

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1999
First Extraordinary Session, 1999
Second Extraordinary Session, 1999
Third Extraordinary Session, 1999

Volume II
Chapters 170 — 301
Chapters 1 — 9
Chapters 1-11
Chapter 1

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CHAPTER 170

(H. B. 2424 —By Delegates Martin, Michael, Thompson and Rowe)

[Passed March 13, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article seven, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article eight of said chapter; and to amend and reenact section four, article ten of said chapter, all relating to exempting certain retirement funds from levy and attachment by creditors; exempting individual retirement and simplified employee pension accounts from attachments, levy and bankruptcy proceedings; and providing limits for exemptions.

Be it enacted by the Legislature of West Virginia:

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

Article

- 7. Attachment.
- 8. Exemptions from Levy.
- 10. Federal Tax Liens; Orders and Decrees in Bankruptcy.

ARTICLE 7. ATTACHMENT.

§38-7-7. What property may be attached.

- 1 Every attachment issued under the provisions of this article
- 2 may be levied upon any estate, real or personal, of the defen-
- 3 dant named therein, or so much thereof as is sufficient to pay
- 4 the amount for which it issues: *Provided*, That funds on deposit
- 5 in an individual retirement account (IRA) including a simplified
- 6 employee pension (SEP) in the name of the defendant are
- 7 exempt from attachment: *Provided, however*, That such amount

8 shall be exempt only to the extent it is not, or has not been,
9 subject to an excise or other tax on excess contributions under
10 section 4973 and/or section 4979 of the Internal Revenue Code
11 of 1986, or any successor provisions, regardless of whether
12 such tax is or has been paid.

ARTICLE 8. EXEMPTIONS FROM LEVY.

§38-8-1. Exemptions of personal property.

1 Any husband, wife, parent or other head of a household
2 residing in this state, or the infant children of deceased parents,
3 may set apart and hold personal property not exceeding one
4 thousand dollars in value to be exempt from execution or other
5 process, except as hereinafter provided. Any mechanic, artisan
6 or laborer residing in this state, whether he or she be a husband,
7 wife, parent or other head of a household, or not, may hold the
8 working tools of his or her trade or occupation to the value of
9 fifty dollars exempt from forced sale or execution: *Provided*,
10 That in no case shall the exemption allowed any one person
11 exceed one thousand dollars: *Provided, however*, That funds on
12 deposit in an individual retirement account (IRA) including a
13 simplified employee pension (SEP) in the name of the defen-
14 dant are exempt from attachment: *Provided further*, That such
15 amount shall be exempt only to the extent it is not or has not
16 been subject to an excise or other tax on excess contributions
17 under section 4973 and/or section 4979 of the Internal Revenue
18 Code of 1986, or any successor provisions, regardless of
19 whether such tax is or has been paid.

ARTICLE 10. FEDERAL TAX LIENS; ORDERS AND DECREES IN BANK- RUPTCY.

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

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

5 Any person who files a petition under the federal bank-
6 ruptcy law may exempt from property of the estate in a bank-
7 ruptcy proceeding the following property:

8 (a) The debtor's interest, not to exceed fifteen thousand
9 dollars in value, in real property or personal property that the
10 debtor or a dependent of the debtor uses as a residence, in a
11 cooperative that owns property that the debtor or a dependent
12 of the debtor uses as a residence or in a burial plot for the
13 debtor or a dependent of the debtor.

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

16 (c) The debtor's interest, not to exceed four hundred dollars
17 in value in any particular item, in household furnishings,
18 household goods, wearing apparel, appliances, books, animals,
19 crops or musical instruments, that are held primarily for the
20 personal, family or household use of the debtor or a dependent
21 of the debtor: *Provided*, That the total amount of personal
22 property exempted under this subsection shall not exceed eight
23 thousand dollars.

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

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

30 (f) The debtor's interest, not to exceed one thousand five
31 hundred dollars in value, in any implements, professional books
32 or tools of the trade of the debtor or the trade of a dependent of
33 the debtor.

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

36 (h) The debtor's interest, not to exceed in value eight
37 thousand dollars less any amount of property of the estate
38 transferred in the manner specified in 11 U.S.C. 542(d), in any
39 accrued dividend or interest under, or loan value of, any
40 unmatured life insurance contract owned by the debtor under
41 which the insured is the debtor or an individual of whom the
42 debtor is a dependent.

43 (i) Professionally prescribed health aids for the debtor or a
44 dependent of the debtor.

