trust; and

20 (4) In other cases:

21 (A) If the debtor has a name, only if it provides the individ-
22 ual or organizational name of the debtor; and

23 (B) If the debtor does not have a name, only if it provides
24 the names of the partners, members, associates or other persons
25 comprising the debtor.

26 (b) **Additional debtor-related information.** A financing
27 statement that provides the name of the debtor in accordance
28 with subsection (a) of this section is not rendered ineffective by
29 the absence of:

30 (1) A trade name or other name of the debtor; or

31 (2) Unless required under subsection (a)(4)(B) of this
32 section, names of partners, members, associates or other
33 persons comprising the debtor.

34 (c) **Debtor's trade name insufficient.** A financing state-
35 ment that provides only the debtor's trade name does not
36 sufficiently provide the name of the debtor.

37 (d) **Representative capacity.** Failure to indicate the
38 representative capacity of a secured party or representative of
39 a secured party does not affect the sufficiency of a financing
40 statement.

41 (e) **Multiple debtors and secured parties.** A financing
42 statement may provide the name of more than one debtor and
43 the name of more than one secured party.

§46-9-504. Indication of collateral.

1 A financing statement sufficiently indicates the collateral
2 that it covers if the financing statement provides:

3 (1) A description of the collateral pursuant to section 9-108;
4 or

5 (2) An indication that the financing statement covers all
6 assets or all personal property.

§46-9-505. Filing and compliance with other statutes and treaties for consignments, leases, other bailments and other transactions.

1 (a) **Use of terms other than "debtor" and "secured**
2 **party."** A consignor, lessor, or other bailor of goods, a licensor
3 or a buyer of a payment intangible or promissory note may file
4 a financing statement, or may comply with a statute or treaty
5 described in section 9-311(a), using the terms "consignor",
6 "consignee", "lessor", "lessee", "bailor", "bailee", "licensor",
7 "licensee", "owner", "registered owner", "buyer", "seller" or
8 words of similar import, instead of the terms "secured party"
9 and "debtor".

10 (b) **Effect of financing statement under subsection (a).**
11 This part applies to the filing of a financing statement under
12 subsection (a) of this section and, as appropriate, to compliance
13 that is equivalent to filing a financing statement under section
14 9-311(b), but the filing or compliance is not of itself a factor in

15 determining whether the collateral secures an obligation. If it is
16 determined for another reason that the collateral secures an
17 obligation, a security interest held by the consignor, lessor,
18 bailor, licensor, owner or buyer which attaches to the collateral
19 is perfected by the filing or compliance.

§46-9-506. Effect of errors or omissions.

1 (a) **Minor errors and omissions.** A financing statement
2 substantially satisfying the requirements of this part is effective,
3 even if it has minor errors or omissions, unless the errors or
4 omissions make the financing statement seriously misleading.

5 (b) **Financing statement seriously misleading.** Except as
6 otherwise provided in subsection (c) of this section, a financing
7 statement that fails sufficiently to provide the name of the
8 debtor in accordance with section 9-503(a) is seriously mislead-
9 ing.

10 (c) **Financing statement not seriously misleading.** If a
11 search of the records of the filing office under the debtor's
12 correct name, using the filing office's standard search logic, if
13 any, would disclose a financing statement that fails sufficiently
14 to provide the name of the debtor in accordance with section
15 9-503(a), the name provided does not make the financing
16 statement seriously misleading.

17 (d) **"Debtor's correct name."** For purposes of section
18 9-508(b), the "debtor's correct name" in subsection (c) of this
19 section means the correct name of the new debtor.

§46-9-507. Effect of certain events on effectiveness of financing statement.

1 (a) **Disposition.** A filed financing statement remains
2 effective with respect to collateral that is sold, exchanged,
3 leased, licensed or otherwise disposed of and in which a
4 security interest or agricultural lien continues, even if the
5 secured party knows of or consents to the disposition.

6 (b) **Information becoming seriously misleading.** Except
7 as otherwise provided in subsection (c) of this section and
8 section 9-508, a financing statement is not rendered ineffective

9 if, after the financing statement is filed, the information
10 provided in the financing statement becomes seriously mislead-
11 ing under section 9-506.

12 (c) **Change in debtor's name.** If a debtor so changes its
13 name that a filed financing statement becomes seriously
14 misleading under section 9-506:

15 (1) The financing statement is effective to perfect a security
16 interest in collateral acquired by the debtor before, or within
17 four months after, the change; and

18 (2) The financing statement is not effective to perfect a
19 security interest in collateral acquired by the debtor more than
20 four months after the change, unless an amendment to the
21 financing statement which renders the financing statement not
22 seriously misleading is filed within four months after the
23 change.

**§46-9-508. Effectiveness of financing statement if new debtor
becomes bound by security agreement.**

1 (a) **Financing statement naming original debtor.** Except
2 as otherwise provided in this section, a filed financing state-
3 ment naming an original debtor is effective to perfect a security
4 interest in collateral in which a new debtor has or acquires
5 rights to the extent that the financing statement would have
6 been effective had the original debtor acquired rights in the
7 collateral.

8 (b) **Financing statement becoming seriously misleading.**
9 If the difference between the name of the original debtor and
10 that of the new debtor causes a filed financing statement that is
11 effective under subsection (a) of this section to be seriously
12 misleading under section 9-506:

13 (1) The financing statement is effective to perfect a security
14 interest in collateral acquired by the new debtor before, and
15 within four months after, the new debtor becomes bound under
16 section 9-203(d); and

17 (2) The financing statement is not effective to perfect a
18 security interest in collateral acquired by the new debtor more

19 than four months after the new debtor becomes bound under
20 section 9-203(d) unless an initial financing statement providing
21 the name of the new debtor is filed before the expiration of that
22 time.

23 (c) **When section not applicable.** This section does not
24 apply to collateral as to which a filed financing statement
25 remains effective against the new debtor under section
26 9-507(a).

§46-9-509. Persons entitled to file a record.

1 (a) **Person entitled to file record.** A person may file an
2 initial financing statement, amendment that adds collateral
3 covered by a financing statement, or amendment that adds a
4 debtor to a financing statement only if:

5 (1) The debtor authorizes the filing in an authenticated
6 record or pursuant to subsection (b) or (c) of this section; or

7 (2) The person holds an agricultural lien that has become
8 effective at the time of filing and the financing statement covers
9 only collateral in which the person holds an agricultural lien.

10 (b) **Security agreement as authorization.** By authenticat-
11 ing or becoming bound as debtor by a security agreement, a
12 debtor or new debtor authorizes the filing of an initial financing
13 statement, and an amendment, covering:

14 (1) The collateral described in the security agreement; and

15 (2) Property that becomes collateral under section
16 9-315(a)(2), whether or not the security agreement expressly
17 covers proceeds.

18 (c) **Acquisition of collateral as authorization.** By acquir-
19 ing collateral in which a security interest or agricultural lien
20 continues under section 9-315(a)(1), a debtor authorizes the
21 filing of an initial financing statement, and an amendment,
22 covering the collateral and property that becomes collateral
23 under section 9-315(a)(2).

24 (d) **Person entitled to file certain amendments.** A person
25 may file an amendment other than an amendment that adds

26 collateral covered by a financing statement or an amendment
27 that adds a debtor to a financing statement only if:

28 (1) The secured party of record authorizes the filing; or

29 (2) The amendment is a termination statement for a
30 financing statement as to which the secured party of record has
31 failed to file or send a termination statement as required by
32 section 9-513(a) or (c), the debtor authorizes the filing and the
33 termination statement indicates that the debtor authorized it to
34 be filed.

35 (e) **Multiple secured parties of record.** If there is more
36 than one secured party of record for a financing statement, each
37 secured party of record may authorize the filing of an amend-
38 ment under subsection (d) of this section.

§46-9-510. Effectiveness of filed record.

1 (a) **Filed record effective if authorized.** A filed record is
2 effective only to the extent that it was filed by a person that
3 may file it under section 9-509.

4 (b) **Authorization by one secured party of record.** A
5 record authorized by one secured party of record does not affect
6 the financing statement with respect to another secured party of
7 record.

8 (c) **Continuation statement not timely filed.** A continua-
9 tion statement that is not filed within the six-month period
10 prescribed by section 9-515(d) is ineffective.

§46-9-511. Secured party of record.

1 (a) **Secured party of record.** A secured party of record
2 with respect to a financing statement is a person whose name is
3 provided as the name of the secured party or a representative of
4 the secured party in an initial financing statement that has been
5 filed. If an initial financing statement is filed under section
6 9-514(a), the assignee named in the initial financing statement
7 is the secured party of record with respect to the financing
8 statement.

9 **(b) Amendment naming secured party of record.** If an
10 amendment of a financing statement which provides the name
11 of a person as a secured party or a representative of a secured
12 party is filed, the person named in the amendment is a secured
13 party of record. If an amendment is filed under section
14 9-514(b), the assignee named in the amendment is a secured
15 party of record.

16 **(c) Amendment deleting secured party of record.** A
17 person remains a secured party of record until the filing of an
18 amendment of the financing statement which deletes the person.

§46-9-512. Amendment of financing statement.

1 **(a) Amendment of information in financing statement.**
2 Subject to section 9-509, a person may add or delete collateral
3 covered by, continue or terminate the effectiveness of, or,
4 subject to subsection (e) of this section, otherwise amend the
5 information provided in, a financing statement by filing an
6 amendment that:

7 (1) Identifies, by its file number, the initial financing
8 statement to which the amendment relates; and

9 (2) If the amendment relates to an initial financing state-
10 ment filed or recorded in a filing office described in section 9-
11 501(a)(1), provides the date and time that the initial financing
12 statement was filed or recorded and the information specified
13 in section 9-502(b).

14 **(b) Period of effectiveness not affected.** Except as
15 otherwise provided in section 9-515, the filing of an amendment
16 does not extend the period of effectiveness of the financing
17 statement.

18 **(c) Effectiveness of amendment adding collateral.** A
19 financing statement that is amended by an amendment that adds
20 collateral is effective as to the added collateral only from the
21 date of the filing of the amendment.

22 **(d) Effectiveness of amendment adding debtor.** A
23 financing statement that is amended by an amendment that adds

24 a debtor is effective as to the added debtor only from the date
25 of the filing of the amendment.

26 (e) **Certain amendments ineffective.** An amendment is
27 ineffective to the extent it:

28 (1) Purports to delete all debtors and fails to provide the
29 name of a debtor to be covered by the financing statement; or

30 (2) Purports to delete all secured parties of record and fails
31 to provide the name of a new secured party of record.

§46-9-513. Termination statement.

1 (a) **Consumer goods.** A secured party shall cause the
2 secured party of record for a financing statement to file a
3 termination statement for the financing statement if the financ-
4 ing statement covers consumer goods and:

5 (1) There is no obligation secured by the collateral covered
6 by the financing statement and no commitment to make an
7 advance, incur an obligation or otherwise give value; or

8 (2) The debtor did not authorize the filing of the initial
9 financing statement.

10 (b) **Time for compliance with subsection (a).** To comply
11 with subsection (a) of this section, a secured party shall cause
12 the secured party of record to file the termination statement:

13 (1) Within one month after there is no obligation secured by
14 the collateral covered by the financing statement and no
15 commitment to make an advance, incur an obligation or
16 otherwise give value; or

17 (2) If earlier, within twenty days after the secured party
18 receives an authenticated demand from a debtor.

19 (c) **Other collateral.** In cases not governed by subsection
20 (a), within twenty days after a secured party receives an
21 authenticated demand from a debtor, the secured party shall
22 cause the secured party of record for a financing statement to
23 send to the debtor a termination statement for the financing
24 statement or file the termination statement in the filing office if:

25 (1) Except in the case of a financing statement covering
26 accounts or chattel paper that has been sold or goods that are
27 the subject of a consignment, there is no obligation secured by
28 the collateral covered by the financing statement and no
29 commitment to make an advance, incur an obligation, or
30 otherwise give value;

31 (2) The financing statement covers accounts or chattel
32 paper that has been sold but as to which the account debtor or
33 other person obligated has discharged its obligation;

34 (3) The financing statement covers goods that were the
35 subject of a consignment to the debtor but are not in the
36 debtor's possession; or

37 (4) The debtor did not authorize the filing of the initial
38 financing statement.

39 (d) **Effect of filing termination statement.** Except as
40 otherwise provided in section 9-510, upon the filing of a
41 termination statement with the filing office, the financing
42 statement to which the termination statement relates ceases to
43 be effective. Except as otherwise provided in section 9-510, for
44 purposes of section 9-519 (g), 9-522 (a), and 9-523 (c), the
45 filing with the filing office of a termination statement relating
46 to a financing statement that indicates that the debtor is a
47 transmitting utility also causes the effectiveness of the financ-
48 ing statement to lapse.

§46-9-514. Assignment of powers of secured party of record.

1 (a) **Assignment reflected on initial financing statement.**
2 Except as otherwise provided in subsection (c) of this section,
3 an initial financing statement may reflect an assignment of all
4 of the secured party's power to authorize an amendment to the
5 financing statement by providing the name and mailing address
6 of the assignee as the name and address of the secured party.

7 (b) **Assignment of filed financing statement.** Except as
8 otherwise provided in subsection (c) of this section, a secured
9 party of record may assign of record all or part of its power to
10 authorize an amendment to a financing statement by filing in

11 the filing office an amendment of the financing statement
12 which:

13 (1) Identifies, by its file number, the initial financing
14 statement to which it relates;

15 (2) Provides the name of the assignor; and

16 (3) Provides the name and mailing address of the assignee.

17 (c) **Assignment of record of mortgage.** An assignment of
18 record of a security interest in a fixture covered by a record of
19 a mortgage which is effective as a financing statement filed as
20 a fixture filing under section 9-502(c) may be made only by an
21 assignment of record of the mortgage in the manner provided
22 by law of this state other than the Uniform Commercial Code.

**§46-9-515. Duration and effectiveness of financing statement;
effect of lapsed financing statement.**

1 (a) **Five-year effectiveness.** Except as otherwise provided
2 in subsections (b), (e), (f) and (g) of this section, a filed
3 financing statement is effective for a period of five years after
4 the date of filing.

5 (b) **Public-finance or manufactured-home transaction.**
6 Except as otherwise provided in subsections (e), (f) and (g) of
7 this section, an initial financing statement filed in connection
8 with a public-finance transaction or manufactured-home
9 transaction is effective for a period of forty years after the date
10 of filing if it indicates that it is filed in connection with a
11 public-finance transaction or manufactured-home transaction.

12 (c) **Lapse and continuation of financing statement.** The
13 effectiveness of a filed financing statement lapses on the
14 expiration of the period of its effectiveness unless before the
15 lapse a continuation statement is filed pursuant to subsection (d)
16 of this section. Upon lapse, a financing statement ceases to be
17 effective and any security interest or agricultural lien that was
18 perfected by the financing statement becomes unperfected,
19 unless the security interest is perfected otherwise. If the security
20 interest or agricultural lien becomes unperfected upon lapse, it

21 is deemed never to have been perfected as against a purchaser
22 of the collateral for value.

23 **(d) When continuation statement may be filed.** A
24 continuation statement may be filed only within six months
25 before the expiration of the five-year period specified in
26 subsection (a) of this section or the thirty-year period specified
27 in subsection (b) of this section, whichever is applicable.

28 **(e) Effect of filing continuation statement.** Except as
29 otherwise provided in section 9-510, upon timely filing of a
30 continuation statement, the effectiveness of the initial financing
31 statement continues for a period of five years commencing on
32 the day on which the financing statement would have become
33 ineffective in the absence of the filing. Upon the expiration of
34 the five-year period, the financing statement lapses in the same
35 manner as provided in subsection (c) of this section, unless,
36 before the lapse, another continuation statement is filed
37 pursuant to subsection (d) of this section. Succeeding continua-
38 tion statements may be filed in the same manner to continue the
39 effectiveness of the initial financing statement.

40 **(f) Transmitting utility financing statement.** If a debtor
41 is a transmitting utility and a filed financing statement so
42 indicates, the financing statement is effective until a termina-
43 tion statement is filed.

44 **(g) Record of mortgage as financing statement.** A record
45 of a mortgage that is effective as a financing statement filed as
46 a fixture filing under section 9-502(c) remains effective as a
47 financing statement filed as a fixture filing until the mortgage
48 is released or satisfied of record or its effectiveness otherwise
49 terminates as to the real property.

§46-9-516. What constitutes filing; effectiveness of filing.

1 **(a) What constitutes filing.** Except as otherwise provided
2 in subsection (b) of this section, communication of a record to
3 a filing office and tender of the filing fee or acceptance of the
4 record by the filing office constitutes filing.

5 **(b) Refusal to accept record; filing does not occur.** Filing
6 does not occur with respect to a record that a filing office
7 refuses to accept because:

8 (1) The record is not communicated by a method or
9 medium of communication authorized by the filing office;

10 (2) An amount equal to or greater than the applicable filing
11 fee is not tendered;

12 (3) The filing office is unable to index the record because:

13 (A) In the case of an initial financing statement, the record
14 does not provide a name for the debtor;

15 (B) In the case of an amendment or correction statement,
16 the record:

17 (i) Does not identify the initial financing statement as
18 required by section 9-512 or 9-518, as applicable; or

19 (ii) Identifies an initial financing statement whose effective-
20 ness has lapsed under section 9-515;

21 (C) In the case of an initial financing statement that
22 provides the name of a debtor identified as an individual or an
23 amendment that provides a name of a debtor identified as an
24 individual which was not previously provided in the financing
25 statement to which the record relates, the record does not
26 identify the debtor's last name; or

27 (D) In the case of a record filed or recorded in the filing
28 office described in section 9-501(a)(1), the record does not
29 provide a sufficient description of the real property to which it
30 relates;

31 (4) In the case of an initial financing statement or an
32 amendment that adds a secured party of record, the record does
33 not provide a name and mailing address for the secured party of
34 record;

35 (5) In the case of an initial financing statement or an
36 amendment that provides a name of a debtor which was not

37 previously provided in the financing statement to which the
38 amendment relates, the record does not:

39 (A) Provide a mailing address for the debtor;

40 (B) Indicate whether the debtor is an individual or an
41 organization; or

42 (C) If the financing statement indicates that the debtor is an
43 organization, provide:

44 (i) A type of organization for the debtor;

45 (ii) A jurisdiction of organization for the debtor; or

46 (iii) An organizational identification number for the debtor
47 or indicate that the debtor has none;

48 (6) In the case of an assignment reflected in an initial
49 financing statement under section 9-514(a) or an amendment
50 filed under section 9-514(b), the record does not provide a
51 name and mailing address for the assignee; or

52 (7) In the case of a continuation statement, the record is not
53 filed within the six-month period prescribed by section
54 9-515(d).

55 (c) **Rules applicable to subsection (b).** For purposes of
56 subsection (b):

57 (1) A record does not provide information if the filing
58 office is unable to read or decipher the information; and

59 (2) A record that does not indicate that it is an amendment
60 or identify an initial financing statement to which it relates, as
61 required by section 9-512, 9-514 or 9-518, is an initial financing
62 statement.

63 (d) **Refusal to accept record; record effective as filed**
64 **record.** A record that is communicated to the filing office with
65 tender of the filing fee, but which the filing office refuses to
66 accept for a reason other than one set forth in subsection (b) of
67 this section, is effective as a filed record except as against a
68 purchaser of the collateral which gives value in reasonable
69 reliance upon the absence of the record from the files.

§46-9-517. Effect of indexing errors.

- 1 The failure of the filing office to index a record correctly
- 2 does not affect the effectiveness of the filed record.

§46-9-518. Claim concerning inaccurate or wrongfully filed record.

1 (a) **Correction statement.** A person may file in the filing
2 office a correction statement with respect to a record indexed
3 there under the person's name if the person believes that the
4 record is inaccurate or was wrongfully filed.

5 (b) **Sufficiency of correction statement.** A correction
6 statement must:

7 (1) Identify the record to which it relates by:

8 (A) The file number assigned to the initial financing
9 statement to which the record relates; and

10 (B) If the correction statement relates to a record filed or
11 recorded in a filing office described in section 9-501(a)(1), the
12 date and time that the initial financing statement was filed or
13 recorded and the information specified in section 9-502(b);

14 (2) Indicate that it is a correction statement; and

15 (3) Provide the basis for the person's belief that the record
16 is inaccurate and indicate the manner in which the person
17 believes the record should be amended to cure any inaccuracy
18 or provide the basis for the person's belief that the record was
19 wrongfully filed.

20 (c) **Record not affected by correction statement.** The
21 filing of a correction statement does not affect the effectiveness
22 of an initial financing statement or other filed record.

SUBPART 2. DUTIES AND OPERATION OF FILING OFFICE.**§46-9-519. Numbering, maintaining and indexing records; communicating information provided in records.**

1 (a) **Filing office duties.** For each record filed in a filing
2 office, the filing office shall:

3 (1) Assign a unique number to the filed record;

4 (2) Create a record that bears the number assigned to the
5 filed record and the date and time of filing;

6 (3) Maintain the filed record for public inspection; and

7 (4) Index the filed record in accordance with subsections
8 (c), (d) and (e) of this section.

9 (b) **File number.** A file number assigned after the first day
10 of January, two thousand two, must include a digit that:

11 (1) Is mathematically derived from or related to the other
12 digits of the file number; and

13 (2) Aids the filing office in determining whether a number
14 communicated as the file number includes a single-digit or
15 transpositional error.

16 (c) **Indexing: general.** Except as otherwise provided in
17 subsections (d) and (e) of this section, the filing office shall:

18 (1) Index an initial financing statement according to the
19 name of the debtor and index all filed records relating to the
20 initial financing statement in a manner that associates with one
21 another an initial financing statement and all filed records
22 relating to the initial financing statement; and

23 (2) Index a record that provides a name of a debtor which
24 was not previously provided in the financing statement to which
25 the record relates also according to the name that was not
26 previously provided.

27 (d) **Indexing: real-property-related financing statement.**
28 If a financing statement is filed as a fixture filing or covers as-
29 extracted collateral or timber to be cut, it must be filed for
30 record and the filing office shall index it:

31 (1) Under the names of the debtor and of each owner of
32 record shown on the financing statement as if they were the

33 mortgagors under a mortgage of the real property described;
34 and

35 (2) To the extent that the law of this state provides for
36 indexing of records of mortgages under the name of the
37 mortgagee, under the name of the secured party as if the
38 secured party were the mortgagee thereunder, or, if indexing is
39 by description, as if the financing statement were a record of a
40 mortgage of the real property described.

41 (e) **Indexing: real-property-related assignment.** If a
42 financing statement is filed as a fixture filing or covers as-
43 extracted collateral or timber to be cut, the filing office shall
44 index an assignment filed under section 9-514(a) or an amend-
45 ment filed under section 9-514(b):

46 (1) Under the name of the assignor as grantor; and

47 (2) To the extent that the law of this state provides for
48 indexing a record of the assignment of a mortgage under the
49 name of the assignee.

50 (f) **Retrieval and association capability.** The filing office
51 shall maintain a capability:

52 (1) To retrieve a record by the name of the debtor and:

53 (A) If the filing office is described in section 9-501(a)(1),
54 by the file number assigned to the initial financing statement to
55 which the record relates and the date and time that the record
56 was filed or recorded; or

57 (B) If the filing office is described in section 9-501(a)(2),
58 by the file number assigned to the initial financing statement to
59 which the record relates; and

60 (2) To associate and retrieve with one another an initial
61 financing statement and each filed record relating to the initial
62 financing statement.

63 (g) **Removal of debtor's name.** The filing office may not
64 remove a debtor's name from the index until one year after the
65 effectiveness of a financing statement naming the debtor lapses
66 under section 9-515 with respect to all secured parties of record.

67 (h) **Timeliness of filing office performance.** The filing
68 office shall perform the acts required by subsections (a) through
69 (e), inclusive, of this section at the time and in the manner
70 prescribed by filing-office rule, but not later than two business
71 days after the filing office receives the record in question.

§46-9-520. Acceptance and refusal to accept record.

1 (a) **Mandatory refusal to accept record.** A filing office
2 shall refuse to accept a record for filing for a reason set forth in
3 section 9-516(b) and may refuse to accept a record for filing
4 only for a reason set forth in section 9-516(b).

5 (b) **Communication concerning refusal.** If a filing office
6 refuses to accept a record for filing, it shall communicate to the
7 person that presented the record the fact of and reason for the
8 refusal and the date and time the record would have been filed
9 had the filing office accepted it. The communication must be
10 made at the time and in the manner prescribed by filing-office
11 rule but, in the case of a filing office described in section 9-
12 501(a)(2), in no event more than two business days after the
13 filing office receives the record.

14 (c) **When filed financing statement effective.** A filed
15 financing statement satisfying section 9-502(a) and (b) is
16 effective, even if the filing office is required to refuse to accept
17 it for filing under subsection (a) of this section. However,
18 section 9-338 applies to a filed financing statement providing
19 information described in section 9-516(b)(5) which is incorrect
20 at the time the financing statement is filed.

21 (d) **Separate application to multiple debtors.** If a record
22 communicated to a filing office provides information that
23 relates to more than one debtor, this part applies as to each
24 debtor separately.

§46-9-521. Uniform form of written financing statement and amendment.

1 (a) **Initial financing statement form.** A filing office that
2 accepts written records may not refuse to accept a written initial
3 financing statement in the following form and format except for
4 a reason set forth in section 9-516(b):



UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]
B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME					
OR	1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
1c. MAILING ADDRESS			CITY	STATE	POSTAL CODE
1d. TAX ID #: SSN OR EIN		ADDL INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION	1f. JURISDICTION OF ORGANIZATION	
1g. ORGANIZATIONAL ID #, if any					<input type="checkbox"/> NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME					
OR	2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
2c. MAILING ADDRESS			CITY	STATE	POSTAL CODE
2d. TAX ID #: SSN OR EIN		ADDL INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	
2g. ORGANIZATIONAL ID #, if any					<input type="checkbox"/> NONE

3. SECURED PARTY'S NAME (or NAME OF TOTAL ASSIGNEE of ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME					
OR	3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS			CITY	STATE	POSTAL CODE

4. This FINANCING STATEMENT covers the following collateral:

5. ALTERNATIVE DESIGNATION (if applicable):	<input type="checkbox"/> LESSEE/LESSOR	<input type="checkbox"/> CONSIGNEE/CONSIGNOR	<input type="checkbox"/> BAILEE/BAILOR	<input type="checkbox"/> SELLER/BUYER	<input type="checkbox"/> AG. LIEN	<input type="checkbox"/> NON-UCC FILING
6. <input type="checkbox"/> This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum	<input type="checkbox"/> If applicable: 7. Check to REQUEST SEARCH REPORT(s) on Debtor(s) (optional)		<input type="checkbox"/> All Debtors		<input type="checkbox"/> Debtor 1	<input type="checkbox"/> Debtor 2
8. OPTIONAL FILER REFERENCE DATA						

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

11c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

11d. TAX ID #: SSN OR EIN

ADD'L INFO RE ORGANIZATION DEBTOR

11e. TYPE OF ORGANIZATION

11f. JURISDICTION OF ORGANIZATION

11g. ORGANIZATIONAL ID #, if any

NONE

12. ADDITIONAL SECURED PARTY'S or ASSIGNOR S/P'S NAME - Insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

12c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

13. This FINANCING STATEMENT covers timber to be cut or as-extracted collateral, or is filed as a fixture filing.

14. Description of real estate:

16. Additional collateral description:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

17. Check only if applicable and check only one box.

Debtor is a Trust or Trustee acting with respect to property held in trust or Decedent's Estate

18. Check only if applicable and check only one box.

Debtor is a TRANSMITTING UTILITY

Filed in connection with a Manufactured-Home Transaction — effective 30 years

Filed in connection with a Public-Finance Transaction — effective 30 years

5 (b) **Amendment form.** A filing office that accepts written
 6 records may not refuse to accept a written record in the follow-
 7 ing form and format except for a reason set forth in section
 8 9-516(b):



UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE # _____

1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.

2. **TERMINATION:** Effectiveness of the Financing Statement Identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. **CONTINUATION:** Effectiveness of the Financing Statement Identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. **ASSIGNMENT (full or partial):** Give name of assignee in Item 7a or 7b and address of assignee in Item 7c; and also give name of assignor in Item 9.

5. **AMENDMENT (PARTY INFORMATION):** This Amendment affects Debtor or Secured Party of record. Check only one of these two boxes.
 Also check one of the following three boxes and provide appropriate information in Items 6 and/or 7.

CHANGE name and/or address: Give current record name in Item 6a or 6b; also give new name (if name change) in Item 7a or 7b and/or new address (if address change) in Item 7c. **DELETE** name: Give record name to be deleted in Item 6a or 6b. **ADD** name: Complete Item 7a or 7b, and also Item 7c; also complete Items 7d-7g (if applicable).

6. **CURRENT RECORD INFORMATION:**

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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7. **CHANGED (NEW) OR ADDED INFORMATION:**

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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7c. MAILING ADDRESS

CITY	STATE	POSTAL CODE	COUNTRY
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7d. TAX ID #: SSN OR EIN	ADDL INFO RE ORGANIZATION DEBTOR	7e. TYPE OF ORGANIZATION	7f. JURISDICTION OF ORGANIZATION	7g. ORGANIZATIONAL ID #, if any
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8. **AMENDMENT (COLLATERAL CHANGE):** check only one box.

Describe collateral deleted or added, or give entire restated collateral description, or describe collateral assigned.

9. **NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT** (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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10. OPTIONAL FILER REFERENCE DATA

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

11. INITIAL FINANCING STATEMENT FILE # (same as item 1a on Amendment form)

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as item 9 on Amendment form)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME, SUFFIX

13. Use this space for additional information

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

§46-9-522. Maintenance and destruction of records.**1 (a) Post-lapse maintenance and retrieval of information.**

2 The filing office shall maintain a record of the information
3 provided in a filed financing statement for at least one year after
4 the effectiveness of the financing statement has lapsed under
5 section 9-515 with respect to all secured parties of record. The
6 record must be retrievable by using the name of the debtor and:

7 (1) If the record was filed or recorded in the filing office
8 described in section 9-501(a)(1), by using the file number
9 assigned to the initial financing statement to which the record
10 relates and the date and time that the record was filed or
11 recorded; or

12 (2) If the record was filed in the filing office described in
13 section 9-501(a)(2), by using the file number assigned to the
14 initial financing statement to which the record relates.

15 **(b) Destruction of written records.** Except to the extent
16 that a statute governing disposition of public records provides
17 otherwise, the filing office immediately may destroy any
18 written record evidencing a financing statement. However, if
19 the filing office destroys a written record, it shall maintain
20 another record of the financing statement which complies with
21 subsection (a) of this section.

§46-9-523. Information from filing office; sale or license of records.

1 **(a) Acknowledgment of filing written record.** If a person
2 that files a written record requests an acknowledgment of the
3 filing, the filing office shall send to the person an image of the
4 record showing the number assigned to the record pursuant to
5 section 9-519(a)(1) and the date and time of the filing of the
6 record. However, if the person furnishes a copy of the record to
7 the filing office, the filing office may instead:

8 (1) Note upon the copy the number assigned to the record
9 pursuant to section 9-519(a)(1) and the date and time of the
10 filing of the record; and

11 (2) Send the copy to the person.

12 **(b) Acknowledgment of filing other record.** If a person
13 files a record other than a written record, the filing office shall
14 communicate to the person an acknowledgment that provides:

15 (1) The information in the record;

16 (2) The number assigned to the record pursuant to section
17 9-519(a)(1); and

18 (3) The date and time of the filing of the record.

19 **(c) Communication of requested information.** The filing
20 office shall communicate or otherwise make available in a
21 record the following information to any person that requests it:

22 (1) Whether there is on file on a date and time specified by
23 the filing office, but not a date earlier than three business days
24 before the filing office receives the request, any financing
25 statement that:

26 (A) Designates a particular debtor;

27 (B) Has not lapsed under section 9-515 with respect to all
28 secured parties of record; and

29 (C) If the request so states, has lapsed under section 9-515
30 and a record of which is maintained by the filing office under
31 section 9-522(a);

32 (2) The date and time of filing of each financing statement;
33 and

34 (3) The information provided in each financing statement.

35 **(d) Medium for communicating information.** In comply-
36 ing with its duty under subsection (c) of this section, the filing
37 office may communicate information in any medium. However,
38 if requested, the filing office shall communicate information by
39 issuing its written certificate.

40 **(e) Timeliness of filing office performance.** The filing
41 office shall perform the acts required by subsections (a) through
42 (d), inclusive, of this section at the time and in the manner
43 prescribed by filing-office rule, but not later than two business
44 days after the filing office receives the request.

45 (f) **Public availability of records.** At least weekly, the
46 secretary of state shall offer to sell or license to the public on a
47 nonexclusive basis, in bulk, copies of all records filed in it
48 under this part, in every medium from time to time available to
49 the filing office.

§46-9-524. Delay by filing office.

1 Delay by the filing office beyond a time limit prescribed by
2 this part is excused if:

3 (1) The delay is caused by interruption of communication
4 or computer facilities, war, emergency conditions, failure of
5 equipment or other circumstances beyond control of the filing
6 office; and

7 (2) The filing office exercises reasonable diligence under
8 the circumstances.

§46-9-525. Fees.

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

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

9 (2) Ten dollars if the record is communicated in writing and
10 consists of more than two pages; and

11 (3) Ten dollars if the record is communicated by another
12 medium authorized by filing-office rule.