45 (j) The debtor's right to receive:

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

48 (2) A veterans' benefit;

49 (3) A disability, illness or unemployment benefit;

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

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

60 (A) Such plan or contract was established by or under the
61 auspices of an insider that employed the debtor at the time the
62 debtor's rights under such plan or contract arose;

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

64 (C) Such plan or contract does not qualify under Section
65 401(a), 403(a), 403(b), 408 or 409 of the Internal Revenue Code
66 of 1986; and

67 (D) With respect to an individual retirement account,
68 including a simplified employee pension, such amount is
69 subject to the excise tax on excess contributions under section
70 4973 and/or section 4979 of the Internal Revenue Code of 1986,
71 or any successor provisions, regardless of whether such tax is
72 paid.

73 (k) The debtor's right to receive, or property that is trace-
74 able to:

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

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

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

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

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

93 (6) Payments made to the prepaid tuition trust fund on
94 behalf of any beneficiary.

95 This section shall not be construed to affect the applicabil-
96 ity of any provision of the federal bankruptcy law other than 11
97 U.S.C. 552(d).

CHAPTER 171

(Com. Sub. for S. B. 608 —By Senators Wooton, Dittmar,
Boley, Kessler, Hunter, Ball, Plymale and Prezioso)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article sixteen; to amend and reenact section twenty-seven, article five, chapter sixty-one of said code; and to further amend said article by adding thereto a

new section, designated section twenty-seven-a, all relating to prohibiting the filing of fraudulent liens; establishing means of invalidating and removing fraudulent liens that have been filed or recorded; intimidation and retaliation against public officials, employees, jurors and witnesses; fraudulent official proceedings and legal processes and filing and serving fraudulent legal processes; impersonating public officials, employees or tribunals; and civil and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

Chapter

38. Liens.

61. Crimes and Their Punishment.

CHAPTER 38. LIENS.

ARTICLE 16. FRAUDULENT COMMON LAW LIENS.

- §38-16-101. Definitions; application of definitions.
- §38-16-102. Court of competent jurisdiction defined.
- §38-16-103. Federal government defined.
- §38-16-104. Federal official or employee defined.
- §38-16-105. Lien defined.
- §38-16-106. Nonconsensual common law lien defined.
- §38-16-107. Purported court defined.
- §38-16-108. State or local official or employee defined.
- §38-16-201. Bonafide liens are not affected by this article.
- §38-16-202. Real property common law liens unenforceable; personal property common law liens limited.
- §38-16-301. Filing or recording a claim of nonconsensual common law lien is of no force or effect.
- §38-16-302. No duty to accept filing of purported common law lien; no duty to reject filing of purported common law lien.
- §38-16-303. Claim of lien against a federal official or employee or a state or local official or employee; performance of duties; validity; no duty to accept filing; notice of invalid lien.
- §38-16-304. No duty to disclose record of common law lien.

- §38-16-305. Immunity from liability for failure to accept filing or disclose common law lien.
- §38-16-306. No duty to disclose fraudulent lien record; lien of purported court is a nullity.
- §38-16-401. Notice by clerk of fraudulent lien.
- §38-16-402. Action on fraudulent judgment lien.
- §38-16-403. Action on fraudulent lien on property.
- §38-16-404. Costs and attorneys' fees.
- §38-16-405. Warning sign.
- §38-16-406. Documents filed with secretary of state.
- §38-16-501. Liability.
- §38-16-502. Cause of action.
- §38-16-503. Venue.
- §38-16-504. Filing fees.
- §38-16-505. Plaintiff's costs.
- §38-16-506. Effect on other law.

PART 1. DEFINITIONS.

§38-16-101. Definitions; application of definitions.

1 For the purposes of this article, the words and phrases
2 defined in the following sections of this part 1, and any varia-
3 tion of those words and phrases required by the context, have
4 the meanings ascribed to them in this part 1. These definitions
5 are applicable unless a different meaning clearly appears from
6 the context.

§38-16-102. Court of competent jurisdiction defined.

1 "Court of competent jurisdiction" means a circuit court,
2 magistrate court or administrative agency within this state or a
3 court or administrative agency of another state, or a court or
4 administrative agency of the federal government having
5 jurisdiction and due legal authority to establish a charge against
6 or an interest in real or personal property by ordering or
7 authorizing the imposition of a lien against the property.

§38-16-103. Federal government defined.

1 "Federal government" means the government of the United
2 States of America and includes the executive, legislative and
3 judicial branches; and the term also includes quasi-public
4 corporations and independent commissions or authorities
5 primarily acting as instrumentalities or agencies of the United

6 States, but does not include any contractor with the United
7 States.

§38-16-104. Federal official or employee defined.