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

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

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

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

25 (d) **Response to information request.** The fee for respond-
26 ing to a request for information from the filing office, including
27 for issuing a certificate showing whether there is on file any
28 financing statement naming a particular debtor, is:

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

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

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

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

40 (f) **Deposit of funds.** All fees and moneys collected by the
41 secretary of state pursuant to the provisions of this article shall
42 be deposited by the secretary of state in a separate fund in the
43 state treasury and shall be expended solely for the purposes of
44 this article, unless otherwise provided by appropriation or other
45 action of the Legislature.

§46-9-526. Filing-office rules.

1 (a) **Adoption of filing-office rules.** The secretary of state
2 shall propose rules for legislative approval consistent with this
3 article and in accordance with the provisions of article three,
4 chapter twenty-nine-a of this code.

5 (1) Consistent with this article; and

6 (2) Promulgated pursuant to the provisions of chapter
7 twenty-nine-a of this code.

8 (b) **Harmonization of rules.** To keep the filing-office rules
9 and practices of the filing office in harmony with the rules and
10 practices of filing offices in other jurisdictions that enact
11 substantially this part, and to keep the technology used by the
12 filing office compatible with the technology used by filing
13 offices in other jurisdictions that enact substantially this part,
14 the secretary of state, so far as is consistent with the purposes,
15 policies and provisions of this article, in proposing filing-office
16 rules for legislative approval, shall:

17 (1) Consult with filing offices in other jurisdictions that
18 enact substantially this part; and

19 (2) Consult the most recent version of the model rules
20 promulgated by the international association of corporate
21 administrators or any successor organization; and

22 (3) Take into consideration the rules and practices of, and
23 the technology used by, filing offices in other jurisdictions that
24 enact substantially this part.

§46-9-527. Duty to report.

1 The secretary of state shall report to the joint committee on
2 government and finance on or before the first day of July each
3 year on the operation of the filing office. The report must
4 contain a statement of the extent to which:

5 (1) The filing-office rules are not in harmony with the rules
6 of filing offices in other jurisdictions that enact substantially
7 this part and the reasons for these variations; and

8 (2) The filing-office rules are not in harmony with the most
9 recent version of the model rules promulgated by the interna-
10 tional association of corporate administrators, or any successor
11 organization, and the reasons for these variations.

PART 6. DEFAULT.

SUBPART 1. DEFAULT AND ENFORCEMENT
OF SECURITY INTEREST.

§46-9-601. Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles or promissory notes.

1 (a) **Rights of secured party after default.** After default, a
2 secured party has the rights provided in this part and, except as
3 otherwise provided in section 9-602, those provided by agree-
4 ment of the parties. A secured party:

5 (1) May reduce a claim to judgment, foreclose or otherwise
6 enforce the claim, security interest or agricultural lien by any
7 available judicial procedure; and

8 (2) If the collateral is documents, may proceed either as to
9 the documents or as to the goods they cover.

10 (b) **Rights and duties of secured party in possession or**
11 **control.** A secured party in possession of collateral or control
12 of collateral under section 9-104, 9-105, 9-106 or 9-107 has the
13 rights and duties provided in section 9-207.

14 (c) **Rights cumulative; simultaneous exercise.** The rights
15 under subsections (a) and (b) of this section are cumulative and
16 may be exercised simultaneously.

17 (d) **Rights of debtor and obligor.** Except as otherwise
18 provided in subsection (g) of this section and section 9-605,
19 after default, a debtor and an obligor have the rights provided
20 in this part and by agreement of the parties.

21 (e) **Lien of levy after judgment.** If a secured party has
22 reduced its claim to judgment, the lien of any levy that may be
23 made upon the collateral by virtue of an execution based upon
24 the judgment relates back to the earliest of:

25 (1) The date of perfection of the security interest or
26 agricultural lien in the collateral;

27 (2) The date of filing a financing statement covering the
28 collateral; or

29 (3) Any date specified in a statute under which the agricul-
30 tural lien was created.

31 (f) **Execution sale.** A sale pursuant to an execution is a
32 foreclosure of the security interest or agricultural lien by
33 judicial procedure within the meaning of this section. A secured
34 party may purchase at the sale and thereafter hold the collateral
35 free of any other requirements of this article.

36 (g) **Consignor or buyer of certain rights to payment.**
37 Except as otherwise provided in section 9-607(c), this part
38 imposes no duties upon a secured party that is a consignor or is
39 a buyer of accounts, chattel paper, payment intangibles or
40 promissory notes.

§46-9-602. Waiver and variance of rights and duties.

1 Except as otherwise provided in section 9-624, to the extent
2 that they give rights to a debtor or obligor and impose duties on
3 a secured party, the debtor or obligor may not waive or vary the
4 rules stated in the following listed sections:

5 (1) Section 9-207(b)(4)(C), which deals with use and
6 operation of the collateral by the secured party;

7 (2) Section 9-210, which deals with requests for an account-
8 ing and requests concerning a list of collateral and statement of
9 account;

10 (3) Section 9-607(c), which deals with collection and
11 enforcement of collateral;

12 (4) Sections 9-608(a) and 9-615(c) to the extent that they
13 deal with application or payment of noncash proceeds of
14 collection, enforcement, or disposition;

15 (5) Sections 9-608(a) and 9-615(d) to the extent that they
16 require accounting for or payment of surplus proceeds of
17 collateral;

18 (6) Section 9-609 to the extent that it imposes upon a
19 secured party that takes possession of collateral without judicial
20 process the duty to do so without breach of the peace;

21 (7) Sections 9-610(b), 9-611, 9-613 and 9-614, which deal
22 with disposition of collateral;

23 (8) Section 9-615(f), which deals with calculation of a
24 deficiency or surplus when a disposition is made to the secured
25 party, a person related to the secured party, or a secondary
26 obligor;

27 (9) Section 9-616, which deals with explanation of the
28 calculation of a surplus or deficiency;

29 (10) Sections 9-620, 9-621 and 9-622, which deal with
30 acceptance of collateral in satisfaction of obligation;

31 (11) Section 9-623, which deals with redemption of
32 collateral;

33 (12) Section 9-624, which deals with permissible waivers;
34 and

35 (13) Sections 9-625 and 9-626, which deal with the secured
36 party's liability for failure to comply with this article.

§46-9-603. Agreement on standards concerning rights and duties.

1 (a) **Agreed standards.** The parties may determine by
2 agreement the standards measuring the fulfillment of the rights
3 of a debtor or obligor and the duties of a secured party under a
4 rule stated in section 9-602 if the standards are not manifestly
5 unreasonable.

6 (b) **Agreed standards inapplicable to breach of peace.**
7 Subsection (a) of this section does not apply to the duty under
8 section 9-609 to refrain from breaching the peace.

**§46-9-604. Procedure if security agreement covers real property
or fixtures.**

1 (a) **Enforcement: personal and real property.** If a
2 security agreement covers both personal and real property, a
3 secured party may proceed:

4 (1) Under this part as to the personal property without
5 prejudicing any rights with respect to the real property; or

6 (2) As to both the personal property and the real property in
7 accordance with the rights with respect to the real property, in
8 which case the other provisions of this part do not apply.

9 (b) **Enforcement: fixtures.** Subject to subsection (c) of this
10 section, if a security agreement covers goods that are or become
11 fixtures, a secured party may proceed:

12 (1) Under this part; or

13 (2) In accordance with the rights with respect to real
14 property, in which case the other provisions of this part do not
15 apply.

16 (c) **Removal of fixtures.** Subject to the other provisions of
17 this part, if a secured party holding a security interest in fixtures
18 has priority over all owners and encumbrancers of the real
19 property, the secured party, after default, may remove the
20 collateral from the real property.

21 (d) **Injury caused by removal.** A secured party that
22 removes collateral shall promptly reimburse any encumbrancer
23 or owner of the real property, other than the debtor, for the cost
24 of repair of any physical injury caused by the removal. The
25 secured party need not reimburse the encumbrancer or owner
26 for any diminution in value of the real property caused by the
27 absence of the goods removed or by any necessity of replacing
28 them. A person entitled to reimbursement may refuse permis-
29 sion to remove until the secured party gives adequate assurance
30 for the performance of the obligation to reimburse.

§46-9-605. Unknown debtor or secondary obligor.

1 A secured party does not owe a duty based on its status as
2 secured party:

3 (1) To a person that is a debtor or obligor, unless the
4 secured party knows:

5 (A) That the person is a debtor or obligor;

6 (B) The identity of the person; and

7 (C) How to communicate with the person; or

8 (2) To a secured party or lienholder that has filed a financ-
9 ing statement against a person, unless the secured party knows:

10 (A) That the person is a debtor; and

11 (B) The identity of the person.

§46-9-606. Time of default for agricultural lien.

1 For purposes of this part, a default occurs in connection
2 with an agricultural lien at the time the secured party becomes
3 entitled to enforce the lien in accordance with the statute under
4 which it was created.

§46-9-607. Collection and enforcement by secured party.

1 (a) **Collection and enforcement generally.** If so agreed,
2 and in any event after default, a secured party:

3 (1) May notify an account debtor or other person obligated
4 on collateral to make payment or otherwise render performance
5 to or for the benefit of the secured party;

6 (2) May take any proceeds to which the secured party is
7 entitled under section 9-315;

8 (3) May enforce the obligations of an account debtor or
9 other person obligated on collateral and exercise the rights of
10 the debtor with respect to the obligation of the account debtor
11 or other person obligated on collateral to make payment or
12 otherwise render performance to the debtor, and with respect to
13 any property that secures the obligations of the account debtor
14 or other person obligated on the collateral;

15 (4) If it holds a security interest in a deposit account
16 perfected by control under section 9-104(a)(1), may apply the
17 balance of the deposit account to the obligation secured by the
18 deposit account; and

19 (5) If it holds a security interest in a deposit account
20 perfected by control under section 9-104(a)(2) or (3), may
21 instruct the bank to pay the balance of the deposit account to or
22 for the benefit of the secured party.

23 (b) **Nonjudicial enforcement of mortgage.** If necessary to
24 enable a secured party to exercise under subsection (a)(3) of
25 this section the right of a debtor to enforce a mortgage
26 nonjudicially, the secured party may record in the office in
27 which a record of the mortgage is recorded:

28 (1) A copy of the security agreement that creates or
29 provides for a security interest in the obligation secured by the
30 mortgage; and

31 (2) The secured party's sworn affidavit in recordable form
32 stating that:

33 (A) A default has occurred; and

34 (B) The secured party is entitled to enforce the mortgage
35 nonjudicially.

36 (c) **Commercially reasonable collection and enforce-**
37 **ment.** A secured party shall proceed in a commercially reason-
38 able manner if the secured party:

39 (1) Undertakes to collect from or enforce an obligation of
40 an account debtor or other person obligated on collateral; and

41 (2) Is entitled to charge back uncollected collateral or
42 otherwise to full or limited recourse against the debtor or a
43 secondary obligor.

44 (d) **Expenses of collection and enforcement.** A secured
45 party may deduct from the collections made pursuant to
46 subsection (c) of this section reasonable expenses of collection
47 and enforcement, including reasonable attorney's fees and legal
48 expenses incurred by the secured party.

49 (e) **Duties to secured party not affected.** This section does
50 not determine whether an account debtor, bank or other person
51 obligated on collateral owes a duty to a secured party.

**§46-9-608. Application of proceeds of collection or enforcement;
liability for deficiency and right to surplus.**

1 (a) **Application of proceeds, surplus and deficiency if**
2 **obligation secured.** If a security interest or agricultural lien

3 secures payment or performance of an obligation, the following
4 rules apply:

5 (1) A secured party shall apply or pay over for application
6 the cash proceeds of collection or enforcement under section 9-
7 607 in the following order to:

8 (A) The reasonable expenses of collection and enforcement
9 and, to the extent provided for by agreement and not prohibited
10 by law, reasonable attorney's fees and legal expenses incurred
11 by the secured party;

12 (B) The satisfaction of obligations secured by the security
13 interest or agricultural lien under which the collection or
14 enforcement is made; and

15 (C) The satisfaction of obligations secured by any subordi-
16 nate security interest in or other lien on the collateral subject to
17 the security interest or agricultural lien under which the
18 collection or enforcement is made if the secured party receives
19 an authenticated demand for proceeds before distribution of the
20 proceeds is completed.

21 (2) If requested by a secured party, a holder of a subordi-
22 nate security interest or other lien shall furnish reasonable proof
23 of the interest or lien within a reasonable time. Unless the
24 holder complies, the secured party need not comply with the
25 holder's demand under paragraph (1)(C) of this subsection.

26 (3) A secured party need not apply or pay over for applica-
27 tion noncash proceeds of collection and enforcement under
28 section 9-607 unless the failure to do so would be commercially
29 unreasonable. A secured party that applies or pays over for
30 application noncash proceeds shall do so in a commercially
31 reasonable manner.

32 (4) A secured party shall account to and pay a debtor for
33 any surplus, and the obligor is liable for any deficiency.

34 (b) **No surplus or deficiency in sales of certain rights to**
35 **payment.** If the underlying transaction is a sale of accounts,
36 chattel paper, payment intangibles or promissory notes, the

37 debtor is not entitled to any surplus and the obligor is not liable
38 for any deficiency.

§46-9-609. Secured party's right to take possession after default.

1 (a) **Possession; rendering equipment unusable; disposition on debtor's premises.** After default, a secured party:

3 (1) May take possession of the collateral; and

4 (2) Without removal, may render equipment unusable and
5 dispose of collateral on a debtor's premises under section
6 9-610.

7 (b) **Judicial and nonjudicial process.** A secured party may
8 proceed under subsection (a) of this section:

9 (1) Pursuant to judicial process; or

10 (2) Without judicial process, if it proceeds without breach
11 of the peace.

12 (c) **Assembly of collateral.** If so agreed, and in any event
13 after default, a secured party may require the debtor to assemble
14 the collateral and make it available to the secured party at a
15 place to be designated by the secured party which is reasonably
16 convenient to both parties.

§46-9-610. Disposition of collateral after default.

1 (a) **Disposition after default.** After default, a secured party
2 may sell, lease, license or otherwise dispose of any or all of the
3 collateral in its present condition or following any commercially
4 reasonable preparation or processing.

5 (b) **Commercially reasonable disposition.** Every aspect of
6 a disposition of collateral, including the method, manner, time,
7 place and other terms, must be commercially reasonable. If
8 commercially reasonable, a secured party may dispose of
9 collateral by public or private proceedings, by one or more
10 contracts, as a unit or in parcels, and at any time and place and
11 on any terms.

12 (c) **Purchase by secured party.** A secured party may
13 purchase collateral:

14 (1) At a public disposition; or

15 (2) At a private disposition only if the collateral is of a kind
16 that is customarily sold on a recognized market or the subject
17 of widely distributed standard price quotations.

18 (d) **Warranties on disposition.** A contract for sale, lease,
19 license or other disposition includes the warranties relating to
20 title, possession, quiet enjoyment, and the like which by
21 operation of law accompany a voluntary disposition of property
22 of the kind subject to the contract.

23 (e) **Disclaimer of warranties.** A secured party may
24 disclaim or modify warranties under subsection (d) of this
25 section:

26 (1) In a manner that would be effective to disclaim or
27 modify the warranties in a voluntary disposition of property of
28 the kind subject to the contract of disposition; or

29 (2) By communicating to the purchaser a record evidencing
30 the contract for disposition and including an express disclaimer
31 or modification of the warranties.

32 (f) **Record sufficient to disclaim warranties.** A record is
33 sufficient to disclaim warranties under subsection (e) of this
34 section if it indicates "There is no warranty relating to title,
35 possession, quiet enjoyment, or the like in this disposition" or
36 uses words of similar import.

§46-9-611. Notification before disposition of collateral.

1 (a) **"Notification date."** In this section, "notification date"
2 means the earlier of the date on which:

3 (1) A secured party sends to the debtor and any secondary
4 obligor an authenticated notification of disposition; or

5 (2) The debtor and any secondary obligor waive the right to
6 notification.

7 (b) **Notification of disposition required.** Except as
8 otherwise provided in subsection (d) of this section, a secured
9 party that disposes of collateral under section 9-610 shall send

10 to the persons specified in subsection (c) of this section a
11 reasonable authenticated notification of disposition.

12 (c) **Persons to be notified.** To comply with subsection (b),
13 the secured party shall send an authenticated notification of
14 disposition to:

15 (1) The debtor;

16 (2) Any secondary obligor; and

17 (3) If the collateral is other than consumer goods:

18 (A) Any other person from which the secured party has
19 received, before the notification date, an authenticated notifica-
20 tion of a claim of an interest in the collateral;

21 (B) Any other secured party or lienholder that, ten days
22 before the notification date, held a security interest in or other
23 lien on the collateral perfected by the filing of a financing
24 statement that:

25 (i) Identified the collateral;

26 (ii) Was indexed under the debtor's name as of that date;
27 and

28 (iii) Was filed in the office in which to file a financing
29 statement against the debtor covering the collateral as of that
30 date; and

31 (C) Any other secured party that, ten days before the
32 notification date, held a security interest in the collateral
33 perfected by compliance with a statute, regulation, or treaty
34 described in section 9-311(a).

35 (d) **Subsection (b) inapplicable: perishable collateral;
36 recognized market.** Subsection (b) of this section does not
37 apply if the collateral is perishable or threatens to decline
38 speedily in value or is of a type customarily sold on a recog-
39 nized market.

40 (e) **Compliance with subsection (c)(3)(B).** A secured party
41 complies with the requirement for notification prescribed by
42 subsection (c)(3)(B) of this section if:

43 (1) Not later than twenty days or earlier than thirty days
44 before the notification date, the secured party requests, in a
45 commercially reasonable manner, information concerning
46 financing statements indexed under the debtor's name in the
47 office indicated in subsection (c)(3)(B) of this section; and

48 (2) Before the notification date, the secured party:

49 (A) Did not receive a response to the request for informa-
50 tion; or

51 (B) Received a response to the request for information and
52 sent an authenticated notification of disposition to each secured
53 party or other lienholder named in that response whose financ-
54 ing statement covered the collateral.

§46-9-612. Timeliness of notification before disposition of collateral.

1 (a) **Reasonable time is question of fact.** Except as other-
2 wise provided in subsection (b) of this section, whether a
3 notification is sent within a reasonable time is a question of
4 fact.

5 (b) **Ten-day period sufficient in non-consumer transac-**
6 **tion.** In a transaction other than a consumer transaction, a
7 notification of disposition sent after default and ten days or
8 more before the earliest time of disposition set forth in the
9 notification is sent within a reasonable time before the disposi-
10 tion.

§46-9-613. Contents and form of notification before disposition of collateral: general.

1 Except in a consumer-goods transaction, the following rules
2 apply:

3 (1) The contents of a notification of disposition are suffi-
4 cient if the notification:

5 (A) Describes the debtor and the secured party;

6 (B) Describes the collateral that is the subject of the
7 intended disposition;

8 (C) States the method of intended disposition;

9 (D) States that the debtor is entitled to an accounting of the
10 unpaid indebtedness and states the charge, if any, for an
11 accounting; and

12 (E) States the time and place of a public disposition or the
13 time after which any other disposition is to be made.

14 (2) Whether the contents of a notification that lacks any of
15 the information specified in paragraph (1) of this section are
16 nevertheless sufficient is a question of fact.

17 (3) The contents of a notification providing substantially
18 the information specified in paragraph (1) of this section are
19 sufficient, even if the notification includes:

20 (A) Information not specified by that paragraph; or

21 (B) Minor errors that are not seriously misleading.

22 (4) A particular phrasing of the notification is not required.

23 (5) The following form of notification and the form
24 appearing in section 9-614(3), when completed, each provides
25 sufficient information:

26 NOTIFICATION OF DISPOSITION OF COLLATERAL

27 To: [Name of debtor, obligor, or other
28 person to which the notification is
29 sent]

30 From: [Name, address, and telephone
31 number of secured party]

32 Name of Debtor(s): [Include only if debtor(s) are not
33 an addressee]

34 *For a public disposition:*

35 We will sell or [lease or license, *as applicable*] the
36 _____ [describe collateral] to the highest quali-
37 fied bidder in public as follows:

38 Day and Date: _____

39 Time: _____

40 Place: _____

41 *For a private disposition:*

42 We will sell [or lease or license, *as applicable*] the
43 [describe collateral] privately sometime after [day and
44 date].

45 You are entitled to an accounting of the unpaid indebted-
46 ness secured by the property that we intend to sell [or lease or
47 license, *as applicable*] for a charge of \$ _____. You may
48 request an accounting by calling us at [telephone number].

49 **[End of Form]**

§46-9-614. Contents and form of notification before disposition of collateral: consumer-goods transaction.

1 In a consumer-goods transaction, the following rules apply:

2 (1) A notification of disposition must provide the following
3 information:

4 (A) The information specified in section 9-613(1);

5 (B) A description of any liability for a deficiency of the
6 person to which the notification is sent;

7 (C) A telephone number from which the amount that must
8 be paid to the secured party to redeem the collateral under
9 section 9-623 is available; and

10 (D) A telephone number or mailing address from which
11 additional information concerning the disposition and the
12 obligation secured is available.

13 (2) A particular phrasing of the notification is not required.

14 (3) The following form of notification, when completed,
15 provides sufficient information:

16 [Name and address of secured party]

17 [Date]

47 If you need more information about the sale call us at
48 [telephone number] or write us at [secured party's
49 address] .

50 We are sending this notice to the following other people
51 who have an interest in [describe collateral] or who owe
52 money under your agreement:

53 [Names of all other debtors and obligors, if any]

54 **[End of Form]**

55 (4) A notification in the form of paragraph (3) of this
56 section is sufficient, even if additional information appears at
57 the end of the form.

58 (5) A notification in the form of paragraph (3) of this
59 section is sufficient, even if it includes errors in information not
60 required by paragraph (1) of this section, unless the error is
61 misleading with respect to rights arising under this article.

62 (6) If a notification under this section is not in the form of
63 paragraph (3) of this section, law other than this article deter-
64 mines the effect of including information not required by
65 paragraph (1) of this section.

**§46-9-615. Application of proceeds of disposition; liability for
deficiency and right to surplus.**

1 (a) **Application of proceeds.** A secured party shall apply or
2 pay over for application the cash proceeds of disposition under
3 section 9-610 in the following order to:

4 (1) The reasonable expenses of retaking, holding, preparing
5 for disposition, processing and disposing, and, to the extent
6 provided for by agreement and not prohibited by law, reason-
7 able attorney's fees and legal expenses incurred by the secured
8 party;

9 (2) The satisfaction of obligations secured by the security
10 interest or agricultural lien under which the disposition is made;

11 (3) The satisfaction of obligations secured by any subordi-
12 nate security interest in or other subordinate lien on the collat-
13 eral if:

14 (A) The secured party receives from the holder of the
15 subordinate security interest or other lien an authenticated
16 demand for proceeds before distribution of the proceeds is
17 completed; and

18 (B) In a case in which a consignor has an interest in the
19 collateral, the subordinate security interest or other lien is
20 senior to the interest of the consignor; and

21 (4) A secured party that is a consignor of the collateral if
22 the secured party receives from the consignor an authenticated
23 demand for proceeds before distribution of the proceeds is
24 completed.

25 (b) **Proof of subordinate interest.** If requested by a
26 secured party, a holder of a subordinate security interest or
27 other lien shall furnish reasonable proof of the interest or lien
28 within a reasonable time. Unless the holder does so, the secured
29 party need not comply with the holder's demand under subsec-
30 tion (a)(3).

31 (c) **Application of noncash proceeds.** A secured party
32 need not apply or pay over for application noncash proceeds of
33 disposition under section 9-610 unless the failure to do so
34 would be commercially unreasonable. A secured party that
35 applies or pays over for application noncash proceeds shall do
36 so in a commercially reasonable manner.

37 (d) **Surplus or deficiency if obligation secured.** If the
38 security interest under which a disposition is made secures
39 payment or performance of an obligation, after making the
40 payments and applications required by subsection (a) of this
41 section and permitted by subsection (c) of this section:

42 (1) Unless subsection (a)(4) of this section requires the
43 secured party to apply or pay over cash proceeds to a consignor,
44 the secured party shall account to and pay a debtor for any
45 surplus; and

46 (2) The obligor is liable for any deficiency.

47 (e) **No surplus or deficiency in sales of certain rights to**
48 **payment.** If the underlying transaction is a sale of accounts,
49 chattel paper, payment intangibles or promissory notes:

50 (1) The debtor is not entitled to any surplus; and

51 (2) The obligor is not liable for any deficiency.

52 (f) **Calculation of surplus or deficiency in disposition to**
53 **person related to secured party.** The surplus or deficiency
54 following a disposition is calculated based on the amount of
55 proceeds that would have been realized in a disposition comply-
56 ing with this part to a transferee other than the secured party, a
57 person related to the secured party, or a secondary obligor if:

58 (1) The transferee in the disposition is the secured party, a
59 person related to the secured party, or a secondary obligor; and

60 (2) The amount of proceeds of the disposition is signifi-
61 cantly below the range of proceeds that a complying disposition
62 to a person other than the secured party, a person related to the
63 secured party, or a secondary obligor would have brought.

64 (g) **Cash proceeds received by junior secured party.** A
65 secured party that receives cash proceeds of a disposition in
66 good faith and without knowledge that the receipt violates the
67 rights of the holder of a security interest or other lien that is not
68 subordinate to the security interest or agricultural lien under
69 which the disposition is made:

70 (1) Takes the cash proceeds free of the security interest or
71 other lien;

72 (2) Is not obligated to apply the proceeds of the disposition
73 to the satisfaction of obligations secured by the security interest
74 or other lien; and

75 (3) Is not obligated to account to or pay the holder of the
76 security interest or other lien for any surplus.

§46-9-616. Explanation of calculation of surplus or deficiency.

1 (a) **Definitions.** In this section:

2 (1) "Explanation" means a writing that:

3 (A) States the amount of the surplus or deficiency;

4 (B) Provides an explanation in accordance with subsection
5 (c) of this section of how the secured party calculated the
6 surplus or deficiency;

7 (C) States, if applicable, that future debits, credits, charges,
8 including additional credit service charges or interest, rebates,
9 and expenses may affect the amount of the surplus or defi-
10 ciency; and

11 (D) Provides a telephone number or mailing address from
12 which additional information concerning the transaction is
13 available.

14 (2) "Request" means a record:

15 (A) Authenticated by a debtor or consumer obligor;

16 (B) Requesting that the recipient provide an explanation;
17 and

18 (C) Sent after disposition of the collateral under section
19 9-610.

20 (b) **Explanation of calculation.** In a consumer-goods
21 transaction in which the debtor is entitled to a surplus or a
22 consumer obligor is liable for a deficiency under section 9-615,
23 the secured party shall:

24 (1) Send an explanation to the debtor or consumer obligor,
25 as applicable, after the disposition and:

26 (A) Before or when the secured party accounts to the debtor
27 and pays any surplus or first makes written demand on the
28 consumer obligor after the disposition for payment of the
29 deficiency; and

30 (B) Within fourteen days after receipt of a request; or

31 (2) In the case of a consumer obligor who is liable for a
32 deficiency, within fourteen days after receipt of a request, send

33 to the consumer obligor a record waiving the secured party's
34 right to a deficiency.

35 (c) **Required information.** To comply with subsection
36 (a)(1)(B) of this section, a writing must provide the following
37 information in the following order:

38 (1) The aggregate amount of obligations secured by the
39 security interest under which the disposition was made, and, if
40 the amount reflects a rebate of unearned interest or credit
41 service charge, an indication of that fact, calculated as of a
42 specified date:

43 (A) If the secured party takes or receives possession of the
44 collateral after default, not more than thirty-five days before the
45 secured party takes or receives possession; or

46 (B) If the secured party takes or receives possession of the
47 collateral before default or does not take possession of the
48 collateral, not more than thirty-five days before the disposition;

49 (2) The amount of proceeds of the disposition;

50 (3) The aggregate amount of the obligations after deducting
51 the amount of proceeds;

52 (4) The amount, in the aggregate or by type, and types of
53 expenses, including expenses of retaking, holding, preparing for
54 disposition, processing, and disposing of the collateral, and
55 attorney's fees secured by the collateral which are known to the
56 secured party and relate to the current disposition;

57 (5) The amount, in the aggregate or by type, and types of
58 credits, including rebates of interest or credit service charges,
59 to which the obligor is known to be entitled and which are not
60 reflected in the amount in paragraph (1) of this subsection; and

61 (6) The amount of the surplus or deficiency.

62 (d) **Substantial compliance.** A particular phrasing of the
63 explanation is not required. An explanation complying substan-
64 tially with the requirements of subsection (a) of this section is
65 sufficient, even if it includes minor errors that are not seriously
66 misleading.

67 (e) **Charges for responses.** A debtor or consumer obligor
68 is entitled without charge to one response to a request under this
69 section during any six-month period in which the secured party
70 did not send to the debtor or consumer obligor an explanation
71 pursuant to subdivision (1), subsection (b) of this section. The
72 secured party may require payment of a charge not exceeding
73 twenty-five dollars for each additional response.

§46-9-617. Rights of transferee of collateral.

1 (a) **Effects of disposition.** A secured party's disposition of
2 collateral after default:

3 (1) Transfers to a transferee for value all of the debtor's
4 rights in the collateral;

5 (2) Discharges the security interest under which the
6 disposition is made; and

7 (3) Discharges any subordinate security interest or other
8 subordinate lien.

9 (b) **Rights of good-faith transferee.** A transferee that acts
10 in good faith takes free of the rights and interests described in
11 subsection (a) of this section, even if the secured party fails to
12 comply with this article or the requirements of any judicial
13 proceeding.

14 (c) **Rights of other transferee.** If a transferee does not take
15 free of the rights and interests described in subsection (a) of this
16 section, the transferee takes the collateral subject to:

17 (1) The debtor's rights in the collateral;

18 (2) The security interest or agricultural lien under which the
19 disposition is made; and

20 (3) Any other security interest or other lien.

§46-9-618. Rights and duties of certain secondary obligors.

1 (a) **Rights and duties of secondary obligor.** A secondary
2 obligor acquires the rights and becomes obligated to perform
3 the duties of the secured party after the secondary obligor:

4 (1) Receives an assignment of a secured obligation from the
5 secured party;

6 (2) Receives a transfer of collateral from the secured party
7 and agrees to accept the rights and assume the duties of the
8 secured party; or

9 (3) Is subrogated to the rights of a secured party with
10 respect to collateral.

11 (b) **Effect of assignment, transfer or subrogation.** An
12 assignment, transfer or subrogation described in subsection (a)
13 of this section:

14 (1) Is not a disposition of collateral under section 9-610;
15 and

16 (2) Relieves the secured party of further duties under this
17 article.

§46-9-619. Transfer of record or legal title.

1 (a) **“Transfer statement.”** In this section, “transfer
2 statement” means a record authenticated by a secured party
3 stating:

4 (1) That the debtor has defaulted in connection with an
5 obligation secured by specified collateral;

6 (2) That the secured party has exercised its post-default
7 remedies with respect to the collateral;

8 (3) That, by reason of the exercise, a transferee has acquired
9 the rights of the debtor in the collateral; and

10 (4) The name and mailing address of the secured party,
11 debtor and transferee.

12 (b) **Effect of transfer statement.** A transfer statement
13 entitles the transferee to the transfer of record of all rights of the
14 debtor in the collateral specified in the statement in any official
15 filing, recording, registration or certificate-of-title system
16 covering the collateral. If a transfer statement is presented with
17 the applicable fee and request form to the official or office

18 responsible for maintaining the system, the official or office
19 shall:

20 (1) Accept the transfer statement;

21 (2) Promptly amend its records to reflect the transfer; and

22 (3) If applicable, issue a new appropriate certificate of title
23 in the name of the transferee.

24 (c) **Transfer not a disposition; no relief of secured**
25 **party's duties.** A transfer of the record or legal title to collat-
26 eral to a secured party under subsection (b) of this section or
27 otherwise is not of itself a disposition of collateral under this
28 article and does not of itself relieve the secured party of its
29 duties under this article.

**§46-9-620. Acceptance of collateral in full or partial satisfaction
of obligation; compulsory disposition of collateral.**

1 (a) **Conditions to acceptance in satisfaction.** Except as
2 otherwise provided in subsection (g) of this section, a secured
3 party may accept collateral in full or partial satisfaction of the
4 obligation it secures only if:

5 (1) The debtor consents to the acceptance under subsection
6 (c) of this section;

7 (2) The secured party does not receive, within the time set
8 forth in subsection (d) of this section, a notification of objection
9 to the proposal authenticated by:

10 (A) A person to which the secured party was required to
11 send a proposal under section 9-621; or

12 (B) Any other person, other than the debtor, holding an
13 interest in the collateral subordinate to the security interest that
14 is the subject of the proposal;

15 (3) If the collateral is consumer goods, the collateral is not
16 in the possession of the debtor when the debtor consents to the
17 acceptance; and

18 (4) Subsection (e) of this section does not require the
19 secured party to dispose of the collateral or the debtor waives
20 the requirement pursuant to section 9-624.

21 (b) **Purported acceptance ineffective.** A purported or
22 apparent acceptance of collateral under this section is ineffec-
23 tive unless:

24 (1) The secured party consents to the acceptance in an
25 authenticated record or sends a proposal to the debtor; and

26 (2) The conditions of subsection (a) of this section are met.