1 “Federal official or employee” means an officer or em-
2 ployee of the federal government temporarily or permanently
3 in the service of the United States, members of the military or
4 naval forces of the United States, members of the national
5 guard, and persons acting on behalf of the United States in an
6 official capacity, whether with or without compensation.

§38-16-105. Lien defined.

1 “Lien” means a charge against or an interest in property to
2 secure payment of a debt or performance of an obligation, and
3 includes a security interest created by agreement, a judicial lien
4 obtained by legal or equitable process or proceedings, a
5 common law lien, or a statutory lien.

§38-16-106. Nonconsensual common law lien defined.

1 “Nonconsensual common law lien” means a fraudulent lien
2 that is misrepresented as a valid lien because it:
3 (1) Is not provided for by a specific statute;
4 (2) Does not derive its existence from the consent of the
5 owner of the affected property; and
6 (3) Is not an equitable lien or other lien imposed by a court
7 of competent jurisdiction.

§38-16-107. Purported court defined.

1 “Purported court” means a so-called common law court or
2 other purported court or purported judicial entity that is not
3 expressly created or established under the constitution or the
4 laws of this state or of the United States.

§38-16-108. State or local official or employee defined.

1 “State or local official or employee” means a person,
2 whether appointed or elected, providing services to a branch of
3 state government or to a political subdivision of this state,
4 whether with or without compensation.

PART 2. COMMON LAW LIENS.

§38-16-201. Bonafide liens are not affected by this article.

1 Regardless of whether such liens may also be considered to
2 be common law liens, nothing in this article is intended to
3 affect:

4 (1) Statutory liens arising under an enactment of the
5 Legislature;

6 (2) Equitable liens, constructive liens and other liens that
7 are imposed by a court of competent jurisdiction; or

8 (3) Consensual liens now or hereafter recognized under the
9 common law of this state.

**§38-16-202. Real property common law liens unenforceable;
personal property common law liens limited.**

1 (a) A common law lien against real property is invalid and
2 is not recognized or enforceable in this state.

3 (b) A common law lien claimed against personal property
4 is invalid and is not recognized or enforceable if, at the time the
5 lien is claimed, the claimant does not have:

6 (1) Actual possession, lawfully acquired, of specific
7 personal property against which the lien is asserted; or

8 (2) Exclusive control, lawfully acquired, of specific
9 personal property against which the lien is asserted.

10 (c) A valid common law lien claimed against personal
11 property is destroyed or terminated if the person entitled to the
12 lien fails to retain possession or control of the property, unless
13 the person against whom the lien is asserted agrees, in writing,
14 that the lien may continue after delivery of the property from
15 the possession of the lienholder.

PART 3. PROVISIONS GOVERNING THE FILING OF
CLAIMS OF COMMON LAW LIENS.**§38-16-301. Filing or recording a claim of nonconsensual com-
mon law lien is of no force or effect.**

1 A nonconsensual common law lien is invalid and does not
2 constitute a charge against property or create an interest in
3 property. The filing or recording of a document that purports to
4 evidence a nonconsensual common law lien is a nullity and is
5 of no force or effect.

§38-16-302. No duty to accept filing of purported common law lien; no duty to reject filing of purported common law lien.

1 A clerk of a county commission or other person has no duty
2 to accept for filing or recording any purported claim of a
3 common law lien, because a common law lien is neither
4 authorized by statute nor imposed by a court of competent
5 jurisdiction. A clerk of a county commission or other person
6 has no duty to reject for filing or recording any claim of a
7 common law lien, and the inadvertent or negligent recordation
8 of a claim of a common law lien by a clerk of a county commis-
9 sion or other recorder does not create a cause of action against
10 that official.

§38-16-303. Claim of lien against a federal official or employee or a state or local official or employee; performance of duties; validity; no duty to accept filing; notice of invalid lien.

1 (a) Any claim of lien against a federal official or employee
2 or a state or local official or employee that is based on the
3 performance or nonperformance of that official's or employee's
4 duties is invalid unless it arises from a specific order of a court
5 of competent jurisdiction authorizing the filing of the lien or
6 unless a specific statute authorizes the filing of the lien.

7 (b) A person is not obligated to accept for filing any
8 purported claim of lien against a federal official or employee or
9 a state or local official or employee that is based on the perfor-
10 mance or nonperformance of that official's or employee's
11 duties unless the claim is accompanied by a specific order from
12 a court of competent jurisdiction authorizing the filing of such
13 lien or unless a specific statute authorizes the filing of such lien.
14 A person has no duty to reject for filing or recording any claim

15 of lien against a federal official or employee or a state or local
16 official or employee that is based on the performance or
17 nonperformance of that official's or employee's duties, and the
18 inadvertent or negligent recordation of such a claim by a clerk
19 of a county commission or other recorder does not create a
20 cause of action against that official.

21 (c) If a claim of lien as described in subsection (a) of this
22 section has been accepted for filing, the recording officer shall
23 accept for filing a notice of invalid lien signed and submitted by
24 the assistant United States attorney or other counsel represent-
25 ing the federal agency of which the individual is an official or
26 employee; the assistant attorney general or other counsel
27 representing the state agency, board, commission, department,
28 or institution of higher education of which the individual is an
29 official or employee; or the prosecuting attorney or municipal
30 attorney or other counsel representing the school district,
31 political subdivision, or unit of local government of this state of
32 which the individual is an official or employee. A copy of the
33 notice of invalid lien shall be mailed by the attorney to the
34 person who filed the claim of lien, at his or her last known
35 address. The clerk of the county commission shall file and
36 index the notice of invalid lien in the same class of records in
37 which the purported claim of lien was originally filed.

§38-16-304. No duty to disclose record of common law lien.

1 No person has a duty to disclose an instrument of record or
2 file that attempts to give notice of a common law lien. This
3 section does not relieve any person of any duty which otherwise
4 may exist to disclose a claim of lien authorized by statute or
5 imposed by order of a court of competent jurisdiction.

§38-16-305. Immunity from liability for failure to accept filing or disclose common law lien.

1 A clerk of the county commission or other person is not
2 liable for the acceptance for filing of an invalid claim of a
3 nonconsensual common law lien, nor for the acceptance for
4 filing of a notice of invalid lien. A clerk of the county commis-
5 sion or other person is not liable for damages arising from a

6 refusal to record or file or a failure to disclose any claim of a
7 purported common law lien of record.

**§38-16-306. No duty to disclose fraudulent lien record; lien of
purported court is a nullity.**

1 (a) An attorney, title insurance company or other title
2 examiner does not have a duty to disclose a fraudulent court
3 record, document, or instrument purporting to create a
4 nonconsensual common law lien asserting a claim on real
5 property or an interest in real property in connection with a sale,
6 conveyance, mortgage, or other transfer of the real property or
7 interest in real property.

8 (b) A purported judgment lien or document establishing or
9 purporting to establish a judgment lien against property in this
10 state, that is issued or purportedly issued by a court or a
11 purported court other than a court established under the laws of
12 this state or the United States, is a nullity and has no effect in
13 the determination of any title or right to the property.

**PART 4. ACTIONS TO STRIKE OR REMOVE
NONCONSENSUAL COMMON LAW LIEN.**

§38-16-401. Notice by clerk of fraudulent lien.

1 (a) If a clerk of the county commission has a reasonable
2 basis to believe in good faith that a document or instrument
3 purporting to evidence an invalid nonconsensual common law
4 lien has been filed or recorded or offered for filing or recording,
5 the clerk shall provide a written notice as follows:

6 (1) If the document is a purported judgment or other
7 document purporting to memorialize or evidence an act, an
8 order, a directive, or process of a purported court, the clerk shall
9 provide written notice of the filing, recording, or submission for
10 filing or recording to the stated or last known address of the
11 person against whom the purported judgment, act, order,
12 directive, or process is rendered; or

13 (2) If the document or instrument purports to create a lien
14 or assert a claim on real or personal property or an interest in
15 real or personal property, provide written notice of the filing,

16 recording, or submission for filing or recording to the stated or
17 last known address of the person named in the document or
18 instrument as the obligor or debtor and to any person named as
19 owning any interest in the real or personal property described
20 in the document or instrument.

21 (b)(1) If the document is not yet filed or recorded, the clerk
22 shall provide written notice under subsection (a) not later than
23 the second business day after the date that the document is
24 submitted for filing or recording; or

25 (2) If the document or instrument has been previously filed
26 or recorded, the clerk shall provide written notice under
27 subsection (a) not later than the second business day after the
28 date that the clerk becomes aware that the document or instru-
29 ment may be fraudulent.