27 (c) **Debtor's consent.** For purposes of this section:

28 (1) A debtor consents to an acceptance of collateral in
29 partial satisfaction of the obligation it secures only if the debtor
30 agrees to the terms of the acceptance in a record authenticated
31 after default; and

32 (2) A debtor consents to an acceptance of collateral in full
33 satisfaction of the obligation it secures only if the debtor agrees
34 to the terms of the acceptance in a record authenticated after
35 default or the secured party:

36 (A) Sends to the debtor after default a proposal that is
37 unconditional or subject only to a condition that collateral not
38 in the possession of the secured party be preserved or main-
39 tained;

40 (B) In the proposal, proposes to accept collateral in full
41 satisfaction of the obligation it secures; and

42 (C) Does not receive a notification of objection authenti-
43 cated by the debtor within twenty days after the proposal is
44 sent.

45 (d) **Effectiveness of notification.** To be effective under
46 subsection (a)(2) of this section, a notification of objection must
47 be received by the secured party:

48 (1) In the case of a person to which the proposal was sent
49 pursuant to section 9-621, within twenty days after notification
50 was sent to that person; and

51 (2) In other cases:

52 (A) Within twenty days after the last notification was sent
53 pursuant to section 9-621; or

54 (B) If a notification was not sent, before the debtor consents
55 to the acceptance under subsection (c) of this section.

56 (e) **Mandatory disposition of consumer goods.** A secured
57 party that has taken possession of collateral shall dispose of the
58 collateral pursuant to section 9-610 within the time specified in
59 subsection (f) of this section if:

60 (1) Sixty percent of the cash price has been paid in the case
61 of a purchase-money security interest in consumer goods; or

62 (2) Sixty percent of the principal amount of the obligation
63 secured has been paid in the case of a non-purchase-money
64 security interest in consumer goods.

65 (f) **Compliance with mandatory disposition require-**
66 **ment.** To comply with subsection (e) of this section, the
67 secured party shall dispose of the collateral:

68 (1) Within ninety days after taking possession; or

69 (2) Within any longer period to which the debtor and all
70 secondary obligors have agreed in an agreement to that effect
71 entered into and authenticated after default.

72 (g) **No partial satisfaction in consumer transaction.** In a
73 consumer transaction, a secured party may not accept collateral
74 in partial satisfaction of the obligation it secures.

§46-9-621. Notification of proposal to accept collateral.

1 (a) **Persons to which proposal to be sent.** A secured party
2 that desires to accept collateral in full or partial satisfaction of
3 the obligation it secures shall send its proposal to:

4 (1) Any person from which the secured party has received,
5 before the debtor consented to the acceptance, an authenticated
6 notification of a claim of an interest in the collateral;

7 (2) Any other secured party or lienholder that, ten days
8 before the debtor consented to the acceptance, held a security
9 interest in or other lien on the collateral perfected by the filing
10 of a financing statement that:

11 (A) Identified the collateral;

12 (B) Was indexed under the debtor's name as of that date;
13 and

14 (C) Was filed in the office or offices in which to file a
15 financing statement against the debtor covering the collateral as
16 of that date; and

17 (3) Any other secured party that, ten days before the debtor
18 consented to the acceptance, held a security interest in the
19 collateral perfected by compliance with a statute, regulation or
20 treaty described in section 9-311(a).

21 (b) **Proposal to be sent to secondary obligor in partial**
22 **satisfaction.** A secured party that desires to accept collateral in
23 partial satisfaction of the obligation it secures shall send its
24 proposal to any secondary obligor in addition to the persons
25 described in subsection (a) of this section.

§46-9-622. Effect of acceptance of collateral.

1 (a) **Effect of acceptance.** A secured party's acceptance of
2 collateral in full or partial satisfaction of the obligation it
3 secures:

4 (1) Discharges the obligation to the extent consented to by
5 the debtor;

6 (2) Transfers to the secured party all of a debtor's rights in
7 the collateral;

8 (3) Discharges the security interest or agricultural lien that
9 is the subject of the debtor's consent and any subordinate
10 security interest or other subordinate lien; and

11 (4) Terminates any other subordinate interest.

12 (b) **Discharge of subordinate interest notwithstanding**
13 **noncompliance.** A subordinate interest is discharged or

14 terminated under subsection (a) of this section, even if the
15 secured party fails to comply with this article.

§46-9-623. Right to redeem collateral.

1 (a) **Persons that may redeem.** A debtor, any secondary
2 obligor, or any other secured party or lienholder may redeem
3 collateral.

4 (b) **Requirements for redemption.** To redeem collateral,
5 a person shall tender:

6 (1) Fulfillment of all obligations secured by the collateral;
7 and

8 (2) The reasonable expenses and attorney's fees described
9 in section 9-615(a)(1).

10 (c) **When redemption may occur.** A redemption may
11 occur at any time before a secured party:

12 (1) Has collected collateral under section 9-607;

13 (2) Has disposed of collateral or entered into a contract for
14 its disposition under section 9-610; or

15 (3) Has accepted collateral in full or partial satisfaction of
16 the obligation it secures under section 9-622.

§46-9-624. Waiver.

1 (a) **Waiver of disposition notification.** A debtor or
2 secondary obligor may waive the right to notification of
3 disposition of collateral under section 9-611 only by an
4 agreement to that effect entered into and authenticated after
5 default.

6 (b) **Waiver of mandatory disposition.** A debtor may waive
7 the right to require disposition of collateral under section 9-
8 620(e) only by an agreement to that effect entered into and
9 authenticated after default.

10 (c) **Waiver of redemption right.** Except in a consumer-
11 goods transaction, a debtor or secondary obligor may waive the
12 right to redeem collateral under section 9-623 only by an

13 agreement to that effect entered into and authenticated after
14 default.

SUBPART 2. NONCOMPLIANCE WITH ARTICLE.

§46-9-625. Remedies for secured party's failure to comply with article.

1 (a) **Judicial orders concerning noncompliance.** If it is
2 established that a secured party is not proceeding in accordance
3 with this article, a court may order or restrain collection,
4 enforcement, or disposition of collateral on appropriate terms
5 and conditions.

6 (b) **Damages for noncompliance.** Subject to subsections
7 (c), (d) and (f) of this section, a person is liable for damages in
8 the amount of any loss caused by a failure to comply with this
9 article. Loss caused by a failure to comply may include loss
10 resulting from the debtor's inability to obtain, or increased costs
11 of, alternative financing.

12 (c) **Persons entitled to recover damages; statutory**
13 **damages in consumer-goods transaction.** Except as otherwise
14 provided in section 9-628:

15 (1) A person that, at the time of the failure, was a debtor,
16 was an obligor, or held a security interest in or other lien on the
17 collateral may recover damages under subsection (b) of this
18 section for its loss; and

19 (2) If the collateral is consumer goods, a person that was a
20 debtor or a secondary obligor at the time a secured party failed
21 to comply with this part may recover for that failure in any
22 event an amount not less than the credit service charge plus ten
23 percent of the principal amount of the obligation or the time-
24 price differential plus ten percent of the cash price.

25 (d) **Recovery when deficiency eliminated or reduced.** A
26 debtor whose deficiency is eliminated under section 9-626 may
27 recover damages for the loss of any surplus. However, a debtor
28 or secondary obligor whose deficiency is eliminated or reduced
29 under section 9-626 may not otherwise recover under subsec-
30 tion (b) of this section for noncompliance with the provisions

31 of this part relating to collection, enforcement, disposition or
32 acceptance.

33 (e) **Statutory damages: noncompliance with specified**
34 **provisions.** In addition to any damages recoverable under
35 subsection (b) of this section, the debtor, consumer obligor or
36 person named as a debtor in a filed record, as applicable, may
37 recover five hundred dollars in each case from a person that:

38 (1) Fails to comply with section 9-208;

39 (2) Fails to comply with section 9-209;

40 (3) Files a record that the person is not entitled to file under
41 section 9-509(a);

42 (4) Fails to cause the secured party of record to file or send
43 a termination statement as required by section 9-513(a) or (c);

44 (5) Fails to comply with section 9-616(b)(1) and whose
45 failure is part of a pattern, or consistent with a practice, of
46 noncompliance; or

47 (6) Fails to comply with section 9-616(b)(2).

48 (f) **Statutory damages: noncompliance with section 9-**
49 **210.** A debtor or consumer obligor may recover damages under
50 subsection (b) of this section and, in addition, five hundred
51 dollars in each case from a person that, without reasonable
52 cause, fails to comply with a request under section 9-210. A
53 recipient of a request under section 9-210 which never claimed
54 an interest in the collateral or obligations that are the subject of
55 a request under that section has a reasonable excuse for failure
56 to comply with the request within the meaning of this subsec-
57 tion.

58 (g) **Limitation of security interest: noncompliance with**
59 **section 9-210.** If a secured party fails to comply with a request
60 regarding a list of collateral or a statement of account under
61 section 9-210, the secured party may claim a security interest
62 only as shown in the list or statement included in the request as
63 against a person that is reasonably misled by the failure.

§46-9-626. Action in which deficiency or surplus is in issue.

1 (a) **Applicable rules if amount of deficiency or surplus**
2 **in issue.** In an action arising from a transaction, other than a
3 consumer transaction, in which the amount of a deficiency or
4 surplus is in issue, the following rules apply:

5 (1) A secured party need not prove compliance with the
6 provisions of this part relating to collection, enforcement,
7 disposition or acceptance unless the debtor or a secondary
8 obligor places the secured party's compliance in issue.

9 (2) If the secured party's compliance is placed in issue, the
10 secured party has the burden of establishing that the collection,
11 enforcement, disposition or acceptance was conducted in
12 accordance with this part.

13 (3) Except as otherwise provided in section 9-628, if a
14 secured party fails to prove that the collection, enforcement,
15 disposition, or acceptance was conducted in accordance with
16 the provisions of this part relating to collection, enforcement,
17 disposition, or acceptance, the liability of a debtor or a second-
18 ary obligor for a deficiency is limited to an amount by which
19 the sum of the secured obligation, expenses, and attorney's fees
20 exceeds the greater of:

21 (A) The proceeds of the collection, enforcement, disposi-
22 tion or acceptance; or

23 (B) The amount of proceeds that would have been realized
24 had the noncomplying secured party proceeded in accordance
25 with the provisions of this part relating to collection, enforce-
26 ment, disposition or acceptance.

27 (4) For purposes of paragraph (3)(B) of this subsection, the
28 amount of proceeds that would have been realized is equal to
29 the sum of the secured obligation, expenses and attorney's fees
30 unless the secured party proves that the amount is less than that
31 sum.

32 (5) If a deficiency or surplus is calculated under section
33 9-615(f), the debtor or obligor has the burden of establishing
34 that the amount of proceeds of the disposition is significantly
35 below the range of prices that a complying disposition to a

36 person other than the secured party, a person related to the
37 secured party, or a secondary obligor would have brought.

38 (b) **Non-consumer transactions; no inference.** The
39 limitation of the rules in subsection (a) of this section to
40 transactions other than consumer transactions is intended to
41 leave to the court the determination of the proper rules in
42 consumer transactions. The court may not infer from that
43 limitation the nature of the proper rule in consumer transactions
44 and may continue to apply established approaches.

**§46-9-627. Determination of whether conduct was commercially
reasonable.**

1 (a) **Greater amount obtainable under other circum-**
2 **stances; no preclusion of commercial reasonableness.** The
3 fact that a greater amount could have been obtained by a
4 collection, enforcement, disposition or acceptance at a different
5 time or in a different method from that selected by the secured
6 party is not of itself sufficient to preclude the secured party
7 from establishing that the collection, enforcement, disposition
8 or acceptance was made in a commercially reasonable manner.

9 (b) **Dispositions that are commercially reasonable.** A
10 disposition of collateral is made in a commercially reasonable
11 manner if the disposition is made:

12 (1) In the usual manner on any recognized market;

13 (2) At the price current in any recognized market at the time
14 of the disposition; or

15 (3) Otherwise in conformity with reasonable commercial
16 practices among dealers in the type of property that was the
17 subject of the disposition.

18 (c) **Approval by court or on behalf of creditors.** A
19 collection, enforcement, disposition, or acceptance is commer-
20 cially reasonable if it has been approved:

21 (1) In a judicial proceeding;

22 (2) By a bona fide creditors' committee;

23 (3) By a representative of creditors; or

24 (4) By an assignee for the benefit of creditors.

25 (d) **Approval under subsection (c) not necessary;**
26 **absence of approval has no effect.** Approval under subsection
27 (c) of this section need not be obtained and lack of approval
28 does not mean that the collection, enforcement, disposition or
29 acceptance is not commercially reasonable.

§46-9-628. Nonliability and limitation on liability of secured party; liability of secondary obligor.

1 (a) **Limitation of liability of secured party for noncom-**
2 **pliance with article.** Unless a secured party knows that a
3 person is a debtor or obligor, knows the identity of the person
4 and knows how to communicate with the person:

5 (1) The secured party is not liable to the person, or to a
6 secured party or lienholder that has filed a financing statement
7 against the person, for failure to comply with this article; and

8 (2) The secured party's failure to comply with this article
9 does not affect the liability of the person for a deficiency.

10 (b) **Limitation of liability based on status as secured**
11 **party.** A secured party is not liable because of its status as
12 secured party:

13 (1) To a person that is a debtor or obligor, unless the
14 secured party knows:

15 (A) That the person is a debtor or obligor;

16 (B) The identity of the person; and

17 (C) How to communicate with the person; or

18 (2) To a secured party or lienholder that has filed a financ-
19 ing statement against a person, unless the secured party knows:

20 (A) That the person is a debtor; and

21 (B) The identity of the person.

22 (c) **Limitation of liability if reasonable belief that**
23 **transaction not a consumer-goods transaction or consumer**
24 **transaction.** A secured party is not liable to any person, and a
25 person's liability for a deficiency is not affected, because of any
26 act or omission arising out of the secured party's reasonable
27 belief that a transaction is not a consumer-goods transaction or
28 a consumer transaction or that goods are not consumer goods,
29 if the secured party's belief is based on its reasonable reliance
30 on:

31 (1) A debtor's representation concerning the purpose for
32 which collateral was to be used, acquired or held; or

33 (2) An obligor's representation concerning the purpose for
34 which a secured obligation was incurred.

35 (d) **Limitation of liability for statutory damages.** A
36 secured party is not liable to any person under section
37 9-625(c)(2) for its failure to comply with section 9-616.

38 (e) **Limitation of multiple liability for statutory dam-**
39 **ages.** A secured party is not liable under section 9-625(c)(2)
40 more than once with respect to any one secured obligation.

PART 7. TRANSITION.

§46-9-701. Effective date.

1 This article takes effect on the first day of July, two
2 thousand one.

§46-9-702. Savings clause.

1 (a) **Pre-effective-date transactions or liens.** Except as
2 otherwise provided in this part, this article applies to a transac-
3 tion or lien within its scope, even if the transaction or lien was
4 entered into or created before this article takes effect.

5 (b) **Continuing validity.** Except as otherwise provided in
6 subsection (c) of this section and sections 9-703 through 9-709:

7 (1) Transactions and liens that were not governed by former
8 article nine, were validly entered into or created before this
9 article takes effect and would be subject to this article if they

10 had been entered into or created after this article takes effect,
11 and the rights, duties and interests flowing from those transac-
12 tions and liens remain valid after this article takes effect; and

13 (2) The transactions and liens may be terminated, com-
14 pleted, consummated and enforced as required or permitted by
15 this article or by the law that otherwise would apply if this
16 article had not taken effect.

17 (c) **Pre-effective-date proceedings.** This article does not
18 affect an action, case or proceeding commenced before this
19 article takes effect.

§46-9-703. Security interest perfected before effective date.

1 (a) **Continuing priority over lien creditor: perfection**
2 **requirements satisfied.** A security interest that is enforceable
3 immediately before this article takes effect and would have
4 priority over the rights of a person that becomes a lien creditor
5 at that time is a perfected security interest under this article if,
6 when this article takes effect, the applicable requirements for
7 enforceability and perfection under this article are satisfied
8 without further action.

9 (b) **Continuing priority over lien creditor: perfection**
10 **requirements not satisfied.** Except as otherwise provided in
11 section 9-705, if, immediately before this article takes effect, a
12 security interest is enforceable and would have priority over the
13 rights of a person that becomes a lien creditor at that time, but
14 the applicable requirements for enforceability or perfection
15 under this article are not satisfied when this article takes effect,
16 the security interest:

17 (1) Is a perfected security interest for two years after this
18 article takes effect;

19 (2) Remains enforceable thereafter only if the security
20 interest becomes enforceable under section 9-203 before the
21 second year expires; and

22 (3) Remains perfected thereafter only if the applicable
23 requirements for perfection under this article are satisfied
24 before the second year expires.

§46-9-704. Security interest unperfected before effective date.

1 A security interest that is enforceable immediately before
2 this article takes effect but which would be subordinate to the
3 rights of a person that becomes a lien creditor at that time:

4 (1) Remains an enforceable security interest for two years
5 after this article takes effect;

6 (2) Remains enforceable thereafter if the security interest
7 becomes enforceable under section 9-203 when this article
8 takes effect or within two years thereafter; and

9 (3) Becomes perfected:

10 (A) Without further action, when this article takes effect if
11 the applicable requirements for perfection under this article are
12 satisfied before or at that time; or

13 (B) When the applicable requirements for perfection are
14 satisfied if the requirements are satisfied after that time.

§46-9-705. Effectiveness of action taken before effective date.

1 (a) **Pre-effective-date action; two-year perfection period**
2 **unless reperfected.** If action, other than the filing of a financ-
3 ing statement, is taken before this article takes effect and the
4 action would have resulted in priority of a security interest over
5 the rights of a person that becomes a lien creditor had the
6 security interest become enforceable before this article takes
7 effect, the action is effective to perfect a security interest that
8 attaches under this article within two years after this article
9 takes effect. An attached security interest becomes unperfected
10 two years after this article takes effect unless the security
11 interest becomes a perfected security interest under this article
12 before the expiration of that period.

13 (b) **Pre-effective-date filing.** The filing of a financing
14 statement before this article takes effect is effective to perfect
15 a security interest to the extent the filing would satisfy the
16 applicable requirements for perfection under this article.

17 (c) **Pre-effective-date filing in jurisdiction formerly**
18 **governing perfection.** This article does not render ineffective

19 an effective financing statement that, before this article takes
20 effect, is filed and satisfies the applicable requirements for
21 perfection under the law of the jurisdiction governing perfection
22 as provided in former section 9-103. However, except as
23 otherwise provided in subsections (d) and (e) of this section and
24 section 9-706, the financing statement ceases to be effective at
25 the earlier of:

26 (1) The time the financing statement would have ceased to
27 be effective under the law of the jurisdiction in which it is filed;
28 or

29 (2) The thirtieth day of June, two thousand six.

30 (d) **Continuation statement.** The filing of a continuation
31 statement after this article takes effect does not continue the
32 effectiveness of the financing statement filed before this article
33 takes effect. However, upon the timely filing of a continuation
34 statement after this article takes effect and in accordance with
35 the law of the jurisdiction governing perfection as provided in
36 part 3, the effectiveness of a financing statement filed in the
37 same office in that jurisdiction before this article takes effect
38 continues for the period provided by the law of that jurisdiction.

39 (e) **Application of subsection (c)(2) to transmitting**
40 **utility financing statement.** Subsection (c)(2) of this section
41 applies to a financing statement that, before this article takes
42 effect, is filed against a transmitting utility and satisfies the
43 applicable requirements for perfection under the law of the
44 jurisdiction governing perfection as provided in former section
45 9-103 only to the extent that part 3 provides that the law of a
46 jurisdiction other than jurisdiction in which the financing
47 statement is filed governs perfection of a security interest in
48 collateral covered by the financing statement.

49 (f) **Application of part 5.** A financing statement that
50 includes a financing statement filed before this article takes
51 effect and a continuation statement filed after this article takes
52 effect is effective only to the extent that it satisfies the require-
53 ments of part 5 for an initial financing statement.

§46-9-706. When initial financing statement suffices to continue effectiveness of financing statement.

1 (a) **Initial financing statement in lieu of continuation**
2 **statement.** The filing of an initial financing statement in the
3 office specified in section 9-501 continues the effectiveness of
4 a financing statement filed before this article takes effect if:

5 (1) The filing of an initial financing statement in that office
6 would be effective to perfect a security interest under this
7 article;

8 (2) The pre-effective-date financing statement was filed in
9 an office in another state or another office in this state; and

10 (3) The initial financing statement satisfies subsection (c)
11 of this section.

12 (b) **Period of continued effectiveness.** The filing of an
13 initial financing statement under subsection (a) of this section
14 continues the effectiveness of the pre-effective-date financing
15 statement:

16 (1) If the initial financing statement is filed before this
17 article takes effect, for the period provided in former section 9-
18 403 with respect to a financing statement; and

19 (2) If the initial financing statement is filed after this article
20 takes effect, for the period provided in section 9-515 with
21 respect to an initial financing statement.

22 (c) **Requirements for initial financing statement under**
23 **subsection (a).** To be effective for purposes of subsection (a)
24 of this section, an initial financing statement must:

25 (1) Satisfy the requirements of part 5 for an initial financing
26 statement;

27 (2) Identify the pre-effective-date financing statement by
28 indicating the office in which the financing statement was filed
29 and providing the dates of filing and file numbers, if any, of the
30 financing statement and of the most recent continuation
31 statement filed with respect to the financing statement; and

32 (3) Indicate that the pre-effective-date financing statement
33 remains effective.

§46-9-707. Amendment of pre-effective-date financing statement.

1 (a) **“Pre-effective-date financing statement”**. In this
2 section, “pre-effective-date financing statement” means a
3 financing statement filed before this article takes effect.

4 (b) **Applicable law.** After this article takes effect, a person
5 may add or delete collateral covered by, continue or terminate
6 the effectiveness of, or otherwise amend the information
7 provided in, a pre-effective-date financing statement only in
8 accordance with the law of the jurisdiction governing perfection
9 as provided in part 3. However, the effectiveness of a pre-
10 effective-date financing statement also may be terminated in
11 accordance with the law of the jurisdiction in which the
12 financing statement is filed.

13 (c) **Method of amending: general rule.** Except as other-
14 wise provided in subsection (d) of this section, if the law of this
15 state governs perfection of a security interest, the information
16 in a pre-effective-date financing statement may be amended
17 after this article takes effect only if:

18 (1) The pre-effective-date financing statement and an
19 amendment are filed in the office specified in section 9-501;

20 (2) An amendment is filed in the office specified in section
21 9-501 concurrently with, or after the filing in that office of, an
22 initial financing statement that satisfies section 9-706(c); or

23 (3) An initial financing statement that provides the informa-
24 tion as amended and satisfies section 9-706(c) is filed in the
25 office specified in section 9-501.

26 (d) **Method of amending: continuation.** If the law of this
27 state governs perfection of a security interest, the effectiveness
28 of a pre-effective-date financing statement may be continued
29 only under section 9-705(d) and (f) or 9-706.

30 (e) **Method of amending: additional termination rule.**
31 Whether or not the law of this state governs perfection of a

32 security interest, effectiveness of a pre-effective-date financing
33 statement filed in this state may be terminated after this article
34 takes effect by filing a termination statement in the office in
35 which the pre-effective-date financing statement is filed, unless
36 an initial financing statement that satisfies section 9-706(c) has
37 been filed in the office specified by the law of the jurisdiction
38 governing perfection as provided in part 3 as the office in which
39 to file a financing statement.

§46-9-708. Persons entitled to file initial financing statement or continuation statement.

1 A person may file an initial financing statement or a
2 continuation statement under this part if:

3 (1) The secured party of record authorizes the filing; and

4 (2) The filing is necessary under this part:

5 (A) To continue the effectiveness of a financing statement
6 filed before this article takes effect; or

7 (B) To perfect or continue the perfection of a security
8 interest.

§46-9-709. Priority.

1 (a) **Law governing priority.** This article determines the
2 priority of conflicting claims to collateral. However, if the
3 relative priorities of the claims were established before this
4 article takes effect, former article nine determines priority.

5 (b) **Priority if security interest becomes enforceable**
6 **under section 9-203.** For purposes of section 9-322(a), the
7 priority of a security interest that becomes enforceable under
8 section 9-203 of this article dates from the time this article
9 takes effect if the security interest is perfected under this article
10 by the filing of a financing statement before this article takes
11 effect which would not have been effective to perfect the
12 security interest under former article nine. This subsection does
13 not apply to conflicting security interests each of which is
14 perfected by the filing of such a financing statement.

**CHAPTER 46A. WEST VIRGINIA CONSUMER
CREDIT AND PROTECTION ACT.**

ARTICLE 2. CONSUMER CREDIT PROTECTION.

***§46A-2-119a. Secured transaction; use of price guide value in
calculating deficiency or surplus.**

1 (a) This section applies to the following transactions:

2 (1) Transactions in which a purchase money security
3 interest is taken in collateral which is being purchased primarily
4 for a personal, family, household or agricultural purpose;

5 (2) Transactions in which a security interest is taken in
6 collateral which was used primarily for a personal, family,
7 household or agricultural purpose prior to the giving the
8 security interest; or

9 (3) Transactions in which a security interest is taken in
10 collateral for a debt that was incurred primarily for a personal,
11 family, household or agricultural purpose.

12 (b) This section takes effect on the first day of July, two
13 thousand two, and is applicable notwithstanding the provisions
14 of:

15 (1) Section six hundred ten, article nine, chapter forty-six
16 of this code, providing that disposition may only be by certain
17 public or private sale, lease or license procedures;

18 (2) Section six hundred ten, article nine, chapter forty-six
19 of this code, requiring that those procedures be commercially
20 reasonable;

21 (3) Section six hundred fifteen, article nine, chapter forty-
22 six of this code, providing for the application of the proceeds;

23 (4) Section six hundred twenty, article nine, chapter forty-
24 six of this code, requiring disposition by sale, lease or license
25 in certain circumstances; and

26 (5) Section six hundred two, article nine, chapter forty-six
27 of this code, providing that these sections may not be waived or
28 varied by agreement.

***Clerk's Note:** This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.

29 (c) For purposes of this section, the term “debtor” shall be
30 deemed to refer collectively to each person who is indebted to
31 a secured creditor in connection with a consumer lease or
32 consumer loan, whether the person’s obligation arises as a co-
33 maker, endorser or guarantor of the lease or loan.

34 (d) After a default by the debtor and after the secured
35 creditor takes or receives possession of collateral or makes
36 collateral unusable as provided in section six hundred nine,
37 article nine, chapter forty-six of this code, the secured creditor
38 may send a written proposal to the debtor setting forth a value
39 for the secured creditor’s collateral which value, less any
40 expenses of taking and holding the collateral, shall be credited
41 against the debtor’s obligation to the secured creditor. The
42 written proposal must explain that:

43 (1) The proposal becomes effective only if the debtor
44 agrees to it in writing but the debtor is not required to agree to
45 the written proposal;

46 (2) If the debtor does not agree to the proposal in writing,
47 then the goods which are the subject of the written proposal will
48 be disposed of in a “commercially reasonable” manner by the
49 secured creditor in accordance with applicable law, and the
50 amount received from the disposition of the collateral, less the
51 expenses of taking and holding the collateral, preparing the
52 collateral of the sale or lease, and selling the collateral, will be
53 the amount credited against the debtor’s obligation to the
54 secured creditor when calculating the deficiency owed by the
55 debtor to the secured creditor or the surplus owed by the
56 secured creditor to the debtor;

57 (3) If the debtor agrees to the written proposal, then the
58 debtor will thereby release and waive any claims against the
59 secured creditor that the disposition of the collateral was not
60 commercially reasonable or was otherwise improper; and

61 (4) The written proposal may set forth a date and time by
62 which the debtor’s written agreement must be received by
63 secured creditor in order for the agreement to become effective.

64 (5) The following form, when reproduced on a single sheet
65 of paper with no other statements or agreements and accurately
66 completed, meets the requirements of this section even if it
67 contains typographical or other minor errors that are not
68 misleading:

69 [*Name and address of secured party*]

70 [*Date*]

71 TO: [*Name and address of debtor*]

72 **OFFER TO CREDIT PRICE GUIDE VALUE**

73 We have possession of your [*describe collateral*] (“prop-
74 erty”) (or we have made it unusable by you), because you broke
75 the terms of our agreement.

76 By law, we may sell, lease or license this property in any
77 commercially reasonable manner. If we choose to sell the
78 property at a public sale we will give you notice of the date,
79 time and place of the sale and you may attend the sale and bring
80 bidders if you want. If we choose to sell the property at a
81 private sale we will give you notice of the date after which the
82 sale will take place. From the money we are paid from the sale
83 of the property, we may subtract our expenses in getting the
84 property from you, storing it, preparing and selling, leasing or
85 licensing it. The sale money left over after these expenses are
86 subtracted will then be subtracted from what you owe us. If we
87 receive less money than you owe, you will still owe us the
88 difference. If we receive more money than you owe, you will
89 get the extra money back (unless we are required to pay it to
90 someone else).

91 Instead of selling, leasing or licensing this property, we are
92 now offering to subtract the amount of \$ [*enter amount*] from
93 what you owe us. We have calculated this amount by adding the
94 retail value of the property of \$ [*insert retail value*] and the
95 [*insert other value pursuant to § 46A-2-119a(5)*] value of the
96 property of \$ [*enter amount*] and dividing that total by 2 (“value
97 amount”). These values were obtained from _____, a
98 price guide in general use as of the date we got possession of or

99 rendered the property unusable by you. From the value amount
100 we have subtracted our expenses of \$ [enter amount] in taking
101 back the property from you, and our expenses of \$ [enter
102 amount] for storing the property through the date below by
103 which you must respond to this offer.

104 You do not have to accept this offer. To agree to our offer,
105 you must sign this notice at the bottom no sooner than one day
106 after the date on which you received this offer and deliver it or
107 have it delivered to us before [enter date by which the secured
108 party determines the offer must be accepted] . If you agree to
109 this offer, you are giving up any right to hold us liable for the
110 way that we sell, lease or otherwise dispose of the property and
111 account for the proceeds.

112 You can get the property back at any time before you
113 accept this offer or we sell, lease or license the property by
114 paying us the full amount you owe (not just the past due
115 payments), including our expenses so far. To learn the exact
116 amount you must pay, you may call us at [telephone number] .
117 If you want us to explain to you in writing how we calculated
118 the amount that you owe us, you may call us at [telephone
119 number] or write us at [secured party's address] and request a
120 written explanation.

121 [We are sending this notice to the following other people
122 who owe money under our agreement. They will also have to
123 agree to our offer or we will sell the property as we normally
124 do.

125 [*Names of all other debtors and obligors, if any*]]

126 I accept the offer:

127 Signed _____

128 Date of signature _____

129 **[End of Form]**

130 (e) (1) The value of the collateral set forth in the written
131 proposal shall be determined from any price guide used
132 generally by persons who are not purchasers or lessees of that

133 type of collateral and who insure, lend money for the purchase
134 of, lease or otherwise deal in goods of the same type as the
135 collateral when it would be to the advantage of the user for the
136 price guide to have higher values.

137 (2) The value of the collateral set forth in the written
138 proposal shall be determined as of the date the secured party
139 took possession of the collateral, received possession of the
140 collateral or rendered the collateral unusable.

141 (3) For a motor vehicle, as that term is defined by section
142 one, article one, chapter seventeen-a of this code, the value of
143 the motor vehicle collateral shall be calculated by adding
144 together the retail value and the trade-in value for the motor
145 vehicle and dividing that sum by two.

146 (4) For a manufactured home, mobile home or house trailer,
147 as those terms are defined in section one, article six, chapter
148 seventeen-a of this code, which at the time of default was
149 located on a lot owned by the debtor, an obligor or a person
150 related to the debtor, the value of the manufactured home,
151 mobile home or house trailer collateral shall be calculated by
152 adding together the retail value and the wholesale value
153 designated for the manufactured home that is moved for resale,
154 mobile home or house trailer and dividing that sum by two.

155 (5) For a manufactured home, mobile home or house trailer,
156 as those terms are defined in section one, article six, chapter
157 seventeen-a of this code, which at the time of default was
158 located on a lot owned by a person or organization in the
159 business of renting or leasing lots or on a lot owned by a person
160 who is not the debtor, an obligor or a person related to the
161 debtor or obligor, the value of the manufactured home, mobile
162 home or house trailer collateral shall be calculated by adding
163 together the retail value and the wholesale value designated for
164 collateral that is offered for sale without moving the collateral
165 from its current location, and dividing that sum by two.

166 (6) For other personal property, the value of the collateral
167 shall be calculated by adding together the used retail value and

168 the highest listed wholesale value for the property and dividing
169 that sum by two.

170 (f) If the debtor agrees in writing to the written proposal
171 within the time period prescribed by the secured creditor, then:

172 (1) The collateral value as calculated in subsection (e)
173 above, less any expenses of taking and holding the collateral,
174 shall be applied to the indebtedness as provided in section six
175 hundred fifteen, article nine, chapter forty-six of this code;

176 (2) Any expenses incurred by the secured creditor in the
177 actual sale or lease of the collateral or preparing the collateral
178 for sale or lease may not be charged to the debtor but must be
179 born by the secured creditor; and

180 (3) The secured creditor is not required to dispose of the
181 collateral in a commercially reasonable manner and is not liable
182 for any failure to comply with any law of this state relating to
183 the disposition of the collateral or application of the proceeds.

184 (g) The written agreement of the debtor is not valid unless
185 it is signed by the debtor on or after the next calendar day after
186 it is received by the debtor or the second calendar day after it
187 was sent to the debtor.

188 (h) If the debtor is more than one person, then the secured
189 creditor must send the proposal described in subsection (d) of
190 this section to all such persons. If any one of the persons
191 indebted to a secured creditor on a consumer lease or consumer
192 loan does not agree in writing to the proposal or does not
193 respond timely to the proposal, then the secured creditor must
194 proceed with a sale or other disposition of its collateral as
195 provided in article nine, chapter forty-six of this code.

196 (i) If a person other than the debtor has a recorded owner-
197 ship interest in property securing the debtor's obligation to a
198 secured creditor and such other person is not also indebted to
199 the secured creditor on such obligation, then the secured
200 creditor must send a copy of the proposal described in subsec-
201 tion (d) of this section to such other person but is not required

202 to obtain such other person's consent or agreement to the
203 proposal in order to effect the proposal.

204 (j) Upon receipt of the debtor's executed acceptance of a
205 written proposal described in subsection (d) of this section, title
206 to the collateral described in the proposal shall be deemed to
207 pass to the secured creditor unless such collateral is a vehicle,
208 manufactured home, mobile home or house trailer.

209 (k) Upon presentation of the debtor's executed acceptance
210 of a written proposal described in subsection (d) of this section
211 to the department of motor vehicles and a certificate of title to
212 the debtor's vehicle, manufactured home, mobile home or
213 house trailer described in the written proposal, the department
214 of motor vehicles shall issue a new certificate of title to the
215 vehicle, manufactured home, mobile home or house trailer in
216 the name of the secured creditor as the owner thereof.

217 (l) Nothing in this section may be construed to create,
218 directly or indirectly, or impose a duty on the secured creditor
219 to make a written offer or give notice under this section. A
220 secured creditor's failure to make a written proposal shall not
221 subject the secured creditor to any liability to the debtor or any
222 other person.

223 (m) The provisions of this section may not be waived or
224 varied.

CHAPTER 273

(Com. Sub. for H. B. 4494 — By Delegates Stemple,
Doyle, Jenkins, Yeager and Stalnaker)

[Passed March 10, 2000; in effect July 1, 2000. Approved by the Governor.]

AN ACT to repeal article six, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said code by adding thereto a new chapter,

designated chapter forty-four-b, relating to revising the uniform principal and income act.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 44B. UNIFORM PRINCIPAL AND INCOME ACT.

Article

- 1. Definitions and Fiduciary Duties.**
- 2. Decedent's Estate or Terminating Income Interest.**
- 3. Apportionment at Beginning and End of Income Interest.**
- 4. Allocation of Receipts During Administration of Trust.**
- 5. Allocation of Disbursements During Administration of Trust.**
- 6. Miscellaneous Provisions.**

ARTICLE 1. DEFINITIONS AND FIDUCIARY DUTIES.

§44B-1-101. Short title.

§44B-1-102. Definitions.

§44B-1-103. Fiduciary duties; general principles.

§44B-1-104. Trustee's power to adjust.

§44B-1-105. Trustee's Right to Give Notice.

§44B-1-101. Short title.

- 1 This chapter may be cited as the "Uniform Principal and
- 2 Income Act".

§44B-1-102. Definitions.

- 1 (a) "Accounting period" means a calendar year unless
- 2 another twelve-month period is selected by a fiduciary. The
- 3 term includes a portion of a calendar year or other
- 4 twelve-month period that begins when an income interest
- 5 begins or ends when an income interest ends.

6 (b) “Beneficiary” includes, in the case of a decedent’s
7 estate, an heir, legatee and devisee and, in the case of a trust, an
8 income beneficiary and a remainder beneficiary.

9 (c) “Fiduciary” means a personal representative or a trustee.
10 The term includes an executor, administrator, successor
11 personal representative, special administrator and a person
12 performing substantially the same function.

13 (d) “Income” means money or property that a fiduciary
14 receives as current return from a principal asset. The term
15 includes a portion of receipts from a sale, exchange or liquida-
16 tion of a principal asset, to the extent provided in article four of
17 this chapter.

18 (e) “Income beneficiary” means a person to whom net
19 income of a trust is or may be payable.

20 (f) “Income interest” means the right of an income benefi-
21 ciary to receive all or part of net income, whether the terms of
22 the trust require it to be distributed or authorize it to be distrib-
23 uted in the trustee’s discretion.

24 (g) “Mandatory income interest” means the right of an
25 income beneficiary to receive net income that the terms of the
26 trust require the fiduciary to distribute.

27 (h) “Net income” means the total receipts allocated to
28 income during an accounting period minus the disbursements
29 made from income during the period, plus or minus transfers
30 under this chapter to or from income during the period.

31 (i) “Person” means an individual, corporation, business
32 trust, estate, trust, partnership, limited liability company,
33 association, joint venture, government; governmental subdivi-
34 sion, agency or instrumentality; public corporation; or any other
35 legal or commercial entity.

36 (j) "Principal" means property held in trust for distribution
37 to a remainder beneficiary when the trust terminates.

38 (k) "Remainder beneficiary" means a person entitled to
39 receive principal when an income interest ends.

40 (l) "Terms of a trust" means the manifestation of the intent
41 of a settlor or decedent with respect to the trust, expressed in a
42 manner that admits of its proof in a judicial proceeding,
43 whether by written or spoken words or by conduct.

44 (m) "Trustee" includes an original, additional or successor
45 trustee, whether or not appointed or confirmed by a court.

§44B-1-103. Fiduciary duties; general principles.

1 (a) In allocating receipts and disbursements to or between
2 principal and income, and with respect to any matter within the
3 scope of articles two and three of this chapter, a fiduciary:

4 (1) Shall administer a trust or estate in accordance with the
5 terms of the trust or the will, even if there is a different provi-
6 sion in this chapter;

7 (2) May administer a trust or estate by the exercise of a
8 discretionary power of administration given to the fiduciary by
9 the terms of the trust or the will, even if the exercise of the
10 power produces a result different from a result required or
11 permitted by this chapter, and no inference that the fiduciary
12 has improperly exercised the discretion arises from the fact that
13 the fiduciary has made an allocation contrary to a provision of
14 this chapter;

15 (3) Shall administer a trust or estate in accordance with this
16 chapter if the terms of the trust or the will do not contain a
17 different provision or do not give the fiduciary a discretionary
18 power of administration; and

19 (4) Shall add a receipt or charge a disbursement to principal
20 to the extent that the terms of the trust and this chapter do not

21 provide a rule for allocating the receipt or disbursement to or
22 between principal and income.

23 (b) In exercising the power to adjust under subsection (a),
24 section one hundred four of this article, or a discretionary
25 power of administration regarding a matter within the scope of
26 this chapter, whether granted by the terms of a trust, a will or
27 this chapter, including the trustee's power to adjust under
28 subsection (a), section one hundred four of this article, a
29 fiduciary shall administer a trust or estate impartially, based on
30 what is fair and reasonable to all of the beneficiaries, except to
31 the extent that the terms of the trust or the will clearly manifest
32 an intention that the fiduciary shall or may favor one or more of
33 the beneficiaries. The exercise of discretion in accordance with
34 this chapter is presumed to be fair and reasonable to all of the
35 beneficiaries.

§44B-1-104. Trustee's power to adjust.

1 (a) Subject to the provisions of subsection (b) of this
2 section, a trustee may make an adjustment between principal
3 and income to the extent the trustee considers necessary if all of
4 the following conditions are satisfied:

5 (1) The trustee invests and manages trust assets under the
6 prudent investor rule.

7 (2) The trust describes the amount that shall or may be
8 distributed to a beneficiary by referring to the trust's income.

9 (3) The trustee determines, after applying the rules in
10 subsection (a), section one hundred three of this article, and
11 considering any power the trustee may have under the trust to
12 invade principal or accumulate income, that the trustee is
13 unable to comply with subsection (b), section one hundred three
14 of this article.

15 (b) A trustee may not make an adjustment between princi-
16 pal and income in any of the following circumstances:

17 (1) Where it would diminish the income interest in a trust
18 (A) that requires all of the income to be paid at least annually
19 to a spouse and (B) for which, if the trustee did not have the
20 power to make the adjustment, an estate tax or gift tax marital
21 deduction would be allowed, in whole or in part.

22 (2) Where it would reduce the actuarial value of the income
23 interest in a trust to which a person transfers property with the
24 intent to qualify for a gift tax exclusion.

25 (3) Where it would change the amount payable to a
26 beneficiary as a fixed annuity or a fixed fraction of the value of
27 the trust assets.

28 (4) Where it would be made from any amount that is
29 permanently set aside for charitable purposes under a will or
30 trust, unless both income and principal are so set aside.

31 (5) Where possessing or exercising the power to make an
32 adjustment would cause an individual to be treated as the owner
33 of all or part of the trust for income tax purposes, and the
34 individual would not be treated as the owner if the trustee did
35 not possess the power to make an adjustment.

36 (6) Where possessing or exercising the power to make an
37 adjustment would cause all or part of the trust assets to be
38 included for estate tax purposes in the estate of an individual
39 who has the power to remove a trustee or appoint a trustee, or
40 both, and the assets would not be included in the estate of the
41 individual if the trustee did not possess the power to make an
42 adjustment.

43 (7) Where the trustee is a beneficiary of the trust.

44 (c) Notwithstanding any provision to the contrary, if
45 subdivision (5), (6), or (7) of subsection (b) of this section
46 applies to a trustee and there is more than one trustee, a
47 cotrustee to whom the provision does not apply may make the

48 adjustment unless the exercise of the power by the remaining
49 trustee or trustees is not permitted by the trust.

50 (d) A trustee may release the entire power conferred by
51 subsection (a) of this section or may release only the power to
52 adjust from income to principal or the power to adjust from
53 principal to income in either of the following circumstances:

54 (1) If the trustee is uncertain about whether possessing or
55 exercising the power will cause a result described in subdivi-
56 sions (1) to (6), inclusive, of subsection (b) of this section.

57 (2) If the trustee determines that possessing or exercising
58 the power will or may deprive the trust of a tax benefit or
59 impose a tax burden not described in subsection (b) of this
60 section.

61 (e) A release under subsection (d) of this section may be
62 permanent or for a specified period, including a period mea-
63 sured by the life of an individual.

64 (f) A trust that limits the power of a trustee to make an
65 adjustment between principal and income does not affect the
66 application of this section unless it is clear from the trust that it
67 is intended to deny the trustee the power of adjustment provided
68 by subsection (a) of this section.

69 (g) Nothing in this section or in this chapter is intended to
70 create or imply a duty to make an adjustment , and a trustee is
71 not liable for not considering whether to make an adjustment or
72 for choosing not to make an adjustment.

§44B-1-105. Trustee's right to give notice.

1 (a) A trustee may but is not required to give a notice of
2 proposed action regarding a matter governed by this chapter as
3 provided in this section. For the purpose of this section, a
4 proposed action includes a course of action and a decision not
5 to take action.

6 (b) The trustee shall mail notice of the proposed action to
7 all adult beneficiaries who are receiving, or are entitled to
8 receive, income under the trust or to receive a distribution of
9 principal if the trust were terminated at the time the notice is
10 given.

11 (c) Notice of proposed action need not be given to any
12 person who consents in writing to the proposed action. The
13 consent may be executed at any time before or after the
14 proposed action is taken.

15 (d) The notice of proposed action shall state that it is given
16 pursuant to this section and shall state all of the following:

17 (1) The name and mailing address of the trustee;

18 (2) The name and telephone number of a person who may
19 be contacted for additional information;

20 (3) A description of the action proposed to be taken and an
21 explanation of the reasons for the action;

22 (4) The time within which objections to the proposed action
23 can be made, which shall be at least thirty days from the
24 mailing of the notice of proposed action;

25 (5) The date on or after which the proposed action may be
26 taken or is effective.

27 (e) A beneficiary may object to the proposed action by
28 mailing a written objection to the trustee at the address stated
29 in the notice of proposed action within the time period specified
30 in the notice of proposed action.

31 (f) A trustee is not liable to a beneficiary for an action
32 regarding a matter governed by this chapter if the trustee does
33 not receive a written objection to the proposed action from the
34 beneficiary within the applicable period and the other require-
35 ments of this section are satisfied. If no beneficiary entitled to
36 notice objects under this section, the trustee is not liable to any

37 current or future beneficiary with respect to the proposed
38 action.

39 (g) If the trustee receives a written objection within the
40 applicable period, either the trustee or a beneficiary may
41 petition the court to have the proposed action taken as pro-
42 posed, taken with modifications, or denied. In the proceeding,
43 a beneficiary objecting to the proposed action has the burden of
44 proving that the trustee's proposed action should not be taken.
45 A beneficiary who has not objected is not estopped from
46 opposing the proposed action in the proceeding. If the trustee
47 decides not to implement the proposed action, the trustee shall
48 notify the beneficiaries of the decision not to take the action and
49 the reasons for the decision, and the trustee's decision not to
50 implement the proposed action does not itself give rise to
51 liability to any current or future beneficiary. A beneficiary may
52 petition the court to have the action taken, and has the burden
53 of proving that it should be taken.

54 (h) In a proceeding with respect to a trustee's exercise or
55 nonexercise of the power to make an adjustment under section
56 one hundred four, the sole remedy is to direct, deny, or devise
57 an adjustment between principal and income.

58 (i) Nothing in this section is intended to create or imply a
59 duty to give notice and a trustee is not liable for choosing not to
60 give notice or for not considering whether to give notice.

61 (j) This chapter applies to any will and trust established
62 under an instrument executed on or after the effective date of
63 this chapter except as otherwise expressly provided in the will
64 or terms of the trust or in this chapter, or if the trustee or
65 personal representative elects in either's sole discretion to
66 administer the trust or will under this chapter. With respect to
67 any will or trust established under an instrument executed prior
68 to the effective date of this chapter, this chapter applies if the

69 trustee or personal representative elects, in either's sold
70 discretion, to administer the trust or will under this chapter.

ARTICLE 2. DECEDENT'S ESTATE OR TERMINATING INCOME INTEREST.

§44B-2-201. Determination and distribution of net income.

§44B-2-202. Distribution to residuary and remainder beneficiaries.

§44B-2-201. Determination and distribution of net income.

1 After a decedent dies, in the case of an estate, or after an
2 income interest in a trust ends, the following rules apply:

3 (1) A fiduciary of an estate or of a terminating income
4 interest shall determine the amount of net income and net
5 principal receipts received from property specifically given to
6 a beneficiary under the rules in articles three through five which
7 apply to trustees and the rules in subdivision (5) of this section.
8 The fiduciary shall distribute the net income and net principal
9 receipts to the beneficiary who is to receive the specific
10 property.

11 (2) A fiduciary shall determine the remaining net income of
12 a decedent's estate or a terminating income interest under the
13 rules in articles three through five which apply to trustees and
14 by:

15 (A) Including in net income all income from property used
16 to discharge liabilities;

17 (B) Paying from income or principal, in the fiduciary's
18 discretion, fees of attorneys, accountants and fiduciaries; court
19 costs and other expenses of administration; and interest on
20 death taxes, but the fiduciary may pay those expenses from
21 income of property passing to a trust for which the fiduciary
22 claims an estate tax marital or charitable deduction only to the
23 extent that the payment of those expenses from income will not
24 cause the reduction or loss of the deduction; and

25 (C) Paying from principal all other disbursements made or
26 incurred in connection with the settlement of a decedent's estate
27 or the winding up of a terminating income interest, including
28 debts, funeral expenses, disposition of remains, family allow-
29 ances and death taxes and related penalties that are apportioned
30 to the estate or terminating income interest by the will, the
31 terms of the trust, or applicable law.

32 (3) A fiduciary shall distribute to a beneficiary who
33 receives a pecuniary amount outright the interest or any other
34 amount provided by the will, the terms of the trust or applicable
35 law from net income determined under subdivision (2) of this
36 section or from principal to the extent that net income is
37 insufficient. If a beneficiary is to receive a pecuniary amount
38 outright from a trust after an income interest ends and no
39 interest or other amount is provided for by the terms of the trust
40 or applicable law, the fiduciary shall distribute the interest or
41 other amount to which the beneficiary would be entitled under
42 applicable law if the pecuniary amount were required to be paid
43 under a will.

44 (4) A fiduciary shall distribute the net income remaining
45 after distributions required by subdivision (3) of this section in
46 the manner described in section two hundred two of this article
47 to all other beneficiaries, including a beneficiary who receives
48 a pecuniary amount in trust, even if the beneficiary holds an
49 unqualified power to withdraw assets from the trust or other
50 presently exercisable general power of appointment over the
51 trust.

52 (5) A fiduciary may not reduce principal or income receipts
53 from property described in subdivision (1) of this section
54 because of a payment described in section five hundred one or
55 five hundred two, article five of this chapter to the extent that
56 the will, the terms of the trust or applicable law requires the
57 fiduciary to make the payment from assets other than the
58 property or to the extent that the fiduciary recovers or expects

59 to recover the payment from a third party. The net income and
60 principal receipts from the property are determined by includ-
61 ing all of the amounts the fiduciary receives or pays with
62 respect to the property, whether those amounts accrued or
63 became due before, on or after the date of a decedent's death or
64 an income interest's terminating event, and by making a
65 reasonable provision for amounts that the fiduciary believes the
66 estate or terminating income interest may become obligated to
67 pay after the property is distributed.

**§44B-2-202. Distribution to residuary and remainder beneficia-
ries.**

1 (a) Each beneficiary described in subdivision (4), section
2 two hundred one of this article is entitled to receive a portion of
3 the net income equal to the beneficiary's fractional interest in
4 undistributed principal assets, using values as of the distribution
5 date. If a fiduciary makes more than one distribution of assets
6 to beneficiaries to whom this section applies, each beneficiary,
7 including one who does not receive part of the distribution, is
8 entitled, as of each distribution date, to the net income the
9 fiduciary has received after the date of death or terminating
10 event or earlier distribution date but has not distributed as of the
11 current distribution date.

12 (b) In determining a beneficiary's share of net income, the
13 following rules apply:

14 (1) The beneficiary is entitled to receive a portion of the net
15 income equal to the beneficiary's fractional interest in the
16 undistributed principal assets immediately before the distribu-
17 tion date, including assets that later may be sold to meet
18 principal obligations.

19 (2) The beneficiary's fractional interest in the undistributed
20 principal assets must be calculated without regard to property
21 specifically given to a beneficiary and property required to pay
22 pecuniary amounts not in trust.

23 (3) The beneficiary's fractional interest in the undistributed
24 principal assets must be calculated on the basis of the aggregate
25 value of those assets as of the distribution date without reducing
26 the value by any unpaid principal obligation.

27 (4) The distribution date for purposes of this section may be
28 the date as of which the fiduciary calculates the value of the
29 assets if that date is reasonably near the date on which assets are
30 actually distributed.

31 (c) If a fiduciary does not distribute all of the collected but
32 undistributed net income to each person as of a distribution
33 date, the fiduciary shall maintain appropriate records showing
34 the interest of each beneficiary in that net income.

35 (d) A trustee may apply the rules in this section, to the
36 extent that the trustee considers it appropriate, to net gain or
37 loss realized after the date of death or terminating event or
38 earlier distribution date from the disposition of a principal asset
39 if this section applies to the income from the asset.

ARTICLE 3. APPORTIONMENT AT BEGINNING AND END OF INCOME INTEREST.

§44B-3-301. When right to income begins and ends.

§44B-3-302. Apportionment of receipts and disbursements when decedent dies or income interest begins.

§44B-3-303. Apportionment when income interest ends.

§44B-3-301. When right to income begins and ends.

1 (a) An income beneficiary is entitled to net income from the
2 date on which the income interest begins. An income interest
3 begins on the date specified in the terms of the trust or, if no
4 date is specified, on the date an asset becomes subject to a trust
5 or successive income interest.

6 (b) An asset becomes subject to a trust:

7 (1) On the date it is transferred to the trust in the case of an
8 asset that is transferred to a trust during the transferor's life;

9 (2) On the date of a testator's death in the case of an asset
10 that becomes subject to a trust by reason of a will, even if there
11 is an intervening period of administration of the testator's
12 estate; or

13 (3) On the date of an individual's death in the case of an
14 asset that is transferred to a fiduciary by a third party because
15 of the individual's death.

16 (c) An asset becomes subject to a successive income
17 interest on the day after the preceding income interest ends, as
18 determined under subsection (d) of this section, even if there is
19 an intervening period of administration to wind up the preced-
20 ing income interest.

21 (d) An income interest ends on the day before an income
22 beneficiary dies or another terminating event occurs, or on the
23 last day of a period during which there is no beneficiary to
24 whom a trustee may distribute income.

**§44B-3-302. Apportionment of receipts and disbursements when
decedent dies or income interest begins.**

1 (a) A trustee shall allocate an income receipt or disburse-
2 ment other than one to which subdivision (1), section two
3 hundred one, article two of this chapter applies to principal if its
4 due date occurs before a decedent dies in the case of an estate
5 or before an income interest begins in the case of a trust or
6 successive income interest.

7 (b) A trustee shall allocate an income receipt or disburse-
8 ment to income if its due date occurs on or after the date on
9 which a decedent dies or an income interest begins and it is a
10 periodic due date. An income receipt or disbursement must be
11 treated as accruing from day to day if its due date is not
12 periodic or it has no due date. The portion of the receipt or
13 disbursement accruing before the date on which a decedent dies
14 or an income interest begins must be allocated to principal and
15 the balance must be allocated to income.

16 (c) An item of income or an obligation is due on the date
17 the payer is required to make a payment. If a payment date is
18 not stated, there is no due date for the purposes of this chapter.
19 Distributions to shareholders or other owners from an entity to
20 which section four hundred one, article four of this chapter
21 applies are deemed to be due on the date fixed by the entity for
22 determining who is entitled to receive the distribution or, if no
23 date is fixed, on the declaration date for the distribution. A due
24 date is periodic for receipts or disbursements that must be paid
25 at regular intervals under a lease or an obligation to pay interest
26 or if an entity customarily makes distributions at regular
27 intervals.

§44B-3-303. Apportionment when income interest ends.

1 (a) In this section, “undistributed income” means net
2 income received before the date on which an income interest
3 ends. The term does not include an item of income or expense
4 that is due or accrued or net income that has been added or is
5 required to be added to principal under the terms of the trust.

6 (b) When a mandatory income interest ends, the trustee
7 shall pay to a mandatory income beneficiary who survives that
8 date, or the estate of a deceased mandatory income beneficiary
9 whose death causes the interest to end, the beneficiary’s share
10 of the undistributed income that is not disposed of under the
11 terms of the trust unless the beneficiary has an unqualified
12 power to revoke more than five percent of the trust immediately
13 before the income interest ends. In the latter case, the undistrib-
14 uted income from the portion of the trust that may be revoked
15 must be added to principal.

16 (c) When a trustee’s obligation to pay a fixed annuity or a
17 fixed fraction of the value of the trust’s assets ends, the trustee
18 shall prorate the final payment if and to the extent required by
19 applicable law to accomplish a purpose of the trust or its settlor
20 relating to income, gift, estate or other tax requirements.

**ARTICLE 4. ALLOCATION OF RECEIPTS DURING ADMINISTRATION
OF TRUST.**

PART 1. RECEIPTS FROM ENTITIES.

- §44B-4-401. Character or receipts.
- §44B-4-402. Distribution from trust or estate.
- §44B-4-403. Business and other activities conducted by trustee.
- §44B-4-404. Principal receipts.
- §44B-4-405. Rental property.
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- §44B-4-409. Deferred compensation, annuities and similar payments.
- §44B-4-410. Liquidating asset.
- §44B-4-411. Minerals, water and other natural resources.
- §44B-4-412. Timber.
- §44B-4-413. Property not productive of income.
- §44B-4-414. Derivatives and options.
- §44B-4-415. Asset-backed securities.

§44B-4-401. Character or receipts.

1 (a) In this section, “entity” means a corporation, partner-
2 ship, limited liability company, regulated investment company,
3 real estate investment trust, common trust fund or any other
4 organization in which a trustee has an interest other than a trust
5 or estate to which section four hundred two of this article
6 applies, a business or activity to which section four hundred
7 three of this article applies, or an asset-backed security to which
8 section four hundred fifteen of this article applies.

9 (b) Except as otherwise provided in this section, a trustee
10 shall allocate to income money received from an entity.

11 (c) A trustee shall allocate the following receipts from an
12 entity to principal:

13 (1) Property other than money;

14 (2) Money received in one distribution or a series of related
15 distributions in exchange for part or all of a trust’s interest in
16 the entity;

17 (3) Money received in total or partial liquidation of the
18 entity; and

19 (4) Money received from an entity that is a regulated
20 investment company or a real estate investment trust if the
21 money distributed is a capital gain dividend for federal income
22 tax purposes.

23 (d) Money is received in partial liquidation:

24 (1) To the extent that the entity, at or near the time of a
25 distribution, indicates that it is a distribution in partial liquida-
26 tion; or

27 (2) If the total amount of money and property received in a
28 distribution or series of related distributions is greater than
29 twenty percent of the entity's gross assets, as shown by the
30 entity's year-end financial statements immediately preceding
31 the initial receipt.

32 (e) Money is not received in partial liquidation, nor may it
33 be taken into account under subdivision (2), subsection (d) of
34 this section, to the extent that it does not exceed the amount of
35 income tax that a trustee or beneficiary must pay on taxable
36 income of the entity that distributes the money.

37 (f) A trustee may rely upon a statement made by an entity
38 about the source or character of a distribution if the statement
39 is made at or near the time of distribution by the entity's board
40 of directors or other person or group of persons authorized to
41 exercise powers to pay money or transfer property comparable
42 to those of a corporation's board of directors.

§44B-4-402. Distribution from trust or estate.

1 A trustee shall allocate to income an amount received as a
2 distribution of income from a trust or an estate in which the
3 trust has an interest other than a purchased interest, and shall
4 allocate to principal an amount received as a distribution of

5 principal from such a trust or estate. If a trustee purchases an
6 interest in a trust that is an investment entity, or a decedent or
7 donor transfers an interest in such a trust to a trustee, section
8 four hundred one or four hundred fifteen of this article applies
9 to a receipt from the trust.

§44B-4-403. Business and other activities conducted by trustee.

1 (a) If a trustee who conducts a business or other activity
2 determines that it is in the best interest of all the beneficiaries
3 to account separately for the business or activity instead of
4 accounting for it as part of the trust's general accounting
5 records, the trustee may maintain separate accounting records
6 for its transactions, whether or not its assets are segregated from
7 other trust assets.

8 (b) A trustee who accounts separately for a business or
9 other activity may determine the extent to which its net cash
10 receipts must be retained for working capital, the acquisition or
11 replacement of fixed assets, and other reasonably foreseeable
12 needs of the business or activity, and the extent to which the
13 remaining net cash receipts are accounted for as principal or
14 income in the trust's general accounting records. If a trustee
15 sells assets of the business or other activity, other than in the
16 ordinary course of the business or activity, the trustee shall
17 account for the net amount received as principal in the trust's
18 general accounting records to the extent the trustee determines
19 that the amount received is no longer required in the conduct of
20 the business.

21 (c) Activities for which a trustee may maintain separate
22 accounting records include:

23 (1) Retail, manufacturing, service and other traditional
24 business activities;

25 (2) Farming;

26 (3) Raising and selling livestock and other animals;

- 27 (4) Management of rental properties;
- 28 (5) Extraction of minerals and other natural resources;
- 29 (6) Timber operations; and
- 30 (7) Activities to which section 414 applies.

PART 2. RECEIPTS NOT NORMALLY APPORTIONED.

§44B-4-404. Principal receipts.

- 1 A trustee shall allocate to principal:
 - 2 (1) To the extent not allocated to income under this chapter,
3 assets received from a transferor during the transferor's
4 lifetime, a decedent's estate, a trust with a terminating income
5 interest or a payer under a contract naming the trust or its
6 trustee as beneficiary;
 - 7 (2) Money or other property received from the sale,
8 exchange, liquidation or change in form of a principal asset,
9 including realized profit, subject to this article;
 - 10 (3) Amounts recovered from third parties to reimburse the
11 trust because of disbursements described in subdivision (7),
12 subsection (a), section five hundred two, article five of this
13 chapter or for other reasons to the extent not based on the loss
14 of income;
 - 15 (4) Proceeds of property taken by eminent domain, but a
16 separate award made for the loss of income with respect to an
17 accounting period during which a current income beneficiary
18 had a mandatory income interest is income;
 - 19 (5) Net income received in an accounting period during
20 which there is no beneficiary to whom a trustee may or must
21 distribute income; and
 - 22 (6) Other receipts as provided in part 3 of this article.

§44B-4-405. Rental property.

1 To the extent that a trustee accounts for receipts from rental
2 property pursuant to this section, the trustee shall allocate to
3 income an amount received as rent of real or personal property,
4 including an amount received for cancellation or renewal of a
5 lease. An amount received as a refundable deposit, including a
6 security deposit or a deposit that is to be applied as rent for
7 future periods, must be added to principal and held subject to
8 the terms of the lease and is not available for distribution to a
9 beneficiary until the trustee's contractual obligations have been
10 satisfied with respect to that amount.

§44B-4-406. Obligation to pay money.

1 (a) An amount received as interest, whether determined at
2 a fixed, variable or floating rate, on an obligation to pay money
3 to the trustee, including an amount received as consideration for
4 prepaying principal, must be allocated to income without any
5 provision for amortization of premium.

6 (b) A trustee shall allocate to principal an amount received
7 from the sale, redemption or other disposition of an obligation
8 to pay money to the trustee more than one year after it is
9 purchased or acquired by the trustee, including an obligation
10 whose purchase price or value when it is acquired is less than
11 its value at maturity. If the obligation matures within one year
12 after it is purchased or acquired by the trustee, an amount
13 received in excess of its purchase price or its value when
14 acquired by the trust must be allocated to income.

15 (c) This section does not apply to an obligation to which
16 section four hundred nine, four hundred ten, four hundred
17 eleven, four hundred twelve, four hundred fourteen or four
18 hundred fifteen of this article applies.

§44B-4-407. Insurance policies and similar contracts.

1 (a) Except as otherwise provided in subsection (b), a trustee
2 shall allocate to principal the proceeds of a life insurance policy

3 or other contract in which the trust or its trustee is named as
4 beneficiary, including a contract that insures the trust or its
5 trustee against loss for damage to, destruction of or loss of title
6 to a trust asset. The trustee shall allocate dividends on an
7 insurance policy to income if the premiums on the policy are
8 paid from income, and to principal if the premiums are paid
9 from principal.

10 (b) A trustee shall allocate to income proceeds of a contract
11 that insures the trustee against loss of occupancy or other use by
12 an income beneficiary, loss of income or, subject to section four
13 hundred three of this article, loss of profits from a business.

14 (c) This section does not apply to a contract to which
15 section four hundred nine of this article applies.

PART 3. RECEIPTS NORMALLY APPORTIONED.

§44B-4-408. Insubstantial allocations not required.

1 (a) If a trustee determines that an allocation between
2 principal and income required by section four hundred nine,
3 four hundred ten, four hundred eleven, four hundred twelve or
4 four hundred fifteen, of this article is insubstantial, the trustee
5 may allocate the entire amount to principal unless one of the
6 circumstances described in subsection (c), section one hundred
7 four of this article applies to the allocation. This power may be
8 exercised by a cotrustee in the circumstances described in
9 subsection (d) of said section and may be released for the
10 reasons and in the manner described in subdivision (e) of said
11 section. An allocation is presumed to be insubstantial if:

12 (1) The amount of the allocation would increase or decrease
13 net income in an accounting period, as determined before the
14 allocation, by less than ten percent; or

15 (2) The value of the asset producing the receipt for which
16 the allocation would be made is less than ten percent of the total

17 value of the trust's assets at the beginning of the accounting
18 period.

19 (b) Nothing in this section imposes a duty on the trustee to
20 make an allocation under this section, and the trustee is not
21 liable for failure to make an allocation under this section.

**§44B-4-409. Deferred compensation, annuities and similar pay-
ments.**

1 (a) In this section, "payment" means a payment that a
2 trustee may receive over a fixed number of years or during the
3 life of one or more individuals because of services rendered or
4 property transferred to the payer in exchange for future pay-
5 ments. The term includes a payment made in money or property
6 from the payer's general assets or from a separate fund created
7 by the payer, including a private or commercial annuity, an
8 individual retirement account, and a pension, profit-sharing,
9 stock-bonus or stock-ownership plan.

10 (b) To the extent that a payment is characterized as interest
11 or a dividend or a payment made in lieu of interest or a divi-
12 dend, a trustee shall allocate it to income. The trustee shall
13 allocate to principal the balance of the payment and any other
14 payment received in the same accounting period that is not
15 characterized as interest, a dividend or an equivalent payment.

16 (c) If no part of a payment is characterized as interest, a
17 dividend, or an equivalent payment, and all or part of the
18 payment is required to be made, a trustee shall allocate to
19 income ten percent of the part that is required to be made during
20 the accounting period and the balance to principal. If no part of
21 a payment is required to be made or the payment received is the
22 entire amount to which the trustee is entitled, the trustee shall
23 allocate the entire payment to principal. For purposes of this
24 subsection, a payment is not "required to be made" to the extent
25 that it is made because the trustee exercises a right of with-
26 drawal.

27 (d) If, to obtain an estate tax marital deduction for a trust,
28 a trustee must allocate more of a payment to income than
29 provided for by this section, the trustee shall allocate to income
30 the additional amount necessary to obtain the marital deduction.

31 (e) This section does not apply to payments to which
32 section four hundred ten of this article applies.

§44B-4-410. Liquidating asset.

1 (a) In this section, "liquidating asset" means an asset whose
2 value will diminish or terminate because the asset is expected
3 to produce receipts for a period of limited duration. The term
4 includes a leasehold, patent, copyright, royalty right and right
5 to receive payments during a period of more than one year
6 under an arrangement that does not provide for the payment of
7 interest on the unpaid balance. The term does not include a
8 payment subject to section four hundred nine of this article,
9 resources subject to section four hundred eleven of this article,
10 timber subject to section four hundred twelve of this article, an
11 activity subject to section four hundred fourteen of this article,
12 an asset subject to section four hundred fifteen of this article or
13 any asset for which the trustee establishes a reserve for depreci-
14 ation under section five hundred three, article five of this
15 chapter.

16 (b) A trustee shall allocate to income ten percent of the
17 receipts from a liquidating asset and the balance to principal.

§44B-4-411. Minerals, water and other natural resources.

1 (a) To the extent that a trustee accounts for receipts from an
2 interest in minerals or other natural resources pursuant to this
3 section, the trustee shall allocate them as follows:

4 (1) If received as nominal delay rental or nominal annual
5 rent on a lease, a receipt must be allocated to income;

6 (2) If received from a production payment, a receipt must
7 be allocated to income if and to the extent that the agreement
8 creating the production payment provides a factor for interest
9 or its equivalent. The balance must be allocated to principal;

10 (3) If an amount received as a royalty, shut-in-well pay-
11 ment, take-or-pay payment, bonus or delay rental is more than
12 nominal, ninety percent must be allocated to principal and the
13 balance to income;

14 (4) If an amount is received from a working interest or any
15 other interest not provided for in subdivision (1), (2) or (3) of
16 this subsection, ninety percent of the net amount received must
17 be allocated to principal and the balance to income.

18 (b) An amount received on account of an interest in water
19 that is renewable must be allocated to income. If the water is
20 not renewable, ninety percent of the amount must be allocated
21 to principal and the balance to income.

22 (c) This chapter applies whether or not a decedent or donor
23 was extracting minerals, water or other natural resources before
24 the interest became subject to the trust.

25 (d) If a trust owns an interest in minerals, water or other
26 natural resources on the effective date of this chapter, the
27 trustee may allocate receipts from the interest as provided in
28 this chapter or in the manner used by the trustee before the
29 effective date of this chapter. If the trust acquires an interest in
30 minerals, water or other natural resources after the effective
31 date of this chapter, the trustee shall allocate receipts from the
32 interest as provided in this chapter.

§44B-4-412. Timber.

1 (a) To the extent that a trustee accounts for receipts from
2 the sale of timber and related products pursuant to this section,
3 the trustee shall allocate the net receipts:

4 (1) To income to the extent that the amount of timber
5 removed from the land does not exceed the rate of growth of the
6 timber during the accounting periods in which a beneficiary has
7 a mandatory income interest;

8 (2) To principal to the extent that the amount of timber
9 removed from the land exceeds the rate of growth of the timber
10 or the net receipts are from the sale of standing timber;

11 (3) To or between income and principal if the net receipts
12 are from the lease of timberland or from a contract to cut timber
13 from land owned by a trust, by determining the amount of
14 timber removed from the land under the lease or contract and
15 applying the rules in subdivisions (1) and (2) of this subsection;
16 or

17 (4) To principal to the extent that advance payments,
18 bonuses and other payments are not allocated pursuant to
19 subdivision (1), (2) or (3) of this subsection.

20 (b) In determining net receipts to be allocated pursuant to
21 subsection (a) of this section, a trustee shall deduct and transfer
22 to principal a reasonable amount for depletion.

23 (c) This chapter applies whether or not a decedent or
24 transferor was harvesting timber from the property before it
25 became subject to the trust.

26 (d) If a trust owns an interest in timberland on the effective
27 date of this chapter, the trustee may allocate net receipts from
28 the sale of timber and related products as provided in this
29 chapter or in the manner used by the trustee before the effective
30 date of this chapter. If the trust acquires an interest in timber-
31 land after the effective date of this chapter, the trustee shall
32 allocate net receipts from the sale of timber and related prod-
33 ucts as provided in this chapter.

§44B-4-413. Property not productive of income.

1 (a) If a marital deduction is allowed for all or part of a trust
2 whose assets consist substantially of property that does not
3 provide the surviving spouse with sufficient income from or use
4 of the trust assets, and if the amounts that the trustee transfers
5 from principal to income under section one hundred four of this
6 article and distributes to the spouse from principal pursuant to
7 the terms of the trust are insufficient to provide the spouse with
8 the beneficial enjoyment required to obtain the marital deduc-
9 tion, the spouse may require the trustee to make property
10 productive of income, convert property within a reasonable
11 time, or exercise the power conferred by subsection (a) of said
12 section. The trustee may decide which action or combination of
13 actions to take.

14 (b) In cases not governed by subsection (a) of this section,
15 proceeds from the sale or other disposition of an asset are
16 principal without regard to the amount of income the asset
17 produces during any accounting period.

§44B-4-414. Derivatives and options.

1 (a) In this section, “derivative” means a contract or finan-
2 cial instrument or a combination of contracts and financial
3 instruments which gives a trust the right or obligation to
4 participate in some or all changes in the price of a tangible or
5 intangible asset or group of assets, or changes in a rate, an index
6 of prices or rates or other market indicator for an asset or a
7 group of assets.

8 (b) To the extent that a trustee accounts for transactions in
9 derivatives pursuant to this section, the trustee shall allocate to
10 principal receipts from and disbursements made in connection
11 with those transactions.

12 (c) If a trustee grants an option to buy property from the
13 trust, whether or not the trust owns the property when the

14 option is granted, grants an option that permits another person
15 to sell property to the trust or acquires an option to buy property
16 for the trust or an option to sell an asset owned by the trust, and
17 the trustee or other owner of the asset is required to deliver the
18 asset if the option is exercised, an amount received for granting
19 the option must be allocated to principal. An amount paid to
20 acquire the option must be paid from principal. A gain or loss
21 realized upon the exercise of an option, including an option
22 granted to a settlor of the trust for services rendered, must be
23 allocated to principal.

§44B-4-415. Asset-backed securities.

1 (a) In this section, “asset-backed security” means an asset
2 whose value is based upon the right it gives the owner to
3 receive distributions from the proceeds of financial assets that
4 provide collateral for the security. The term includes an asset
5 that gives the owner the right to receive from the collateral
6 financial assets only the interest or other current return or only
7 the proceeds other than interest or current return. The term does
8 not include an asset to which section four hundred one or four
9 hundred nine of this article applies.

10 (b) If a trust receives a payment from interest or other
11 current return and from other proceeds of the collateral finan-
12 cial assets, the trustee shall allocate to income the portion of the
13 payment which the payer identifies as being from interest or
14 other current return and shall allocate the balance of the
15 payment to principal.

16 (c) If a trust receives one or more payments in exchange for
17 the trust’s entire interest in an asset-backed security in one
18 accounting period, the trustee shall allocate the payments to
19 principal. If a payment is one of a series of payments that will
20 result in the liquidation of the trust’s interest in the security

21 over more than one accounting period, the trustee shall allocate
22 ten percent of the payment to income and the balance to
23 principal.

**ARTICLE 5. ALLOCATION OF DISBURSEMENTS DURING ADMINIS-
TRATION OF TRUST.**

§44B-5-501. Disbursements from income.

§44B-5-502. Disbursements from principal.

§44B-5-503. Transfers from income to principal for depreciation.

§44B-5-504. Transfers from income to reimburse principal.

§44B-5-505. Income taxes.

§44B-5-506. Adjustments between principal and income because of taxes.

§44B-5-507. Effect on marital deduction.

§44B-5-501. Disbursements from income.

1 A trustee shall make the following disbursements from
2 income to the extent that they are not disbursements to which
3 paragraph (B) or (C), subdivision (2), section two hundred one,
4 article two of this chapter applies:

5 (1) Except as otherwise ordered by the court one half of the
6 regular compensation of the trustee and of any person providing
7 investment advisory or custodial services to the trustee;

8 (2) Except as otherwise ordered by the court one half of all
9 expenses for accountings, judicial proceedings or other matters
10 that involve both the income and remainder interests;

11 (3) All of the other ordinary expenses incurred in connec-
12 tion with the administration, management or preservation of
13 trust property and the distribution of income, including interest,
14 ordinary repairs, regularly recurring taxes assessed against
15 principal and expenses of a proceeding or other matter that
16 concerns primarily the income interest; and

17 (4) Recurring premiums on insurance covering the loss of
18 a principal asset or the loss of income from or use of the asset.

§44B-5-502. Disbursements from principal.

1 (a) A trustee shall make the following disbursements from
2 principal:

3 (1) Except as otherwise ordered by the court the remaining
4 one half of the disbursements described in subdivisions (1) and
5 (2), section five hundred one of this article;

6 (2) Except as otherwise ordered by the court all of the
7 trustee's compensation calculated on principal as a fee for
8 acceptance, distribution or termination, and disbursements
9 made to prepare property for sale;

10 (3) Payments on the principal of a trust debt;

11 (4) Expenses of a proceeding that concerns primarily
12 principal, including a proceeding to construe the trust or to
13 protect the trust or its property;

14 (5) Premiums paid on a policy of insurance not described
15 in subdivision (4), section five hundred one of this article of
16 which the trust is the owner and beneficiary;

17 (6) Estate, inheritance and other transfer taxes, including
18 penalties, apportioned to the trust; and

19 (7) Disbursements related to environmental matters,
20 including reclamation, assessing environmental conditions,
21 remedying and removing environmental contamination,
22 monitoring remedial activities and the release of substances,
23 preventing future releases of substances, collecting amounts
24 from persons liable or potentially liable for the costs of those
25 activities, penalties imposed under environmental laws or
26 regulations and other payments made to comply with those laws
27 or regulations, statutory or common law claims by third parties
28 and defending claims based on environmental matters.

29 (b) If a principal asset is encumbered with an obligation
30 that requires income from that asset to be paid directly to the
31 creditor, the trustee shall transfer from principal to income an

32 amount equal to the income paid to the creditor in reduction of
33 the principal balance of the obligation.

§44B-5-503. Transfers from income to principal for depreciation.

1 (a) In this section, “depreciation” means a reduction in
2 value due to wear, tear, decay, corrosion or gradual obsoles-
3 cence of a fixed asset having a useful life of more than one
4 year.

5 (b) A trustee may transfer to principal a reasonable amount
6 of the net cash receipts from a principal asset that is subject to
7 depreciation, under generally accepted accounting principles,
8 but may not transfer any amount for depreciation:

9 (1) Of that portion of real property used or available for use
10 by a beneficiary as a residence or of tangible personal property
11 held or made available for the personal use or enjoyment of a
12 beneficiary;

13 (2) During the administration of a decedent’s estate; or

14 (3) Under this section if the trustee is accounting under
15 section four hundred three, article four of this chapter for the
16 business or activity in which the asset is used.

17 (c) An amount transferred to principal need not be held as
18 a separate fund.

§44B-5-504. Transfers from income to reimburse principal.

1 (a) If a trustee makes or expects to make a principal
2 disbursement described in this section, the trustee may transfer
3 an appropriate amount from income to principal in one or more
4 accounting periods to reimburse principal or to provide a
5 reserve for future principal disbursements.

6 (b) Principal disbursements to which subsection (a) of this
7 section applies include the following, but only to the extent that

8 the trustee has not been and does not expect to be reimbursed
9 by a third party:

10 (1) An amount chargeable to income but paid from princi-
11 pal because it is unusually large, including extraordinary
12 repairs;

13 (2) A capital improvement to a principal asset, whether in
14 the form of changes to an existing asset or the construction of
15 a new asset, including special assessments;

16 (3) Disbursements made to prepare property for rental,
17 including tenant allowances, leasehold improvements and
18 broker's commissions;

19 (4) Periodic payments on an obligation secured by a
20 principal asset to the extent that the amount transferred from
21 income to principal for depreciation is less than the periodic
22 payments; and

23 (5) Disbursements described in subdivision (7), subsection
24 (a), section five hundred two of this article.

25 (c) If the asset whose ownership gives rise to the disburse-
26 ments becomes subject to a successive income interest after an
27 income interest ends, a trustee may continue to transfer
28 amounts from income to principal as provided in subsection (a)
29 of this section.

§44B-5-505. Income taxes.

1 (a) A tax required to be paid by a trustee based on receipts
2 allocated to income must be paid from income.

3 (b) A tax required to be paid by a trustee based on receipts
4 allocated to principal must be paid from principal, even if the
5 tax is called an income tax by the taxing authority.

6 (c) A tax required to be paid by a trustee on the trust's share
7 of an entity's taxable income must be paid proportionately:

8 (1) From income to the extent that receipts from the entity
9 are allocated to income; and

10 (2) From principal to the extent that:

11 (A) Receipts from the entity are allocated to principal; and

12 (B) The trust's share of the entity's taxable income exceeds
13 the total receipts described in subdivision (1) and paragraph
14 (A), subdivision (2) of this subsection.

15 (d) For purposes of this section, receipts allocated to
16 principal or income must be reduced by the amount distributed
17 to a beneficiary from principal or income for which the trust
18 receives a deduction in calculating the tax.

**§44B-5-506. Adjustments between principal and income because
of taxes.**

1 (a) A fiduciary may make adjustments between principal
2 and income to offset the shifting of economic interests or tax
3 benefits between income beneficiaries and remainder beneficia-
4 ries which arise from:

5 (1) Elections and decisions, other than those described in
6 subsection (b) of this section, that the fiduciary makes from
7 time to time regarding tax matters;

8 (2) An income tax or any other tax that is imposed upon the
9 fiduciary or a beneficiary as a result of a transaction involving
10 or a distribution from the estate or trust; or

11 (3) The ownership by an estate or trust of an interest in an
12 entity whose taxable income, whether or not distributed, is
13 includable in the taxable income of the estate, trust or a
14 beneficiary.

15 (b) If the amount of an estate tax marital deduction or
16 charitable contribution deduction is reduced because a fiduciary
17 deducts an amount paid from principal for income tax purposes

18 instead of deducting it for estate tax purposes, and as a result
19 estate taxes paid from principal are increased and income taxes
20 paid by an estate, trust or beneficiary are decreased, each estate,
21 trust or beneficiary that benefits from the decrease in income
22 tax shall reimburse the principal from which the increase in
23 estate tax is paid. The total reimbursement must equal the
24 increase in the estate tax to the extent that the principal used to
25 pay the increase would have qualified for a marital deduction
26 or charitable contribution deduction but for the payment. The
27 proportionate share of the reimbursement for each estate, trust
28 or beneficiary whose income taxes are reduced must be the
29 same as its proportionate share of the total decrease in income
30 tax. An estate or trust shall reimburse principal from income.

§44B-5-507. Effect on marital deduction.

1 If a marital deduction gift is made in trust, in addition to the
2 other provisions of this chapter, each of the following provi-
3 sions also applies to the marital deduction trust:

4 (a) The transferor's spouse is the only beneficiary of
5 income or principal of the marital deduction property as long as
6 the spouse is alive. Nothing in this subdivision precludes
7 exercise by the transferor's spouse of a power of appointment
8 included in a trust that qualifies as a general power of appoint-
9 ment marital deduction trust.

10 (b) Subject to the provisions of subdivision (d) of this
11 section, the transferor's spouse is entitled to all of the income
12 of the marital deduction property as long as the spouse is alive.
13 Nothing in this subdivision precludes exercise by the trans-
14 feror's spouse of a power of appointment included in a trust that
15 qualifies as a general power of appointment marital deduction
16 trust.

17 (c) The transferor's spouse has the right to require that the
18 trustee of the trust make unproductive marital deduction

19 property productive or to convert it into productive property
20 within a reasonable time.

21 (d) Notwithstanding the provisions of section three hundred
22 three, article three of this chapter, in the case of a qualified
23 terminable interest property under 26 U.S.C. §2056 (b)(7) or 26
24 U.S.C. §2523 (f), as the same are in effect on the effective date
25 of this chapter, on termination of the interest of the transferor's
26 spouse in the trust all of the remaining accrued or undistributed
27 income shall pass to the estate of the transferor's spouse, unless
28 the instrument provides a different disposition that qualifies for
29 the marital deduction.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§44B-6-601. Uniformity of application and construction.

§44B-6-602. Severability clause.

§44B-6-603. Effective date.

§44B-6-604. Application of chapter to existing trusts and estates.

§44B-6-601. Uniformity of application and construction.

1 In applying and construing this chapter, consideration must
2 be given to the need to promote uniformity of the law with
3 respect to its subject matter among states that enact it.

§44B-6-602. 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.

§44B-6-603. Effective date.

1 This chapter takes effect on the first day of July, two
2 thousand.

§44B-6-604. Application of chapter to existing trusts and estates.

1 This chapter applies , to any will and trust established under
2 an instrument executed on or after the effective date of this

3 chapter except as otherwise expressly provided in the will or
4 terms of the trust or in this chapter, or if the trustee or personal
5 representative elects in either's sole discretion to administer the
6 trust or will under this chapter.

7 With respect to any will or trust established under an
8 instrument executed prior to the effective date of this chapter,
9 this chapter applies if the trustee or personal representative
10 elects, in either's sole discretion, to administer the trust or will
11 under this chapter.

CHAPTER 274

(Com. Sub. for H. B. 4442 — By Delegates Linch, Pino,
Varner, Leach, Staton, Douglas and Laird)

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

AN ACT to amend and reenact section one, article twenty-two, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section eleven, article three, chapter five-a of said code; and to further amend said article by adding six new sections, designated sections thirty-three-a, thirty-three-b, thirty-three-c, thirty-three-d, thirty-three-e and thirty-three-f; to amend and reenact section eleven, article one, chapter seven of said code; to amend and reenact section nineteen, article four, chapter seventeen of said code; to amend and reenact section fifteen, article nine-d, chapter eighteen of said code; and to amend and reenact section five, article five, chapter eighteen-b of said code, all relating to debarment of vendors from bidding on certain government contracts; debarment procedure; duties of the director of purchasing in regard to debarment; scope of the applicability of the debarment process; providing for an administrative procedure for contesting debarment decisions; and promulgation of rules.

Be it enacted by the Legislature of West Virginia:

That section one, article twenty-two, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section eleven, article three, chapter five-a of said code be amended and reenacted; that article three of said chapter be further amended by adding six new sections, designated sections thirty-three-a, thirty-three-b, thirty-three-c, thirty-three-d, thirty-three-e, and thirty-three-f; that section eleven, article one, chapter seven of said code be amended and reenacted; that section nineteen, article four, chapter seventeen of said code be amended and reenacted; that section fifteen, article nine-d, chapter eighteen of said code be amended and reenacted; and that section five, article five, chapter eighteen-b 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.**
- 5A. Department of Administration.**
- 7. County Commissions and Officers.**
- 17. Roads and Highways.**
- 18. Education.**
- 18B. Higher Education.**

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

ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.

§5-22-1. Bidding required; government construction contracts to go to qualified responsible bidder; debarment; exceptions.

- 1 (a) As used in this section, "the state and its subdivisions"
- 2 means the state of West Virginia, every political subdivision
- 3 thereof, every administrative entity that includes such a

4 subdivision, all municipalities and all county boards of education.

5 (b) The state and its subdivisions shall, except as provided
6 in this section, solicit competitive bids for every construction
7 project exceeding twenty-five thousand dollars in total cost:
8 *Provided*, That a vendor who has been debarred pursuant to the
9 provisions of sections thirty-three-a through thirty-three-f,
10 article three, chapter five-a of this code, may not bid on or be
11 awarded a contract under this section.

12 (c) Following the solicitation of such bids, the construction
13 contract shall be awarded to the lowest qualified responsible
14 bidder, who shall furnish a sufficient performance and payment
15 bond: *Provided*, That the state and its subdivisions may reject
16 all bids and solicit new bids on said project.

17 (d) Nothing in this section shall apply to:

18 (1) Work performed on construction or repair projects by
19 regular full-time employees of the state or its subdivisions;

20 (2) Prevent students enrolled in vocational educational
21 schools from being utilized in construction or repair projects
22 when such use is a part of the students training program;

23 (3) Emergency repairs to building components and systems.
24 For the purpose of this subdivision, emergency repairs means
25 repairs that if not made immediately will seriously impair the
26 use of such building components and systems, or cause danger
27 to those persons using such building components and systems;
28 and

29 (4) Any situation where the state or a subdivision thereof
30 shall come to an agreement with volunteers, or a volunteer
31 group, whereby the governmental body will provide construc-
32 tion or repair materials, architectural, engineering, technical or
33 any other professional services and the volunteers will provide

34 the necessary labor without charge to, or liability upon, the
35 governmental body.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-11. Purchasing in open market on competitive bids; debarment; bids to be based on standard specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder; uniform bids; record of bids; and exception.

§5A-3-33a. Definitions.

§5A-3-33b. Scope.

§5A-3-33c. Duties.

§5A-3-33d. Grounds for debarment.

§5A-3-33e. Debarment procedure.

§5A-3-33f. Effects of debarment.

§5A-3-11. Purchasing in open market on competitive bids; debarment; bids to be based on standard specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder; uniform bids; record of bids; and exception.

1 (a) The director may make a purchase of commodities,
2 printing, and services of ten thousand dollars or less in amount
3 in the open market, but the purchase shall, wherever possible,
4 be based on at least three competitive bids.

5 (b) The director may authorize spending units to purchase
6 commodities, printing and services in the amount of one
7 thousand dollars in the open market without competitive bids.

8 (c) Bids shall be based on the standard specifications
9 promulgated and adopted in accordance with the provisions of
10 section five of this article, and may not be altered or withdrawn
11 after the appointed hour for the opening of the bids.

12 (d) A vendor who has been debarred pursuant to the
13 provisions of sections thirty-three-a through thirty-three-f,

14 article three, chapter five-a of this code, may not bid on or be
15 awarded a contract under this section.

16 (e) All open market orders, purchases based on advertised
17 bid requests or contracts made by the director or by a state
18 department shall be awarded to the lowest responsible bidder,
19 taking into consideration the qualities of the articles to be
20 supplied, their conformity with specifications, their suitability
21 to the requirements of the government and the delivery terms:
22 *Provided*, That state bids on school buses shall be accepted
23 from all bidders who shall then be awarded contracts if they
24 meet the state board's "Minimum Standards for Design and
25 Equipment of School Buses". County boards of education may
26 select from those bidders who have been awarded contracts and
27 shall pay the difference between the state aid formula amount
28 and the actual cost of bus replacement. Any or all bids may be
29 rejected.

30 (f) If all bids received on a pending contract are for the
31 same unit price or total amount, the director has the authority to
32 reject all bids, and to purchase the required commodities,
33 printing and services in the open market, if the price paid in the
34 open market does not exceed the bid prices.

35 (g) All bidders submitting bid proposals to the purchasing
36 division are required to submit an extra or duplicate copy to the
37 state auditor.

38 (h) Both copies must be received at the respective offices
39 prior to the specified date and time of the bid openings. The
40 failure to deliver or the nonreceipt of these bid forms at either
41 of these offices prior to the appointed date and hour are grounds
42 for rejection of the bids. In the event of any deviation between
43 the copies submitted to the purchasing division and the state
44 auditor, the bids as to which there is a deviation shall be
45 rejected, if the deviation relates to the quantity, quality or
46 specifications of the commodities, printing or services to be

47 furnished or to the price therefor or to the date of delivery or
48 performance.

49 (i) After the award of the order or contract, the director, or
50 someone appointed by him or her for that purpose, shall
51 indicate upon the successful bid and its copy in the office of the
52 state auditor that it was the successful bid. Thereafter, the copy
53 of each bid in the possession of the director and the state auditor
54 shall be maintained as a public record by both of them, shall be
55 open to public inspection in the offices of both the director and
56 the state auditor and may not be destroyed by either of them
57 without the written consent of the legislative auditor: *Provided*,
58 That the governing board as defined in section two, article one,
59 chapter eighteen-b of this code, may certify in writing to the
60 director the need for a specific item essential to a particular
61 usage either for instructional or research purposes at an
62 institution of higher education and the director upon review of
63 such certification may provide for the purchase of said specific
64 items in the open market without competitive bids.

65 (j) If the director permits bids by facsimile transmission
66 machine to be accepted in lieu of sealed bids pursuant to the
67 provisions of section ten of this article, a duplicate facsimile
68 transmission machine bid shall be transmitted to the state
69 auditor pursuant to this section: *Provided*, That an original bid
70 is received by the state auditor within two working days
71 following the date specified for bid opening.

§5A-3-33a. Definitions.

1 For purposes of the provisions of sections thirty-three-a
2 through thirty-three-f of this article:

3 (a) "Debarment" means the exclusion of a vendor from the
4 right to bid on contracts to sell goods or supply services to the
5 state or its subdivisions for a specified period of time.

6 (b) "The state and its subdivisions" means the state of West
7 Virginia, every political subdivision thereof, every administra-
8 tive entity that includes such a subdivision, all municipalities
9 and all county boards of education.

10 (c) "Vendor" means any person or entity that is eligible to
11 bid on contracts to supply the state or its subdivisions with
12 commodities or services, including contracting services for the
13 construction and improvement of roads and buildings.

§5A-3-33b. Scope.

1 The provisions of sections thirty-three-a through thirty-
2 three-f of this article govern the debarment of vendors with
3 regard to bids under the following provisions of this code:

4 (a) Section one, article twenty-two, chapter five, relating to
5 bids for construction contracts by the state and its subdivisions;

6 (b) Section eleven, article three, chapter five-a, relating to
7 the purchase of supplies and printing by the state;

8 (c) Section eleven, article one, chapter seven, relating to
9 bids for the purchase of commodities and printing by county
10 commissions;

11 (d) Sections nineteen and twenty, article four, chapter
12 seventeen, relating to bids for construction and reconstruction
13 of state roads and bridges and the furnishing of materials and
14 supplies therefor;

15 (e) Article nine-d, chapter eighteen, relating to the awarding
16 of contracts by the school building authority; and

17 (f) Sections four and five, article five, chapter eighteen-b,
18 relating to expenditures by the governing boards for higher
19 education.

§5A-3-33c. Duties.

1 The director has primary responsibility for administering
2 the debarment process. The director's duties include:

3 (a) Obtaining lists of vendors declared ineligible under
4 federal laws and regulations;

5 (b) Notification of all contracting officials for the state and
6 its subdivisions regarding debarred vendors;

7 (c) Compiling and maintaining a current, consolidated list
8 of all vendors that have been debarred or declared ineligible,
9 the period of such debarment, and the reasons therefor;

10 (d) Investigating complaints about vendors from the
11 officials of the state and its subdivisions responsible for
12 contracting with vendors for supplies and services;

13 (e) Initiating and conducting debarment procedures;

14 (f) Proposing rules for legislative approval, pursuant to the
15 provisions of article three, chapter twenty-nine-a of this code,
16 for the operation of the debarment process described in the
17 provisions of sections thirty-three-a through thirty-three-f of
18 this article.

§5A-3-33d. Grounds for debarment.

1 Grounds for debarment are:

2 (a) Conviction of an offense involving fraud or a felony
3 offense in connection with obtaining or attempting to obtain a
4 public contract or subcontract.

5 (b) Conviction of any federal or state antitrust statute
6 relating to the submission of offers.

7 (c) Conviction of an offense involving embezzlement, theft,
8 forgery, bribery, falsification or destruction of records, making

9 false statements or receiving stolen property in connection with
10 the performance of a contract.

11 (d) Conviction of a felony offense demonstrating a lack of
12 business integrity or business honesty that affects the present
13 responsibility of the vendor or subcontractor.

14 (e) Default on obligations owed to the state, including, but
15 not limited to, obligations under the West Virginia workers'
16 compensation act, the West Virginia unemployment compensa-
17 tion act, and West Virginia state tax and revenue laws. For
18 purposes of this subsection, a vendor is in default when, after
19 due notice, the vendor fails to submit a required payment,
20 interest thereon, or penalty, and has not entered into a repay-
21 ment agreement with the appropriate agency of the state, or has
22 entered into a repayment agreement but does not remain in
23 compliance with its obligations under the repayment agreement.
24 In the case of a vendor granted protection by order of a federal
25 bankruptcy court or a vendor granted an exemption under any
26 rule of the bureau of employment programs, the director may
27 waive debarment under section thirty-three-f of this article:
28 *Provided*, That in no event may debarment be waived with
29 respect to any vendor who has not paid all current state obliga-
30 tions for at least the four most recent calendar quarters, exclud-
31 ing the current calendar quarter, or with respect to any vendor
32 who is in default on a repayment agreement with an agency of
33 the state.

34 (f) The vendor is not in good standing with a licensing
35 board, in that the vendor is not licensed when licensure is
36 required by the law of this state, or the vendor has been found
37 to be in violation of an applicable licensing law after notice,
38 opportunity to be heard and other due process required by law.

39 (g) Violation of the terms of a public contract or subcon-
40 tract for:

41 (1) Willful failure to substantially perform in accordance
42 with the terms of one or more public contracts;

43 (2) Performance in violation of standards established by
44 law or generally accepted standards of the trade or profession
45 amounting to intentionally deficient or grossly negligent
46 performance on one or more public contracts;

47 (3) Use of substandard materials on one or more public
48 contracts, or defects in construction in one or more public
49 construction projects amounting to intentionally deficient or
50 grossly negligent performance, even if discovery of the defect
51 is subsequent to acceptance of a construction project and
52 expiration of any warranty thereunder;

53 (4) A repeated pattern or practice of failure to perform so
54 serious and compelling as to justify debarment; or

55 (5) Any other cause of a serious and compelling nature
56 amounting to knowing and willful misconduct of the vendor
57 that demonstrates a wanton indifference to the interests of the
58 public and that caused, or that had a substantial likelihood of
59 causing, serious harm to the public.

§5A-3-33e. Debarment procedure.

1 (a) The director shall obtain lists of vendors declared
2 ineligible under federal laws and regulation and lists of vendors
3 who are in default on state obligations, and shall initiate
4 debarment proceedings with respect to such vendors, except
5 when good cause is shown which includes evidence that the
6 vendor has become responsible.

7 (1) In the case of federal ineligibility restrictions applicable
8 to state agencies, the director shall also notify the appropriate
9 agencies of any ineligibility determined under federal authority.

10 (2) The director may also initiate debarment proceedings if
11 he or she finds probable cause for debarment for any ground set
12 forth in section thirty-three-d of this article.

13 (3) The director shall initiate debarment proceedings when
14 any state agency requests debarment of a vendor and the
15 director finds that probable cause for debarment exists.

16 (b) The director shall notify the vendor by certified mail,
17 return receipt requested, of the following:

18 (1) The reasons for the proposed debarment in sufficient
19 detail to put the vendor on notice of the conduct or transactions
20 upon which the proposed debarment is based;

21 (2) The causes relied upon for the proposed debarment;

22 (3) That within thirty working days after receipt of the
23 notice, the vendor may submit in writing information and
24 argument in opposition to the proposed debarment;

25 (4) The procedures governing debarment decision-making;
26 and

27 (5) The potential effect of the proposed debarment.

28 (c) In the event a vendor wishes to contest the debarment
29 decision, the director shall decide the matter in accordance with
30 the provisions of article five, chapter twenty-nine-a of this code.

31 (d) In any debarment decision, the director shall make a
32 specific finding, based on the substantial record, whether the
33 public interest requires that the debarment decision extend to all
34 commodities and services of the vendor, or whether the public
35 interest allows the debarment decision to be limited to specific
36 commodities or services.

37 (e) In any debarment decision, the director shall specify the
38 length of the debarment period. The debarment period must be

39 for the period of time that the director finds necessary and
40 proper to protect the public from an irresponsible vendor.

41 (f) Proof of grounds for debarment must be clear and
42 convincing.

§5A-3-33f. Effects of debarment.

1 (a) Unless the director determines in writing that there is a
2 compelling reason to do otherwise, the state and its subdivisions
3 may not solicit offers from, award contracts to, or consent to
4 subcontract with a debarred vendor during the debarment
5 period.

6 (b) The contracting officer may not exercise an option to
7 renew or otherwise extend a current contract with a debarred
8 vendor, or a contract which is being performed in any part by
9 a debarred subcontractor, unless the director approves the
10 action in writing, based on compelling reasons for exercise of
11 the option or extension.

12 (c) The debarment decision may extend to all commodities
13 and services of the vendor, or may be limited to specific
14 commodities or services, as the director specifically finds, in
15 the debarment procedure under section thirty-three-e of this
16 article, to be in the public interest based on the substantial
17 record.

18 (d) The director may extend the debarment to include an
19 affiliate of the vendor upon proof necessary to pierce the
20 corporate veil at common law. The director shall follow the
21 same procedure, and afford the affiliate like notice, hearing and
22 other rights, for extending the debarment to the affiliate as
23 provided for under section thirty-three-e for the debarment of
24 the vendor.

25 (e) The director may reduce the period or extent of debar-
26 ment, upon the vendor's request supported by documentation,
27 for the following reasons:

28 (1) Newly discovered material evidence;

29 (2) Reversal of the conviction or judgment upon which
30 debarment was based;

31 (3) Elimination of the causes for which the debarment was
32 imposed; or

33 (4) Other good cause shown, including evidence that the
34 vendor has become responsible.

35 (f) The director may extend the debarment period for an
36 additional period if the director determines that the extension is
37 necessary to protect the interests of the state. Upon the expira-
38 tion of a debarment period, the director shall extend the
39 debarment period for any vendor who has not paid all current
40 state obligations for at least the four most recent calendar
41 quarters, exempting the current calendar quarter, and for any
42 vendor who is in default on a repayment agreement with an
43 agency of the state, until such time as the cause for the extended
44 debarment is removed. If the director extends the debarment
45 period, the director shall follow the same procedures, and afford
46 the vendor like notice, hearing and other rights for extending
47 the debarment, as provided for debarment under section thirty-
48 three-e of this article.

49 (g) A debarment under this article may be waived by the
50 director with respect to a particular contract if the director
51 determines the debarment of the vendor would severely disrupt
52 the operation of a governmental entity to the detriment of the
53 general public or would not be in the public interest.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**§7-1-11. Purchasing in open market or competitive bids; debarment.**

1 (a) County commissions may make a purchase of commodities
2 ties and printing of fifteen thousand dollars or less in amount in
3 the open market, but a purchase of and contract for commodities
4 ties and printing over fifteen thousand dollars shall be based on
5 competitive bids, except in case of emergency.

6 (b) The county commission of any county is authorized and
7 empowered to promulgate rules governing the procedure of
8 competitive bids: *Provided*, That a vendor who has been
9 debarred pursuant to the provisions of sections thirty-three-a
10 through thirty-three-f, article three, chapter five-a of this code,
11 may not bid on or be awarded a contract under this section.

12 (c) As used in this section, the terms “commodities” and
13 “printing” shall have the same meaning as those terms are
14 defined in section one, article one, chapter five-a of this code.

CHAPTER 17. ROADS AND HIGHWAYS.**ARTICLE 4. STATE ROAD SYSTEM.****§17-4-19. Contracts for construction, materials, etc.; work by prison labor, etc.; bidding procedure.**

1 (a) All work of construction and reconstruction of state
2 roads and bridges, and the furnishing of all materials and
3 supplies therefor, and for the repair thereof shall be done and
4 furnished pursuant to contract, except that the commissioner
5 may not be required to award any contract for work which can
6 be done advantageously, economically and practicably by
7 commission forces or prison labor and by use of state road
8 equipment, or for materials and supplies, which are manufac-
9 tured, processed or assembled by the commissioner: *Provided*,
10 That the commissioner may not be required to award any

11 contract for work, materials or supplies for an amount less than
12 three thousand dollars. In all the work, the commissioner shall
13 utilize state road forces or prison labor and state road equip-
14 ment and shall manufacture, process and assemble all the
15 materials and supplies for the work whenever and wherever the
16 commissioner, in his or her discretion, finds work and services
17 advantageous, economical and practicable in the state road
18 program.

19 (b) If the work is to be done, or the materials therefor are
20 to be furnished by contract, the commissioner shall thereupon
21 publish the following described advertisement as a Class II
22 legal advertisement, in compliance with the provisions of article
23 three, chapter fifty-nine of this code, and the publication area
24 for the publication shall be the county or municipality in which
25 the road lies.

26 (c) The advertisement shall also be published at least once
27 in at least one daily newspaper published in the city of
28 Charleston and in other journals or magazines as may to the
29 commissioner seem advisable. The advertisement shall solicit
30 sealed proposals for the construction or other improvement of
31 the road, and for the furnishing of materials therefor, accurately
32 describing the same, and stating the time and place for opening
33 the proposals and reserving the right to reject any and all
34 proposals: *Provided*, That whenever the estimated amount of
35 any contract for work or for materials or supplies is less than
36 three thousand dollars, the commissioner may not be required
37 to advertise the letting of the contract in newspapers as above
38 required, but may award the contract to the lowest responsible
39 bidder, when two or more sealed proposals or bids have been
40 received by him or her without the advertisement, but the
41 contract may not be so awarded unless the bid of the successful
42 bidder is three thousand dollars or less.

43 (d) The commissioner shall have the power to prescribe
44 proper prequalifications of contractors bidding on state road
45 construction work: *Provided*, That a vendor who has been
46 debarred pursuant to the provisions of sections thirty-three-a
47 through thirty-three-f, article three, chapter five-a of this code,
48 may not bid on or be awarded a contract under this section.

49 (e) To all sealed proposals there shall be attached the
50 certified check of the bidder or bidder's bond acceptable to the
51 commissioner, in the amount as the commissioner shall specify
52 in the advertisement, but not to exceed five percent of the
53 aggregate amount of the bid; but the amount shall never be less
54 than five hundred dollars. The proposals shall be publicly
55 opened and read at the time and place specified in the advertise-
56 ment, and the contract for the work, or for the supplies or
57 materials required therefor shall, if let, be awarded by the
58 commissioner to the lowest responsible bidder for the type of
59 construction selected.

60 (f) In case all bids be rejected, the commissioner may
61 thereafter do the work with commission forces or with prison
62 labor, or may readvertise in the same manner as before and let
63 a contract for the work pursuant thereto.

CHAPTER 18. EDUCATION.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-15. Legislative intent; distribution of money.

1 (a) It is the intent of the Legislature to empower the school
2 building authority to facilitate and provide state funds and to
3 administer all federal funds provided for the construction and
4 major improvement of school facilities so as to meet the
5 educational needs of the people of this state in an efficient and
6 economical manner. The authority shall make funding determi-
7 nations in accordance with the provisions of this article and
8 shall assess existing school facilities and each facility's school

9 major improvement plan in relation to the needs of the individ-
10 ual student, the general school population, the communities
11 served by the facilities and facility needs statewide.

12 (b) An amount that is no more than three percent of the sum
13 of moneys that are determined by the authority to be available
14 for distribution during the then current fiscal year from: (1)
15 Moneys paid into the school building capital improvements
16 fund pursuant to section ten, article nine-a of this chapter; (2)
17 the issuance of revenue bonds for which moneys in the school
18 building debt service fund are pledged as security; (3) moneys
19 paid into the school construction fund pursuant to section six of
20 this article; and (4) any other moneys received by the authority,
21 except moneys paid into the school major improvement fund
22 pursuant to section six of this article, may be allocated and may
23 be expended by the authority for projects that service the
24 educational community statewide or, upon application by the
25 state board, for educational programs that are under the
26 jurisdiction of the state board. In addition, upon application by
27 the state board or the administrative council of an area voca-
28 tional educational center established pursuant to article two-b
29 of this chapter, the authority may allocate and expend under this
30 section moneys for school major improvement projects pro-
31 posed by the state board or an administrative council for school
32 facilities under the direct supervision of the state board or an
33 administrative council, respectively: *Provided*, That the
34 authority may not expend any moneys for a school major
35 improvement project proposed by the state board or the
36 administrative council of an area vocational educational center
37 unless the state board or an administrative council has submit-
38 ted a ten-year school major improvement plan, to be updated
39 annually, pursuant to section sixteen of this article: *Provided*,
40 *however*, That the authority shall, before allocating any moneys
41 to the state board or the administrative council of an area
42 vocational educational center for a school improvement project,
43 consider all other funding sources available for the project.

44 (c) An amount that is no more than two percent of the
45 moneys that are determined by the authority to be available for
46 distribution during the current fiscal year from: (1) Moneys
47 paid into the school building capital improvements fund
48 pursuant to section ten, article nine-a of this chapter; (2) the
49 issuance of revenue bonds for which moneys in the school
50 building debt service fund are pledged as security; (3) moneys
51 paid into the school construction fund pursuant to section six of
52 this article; and (4) any other moneys received by the authority,
53 except moneys deposited into the school major improvement
54 fund, shall be set aside by the authority as an emergency fund
55 to be distributed in accordance with the guidelines adopted by
56 the authority.

57 (d) The remaining moneys determined by the authority to
58 be available for distribution during the then current fiscal year
59 from: (1) Moneys paid into the school building capital improve-
60 ments fund pursuant to section ten, article nine-a of this
61 chapter; (2) the issuance of revenue bonds for which moneys in
62 the school building debt service fund are pledged as security;
63 (3) moneys paid into the school construction fund pursuant to
64 section six of this article; and (4) any other moneys received by
65 the authority, except moneys deposited into the school major
66 improvement fund, shall be allocated and expended on the basis
67 of need and efficient use of resources, the basis to be deter-
68 mined by the authority in accordance with the provisions of
69 section sixteen of this article.

70 (e) If a county board of education proposes to finance a
71 project that is approved pursuant to section sixteen of this
72 article through a lease with an option to purchase leased
73 premises upon the expiration of the total lease period pursuant
74 to an investment contract, the authority may allocate no moneys
75 to the county board in connection with the project: *Provided,*
76 That the authority may transfer moneys to the state board of
77 education, which, with the authority, shall lend the amount

78 transferred to the county board to be used only for a one-time
79 payment due at the beginning of the lease term, made for the
80 purpose of reducing annual lease payments under the invest-
81 ment contract, subject to the following conditions:

82 (1) The loan shall be secured in the manner required by the
83 authority, in consultation with the state board, and shall be
84 repaid in a period and bear interest at a rate as determined by
85 the state board and the authority and shall have such terms and
86 conditions as are required by the authority, all of which shall be
87 set forth in a loan agreement among the authority, the state
88 board and the county board;

89 (2) The loan agreement shall provide for the state board and
90 the authority to defer the payment of principal and interest upon
91 any loan made to the county board during the term of the
92 investment contract, and annual renewals of the investment
93 contract, among the state board, the authority, the county board
94 and a lessor: *Provided*, That in the event a county board, which
95 has received a loan from the authority for a one-time payment
96 at the beginning of the lease term, does not renew the subject
97 lease annually until performance of the investment contract in
98 its entirety is completed, the county board is in default and the
99 principal of the loan, together with all unpaid interest accrued
100 to the date of the default, shall at the option of the authority, in
101 consultation with the state board, become due and payable
102 immediately or subject to renegotiation among the state board,
103 the authority and the county board: *Provided, however*, That if
104 a county board renews the lease annually through the perfor-
105 mance of the investment contract in its entirety, the county
106 board shall exercise its option to purchase the leased premises:
107 *Provided further*, That the failure of the county board to make
108 a scheduled payment pursuant to the investment contract
109 constitutes an event of default under the loan agreement: *And*
110 *provided further*, That upon a default by a county board, the
111 principal of the loan, together with all unpaid interest accrued

112 to the date of the default, shall at the option of the authority, in
113 consultation with the state board, become due and payable
114 immediately or subject to renegotiation among the state board,
115 the authority and the county board: *And provided further*, That
116 if the loan becomes due and payable immediately, the authority,
117 in consultation with the state board, shall use all means avail-
118 able under the loan agreement and law to collect the outstand-
119 ing principal balance of the loan, together with all unpaid
120 interest accrued to the date of payment of the outstanding
121 principal balance; and

122 (3) The loan agreement shall provide for the state board and
123 the authority to forgive all principal and interest of the loan
124 upon the county board purchasing the leased premises pursuant
125 to the investment contract and performance of the investment
126 contract in its entirety.

127 (f) To encourage county boards to proceed promptly with
128 facilities planning and to prepare for the expenditure of any
129 state moneys derived from the sources described in this
130 subsection, any county board failing to expend money within
131 three years of the allocation to the county board shall forfeit the
132 allocation and thereafter is ineligible for further allocations
133 pursuant to this subsection until the county board is ready to
134 expend funds in accordance with an approved facilities plan:
135 *Provided*, That the authority may authorize an extension beyond
136 the three-year forfeiture period not to exceed an additional two
137 years. Any amount forfeited shall be added to the total funds
138 available in the school construction fund of the authority for
139 future allocation and distribution.

140 (g) The remaining moneys that are determined by the
141 authority to be available for distribution during the then current
142 fiscal year from moneys paid into the school major improve-
143 ment fund pursuant to section six of this article shall be
144 allocated and distributed on the basis of need and efficient use

145 of resources, the basis to be determined by the authority in
146 accordance with the provisions of section sixteen of this article:
147 *Provided*, That the moneys may not be distributed to any county
148 board that does not have an approved school major improve-
149 ment plan or to any county board that is not prepared to
150 commence expenditures of the funds during the fiscal year in
151 which the moneys are distributed: *Provided, however*, That any
152 moneys allocated to a county board and not distributed to that
153 county board shall be deposited in an account to the credit of
154 that county board, the principal amount to remain to the credit
155 of and available to the county board for a period of two years.
156 Any moneys which are unexpended after a two-year period
157 shall be redistributed on the basis of need from the school major
158 improvement fund in that fiscal year.

159 (h) No local matching funds may be required under the
160 provisions of this section. However, the responsibilities of the
161 county boards of education to maintain school facilities are not
162 negated by the provisions of this article. To be eligible to
163 receive an allocation of school major improvement funds from
164 the authority, a county board must have expended in the
165 previous fiscal year an amount of county moneys equal to or
166 exceeding the lowest average amount of money included in the
167 county board's maintenance budget over any three of the
168 previous five years and must have budgeted an amount equal to
169 or greater than the average in the current fiscal year: *Provided*,
170 That the state board of education shall promulgate rules relating
171 to county boards' maintenance budgets, including items which
172 shall be included in the budgets.

173 (i) Any county board may use moneys provided by the
174 authority under this article in conjunction with local funds
175 derived from bonding, special levy or other sources. Distribu-
176 tion to a county board, or to the state board or the administra-
177 tive council of an area vocational educational center pursuant
178 to subsection (b) of this section, may be in a lump sum or in

179 accordance with a schedule of payments adopted by the
180 authority pursuant to guidelines adopted by the authority.

181 (j) Funds in the school construction fund shall first be
182 transferred and expended as follows:

183 Any funds deposited in the school construction fund shall
184 be expended first in accordance with an appropriation by the
185 Legislature. To the extent that funds are available in the school
186 construction fund in excess of that amount appropriated in any
187 fiscal year, the excess funds may be expended in accordance
188 with the provisions of this article. Any projects which the
189 authority identified and announced for funding on or before the
190 first day of August, one thousand nine hundred ninety-five, or
191 identified and announced for funding on or before the
192 thirty-first day of December, one thousand nine hundred
193 ninety-five, shall be funded by the authority in an amount
194 which is not less than the amount specified when the project
195 was identified and announced.

196 (k) It is the intent of the Legislature to encourage county
197 boards to explore and consider arrangements with other
198 counties that may facilitate the highest and best use of all
199 available funds, which may result in improved transportation
200 arrangements for students, or which otherwise may create
201 efficiencies for county boards and the students. In order to
202 address the intent of the Legislature contained in this subsection,
203 the authority shall grant preference to those projects which
204 involve multicounty arrangements as the authority shall
205 determine reasonable and proper.

206 (l) County boards shall submit all designs for construction
207 of new school buildings to the school building authority for
208 review and approval prior to preparation of final bid documents:
209 *Provided*, That a vendor who has been debarred pursuant to the provisions of sections thirty-three-a through thirty-

211 three-f, article three, chapter five-a of this code, may not bid on
212 or be awarded a contract under this section.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-5. Prequalification disclosure by vendors; register of vendors; exceptions; suspension of vendors.

1 (a) Every person, firm or corporation selling or offering to
2 sell to the governing boards, upon competitive bids or other-
3 wise, any materials, equipment or supplies in excess of fifteen
4 thousand dollars shall comply with all of the provisions of
5 section twelve, article three, chapter five-a of this code and
6 shall file with the director of the purchasing division of the state
7 of West Virginia the affidavit required herein: *Provided*, That
8 every such person, firm or corporation who is presently in
9 compliance with said section shall not be required to requalify
10 thereunder to be able to transact business with the governing
11 boards.

12 (b) Any person, firm or corporation failing or refusing to
13 comply with said statute as herein required shall be ineligible
14 to sell or offer to sell commodities or printing to the governing
15 boards as hereinafter set forth: *Provided*, That any person
16 suspended under the provisions of section thirty-nine, article
17 three, chapter five-a of this code shall not be eligible to sell or
18 offer to sell commodities or printing to the governing boards:
19 *Provided, however*, That the governing boards shall have the
20 power and authority to suspend, for a period not to exceed one
21 year, the right and privilege of a person to bid on purchases of
22 the governing boards when there is reason to believe that such
23 person has violated any of the provisions in sections four
24 through seven of this article or the rules of the governing boards
25 pursuant thereto. Every person whose right to bid has been so
26 suspended shall be notified thereof by a letter posted by

27 registered mail containing the reason for such suspension and
28 shall have the right to have the appropriate governing board's
29 action reviewed in accordance with section forty, article three,
30 chapter five-a of this code: *Provided further*, That a vendor who
31 has been debarred pursuant to the provisions of sections thirty-
32 three-a through thirty-three-f, article three, chapter five-a of this
33 code, may not bid on or be awarded a contract under this
34 section.

CHAPTER 275

(Com. Sub. for H. B. 2060 — By Delegates Givens and Martin)

[Passed March 9, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four, relating to granting priority to veterans in certain training programs.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. VETERANS EMPLOYMENT TRAINING PRIORITY.

§9A-4-1. Purpose.

§9A-4-2. Definitions.

§9A-4-3. Program eligibility.

§9A-4-4. Application for priority of services.

§9A-4-5. Priority of services.

§9A-4-6. Federal law.

§9A-4-1. Purpose.

1 (a) The Legislature finds that West Virginia veterans
2 represent a strong and productive part of the workforce of this
3 state. They are frequently disadvantaged in their pursuit of
4 civilian employment as a result of military service and delayed
5 entry into the civilian labor market. It is, therefore, in the public
6 interest and welfare that veterans continue to be provided the
7 traditional priority of services in workforce development
8 programs administered under the provisions of the federal
9 Workforce Investment Act of 1998.

10 (b) The purpose of this article is to require all federal and
11 state funded employment and training programs offered within
12 West Virginia to adopt a written policy providing priority of
13 service to veterans of the United States military over other
14 individuals seeking employment and training services.

§9A-4-2. Definitions.

1 (a) "Eligible veteran" means a person who:

2 (1) Served on active duty and was discharged or released
3 from active duty with an honorable discharge or because of a
4 service-connected disability; or

5 (2) As a member of a reserve component under an order to
6 active duty, served on active duty during a period of war or in
7 a campaign or expedition for which a campaign badge or ribbon
8 is authorized and was discharged or released from such duty
9 with an honorable discharge.

10 (b) "Priority of service" means the right to priority in any
11 employment or training program offered citizens of West
12 Virginia which is funded, in whole or in part, through federal or
13 state moneys.

14 (c) "Reserve component" means any branch of the military
15 which is called up to active duty, including any military defense
16 forces.

17 (d) "Training program" means a program that provides
18 training leading to qualification for employment, or improved
19 skills, or both, funded in whole or in part through the workforce
20 investment act or another federal or state act administered
21 through the state and having as its primary purpose workforce
22 development.

23 (e) "Training provider" means any private or public entity
24 which has been certified by competent authority to provide
25 training funded by federal or state funds appropriated in the
26 budget under the jobs training partnership act or another federal
27 or state act having as its primary purpose workforce develop-
28 ment.

§9A-4-3. Program eligibility.

1 For a veteran to receive a priority in services designation
2 for a federal or state funded training program, the veteran shall
3 first meet the eligibility criteria and qualifications of the
4 specific program.

§9A-4-4. Application for priority of services.

1 A veteran shall make application for a priority of services
2 designation with the training provider by completing required
3 documentation and identifying to the satisfaction of the training
4 provider his or her eligibility in accordance with subsection (b),
5 section two of this article.

§9A-4-5. Priority of services.

1 An eligible veteran who has applied for and received a
2 priority of services designation and who has otherwise met the
3 eligibility criteria for employment training through a federal or

4 state funded program shall be placed in a pool of eligible
5 applicants, ordered on the date of eligibility. If both veterans
6 and nonveterans are certified eligible on the same day, veterans
7 shall be afforded priority in enrollment in the following
8 manner:

9 (A) First priority shall be awarded to service-connected
10 disabled veterans;

11 (B) Second priority shall be awarded to other eligible
12 veterans;

13 (C) Third priority shall be awarded to nonveterans.

§9A-4-6. Federal law.

1 Provisions of this article shall be superseded by federal
2 laws and regulations which are more stringent or which provide
3 specific veterans preference or priority of service relative to
4 administering employment and training programs.

CHAPTER 276

(Com. Sub. for H. B. 4425 — By Delegates Martin, Givens,
Varner, Stemple, Cann, Mattaliano and Coleman)

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

AN ACT to amend article twenty-two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-a, relating to lottery; providing for a scratch-off game to benefit veterans for a limited time; creating a special fund within the state treasury; authorizing the Legislature to appropriate the special lottery funds to construct skilled nursing beds for veter-

ans; requiring lottery commission to change design or theme of game on a regular basis; requiring the health care authority to conduct a survey to determine need for skilled nursing beds for veterans; requiring authority to report its findings to the joint committee on government and finance.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. STATE LOTTERY ACT.

§29-22-9a. Veterans instant lottery scratch-off game.

1 (a) Beginning the first day of September, two thousand, the
2 commission shall establish an instant lottery scratch-off game
3 designated as the veterans benefit game, which shall be offered
4 by the lottery. The lottery shall offer the veterans benefit game
5 until the amount of money in the veterans lottery fund created
6 under this section reaches six million dollars.

7 (b) Notwithstanding the provisions of section eighteen of
8 this article, and subject to the provisions of subsection (d) of
9 this section, all net profits received from the sale of veterans
10 benefit game lottery tickets, materials and games shall be
11 deposited with the state treasurer into the veterans lottery fund
12 created under this section, and the Legislature may make
13 appropriations from this fund for the construction of skilled
14 nursing beds for veterans of the armed forces of the United
15 States military.

16 (c) Before appropriation of any of the net profits derived
17 from the veterans benefit game for the uses set forth in this
18 section, the Legislature shall first determine that the state has

19 met all debt obligations for which lottery profits have been
20 pledged for that fiscal year.

21 (d) There is hereby created in the state treasury a special
22 revenue fund designated and known as the veterans lottery fund
23 which shall consist of all revenues derived from the veterans
24 benefit game, any appropriations to the fund by the Legislature,
25 and all interest earned from investment of the fund and any
26 gifts, grants or contributions received by the fund. Revenues
27 received by the veterans lottery fund shall be deposited in the
28 West Virginia consolidated investment pool with the West
29 Virginia investment management board, with the interest
30 income a proper credit to all such funds.

31 (e) The commission shall change the design or theme of the
32 veterans benefit game regularly so that the game remains
33 competitive with the other instant lottery scratch-off games
34 offered by the commission. The tickets for the instant lottery
35 game created in this section shall clearly state that the profits
36 derived from the game are being used to benefit veterans in this
37 state.

38 (f) The health care authority created under section five,
39 article twenty-nine-b, chapter sixteen of this code, shall conduct
40 a survey to determine the need for skilled nursing beds for
41 veterans in this state. The survey shall determine the number of
42 veterans in existing nursing homes in this state; the number of
43 nursing homes collecting reimbursement from the veterans
44 administration; where the veterans are located within this state;
45 the number of skilled nursing beds that currently exist in the
46 areas in which the veterans are located; and any other informa-
47 tion necessary to determine the need for skilled nursing beds for
48 veterans in this state. The authority shall also determine the
49 manner in which federal reimbursement may be maximized for
50 these skilled nursing beds: *Provided*, That the authority, when
51 determining the best method of maximizing reimbursement,

52 shall consider the requirement that veterans pay a fee for
53 residing in the nursing homes through a sliding fee scale based
54 upon ability to pay. The authority shall also determine the
55 benefits of locating the skilled nursing beds adjacent to existing
56 veterans administration medical facilities as a means of
57 minimizing the cost of construction and to avoid duplication of
58 services. The authority shall report its findings to the joint
59 committee on government and finance by the first day of
60 November, two thousand.

CHAPTER 277

**(Com. Sub. for S. B. 427 — 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 sections two and three, article twenty-three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact article twenty-four of said chapter; to amend article ten, chapter seventeen-a of said code by adding thereto a new section, designated section sixteen; to amend and reenact section eight, article eleven, chapter twenty of said code; to amend article fifteen, chapter twenty-two of said code by adding thereto a new section, designated section twenty-one; and to amend and reenact section one-b, article two, chapter twenty-four of said code, all relating generally to waste tires; prohibiting collection, accumulation or storage of waste tires in salvage yards; providing for exceptions; defining terms; establishing legislative findings and policy regarding urgent need for remediation of waste tire piles; creating definitions; prohibiting placing, depositing or abandoning waste tires on public or private property; creating exceptions

for waste tire monofills, solid waste facilities and other business authorized to accept or process waste tires; providing for enforcement as illegal open dump; authorizing the division of highways to administer funds for waste tire remediation; authorizing the commissioner of the division of highways to contract with public and private entities to carry out the requirements of the act; authorizing the commissioner of the division of highways to establish a waste tire collection program; authorizing promulgation of rules; providing for the disposal of waste tires; creating tire remediation/environmental cleanup fund; authorizing proceeds of waste tire sales to be deposited into fund; establishing a fee on the issuance of a certificate of title for purpose of tire remediation and environmental cleanup; providing for a performance review; authorizing remedies; making property owner responsible for waste tires on property; assessing costs of remediation; creating lien to recover cost of remediation; authorizing injunctive relief; establishing authority of commissioner of bureau for public health; authorizing disposal of waste tires collected in a remediation effort in solid waste facilities; providing that waste tires from remediation not subject to tipping fees or tonnage limits; requiring solid waste facilities to accept waste tires; authorizing reasonable fees; providing that waste tires from remediation or cleanup projects may only be deposited in a solid waste facility when there is no other alternative available; requiring tire retailers to accept a waste tire for each new tire sold; authorizing disposal fee; requiring purchaser to leave waste tires with retailer or sign waiver; posting of signs; prohibiting accumulation of waste tires without a permit; prohibiting disposal of waste tires except at facility with valid permit; prohibiting transportation of waste tires to facility without permit; prohibiting open burning of tires; and requiring public service commission establish rule for collection of waste tires by commercial haulers.

Be it enacted by the Legislature of West Virginia:

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

Chapter

17. Roads and Highways.

17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.

20. Natural Resources.

22. Environmental Resources.

24. Public Service Commission.

CHAPTER 17. ROADS AND HIGHWAYS.

Article

23. Salvage Yards.

24. Waste Tire Remediation.

ARTICLE 23. SALVAGE YARDS.

§17-23-2. Definitions.

§17-23-3. License required; issuance; fee; renewal; disposition of fees.

§17-23-2. Definitions.

1 As used in this article:

2 (a) "Abandoned salvage yard" means any unlicensed
3 salvage yard or any salvage yard that was previously licensed
4 but upon which the license has not been renewed for more than
5 one year.

6 (b) "Commissioner" means the commissioner of the West
7 Virginia division of highways.

8 (c) "Fence" means an enclosure, barrier or screen con-
9 structed of materials or consisting of plantings, natural objects
10 or other appropriate means approved by the commissioner and
11 located, placed or maintained so as effectively to screen at all
12 times salvage yards and the salvage therein contained from the
13 view of persons passing upon the public roads of this state.

14 (d) "Occupied private residence" means a private residence
15 which is occupied for at least six months each year.

16 (e) "Owner or operator" includes an individual, firm,
17 partnership, association or corporation or the plural thereof.

18 (f) "Residential community" means an area wherein five or
19 more occupied private residences are located within any one
20 thousand foot radius.

21 (g) "Salvage" means old or scrap brass, copper, iron, steel,
22 other ferrous or nonferrous materials, batteries or rubber and
23 any junked, dismantled or wrecked machinery, machines or
24 motor vehicles or any parts of any junked, dismantled or
25 wrecked machinery, machines or motor vehicles.

26 (h) "Salvage yard" means any place which is maintained,
27 operated or used for the storing, keeping, buying, selling or
28 processing of salvage, or for the operation and maintenance of
29 a motor vehicle graveyard: *Provided*, That no salvage yard shall
30 accept, store or process more than one hundred waste tires
31 unless it has all permits necessary to operate a monofill, waste
32 tire processing facility or solid waste facility. Any salvage yard
33 which currently has on its premises more than one hundred
34 waste tires not on a vehicle must establish a plan in conjunction
35 with the division of environmental protection for the proper
36 disposal of the waste tires.

37 (i) "Waste tire" means any continuous solid or pneumatic
38 rubber covering designed to encircle the wheel of a vehicle but

39 which has been discarded, abandoned or is no longer suitable
40 for its original, intended purpose nor suitable for recapping, or
41 other beneficial use, as defined in section two, article twenty-
42 four, chapter seventeen of this code, because of wear, damage
43 or defect. A tire is no longer considered to be suitable for its
44 original intended purpose when it fails to meet the minimum
45 requirements to pass a West Virginia motor vehicle safety
46 inspection. Used tires located at a commercial recapping facility
47 or tire dealer for the purpose of being reused or recapped are
48 not waste tires.

49 (j) "Waste tire monofill or monofill" means an approved
50 solid waste facility where waste tires not mixed with any other
51 waste are placed for the purpose of long term storage for
52 eventual retrieval for marketing purposes.

53 (k) "Waste tire processing facility" means a solid waste
54 facility or manufacturer that accepts waste tires generated by
55 sources other than the owner or operator of the facility for
56 processing by such means as cryogenics, pyrolysis,
57 pyroprocessing cutting, splitting, shredding, quartering, grinding
58 or otherwise breaking down waste tires for the purposes of
59 disposal, reuse, recycling or marketing.

§17-23-3. License required; issuance; fee; renewal; disposition of fees.

1 No salvage yard or any part thereof shall be established,
2 operated or maintained without a state license. The commis-
3 sioner shall have the sole authority to issue such a state license,
4 and he or she shall charge therefore a fee of two hundred dollars
5 payable annually in advance. No license shall be issued to any
6 salvage yard that contains more than one hundred waste tires
7 which are not mounted on wheels on vehicles or machines
8 unless the salvage yard has received a license, permit or
9 approval from the division of environmental protection for
10 storage, use or processing of waste tires or has entered into an

11 agreement with the division of environmental protection for the
12 proper disposal of the waste tires. All licenses issued under this
13 section shall expire on the first day of January following the
14 date of issuance. A license may be renewed from year to year
15 upon paying the commissioner the sum of two hundred dollars
16 for each renewal. All renewal license fees collected under the
17 provisions of this article shall be deposited in the special fund
18 provided for in section ten of this article.

ARTICLE 24. WASTE TIRE REMEDIATION.

§17-24-1. Legislative findings; statement of policy.

§17-24-2. Definitions.

§17-24-3. Waste tires prohibited in certain places; penalty.

§17-24-4. Division of highways to administer funds for waste tire remediation; rules authorized; duties of commissioner.

§17-24-5. Disposal of waste tires.

§17-24-6. Creation of tire remediation environmental cleanup fund; proceeds from sale of waste tires; fee on issuance of certificate of title; performance review.

§17-24-7. Remediation; liability for remediation and court costs.

§17-24-8. Injunctive relief; additional remedy.

§17-24-9. Authority of commissioner of bureau of public health.

§17-24-1. Legislative findings; statement of policy.

1 The Legislature finds that innovative approaches are needed
2 to addressing proper management of the wastes continually
3 generated by the state and national highway transportation
4 system. The Legislature further finds that waste tire piles are a
5 direct product of state citizens use and enjoyment of state roads
6 and highways and proper tire waste disposal is a necessary
7 component of maintenance of the transportation system. The
8 accumulation of waste tires has also become a significant
9 environmental and public health hazard to the state and the
10 location and number of waste tires are directly related to the
11 efficiency of travel, by citizens, visitors and of commerce,
12 along public highways in West Virginia. In particular, the

13 Legislature recognizes that waste tires are widespread in
14 location and in number throughout the state; waste tires
15 physically touch and concern public highways, including, but
16 not limited to, state roads, county roads, park roads, secondary
17 routes and orphan roads, all of which interferes with the
18 efficiency of public highways; and further that the existence of
19 waste tires along and near public highways is sometimes
20 accompanied by other hazards and, in turn, adversely impacts
21 the proper maintenance and efficiency of public highways for
22 citizens.

23 The Legislature also recognizes and declares that waste
24 tires are a public nuisance and hazard; that waste tires serve as
25 harborage and breeding places for rodents, mosquitoes, fleas,
26 ticks and other insects and pests injurious to the public health,
27 safety and general welfare; that waste tires collected in large
28 piles pose an excessive risk to public health, safety and welfare
29 from disease or fire; that the environmental, economic and
30 societal damage resulting from fires in waste tire piles can be
31 avoided by removing the piles; and that tire pile fires cause
32 extensive pollution of the air and surface and ground water for
33 miles downwind and downstream from the fire.

34 Therefore, in view of these findings the Legislature declares
35 it to be the public policy of the state of West Virginia to
36 eliminate the present danger resulting from discarded or
37 abandoned waste tires and to eliminate the visual pollution
38 resulting from waste tire piles, and that in order to provide for
39 the public health, safety and welfare, quality of life, and to
40 reverse the adverse impacts to the proper maintenance and
41 efficiency of public highways, it is necessary to enact legisla-
42 tion to those ends by providing expeditious means and methods
43 for effecting the disposal of waste tires.

§17-24-2. Definitions.

1 Unless the context clearly indicates a different meaning, as
2 used in this article:

3 (1) “Beneficial use” means the use or reuse of whole waste
4 tires or tire derived material which are reused in constructing
5 retaining walls, rebuilding highway shoulders and subbase,
6 building highway crash attenuation barriers, feed hopper or
7 watering troughs for livestock, other agricultural uses approved
8 by the division of environmental protection, playground
9 equipment, boat or truck dock construction, house or building
10 construction, go-cart, motorbike or race track barriers, or
11 similar types of beneficial applications: *Provided*, That waste
12 tires may not be reused as fencing, as erosion control structures,
13 along stream banks or river banks or reused in any manner
14 where human health or the environment, as determined by the
15 director of the division of environmental protection, is put at
16 risk.

17 (2) “Commissioner” means the commissioner of the
18 division of highways or his or her designee.

19 (3) “Division” means the division of highways.

20 (4) “Person” includes a natural person, corporation, firm,
21 partnership, association or society, and the plural as well as the
22 singular.

23 (5) “Remediate or Remediation” means to remove all tires
24 located above grade at a site and may also include, at the
25 discretion of the division, the removal of the solid waste
26 incidental to the removal of waste tires at a site: *Provided*, That
27 remediation does not include clean up of hazardous waste.

28 (6) “Waste tire” means any continuous solid or pneumatic
29 rubber covering designed to encircle the wheel of a vehicle but
30 which has been discarded, abandoned or is no longer suitable
31 for its original, intended purpose nor suitable for recapping, or

32 other beneficial use because of wear, damage or defect. A tire
33 is no longer considered to be suitable for its original intended
34 purpose when it fails to meet the minimum requirements to pass
35 a West Virginia motor vehicle safety inspection. Used tires
36 located at a commercial recapping facility or tire dealer for the
37 purpose of being reused or recapped are not waste tires.

38 (7) "Waste tire monofill or monofill" means an approved
39 solid waste facility where no solid waste except waste tires are
40 placed for the purpose of long term storage for eventual
41 retrieval for marketing purposes.

42 (8) "Waste tire processing facility" means a solid waste
43 facility or manufacturer that accepts waste tires generated by
44 sources other than the owner or operator of the facility for
45 processing by such means as cryogenics, pyrolysis,
46 pyroprocessing cutting, splitting, shredding, quartering, grinding
47 or otherwise breaking down waste tires for the purposes of
48 disposal, reuse, recycling and/or marketing.

§17-24-3. Waste tires prohibited in certain places; penalty.

1 (a) No person shall, within this state, place, deposit or
2 abandon any waste tire or part thereof upon the right-of-way of
3 any public highway or upon any other public property nor
4 deposit or abandon any waste tire or part thereof upon any
5 private property unless it is at a licensed monofill, solid waste
6 facility or at any other business authorized by the division of
7 environmental protection to accept, process, manufacture or re-
8 manufacture waste tires: *Provided*, That the commissioner may
9 temporarily accumulate as many waste tires as he or she deems
10 necessary at any location or locations necessary to effectuate
11 the purposes of this article.

12 (b) No person, except those persons who have received and
13 maintain a valid permit or license from the state for the opera-
14 tion of a solid waste facility, waste tire monofill, waste tire

15 processing facility, or other such permitted activities, shall
16 accumulate more than one hundred waste tires for beneficial
17 use without obtaining a license or permit from the division of
18 environmental protection.

19 (c) Any person who violates any provision of this section
20 shall be guilty of creating an open dump and subject to enforce-
21 ment actions or prosecution under the provisions of article
22 fifteen, chapter twenty-two of this code.

**§17-24-4. Division of highways to administer funds for waste tire
remediation; rules authorized; duties of commis-
sioner.**

1 (a) The division of highways shall administer all funds
2 made available to the division for remediation of waste tire
3 piles and for the proper disposal of waste tires removed from
4 waste tire piles. The commissioner of the division of highways
5 is hereby authorized and empowered: (i) To propose for
6 legislative promulgation in accordance with article three,
7 chapter twenty-nine-a of this code, emergency and legislative
8 rules necessary to implement the provisions of this article; and
9 (ii) to administer all funds appropriated by the Legislature to
10 carry out the requirements of this article, and any other funds
11 from whatever source, including, but not limited to, federal,
12 state or private grants.

13 (b) The commissioner shall also have the following powers:

14 (1) To apply and carry out the provisions of this article and
15 the rules promulgated hereunder.

16 (2) To investigate from time to time the operation and
17 effect of this article and of the rules promulgated hereunder and
18 to report his or her findings and recommendations to the
19 Legislature and the governor.

20 (c) The provisions of articles two-a and four, chapter
21 seventeen of this code and the policy, rules, practices and
22 procedures thereunder shall be followed by the commissioner
23 in carrying out the purposes of this article.

24 (d) On or before the first day of June, two thousand one, the
25 commissioner shall determine the location, approximate size
26 and potential risk to the public of all waste tire piles in the state
27 and establish, in descending order, a waste tire remediation list.

28 (e) The commissioner may contract with the department of
29 health and human resources and/or the division of corrections
30 to remediate or assist in remediation of waste tire piles through-
31 out the state. Utilization of available department of health and
32 human resources and the department of corrections work
33 programs shall be given priority status in the contract process
34 so long as such programs prove a cost effective method of
35 remediating waste tire piles.

36 (f) Waste tire remediation shall be stopped and the division
37 of environmental protection notified upon the discovery of any
38 potentially hazardous material at a remediation site. The
39 division of environmental protection shall respond to the
40 notification in accordance with the provisions of article
41 eighteen, chapter twenty-two of this code.

42 (g) The commissioner is authorized to establish a tire
43 disposal program within the division to provide for a cost
44 effective and efficient method to accept passenger car and light
45 truck waste tires at such division of highways county headquar-
46 ters as have sufficient space for temporary storage of waste tires
47 and personnel to accept and handle waste tires. The commis-
48 sioner may pay a fee for each tire an individual West Virginia
49 resident or West Virginia business brings to the division. The
50 commissioner may establish a limit on the number of tires an
51 individual or business may be paid for during any calender
52 month. The commissioner may in his discretion authorize

53 commercial businesses to participate in the collection program:
54 *Provided*, That no person or business who has a waste tire pile
55 subject to remediation under this article may participate in this
56 program.

§17-24-5. Disposal of waste tires.

1 (a) The division may sell waste tires collected during
2 remediation of waste tire piles at public auction or to a waste
3 tire monofill, waste tire processing facility or business autho-
4 rized by the division of environmental protection to accept,
5 store, use or process waste tires.

6 (b) If there is no market in West Virginia for the sale of
7 waste tires the division may sell them at any available market.

8 (c) If there is no market for the sale of waste tires the
9 division may dispose of them in any lawful manner.

**§17-24-6. Creation of tire remediation environmental cleanup
fund; proceeds from sale of waste tires; fee on
issuance of certificate of title; performance re-
view.**

1 (a) There is hereby created in the state treasury a special
2 revenue fund known as the "Tire Remediation/Environmental
3 Cleanup Fund". All moneys appropriated, deposited or accrued
4 in this fund shall be used exclusively for remediation of waste
5 tire piles as required by article twenty-four, chapter seventeen
6 of this code. The fund shall consist of the proceeds from the
7 sale of waste tires; fees collected by the division of motor
8 vehicles as provided for in section sixteen, article ten, chapter
9 seventeen-a of this code; any federal, state or private grants;
10 legislative appropriations; loans and any other funding source
11 available for waste tire remediation. Any balance remaining in
12 the fund at the end of any state fiscal year shall not revert to the
13 state treasury but shall remain in this fund and be used only in

14 a manner consistent with the requirements of article twenty-
15 four, chapter seventeen of this code.

16 (b) No further collections or deposits shall be made after
17 the commissioner certifies to the governor and the Legislature
18 that the remediation of all waste tire piles that were determined
19 by the commissioner to exist on the first day of June, two
20 thousand one, has been completed.

21 (c) The joint committee on government operations shall,
22 pursuant to authority granted in article ten of chapter four of
23 this code, conduct a preliminary performance review of the
24 division's compliance with the waste tire remediation mandated
25 in this article; whether the purposes of this article have been
26 met and whether it is appropriate to terminate this program. In
27 conducting such preliminary performance review, the commit-
28 tee shall follow the guidelines established in article ten, section
29 ten, chapter four of this code. A preliminary review shall be
30 completed on or before the first day of January, two thousand
31 three.

§17-24-7. Remediation; liability for remediation and court costs.

1 (a) Any person who has prior or subsequent to the effective
2 date of this act illegally disposed of waste tires or has waste
3 tires illegally disposed on his or her property shall be liable for:

4 (1) All costs of removal or remedial action incurred by the
5 division;

6 (2) Any other necessary costs of remediation including
7 properly disposing of waste tires and damage to adjacent
8 property owners; and

9 (3) All costs incurred in bringing civil actions under this
10 article.

11 (b) The division shall notify any person who owns real
12 property or rights to property where a waste tire pile is located
13 that remediation of the waste tire pile is necessary. The division
14 shall make and enter an order directing such person or persons
15 to remove and properly dispose of the waste tires. The division
16 shall set a time limit for completion of the remediation. The
17 order shall be served by registered or certified mail, return
18 receipt requested, or by a county sheriff or deputy sheriff.

19 (c) If the remediation is not completed within the time
20 limit, or the person cannot be located, or the person notifies the
21 division that he or she is unable to comply with the order, the
22 division may expend funds, as provided herein, to complete the
23 remediation. Any amounts so expended shall be promptly
24 repaid by the person or persons responsible for the waste tire
25 pile. Any person owing remediation costs and or damages shall
26 be liable at law until such time as all costs and or damages are
27 fully paid.

28 (d) Authorized representatives of the division have the
29 right, upon presentation of proper identification, to enter upon
30 any property for the purpose of conducting studies or explor-
31 atory work to determine the existence of adverse effects of a
32 waste tire pile, to determine the feasibility of the remediation or
33 prevention of such adverse effects and to conduct remediation
34 activities provided for herein. Such entry is an exercise of the
35 police power of the state and for the protection of public health,
36 safety and general welfare and is not an act of condemnation of
37 property or trespass thereon. Nothing contained in this section
38 eliminates any obligation to follow any process that may be
39 required by law.

40 (e) There is hereby created a statutory lien upon all real
41 property and rights to the property from which a waste tire pile
42 was remediated for all reclamation costs and damages incurred

43 by the division. The lien created by this section shall arise at the
44 later of the following:

45 (1) The time costs are first incurred by the division; or

46 (2) The time the person is provided, by certified or regis-
47 tered mail, or personal service, written notice as required by
48 this section.

49 The lien shall continue until the liability for the costs or
50 judgment against the property is satisfied.

51 (f) Liens created by this section shall be duly recorded in
52 the office of the clerk of the county commission in the county
53 where the real property is located, be liens of equal dignity,
54 rank and priority with the lien on such premises of state,
55 county, school and municipal taxes for the amount thereof upon
56 the real property served. The division shall have the power and
57 authority to enforce such liens in a civil action to recover the
58 money due for remediation costs and damages plus court fees
59 and costs and reasonable attorney's fees.

60 (g) The division may foreclose upon the premises by
61 bringing a civil action, in the circuit court of the county where
62 the property is located, for foreclosure and an order to sell the
63 property to satisfy the lien.

64 (h) Any proceeds from any sale of property obtained as a
65 result of execution of a lien or judgment under this section for
66 remediation costs, excluding costs of obtaining judgement and
67 perfecting the lien, shall be deposited into the waste tire
68 remediation fund of the state treasury.

69 (i) The provisions of this section do not apply and no lien
70 may attach to the right-of-way, easement or other property
71 interest of a utility, whether electric, gas, water, sewer, tele-
72 phone, television cable or other public service unless the utility
73 contributed to the illegal tire pile.

§17-24-8. Injunctive relief; additional remedy.

1 In addition to all other remedies provided for in this article,
2 the attorney general of this state, the prosecuting attorney of
3 any county where any violation of any provision of this article
4 occurs, or any citizen, resident or taxpayer of the county where
5 any violation of any provision of this article occurs, may apply
6 to the circuit court, or the judge thereof in vacation, of the
7 county where the alleged violation occurred, for an injunction
8 to restrain, prevent or abate the maintenance and storage of
9 waste tires in violation of any provision of this article, or the
10 violation of any other provision of this article. In seeking an
11 injunction, it is not necessary for the director or any state
12 agency seeking an injunction under section to post bond.

§17-24-9. Authority of commissioner of bureau of public health.

1 Although the director is primarily responsible for
2 remediation of waste tire piles under the provisions of this
3 article, the commissioner of the bureau of public health may
4 enforce the public health laws in any instance where the
5 commissioner of the bureau of public health determines there
6 is an imminent and substantial endangerment to the public
7 health.

**CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION,
REGISTRATION, CERTIFICATE OF TITLE, AND
ANTITHEFT PROVISIONS.****ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.****§17A-10-16. Fee for tire remediation environmental cleanup
fund.**

1 In addition to each fee provided for in this article, an
2 additional five dollar fee shall be imposed on the issuance of
3 each certificate of title issued pursuant to article three of this
4 chapter. All money collected under this section shall be

5 deposited in the state treasury and credited to a tire
6 remediation/environmental cleanup fund to be established
7 within the department of highways, for waste tire remediation
8 in accordance to the provisions of article twenty-four, chapter
9 seventeen of this code. The additional fee provided herein shall
10 be imposed for each application for certificate and renewal
11 thereof made on or after the first day of July, two thousand:
12 *Provided*, That no further collections or deposits shall be made
13 after the commissioner certifies to the governor and the
14 Legislature that the remediation of all waste tire piles that were
15 determined by the commissioner to exist on the first day of
16 June, two thousand one, has been completed.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 11. WEST VIRGINIA RECYCLING PROGRAM.

§20-11-8. Prohibition on the disposal of certain items; plans for the proper handling of said items required.

1 (a) Effective the first day of June, one thousand nine
2 hundred ninety-four, it shall be unlawful to dispose of lead-acid
3 batteries in a solid waste landfill in West Virginia; effective the
4 first day of June, one thousand nine hundred ninety-six, it shall
5 be unlawful to dispose of tires in a solid waste landfill in West
6 Virginia except for waste tires collected as part of the division
7 of highways waste tire remediation projects or other collection
8 efforts in accordance with the provisions of article twenty-four,
9 chapter seventeen of this code or the division of environmental
10 protection's pollution prevention program and open dump
11 program or other state authorized remediation or cleanup
12 programs: *Provided*, That waste tires may be disposed of in
13 solid waste landfills only when the state agency authorizing the
14 remediation or cleanup program has determined there is no
15 reasonable alternative available.

16 (b) Effective the first day of January, one thousand nine
17 hundred ninety-seven, it shall be unlawful to dispose of yard
18 waste, including grass clippings and leaves, in a solid waste
19 facility in West Virginia: *Provided*, That such prohibitions do
20 not apply to a facility designed specifically to compost such
21 yard waste or otherwise recycle or reuse such items: *Provided*,
22 *however*, That reasonable and necessary exceptions to such
23 prohibitions may be included as part of the rules promulgated
24 pursuant to subsection (d) of this section.

25 (c) No later than the first day of May, one thousand nine
26 hundred ninety-five, the solid waste management board shall
27 design a comprehensive program to provide for the proper
28 handling of yard waste and lead-acid batteries. No later than the
29 first day of May one thousand nine hundred ninety-four, a
30 comprehensive plan shall be designed in the same manner to
31 provide for the proper handling of tires.

32 (d) No later than the first day of August, one thousand nine
33 hundred ninety-five, the division of environmental protection
34 shall promulgate rules, in accordance with chapter twenty-nine-
35 a of this code, as amended, to implement and enforce the
36 program for yard waste and lead-acid batteries designed
37 pursuant to subsection (c) of this section. No later than the first
38 day of August, two thousand, the division of environmental
39 protection shall promulgate rules, in accordance with chapter
40 twenty-nine-a of said code, as amended, to implement and
41 enforce the program for tires designed pursuant to subsection
42 (c) of this section.

43 (e) For the purposes of this section, "yard waste" means
44 grass clippings, weeds, leaves, brush, garden waste, shrub or
45 tree prunings and other living or dead plant tissues, except that,
46 such materials which, due to inadvertent contamination or
47 mixture with other substances which render the waste unsuit-
48 able for composting, shall not be considered to be yard waste:

49 *Provided*, That the same or similar waste generated by commer-
50 cial agricultural enterprises is excluded.

51 (f) In promulgating the rules required by subsections (c)
52 and (d) of this section, yard waste, as described in subsection
53 (e) of this section, the division shall provide for the disposal of
54 yard waste in a manner consistent with one or any combination
55 of the following:

56 (1) Disposal in a publicly or privately operated commercial
57 or noncommercial composting facility.

58 (2) Disposal by composting on the property from which
59 domestic yard waste is generated or on adjoining property or
60 neighborhood property if consent is obtained from the owner of
61 the adjoining or neighborhood property.

62 (3) Disposal by open burning where such activity is not
63 prohibited by this code, rules promulgated hereunder or
64 municipal or county codes or ordinances.

65 (4) Disposal in a publicly or privately operated landfill,
66 only where none of the foregoing options are available. Such
67 manner of disposal will involve only small quantities of
68 domestic yard waste generated only from the property of the
69 participating resident or tenant.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.

§22-15-21. Waste tire management.

1 (a) No person, except those persons who have received and
2 maintained a valid permit or license from the state for the
3 operation of a solid waste facility, waste tire monofill, waste
4 tire processing facility, or other such permitted activities, shall
5 accumulate waste tires without obtaining a license or permit

6 from the division: *Provided*, That persons who use waste tires
7 for beneficial uses may in the discretion of the director of the
8 division of environmental protection accumulate waste tires
9 without a permit.

10 (b) No person shall dispose of waste tires in or upon any
11 public or private land, any site or facility other than a site or
12 facility which holds a valid permit issued by the division for
13 such disposal or usage.

14 (c) No person shall knowingly transport or knowingly allow
15 waste tires under his or her control to be transported to a site or
16 facility that does not have a valid permit or license to accept
17 waste tires.

18 (d) No person shall engage in the open burning of waste
19 tires.

20 (e) Persons who violate this article are subject to all
21 enforcement actions available to the director under the provi-
22 sions of section fifteen, article fifteen, chapter twenty-two of
23 this code.

24 (f) Except as otherwise provided in subsection (g) of this
25 section, each retailer is required to accept one tire of compara-
26 ble size for each new tire sold at retail. The retailer may charge
27 a disposal fee to cover the actual costs of lawful waste tire
28 disposal. No retail tire dealer may deliver any waste tire, or part
29 thereof, to a person not authorized by the state of West Virginia
30 to transport or accept waste tires.

31 (g) Any person purchasing a new tire from a retailer must
32 provide a used or waste tire for each tire purchased or sign a
33 waiver, provided to the tire retailer by the division, acknowl-
34 edging that he or she is retaining the waste tire and that he or
35 she is legally responsible for proper disposal of each tire
36 retained. These forms are to be kept by the retailer for three

37 years. If the tire purchaser returns to the tire retailer with a
38 signed form given to the purchaser by that retailer, the retailer
39 must accept up to the total number of comparable size tires as
40 previously retained by the purchaser: *Provided*, That persons
41 having winter tires changed or buying new winter tires and
42 keeping usable summer tires for later installation are not
43 required to provide a used or waste tire, or sign a waiver.

44 (h) Each tire retailer shall post in a conspicuous place a
45 written notice, provided by the division, that bears the follow-
46 ing statements:

47 (1) "State law requires us to accept your (old) waste tires
48 for recycling or proper disposal if you purchase new tires from
49 us."

50 (2) "State law authorizes us to charge you no more than the
51 actual cost of disposal of your waste tires even if you do not
52 leave your tires with us."

53 (3) "It is a crime to burn, bury, abandon or throw away
54 waste tires without authorization and or permits from the
55 Division of Environmental Protection."

56 This notice must be at least eight and one-half inches wide
57 and eleven inches high.

58 (i) Solid waste facilities shall accept whole waste tires and
59 may charge a reasonable fee for acceptance of waste tires. All
60 waste tires except those disposed of in a landfill shall be
61 excluded from the calculation of monthly tonnage limits and
62 from any solid waste disposal assessment fees imposed by
63 section five-a, article eleven, chapter twenty; section eleven,
64 article fifteen, chapter twenty-two, section four, article sixteen,
65 chapter twenty-two and section thirty, article four, chapter
66 twenty-two-c of this code.

67 (j) Solid waste facilities shall accept and dispose of whole
68 tires from state authorized tire remediation projects. All waste
69 tires from state authorized tire remediation projects except
70 those disposed of in a landfill shall be excluded from the
71 calculation of monthly tonnage limits and from any solid waste
72 disposal assessment fees imposed by section five-a, article
73 eleven, chapter twenty; section eleven, article fifteen, chapter
74 twenty-two, section four, article sixteen, chapter twenty-two
75 and section thirty, article four, chapter twenty-two-c of this
76 code. For state sponsored tire remediation projects, the state
77 may negotiate with the solid waste facility for rates and charges
78 for the disposal of waste tires regardless of the rates and
79 charges established by the public service commission pursuant
80 to article one, chapter twenty-four of this code: *Provided*, That
81 the disposal of whole tires in a solid waste facility is allowed
82 only when the division of highways or the division of environ-
83 mental protection has determined there is no other reasonable
84 alternative available.

85 (k) The division shall propose for legislative promulgation
86 emergency and legislative rules to effectuate the purposes of
87 this section.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1b. Additional jurisdiction of commission.

1 (a) Effective the first day of July, one thousand nine
2 hundred eighty-eight, in addition to all other powers and duties
3 of the commission as defined in this article, the commission
4 shall establish, prescribe and enforce rates and fees charged by
5 commercial solid waste facilities, as defined in section two,
6 article fifteen, chapter twenty-two of this code, that are owned
7 or under the direct control of persons or entities who are
8 regulated under section five, article two, chapter twenty-four-a

9 of this code. The commission shall establish, prescribe and
10 enforce rules providing for the safe transportation of solid waste
11 in the state. The commission shall establish rules for the
12 collection of waste tires by private commercial carriers of solid
13 waste.

14 (b) The public service commission shall study the feasibil-
15 ity of incorporating and adopting guidelines for solid waste
16 collection fees that are based upon the volume of solid waste
17 generated by any person. This report shall be submitted to the
18 governor and the members of the Legislature on or before the
19 first day of January, one thousand nine hundred ninety-three.

CHAPTER 278

(H. B. 4505 — By Mr. Speaker, Mr. Kiss, and Delegates Martin,
Michael, Trump and Hall)

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

AN ACT to amend and reenact section twenty-seven, article one,
chapter twenty-two-c of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to increasing the
authorized borrowing limit of the West Virginia water develop-
ment authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. WATER DEVELOPMENT AUTHORITY.

§22C-1-27. Authorized limit on borrowing.

1 The aggregate principal amount of bonds and notes issued
2 by the authority may not exceed five hundred million dollars

3 outstanding at any one time: *Provided*, That before the authority
4 issues bonds and notes in excess of four hundred million dollars
5 the Legislature must pass a resolution authorizing this action:
6 *Provided, however*, That in computing the total amount of
7 bonds and notes which may at any one time be outstanding, the
8 principal amount of any outstanding bonds or notes refunded or
9 to be refunded either by application of the proceeds of the sale
10 of any refunding bonds or notes of the authority or by exchange
11 for any refunding bonds or notes, shall be excluded.

CHAPTER 279

(Com. Sub. for S. B. 505 — By Senator Unger)

[Passed March 11, 2000; in effect June 1, 2000. Approved by the Governor.]

AN ACT to amend article ten-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve-a; and to amend article twelve, chapter thirty-one-b of said code by adding thereto a new section, designated section one thousand two hundred seven, all relating to workers' compensation; workers' compensation coverage for clients of the division of rehabilitation services participating in unpaid work-based training programs; requiring annual report to the division of rehabilitation services; designating division of rehabilitation services and the participating entity as the employers; providing participating entities with immunity from liability to the division of workers' compensation; establishing wage rate for purpose of providing minimum benefits to employers and employees subject to workers' compensation coverage; providing equivalent workers compensation treatment for the members of limited liability companies; providing that members and managers of limited liability companies may elect to include or exclude coverage under workers' compensation and pay premiums as partners in a partnership; and providing transition elections.

Be it enacted by the Legislature of West Virginia:

That article ten-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twelve-a; and that article twelve, chapter thirty-one-b of said code be amended by adding thereto a new section, designated section one thousand two hundred seven, all to read as follows:

Chapter

18. Education.

31B. Uniform Limited Liability Company Act.

CHAPTER 18. EDUCATION.

ARTICLE 10A. REHABILITATION SERVICES.

§18-10A-12a. Workers' compensation for clients participating in unpaid work-based training programs.

1 (a) The workers' compensation division shall create a
2 classification and calculate a base premium tax rate for clients
3 of the division of rehabilitation services participating in unpaid
4 work-based training programs within integrated community-
5 based settings. The workers' compensation division shall report
6 to the division of rehabilitation services:

7 (1) The amount of the base premium tax rate for the class;
8 and

9 (2) The hourly wages per client to be used to provide the
10 minimum weekly benefits required by section six, article four,
11 chapter twenty-three of this code.

12 (b) The base premium tax rate reported annually to the
13 division of rehabilitation services by the workers' compensation
14 division shall not be effective until the first day of July, and
15 shall remain in effect through the last day of the next June.

16 (c) The division of rehabilitation services and the participat-
17 ing entity shall be considered the joint employers of record of
18 the clients while the clients are participating in unpaid work-
19 based training programs in integrated community-based

20 settings: *Provided*, That the participating entity shall not be
21 held responsible for any liability due the workers' compensa-
22 tion division. Such clients shall be considered to be paid the
23 amount of wages sufficient to provide the minimum workers'
24 compensation weekly benefits required by section six, article
25 four, chapter twenty-three of this code.

CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

ARTICLE 12. MISCELLANEOUS PROVISIONS.

§31B-12-1207. Equality of workers' compensation treatment.

1 Members of limited liability companies which are treated
2 as partnerships for federal income tax purposes may elect to
3 forego coverage under workers' compensation in the same
4 manner as partners in a partnership pursuant to the provisions
5 of section one-a, article two, chapter twenty-three of this code,
6 and any member not electing to forego coverage, shall be
7 subject to the calculation of premium on the member as
8 provided for partners in a partnership in section one-b, article
9 two, chapter twenty-three of this code. Any limited liability
10 company excluding any member from workers' compensation
11 coverage or computing premiums on such member as a partner
12 prior to the effective date of this section is deemed to have
13 made an effective election in accordance with the provisions of
14 this section for all periods until such limited liability company
15 modifies the election.

CHAPTER 280

(H. B. 4388 — By Delegates Warner, Linch, Cann and Angotti)

[Passed March 9, 2000; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the county commission of Harrison
County, West Virginia, to meet as a levying body for the purpose

of presenting to the voters of said county an election on the question of continuing the excess levy for bus services in Harrison County, from between the seventh and twenty-eighth days of March until the first Thursday in June, two thousand.

Be it enacted by the Legislature of West Virginia:

**HARRISON COUNTY COMMISSION MEETING AS A LEVYING BODY
EXTENDED FOR AN ELECTION ON THE QUESTION OF CONTINUING
THE EXCESS LEVY FOR BUS SERVICES.**

**§1. Extending time for the Harrison County Commission to meet
as a levying body for an election on the question of continuing
the excess levy for bus services.**

1 Notwithstanding the provisions of article eight, chapter
2 eleven of the code of West Virginia, one thousand nine hundred
3 thirty-one, as amended, the county commission of Harrison
4 County, West Virginia, is hereby authorized to extend the time
5 for its meeting as a levying body, setting the levy rate and
6 certifying its actions to the state tax commissioner from
7 between the seventh and twenty-eighth days of March until the
8 first Thursday in June, two thousand, for the purpose of
9 submitting to the voters of Harrison County the question of
10 continuing the excess levy for bus services in Harrison County.

CHAPTER 281

(Com. Sub. for S. B. 205 — By Senators Kessler, Edgell,
Craig, Jackson, Deem, Minard, Dittmar and Ross)

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

AN ACT to amend and reenact section two, chapter two hundred sixty-one, acts of the Legislature, regular session, one thousand nine hundred ninety-six, relating to authorizing participating municipalities and the Hughes River water board to enter into

agreements extending more than one year without ratification by voters in participating jurisdictions.

Be it enacted by the Legislature of West Virginia:

That section two, chapter two hundred sixty-one, acts of the Legislature, regular session, one thousand nine hundred ninety-six, be amended and reenacted to read as follows:

HUGHES RIVER WATER BOARD.

§2. Board of directors; appointment; powers and duties.

1 (a) There shall be a board of directors, consisting of one
2 member representing each of the participating municipalities.
3 The municipalities shall make appointments to the board
4 through their duly constituted government authorities as
5 provided herein.

6 No later than the first day of July, one thousand nine
7 hundred ninety-six, the municipality of Cairo shall appoint one
8 member of the board of directors for the term of three years.
9 The municipality of Harrisville shall appoint one member for
10 the term of four years. The municipality of Pennsboro shall
11 appoint one member for the term of five years. Although
12 members shall serve from date of appointment, terms of office
13 shall expire as if said terms had commenced on the first day of
14 July, one thousand nine hundred ninety-six.

15 Each successor member of the board of directors shall be
16 appointed by the respective municipality that appointed the
17 predecessor member and each successor member shall be
18 appointed for a term of three years, except that any person
19 appointed to fill a vacancy occurring before the expiration of
20 the term shall serve only for the unexpired portion thereof. Any
21 member of the board shall be eligible for reappointment and the
22 appointing municipality which appointed the member may
23 remove that member at any time for any reason.

24 (b) There shall be an annual meeting of the board of
25 directors on the second Monday in July of each year and a
26 monthly meeting on the day in each month which the board

27 may designate in its bylaws. A special meeting may be called
28 by the president or any two members of the board and shall be
29 held only after all of the directors are given notice thereof in
30 writing. At all meetings two members shall constitute a quorum
31 and at each annual meeting of the board of directors it shall
32 elect, from its membership, a president, a vice president, a
33 secretary and a treasurer: *Provided*, That a member may be
34 elected both secretary and treasurer.

35 (c) The board of directors shall adopt those bylaws and
36 rules which it deems necessary for its own guidance and for the
37 administration, supervision and protection of the water board
38 and all of the property belonging to the water board.

39 The board of directors shall have all the powers necessary,
40 convenient and advisable for the proper operation, equipment
41 and management of the water board; and except as otherwise
42 especially provided in this act, shall have the powers and be
43 subject to the duties which are conferred and imposed upon the
44 cooperating municipalities by article twenty-three, chapter eight
45 of the code of West Virginia, one thousand nine hundred thirty-
46 one, as amended: *Provided*, That participating municipalities
47 and the board may enter into agreements in furtherance of the
48 Hughes River water project which extend for a period in excess
49 of one fiscal year without voter approval as would otherwise be
50 required pursuant to section eight of said article.

51 The qualifications of the directors shall be determined by
52 each participating municipality.

CHAPTER 282

(S. B. 625 — By Senators Craigo and Dittmar)

[Passed February 25, 2000; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the county commission of Jackson
County to meet as a levying body for the purpose of presenting

to the voters of the county an election to consider an excess levy for the Jackson County health department from between the seventh and twenty-eighth days of March until the seventh day of June, two thousand.

Be it enacted by the Legislature of West Virginia:

JACKSON COUNTY COMMISSION MEETING AS LEVYING BODY EXTENDED.

§1. Extending time for Jackson County commission to meet as levying body for an election to consider an excess levy for the Jackson County health department.

1 Notwithstanding the provisions of article eight, chapter
2 eleven of the code of West Virginia, one thousand nine hundred
3 thirty-one, as amended, to the contrary, the county commission
4 of Jackson County is hereby authorized to extend the time for
5 its meeting as a levying body and certifying its actions to the
6 state tax commissioner from between the seventh and twenty-
7 eighth days of March until the seventh day of June, two
8 thousand, for the purpose of submitting to the voters of Jackson
9 County an election to consider an excess levy for the Jackson
10 County health department.

CHAPTER 283

(H. B. 4137 — By Delegates Manuel and Doyle)

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

AN ACT authorizing the County Commission of Jefferson County, West Virginia, to convey certain land located in Ranson Corporation, Jefferson County, West Virginia, to the Jefferson County Council on Aging.

Be it enacted by the Legislature of West Virginia:

LAND TRANSFER TO JEFFERSON COUNTY COUNCIL ON AGING.

1 The County Commission of Jefferson County, a corpora-
2 tion, is authorized to grant and convey, without consideration,
3 to the Jefferson County Council on Aging, all of those certain
4 lots or parcels of real estate, with the improvements thereon,
5 being Lots 22, 23, 24, 25, 26, 27 and 28 in Block 91, situate in
6 Ranson Corporation, Jefferson County, West Virginia, fronting
7 on Fifth Avenue. The lots are described on a plat of record in
8 the Office of the Clerk of the County Commission of Jefferson
9 County in Deed Book X, at Page 1. The property is more
10 particularly bounded and described in a deed dated February 26,
11 1979, from the Board of Education of the County of Jefferson,
12 a corporation, to the County Commission of Jefferson County,
13 a corporation, recorded in the Office of the Clerk of the County
14 Commission of Jefferson County, West Virginia, in Deed Book
15 689, at Page 611. The conveyance of the property is subject to
16 all restrictions and reservations duly of record affecting the
17 property.

CHAPTER 284

(H. B. 4126 — By Delegates Manchin, Caputo and Prunty)

[Passed February 2, 2000; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the county commission of Marion County, West Virginia, to meet as a levying body for the purpose of presenting to the voters of the county an election to extend an additional county levy for parks and recreation equipment and development in Marion County from between the seventh and twenty-eighth days of March until the twenty-first day of May, two thousand.

Be it enacted by the Legislature of West Virginia:

**MARION COUNTY COMMISSION MEETING AS LEVYING BODY
EXTENDED.**

**§1. Extending time for Marion County commission to meet as
levying body for election of additional levy for parks and
recreation equipment and development.**

1 Notwithstanding the provisions of article eight, chapter
2 eleven of the code of West Virginia, one thousand nine hundred
3 thirty-one, as amended, to the contrary, the county commission
4 of Marion County is hereby authorized to extend the time for its
5 meeting as a levying body and certifying its actions to the state
6 tax commissioner from between the seventh and twenty-eighth
7 days of March until the twenty-first day of May, two thousand,
8 for the purpose of submitting to the voters of Marion County an
9 additional county levy for parks and recreation equipment and
10 development in Marion County.

CHAPTER 285

**(Com. Sub. for S. B. 138 — By Senators Prezioso, Oliverio,
Edgell, Kessler and Hunter)**

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

AN ACT to extend the time for the county commission of Marion County to meet as a levying body for the purpose of presenting to the voters of the county an election to extend three additional county levies for parks and recreation equipment and development, libraries and the transit authority in Marion County from between the seventh and twenty-eighth days of March until the first day of June, two thousand.

Be it enacted by the Legislature of West Virginia:

**MARION COUNTY COMMISSION MEETING AS LEVYING BODY
EXTENDED.**

**§1. Extending time for Marion County commission to meet as
levying body for an election for three additional levies.**

1 Notwithstanding the provisions of article eight, chapter
2 eleven of the code of West Virginia, one thousand nine hundred
3 thirty-one, as amended, to the contrary, the county commission
4 of Marion County is hereby authorized to extend the time for its
5 meeting as a levying body and certifying its actions to the state
6 tax commissioner from between the seventh and twenty-eighth
7 days of March until the first day of June, two thousand, for the
8 purpose of submitting to the voters of Marion County three
9 additional county levies for parks and recreation equipment and
10 development, libraries and the transit authority in Marion
11 County.

CHAPTER 286

(Com. Sub. for S. B. 501 — By Senators Bowman and Plymale)

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

AN ACT giving the secretary of administration options on how to dispose of the land, together with the improvements thereon, known as Morris Square in Charleston, Kanawha County; and authorizing same.

Be it enacted by the Legislature of West Virginia:

SALE OF PROPERTY.

§1. Land sale; description.

1 (a) The secretary of administration is hereby authorized to
2 negotiate a financial proposal for the property described in
3 subsection (b) of this act with the city of Charleston which
4 arrangement shall be in the best financial interest for the state.
5 Any financial proposal shall be funded either in cash or by a
6 purchase money mortgage at a value acceptable to the secretary.
7 The financial proposal must be made within ninety (90) days of
8 the effective date of this section. Any contract, sale or lease
9 shall be approved by the joint committee on government and
10 finance.

11 (b) The secretary is authorized to sell, grant and convey or
12 lease to the city of Charleston, all of those certain lots or parcels
13 of land, together with the improvements thereon and the
14 appurtenances thereunto belonging, being known as Lot "A-1"
15 containing 1.118 acres, more or less; and Lot "A-2" containing
16 0.587 acre, more or less, being situate in the city of Charleston,
17 Charleston East tax district, Kanawha County, West Virginia;
18 which property is more particularly bounded and described in
19 a deed dated October 29, 1996, from the Charleston building
20 corporation to the state building commission of West Virginia,
21 of record in the office of the clerk of the county commission of
22 Kanawha County, West Virginia, in Deed Book 2399 at page
23 79. Any sale and conveyance of the property is subject to all
24 restrictions, reservations, rights-of-way, easements, utilities,
25 covenants, leases, exclusions and other matters duly of record
26 affecting the property.

27 (c) If the subject property is not transferred to the city of
28 Charleston pursuant to subsections (a) and (b) of this act, then
29 the secretary shall solicit bids for sale by auction, sell, grant and
30 convey, for good and valuable consideration to the highest
31 responsible bidder, the property described in subsection (b) of
32 this act. Any sale and conveyance of the property is subject to
33 all restrictions, reservations, rights-of-way, easements, utilities,

34 covenants, leases, exclusions and other matters duly of record
35 affecting the property.

36 (d) The secretary is authorized to contract with an auction
37 company to sell the property. The auction may be oral, silent or
38 on the internet. The cost of the auction, as contracted by the
39 secretary with the auction company, is to be paid from the
40 proceeds of the sale.

41 (e) The property shall have a minimum bid price which
42 shall be set by the secretary, regardless of the appraised value,
43 for sale and conveyance of the property.

44 (f) The sale by auction shall take place no less than once a
45 year until the time the property is successfully sold.

46 (g) The money obtained from the property shall be depos-
47 ited in a special fund of the department of administration to be
48 known as "the Morris Square property fund" and is to be used
49 for improvements and renovations of the state capitol complex.

50 (h) Notwithstanding any other provision of law to the
51 contrary, the state, its subdivisions, agencies and instrumental-
52 ities, except for the city of Charleston, are prohibited from
53 obtaining any interest, by way of purchase, lease, trade,
54 donation, condemnation, tax sale, or any other means whatso-
55 ever in the property described in subsection (b) of this act, or
56 any interest therein, for so long as any building or structure or
57 any portion thereof situate on the property on the date of the
58 enactment of the provisions of this act remains so situated.

59 (i) Notwithstanding anything in the code of West Virginia,
60 one thousand nine hundred thirty-one, as amended, to the
61 contrary, the provisions of this section prevail.

CHAPTER 287

(H. B. 4295 — By Delegates Givens, Ennis, Hutchins and L. White)

[Passed February 24, 2000; in effect from passage. Approved by the Governor.]

AN ACT to authorize the commissioner of highways to allow the increase of gross weight limitations on certain designated roads in Ohio and Brooke counties.

Be it enacted by the Legislature of West Virginia:

WEIGHT LIMITATIONS ON CERTAIN ROADS IN OHIO AND BROOKE COUNTIES.

§1. Authority of the commissioner of the division of highways to increase weight limitations on certain highways within Ohio and Brooke counties of West Virginia.

1 If the commissioner of the division of highways determines
2 that the design, construction and safety of certain highways
3 designated herein in Brooke and Ohio counties of West Virginia
4 are such that tonnage limits may be increased without undue
5 damage, the commissioner may increase them. The commis-
6 sioner shall then set new weight limitations applicable to said
7 highways or portions thereof.

8 The commissioner may not establish any weight limitation
9 in excess of or in conflict with any weight limitation prescribed
10 by or pursuant to acts of Congress with respect to the national
11 system of interstate and defense highways.

12 If the commissioner determines that the portion of State
13 Route 2 from milepost 3.33 to the Ohio County line, the portion
14 of State Route 2 from the Brooke County line to milepost 3.27,

15 the portion of I-70 from milepost 0.69 to 0.00 and the portion
16 of U. S. Route 40 from milepost 0.39 to milepost 0.00 in Ohio
17 County are designed and constructed to allow the gross weight
18 limitation to be increased from eighty thousand pounds to
19 ninety thousand pounds without undue damage, the commis-
20 sioner may increase the weight limitations from eighty thou-
21 sand pounds up to ninety thousand pounds on those sections of
22 State Route 2, U. S. Route 40 and I-70 described above:
23 *Provided*, That any person, organization or corporation exceed-
24 ing eighty thousand pounds gross weight limitation while using
25 said routes shall first obtain a multi-trip permit from the
26 commissioner before proceeding and shall provide the commis-
27 sioner with a bond sufficient to cover any potential undue
28 damage which may result from the use: *Provided, however*,
29 That if it is the determination of the commissioner that the
30 routes, as specifically described herein, are in need of repaving,
31 those persons, organizations or corporations shall pay the cost
32 of repaving in amounts as assessed, from time to time, by the
33 commissioner: *Provided further*, That the commissioner also
34 determines that the increased limitation is not barred by an act
35 of the United States Congress and the commissioner has
36 received approval from the United States department of
37 transportation to increase the weight limitation.

CHAPTER 288

(S. B. 667 — By Senator Helmick)

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

AN ACT to extend the time for the board of education of Pocahontas County to meet as a levying body for the purpose of presenting to the voters of the county an election to consider a special levy for

the board of education from between the seventh and twenty-eighth days of March until the twenty-second day of May, two thousand.

Be it enacted by the Legislature of West Virginia:

POCAHONTAS COUNTY BOARD OF EDUCATION MEETING AS LEVYING BODY EXTENDED.

§1. Extending time for Pocahontas County board of education to meet as levying body for an election for a special levy.

1 Notwithstanding the provisions of article eight, chapter
2 eleven of the code of West Virginia, one thousand nine hundred
3 thirty-one, as amended, to the contrary, the board of education
4 of Pocahontas County is hereby authorized to extend the time
5 for its meeting as a levying body and certifying its actions to
6 the state tax commissioner from between the seventh and
7 twenty-eighth days of March until the twenty-second day of
8 May, two thousand, for the purpose of submitting to the voters
9 of Pocahontas County a special levy for the board of education.



CHAPTER 289

**(Com. Sub. for H. B. 4747 — By Mr. Speaker, Mr. Kiss,
and Delegates Martin and Border)**

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

AN ACT to reform, alter and modify the county commission of Wirt County under the provisions of section thirteen, article nine of the constitution of West Virginia.

Be it enacted by the Legislature of West Virginia:

WIRT COUNTY COMMISSION.

§1. Legislative findings.

1 The Legislature hereby finds and declares that, by a petition
2 presented to the county commission of the county of Wirt, at
3 least ten percent of the registered voters of said county have
4 requested the reformation, alteration and modification of the
5 county commission of said county, so as to replace the county
6 commission with a new form of administration entitled the
7 county administrators. The Legislature further finds and
8 declares that, by a letter dated the eighteenth day of January,
9 two thousand, said county commission has verified that the
10 petition is proper and has requested the Legislature to so
11 reform, alter and modify said county commission, as required
12 by the provisions of section thirteen, article nine of the constitu-
13 tion of this state. The Legislature further finds and declares that
14 it fulfills the mandatory requirements of said petition and of
15 said section thirteen of the constitution by the provision of this
16 act.

**§2. Reformation, alteration and modification of the Wirt County
commission; composition; application of laws.**

1 That on and after the first day of January, two thousand
2 one, a tribunal of five persons called the county administrators
3 shall replace the previous and existing county commission in
4 the county of Wirt, and shall have the powers, duties and
5 responsibilities of a county commission as provided for in the
6 constitution and general laws of this state. Notwithstanding any
7 other provision to the contrary, any reference to a county
8 commission or to county commissioners in the constitution or
9 laws of this state shall be construed to include and to reference
10 the county administrators in the county of Wirt, unless the
11 reference conflicts with a specific provision of this act.

§3. Election of county administrators; terms of office; meetings; chief administrator; compensation; exception.

1 At the general election to be held in the year two thousand,
2 there shall be elected on a nonpartisan ballot by the voters of
3 the county of Wirt, five county administrators, no more than
4 two to be elected from any one county district. If three or more
5 persons residing in the same district shall receive the greatest
6 number of votes cast at any election then only two of such
7 persons receiving the highest number shall be declared elected,
8 and the person living in another district, who shall receive the
9 next highest number of votes, shall be declared elected. The
10 county administrators shall hold office for a term of four years
11 and may serve no more than two consecutive terms, except that
12 at the first meeting of said county administrators elected in the
13 year two thousand, the administrators shall designate the person
14 receiving the highest number of votes in each of the county's
15 three districts and those three county administrators shall serve
16 initial four year terms. The elected county administrator who
17 received the next highest number of votes and the elected
18 county administrator with the least amount of votes shall each
19 serve an initial two year term and then may each stand for
20 reelection to four year terms.

21 The county administrators shall meet at least twenty-four
22 times annually and may call such special meetings as needed,
23 including meetings as the board of equalization. Each county
24 administrator shall receive one hundred dollars for each
25 meeting attended. At the first meeting of said county adminis-
26 trators elected in the year two thousand, the administrators shall
27 designate by lot, or otherwise in such manner as they may
28 determine, one of their number who shall serve as chief
29 administrator. The chief administrator shall serve as chairper-
30 son of the county administrators and the position shall be
31 rotated on an annual basis.

§4. Submission to voters of question of reformation, alteration and modification of the county commission; publication.

1 At the primary election to be held in the year two thousand,
2 the question of the reformation, alteration and modification of
3 the county commission as provided in this act shall be submit-
4 ted to the voters of Wirt County voting at such election, on a
5 separate ballot furnished by the county commission, in the
6 following form:

7 “For reformation of the county commission.

8 Against reformation of the county commission. ”

9 Notice of the election on the question shall be given by
10 publication of this act in each weekly or daily newspaper as a
11 Class II-O legal advertisement in compliance with the provi-
12 sions of article three, chapter fifty-nine of the code of West
13 Virginia, one thousand nine hundred thirty-one, as amended, in
14 the county at least once in each week for two successive weeks
15 immediately preceding the election.

**§5. Effect of result of vote on modification of the county commis-
sion.**

1 If a majority of the votes cast upon the question be for
2 reformation of the county commission, this act shall be and
3 remain in full force and effect; but, if a majority of said votes
4 be against reformation of said county commission, said act shall
5 be void and of no further force and effect.

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 2000

CHAPTER 1

(S. B. 1002 — By Senator Craig)

[Passed March 19, 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 six million dollars from the revenue shortfall reserve fund, fund 2038, organization 0201, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand, to the governor's office, civil contingent fund, fund 0105, fiscal year 2000, organization 0100.

WHEREAS, The Legislature finds that it anticipates that the funds available to assist flood victims and to fund other needed infrastructure and other community development projects throughout the state will fall short of that needed during the fiscal year ending the thirtieth day of June, two thousand; and

WHEREAS, The revenue shortfall reserve fund has a sufficient balance available for appropriation in the fiscal year ending the thirtieth day of June, two thousand; and

WHEREAS, By the provision of this legislation there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the revenue shortfall reserve fund, fund 2038, organization 0201, be decreased by expiring the amount of six million dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, two thousand, to fund 0105, fiscal year 2000, organization 0100, be supplemented and amended by increasing the total appropriation by six million dollars as follows:

1	TITLE II-APPROPRIATIONS		
2	Section 1. Appropriations from general revenue.		
3	<i>8-Governor's Office-</i>		
4	<i>Civil Contingent Fund</i>		
5	(WV Code Chapter 5)		
6	Fund <u>0105</u> FY <u>2000</u> Org <u>0100</u>		
7			General
8		Act-	Revenue
9		ivity	Fund
10	1a Civil Contingent Fund - Surplus (R)	263	\$ 6,000,000

11 The purpose of this bill is to expire the sum of six million
12 dollars from the revenue shortfall reserve fund, fund 2038,
13 organization 0201, and to supplement the governor's office,
14 civil contingent fund, fund 0105, fiscal year 2000, organization
15 0100, in the budget act for the fiscal year ending the thirtieth
16 day of June, two thousand, by adding six million dollars to the
17 appropriation for civil contingent fund-surplus.

CHAPTER 2

(S. B. 1003 — By Senator Craigo)

[Passed March 19, 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 one million one hundred fifty-five thousand one hundred one 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 \$ 1,155,101

10

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



CHAPTER 3

(S. B. 1004 — By Senator Craigo)

[Passed March 19, 2000; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the balance of the West Virginia economic development authority, fund 3148, fiscal year 2000, organization 0307, for the fiscal year ending the thirtieth day of June, two thousand, in the amount of one million dollars from the unappropriated balance in the health care cost review authority fund, fund 5375, fiscal year 2000, organization 0507.

WHEREAS, The Legislature finds that the balance in the health care cost review authority fund, fund 5375, fiscal year 2000, organization 0507, exceeds that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the West Virginia economic development authority, fund 3148, fiscal year 2000, organization 0307, be increased by expiring to that fund one million dollars from the unappropriated balance of the health care cost review authority fund, fund 5375, fiscal year 2000, organization 0507, to be available for expenditure during the fiscal year two thousand.

The purpose of this bill is to expire one million dollars from the unappropriated balance in the health care cost review authority fund, fund 5375, fiscal year 2000, organization 0507, to the balance of the West Virginia economic development authority, fund 3148, fiscal year 2000, organization 0307, for the fiscal year ending the thirtieth day of June, two thousand, to be available for expenditure on emergency response equipment during the fiscal year two thousand.

CHAPTER 4

(S. B. 1005 — By Senator Craigo)

[Passed March 19, 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, in the amount of six hundred ten thousand eight hundred fifty dollars from the banking services expense fund, fund 1322, fiscal year 2000, organization 1300, and making supplementary appropriations of public moneys out of the treasury from the balance of moneys remaining as an unappropri-

ated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand, to the division of juvenile services, fund 0570, fiscal year 2000, organization 0621.

WHEREAS, The Legislature finds that the balance in the banking services expense fund, fund 1322, 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 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 balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, two thousand, in the banking services expense fund, fund 1322, fiscal year 2000, organization 1300, be decreased by expiring the amount of six hundred ten thousand eight hundred fifty dollars to the unappropriated balance in the state fund, general revenue, and that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand, to fund 0570, fiscal year 2000, organization 0621, be supplemented and amended by increasing the total appropriation by six hundred ten thousand eight hundred fifty dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 68—Division of Juvenile Services

4 (WV Code Chapter 49)

5 Fund 0570 FY 2000 Org 0621

6		General
7	Act-	Revenue
8	ivity	Funds
9	* 1a Central Office - Surplus 024	\$ 226,529

*Language deleted by the Governor.

10 *2a Personal Services - ~~Surplus~~ 243* \$ 384,321

11 The purpose of this bill is to expire the sum of six hundred
12 ten thousand eight hundred fifty dollars from the banking
13 services expense fund, fund 1322, fiscal year 2000, organization
14 1300, and to supplement the division of juvenile services, fund
15 0570, fiscal year 2000, organization 0621, in the budget act for
16 the fiscal year ending the thirtieth day of June, two thousand by
17 adding two hundred twenty-six thousand, five hundred twenty-
18 nine dollars to the appropriation ~~*in a new line item*~~ for central
19 office ~~*surplus*~~, and three hundred eighty-four thousand three
20 hundred twenty-one dollars to the appropriation ~~*in a new line~~
21 ~~item*~~ for personal services ~~*surplus*~~, for expenditure during
22 fiscal year ending the thirtieth day of June, two thousand.

CHAPTER 5

(S. B. 1001 — By Senator Craigo)

[Passed March 19, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing a seven hundred fifty-six dollar salary increase for members of the West Virginia state police.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA STATE POLICE.

*Language deleted by the Governor.

§15-2-5. Career progression system; salaries; exclusion from wage and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.

1 (a) The superintendent shall establish within the West
2 Virginia state police a system to provide for: The promotion of
3 members to the supervisory ranks of sergeant, first sergeant,
4 second lieutenant and first lieutenant; the classification of
5 nonsupervisory members within the field operations force to the
6 ranks of trooper, senior trooper, trooper first class or corporal;
7 the classification of members assigned to the forensic labora-
8 tory as criminalist I-VII; and the temporary reclassification of
9 members assigned to administrative duties as administrative
10 support specialist I-VIII.

11 (b) The superintendent is authorized to propose legislative
12 rules for promulgation in accordance with article three, chapter
13 twenty-nine-a of this code for the purpose of ensuring consis-
14 tency, predictability and independent review of any system
15 developed under the provisions of this section.

16 (c) The superintendent shall provide to each member a
17 written manual governing any system established under the
18 provisions of this section and specific procedures shall be
19 identified for the evaluation and testing of members for
20 promotion or reclassification and the subsequent placement of
21 any members on a promotional eligibility or reclassification
22 recommendation list.

23 (d) Members shall receive annual salaries as follows:

24 ANNUAL SALARY SCHEDULE (BASE PAY)
25 SUPERVISORY AND NONSUPERVISORY RANKS

26	Cadet During Training	\$1,747 Mo.	\$20,964
27	Cadet Trooper After Training	2,150 Mo.	25,800

Ch. 5]	SALARIES	2315
28	Trooper Second Year	26,256
29	Trooper Third Year	26,628
30	Trooper Fourth & Fifth Year	26,928
31	Senior Trooper	29,016
32	Trooper First Class	31,104
33	Corporal	33,192
34	Sergeant	37,368
35	First Sergeant	39,456
36	Second Lieutenant	41,544
37	First Lieutenant	43,632
38	Captain	45,720
39	Major	47,808
40	Lieutenant Colonel	49,896
41	ANNUAL SALARY SCHEDULE (BASE PAY)	
42	ADMINISTRATION	
43	SUPPORT SPECIALIST CLASSIFICATION	
44	I	26,928
45	II	29,016
46	III	31,104
47	IV	33,192
48	V	37,368
49	VI	39,456
50	VII	41,544
51	VIII	43,632

52 ANNUAL SALARY SCHEDULE (BASE PAY)

53 CRIMINALIST CLASSIFICATION

54	I	26,928
55	II	29,016
56	III	31,104
57	IV	33,192
58	V	37,368
59	VI	39,456
60	VII	41,544

61 (e) Each member of the West Virginia state police whose
 62 salary is fixed and specified pursuant to this section shall
 63 receive, and is entitled to, an increase in salary over that set
 64 forth in subsection (d) of this section, for grade in rank, based
 65 on length of service, including that service served before and
 66 after the effective date of this section with the West Virginia
 67 state police as follows: At the end of five years of service with
 68 the West Virginia state police, the member shall receive a
 69 salary increase of three hundred dollars to be effective during
 70 his or her next three years of service and a like increase at
 71 three-year intervals thereafter, with the increases to be cumula-
 72 tive.

73 (f) In applying the salary schedules set forth in this section
 74 where salary increases are provided for length of service,
 75 members of the West Virginia state police in service at the time
 76 the schedules become effective shall be given credit for prior
 77 service and shall be paid such salaries as the same length of
 78 service entitles them to receive under the provisions of this
 79 section.

80 (g) The Legislature finds and declares that because of the
 81 unique duties of members of the West Virginia state police, it

82 is not appropriate to apply the provisions of state wage and hour
83 laws to them. Accordingly, members of the West Virginia state
84 police are excluded from the provisions of state wage and hour
85 law. This express exclusion shall not be construed as any
86 indication that the members were or were not covered by the
87 wage and hour law prior to this exclusion.

88 In lieu of any overtime pay they might otherwise have
89 received under the wage and hour law, and in addition to their
90 salaries and increases for length of service, members who have
91 completed basic training and who are exempt from federal Fair
92 Labor Standards Act guidelines may receive supplemental pay
93 as provided in this section.

94 The superintendent shall, within thirty days after the
95 effective date of this section, propose a legislative rule for
96 promulgation in accordance with article three, chapter
97 twenty-nine-a of this code, to establish the number of hours per
98 month which constitute the standard work month for the
99 members of the West Virginia state police. The rule shall
100 further establish, on a graduated hourly basis, the criteria for
101 receipt of a portion or all of supplemental payment when hours
102 are worked in excess of the standard work month. The superin-
103 tendent shall certify monthly to the West Virginia state police's
104 payroll officer the names of those members who have worked
105 in excess of the standard work month and the amount of their
106 entitlement to supplemental payment.

107 The supplemental payment may not exceed two hundred
108 thirty-six dollars monthly. The superintendent and civilian
109 employees of the West Virginia state police are not eligible for
110 any supplemental payments.

111 (h) Each member of the West Virginia state police, except
112 the superintendent and civilian employees, shall execute, before
113 entering upon the discharge of his or her duties, a bond with
114 security in the sum of five thousand dollars payable to the state

115 of West Virginia, conditioned upon the faithful performance of
 116 his or her duties, and the bond shall be approved as to form by
 117 the attorney general and as to sufficiency by the governor.

118 (i) Any member of the West Virginia state police who is
 119 called to perform active duty for training or inactive duty
 120 training in the national guard or any reserve component of the
 121 armed forces of the United States annually shall be granted,
 122 upon request, leave time not to exceed thirty calendar days for
 123 the purpose of performing the active duty for training or
 124 inactive duty training and the time granted may not be deducted
 125 from any leave accumulated as a member of the West Virginia
 126 state police.

127 (j) Beginning on the first day of July, one thousand nine
 128 hundred ninety-nine, and continuing thereafter, members shall
 129 receive annual salaries as follows:

130 AMENDED ANNUAL SALARY SCHEDULE (BASE PAY)
 131 SUPERVISORY AND NONSUPERVISORY RANKS

132	Cadet During Training	\$1,913 Mo.	\$22,964
133	Cadet Trooper After Training	2,316 Mo.	27,800
134	Trooper Second Year		28,256
135	Trooper Third Year		28,628
136	Trooper Fourth & Fifth Year		28,928
137	Senior Trooper		31,016
138	Trooper First Class		33,104
139	Corporal		35,192
140	Sergeant		39,368
141	First Sergeant		41,456
142	Second Lieutenant		43,544

Ch. 5]	SALARIES	2319
143	First Lieutenant	45,632
144	Captain	47,720
145	Major	49,808
146	Lieutenant Colonel	51,896
147	AMENDED ANNUAL SALARY SCHEDULE (BASE PAY)	
148	ADMINISTRATION	
149	SUPPORT SPECIALIST CLASSIFICATION	
150	I	28,928
151	II	31,016
152	III	33,104
153	IV	35,192
154	V	39,368
155	VI	41,456
156	VII	43,544
157	VIII	45,632
158	AMENDED ANNUAL SALARY SCHEDULE (BASE PAY)	
159	CRIMINALIST CLASSIFICATION	
160	I	28,928
161	II	31,016
162	III	33,104
163	IV	35,192
164	V	39,368
165	VI	41,456
166	VII	43,544

167 Each member of the West Virginia state police whose
 168 salary is fixed and specified in the amended annual salary
 169 schedules is entitled to the length of service increases set forth
 170 in subsection (f) of this section and supplemental pay as
 171 provided in subsection (g) of this section.

172 (k) Beginning on the first day of July, two thousand, and
 173 continuing thereafter, members shall receive annual salaries as
 174 follows:

175 AMENDED ANNUAL SALARY SCHEDULE (BASE PAY)
 176 SUPERVISORY AND NONSUPERVISORY RANKS

177	Cadet During Training	\$1,976 Mo.	\$23,720
178	Cadet Trooper After Training	2,379 Mo.	28,556
179	Trooper Second Year		29,012
180	Trooper Third Year		29,384
181	Trooper Fourth & Fifth Year		29,684
182	Senior Trooper		31,772
183	Trooper First Class		33,860
184	Corporal		35,948
185	Sergeant		40,124
186	First Sergeant		42,212
187	Second Lieutenant		44,300
188	First Lieutenant		46,388
189	Captain		48,476
190	Major		50,564
191	Lieutenant Colonel		52,652

192 AMENDED ANNUAL SALARY SCHEDULE (BASE PAY)

193 ADMINISTRATION

194 SUPPORT SPECIALIST CLASSIFICATION

195 I 29,684

196 II 31,772

197 III 33,860

198 IV 35,948

199 V 40,124

200 VI 42,212

201 VII 44,300

202 VIII 46,388

203 AMENDED ANNUAL SALARY SCHEDULE (BASE PAY)

204 CRIMINALIST CLASSIFICATION

205 I 29,684

206 II 31,772

207 III 33,860

208 IV 35,948

209 V 40,124

210 VI 42,212

211 VII 44,300

212 Each member of the West Virginia state police whose
213 salary is fixed and specified in the amended annual salary
214 schedules is entitled to the length of service increases set forth
215 in subsection (f) of this section and supplemental pay as
216 provided in subsection (g) of this section.

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2000

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2060	275	4125	184	4354	264
2377	2	4126	284	4364	47
2605	58	4129	158	4365	51
2741	33	4132	188	4380	4
2776	170	4137	283	4388	280
2866	72	4139	175	4389	183
2918	1	4144	132	4390	139
4004	77	4153	179	4391	205
4009	73	4156	227	4399	102
4012	135	4157	248	4410	247
4033	117	4158	244	4411	250
4035	157	4169	64	4413	103
4038	106	4172	8	4414	111
4049	215	4183	269	4416	259
4055	173	4221	162	4418	258
4058	40	4223	161	4425	276
4060	223	4250	163	4426	99
4061	197	4258	166	4429	116
4062	195	4286	164	4430	202
4063	217	4293	37	4431	129
4066	94	4295	287	4441	206
4074	6	4296	228	4442	274
4078	35	4297	232	4447	124
4080	36	4298	134	4460	133
4084	142	4300	50	4467	89
4090	260	4303	145	4470	122
4093	31	4309	178	4471	190
4094	246	4314	112	4479	149
4101	211	4317	207	4481	75
4102	203	4322	59	4487	136
4103	210	4324	126	4494	273
4104	54	4340	78	4498	7
4106	67	4353	115	4499	146

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4502	152	4645	76	4772	233
4505	278	4646	55	4773	239
4523	148	4650	147	4774	238
4526	251	4669	71	4776	151
4529	52	4672	127	4777	107
4533	266	4674	104	4780	96
4536	271	4679	101	4781	169
4541	213	4689	137	4782	5
4555	181	4705	150	4784	113
4561	85	4735	74	4785	110
4568	123	4740	216	4786	30
4575	212	4742	153	4787	109
4578	131	4747	289	4791	49
4579	138	4753	171	4793	224
4581	39	4765	25	4800	198
4587	9	4766	29	4801	156
4589	257	4767	26	4805	200
4603	218	4768	28	4806	177
4611	128	4770	236	4809	32
4639	261			4812	27

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2000**SENATE BILLS**

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22	125	175	192	396	240
29	199	177	61	397	249
50	10	178	62	398	226
79	252	179	65	406	221
81	80	184	196	415	120
82	159	189	108	421	254
85	81	191	253	427	277
90	43	201	63	428	143
97	68	202	56	433	174
98	60	205	281	448	119
103	155	206	270	449	241
109	66	207	38	450	243
121	87	209	3	451	229
125	70	211	214	452	23
126	268	212	209	453	21
127	220	215	208	454	222
128	97	216	42	455	18
129	44	226	225	456	14
132	187	227	235	458	186
133	193	228	245	460	92
137	41	229	242	469	272
138	285	232	165	475	267
143	262	235	160	480	93
144	265	310	168	492	53
146	95	333	167	497	219
153	57	359	34	501	286
157	86	362	201	505	279
161	256	367	15	516	141
164	234	371	79	517	255
165	237	372	98	519	88
166	230	384	180	520	114
167	191	388	48	522	189
170	121	389	82	540	194

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551	185	634	90	650	19
558	182	639	46	651	176
565	45	641	84	652	204
577	140	642	11	653	100
584	105	643	24	657	91
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595	118	646	16	668	12
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Senate Bills = 2, 3 Digits

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2	2377	38	207	74	4735
3	209	39	4581	75	4481
4	4380	40	4058	76	4645
5	4782	41	137	77	4004
6	4074	42	216	78	4340
7	4498	43	90	79	371
8	4172	44	129	80	81
9	4587	45	565	81	85
10	50	46	639	82	389
11	642	47	4364	83	4641
12	668	48	388	84	641
13	649	49	4791	85	4561
14	456	50	4300	86	157
15	367	51	4365	87	121
16	646	52	4529	88	519
17	647	53	492	89	4467
18	455	54	4104	90	634
19	650	55	4646	91	657
20	644	56	202	92	460
21	453	57	153	93	480
22	648	58	2605	94	4066
23	452	59	4322	95	146
24	643	60	98	96	4780
25	4765	61	177	97	128
26	4767	62	178	98	372
27	4812	63	201	99	4426
28	4768	64	4169	100	653
29	4766	65	179	101	4679
30	4786	66	109	102	4399
31	4093	67	4106	103	4413
32	4809	68	97	104	4674
33	2741	69	592	105	584
34	359	70	125	106	4038
35	4078	71	4669	107	4777
36	4080	72	2866	108	189

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110	4785	153	4742	196	184
111	4414	154	630	197	4061
112	4314	155	103	198	4800
113	4784	156	4801	199	29
114	520	157	4035	200	4805
115	4353	158	4129	201	362
116	4429	159	82	202	4430
117	4033	160	235	203	4102
118	595	161	4223	204	652
119	448	162	4221	205	4391
120	415	163	4250	206	4441
121	170	164	4286	207	4317
122	4470	165	232	208	215
123	4568	166	4258	209	212
124	4447	167	333	210	4103
125	22	168	310	211	4101
126	4324	169	4781	212	4575
127	4672	170	2776	213	4541
128	4611	171	4753	214	211
129	4431	172	614	215	4049
130	542	173	4055	216	4740
131	4578	174	433	217	4063
132	4144	175	4139	218	4603
133	4460	176	651	219	497
134	4298	177	4806	220	127
135	4012	178	4309	221	406
136	4487	179	4153	222	454
137	4689	180	384	223	4060
138	4579	181	4555	224	4793
139	4390	182	558	225	226
140	577	183	4389	226	398
141	516	184	4125	227	4156
142	4084	185	551	228	4296
143	428	186	458	229	451
144	4500	187	132	230	166
145	4303	188	4132	231	4771
146	4499	189	522	232	4297
147	4650	190	4471	233	4772
148	4523	191	167	234	164
149	4479	192	175	235	227
150	4705	193	133	236	4770
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240	396	258	4418	275	2060
241	449	259	4416	276	4425
242	229	260	4090	277	427
243	450	261	4639	278	4505
244	4158	262	143	279	505
245	228	263	669	280	4388
246	4094	264	4354	281	205
247	4410	265	144	282	625
248	4157	266	4533	283	4137
249	397	267	475	284	4126
250	4411	268	126	285	138
251	4526	269	4183	286	501
252	79	270	206	287	4295
253	191	271	4536	288	667
254	421	272	469	289	4747
255	517				

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

First Extraordinary Session, 2000

SENATE BILLS

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1002	1	1005	4
1003	2		

DISPOSITION OF BILLS ENACTED

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