30 (c) For purposes of this section, a document or instrument
31 is presumed to be fraudulent if:

32 (1) The document is styled as a judgment or other document
33 purporting to memorialize or evidence an act, an order, a
34 directive, or process of a purported court; or

35 (2) The document or instrument purports to create a lien or
36 security interest or otherwise create a charge against real or
37 personal property and:

38 (A) It is not a document or instrument provided for by the
39 constitution or laws of this state or of the United States;

40 (B) It is not created by implied or express consent or
41 agreement of the alleged obligor, debtor, or the owner of the
42 real or personal property or an interest in the real or personal
43 property, or by implied or express consent or agreement of an
44 agent, fiduciary, or other representative of that person; or

45 (C) It is not an equitable, constructive, or other lien
46 imposed by a court of competent jurisdiction.

§38-16-402. Action on fraudulent judgment lien.

1 (a) A person against whom a purported judgment was
2 rendered who has reason to believe that a document previously

3 filed or recorded or submitted for filing or for filing and
4 recording is fraudulent may complete and file with the clerk of
5 the circuit court a motion, verified by affidavit, that contains, at
6 a minimum, the information in the following suggested form:

7 IN THE CIRCUIT COURT OF _____ COUNTY,
8 WEST VIRGINIA

9 In Re: A Purported Judgment Lien Against

10 (Name of Purported Debtor)

11 MOTION FOR JUDICIAL REVIEW OF A DOCUMENT
12 PURPORTING TO CREATE A JUDGMENT LIEN

13 Now comes (name) and files this motion requesting a
14 judicial determination of the status of a court, judicial entity, or
15 judicial officer purporting to have taken an action that is the
16 basis of a purported judgment lien filed in the office of the clerk
17 of the county commission, and in support of the motion would
18 show the court as follows:

19 I.

20 (Name), movant herein, is the person against whom the
21 purported judgment was rendered.

22 II.

23 On (date), in the exercise of official duties as Clerk of the
24 County Commission of (county name) County, West Virginia,
25 the county clerk received and filed or filed and recorded the
26 attached documentation containing (number) pages. The
27 documentation purports to have been rendered on the basis of
28 a judgment, act, order, directive, or process of a court, judicial
29 entity, or judicial officer called "(name of purported court)"
30 against one (name of purported debtor).

31 III.

32 Movant alleges that the purported court referred to in the
33 attached documentation is one described in W.Va. Code, §38-
34 16-108, as not legally created or established under the constitu-
35 tion or laws of this state or of the United States, and that the
36 document therefore not be accorded lien status.

37

IV.

38 Movant further attests that the assertions contained herein
39 are true and correct.

40

PRAYER

41 Movant requests the court to review the attached documen-
42 tation and enter an order determining whether it should be
43 accorded lien status, together with such other orders as the court
44 deems appropriate.

45

Respectfully submitted,

46

(Signature and typed name and address)

47

48 (b) The acknowledgment must be as follows:

49 THE STATE OF WEST VIRGINIA,

50 COUNTY OF _____, To-wit:

51 I, _____, a notary public of said
52 county; (or other officer or person authorized to take acknowl-
53 edgments), do certify that _____, whose
54 name (or names) is (or are) signed to the attached motion, dated
55 the _____ day of _____, _____, has (or have)
56 this day acknowledged the same before me, in my said
57 _____.

58 Given under my hand this _____ day of
59 _____, _____.

60

Notary Public, State of West Virginia

61

62 Notary's printed name:

63 My commission expires:

64 (c) A motion filed under this section may be ruled on by a
65 circuit judge in the county where the subject documentation
66 was filed. The court's finding may be made solely on a review
67 of the documentation attached to the movant's motion and
68 without hearing any testimonial evidence. The court's review
69 may be made ex parte without delay or notice of any kind.

70 (d) The clerk of the circuit court may not charge a filing fee
71 for filing a motion under this section.

72 (e) After reviewing the documentation attached to a motion
73 under this section, the circuit judge shall enter appropriate
74 findings of fact and conclusions of law, which must be filed and
75 indexed in the same class of records in which the subject
76 documentation or instrument was originally filed.

77 (f) The county clerk may not collect a filing fee for filing a
78 district judge's findings of fact and conclusions of law under
79 this section.

80 (g) A suggested form order appropriate to comply with this
81 section is as follows:

82 IN THE CIRCUIT COURT OF _____ COUNTY,
83 WEST VIRGINIA

84 In Re: A Purported Judgment Lien Against

85 (Name of Purported Debtor)

86 JUDICIAL FINDINGS OF FACT AND CONCLUSIONS
87 OF LAW REGARDING A DOCUMENTATION
88 PURPORTING TO CREATE A JUDGMENT LIEN

89 On the (number) day of (month), (year), in the above
90 entitled action, this Court reviewed a motion verified by (name)
91 and the documentation attached thereto. No testimony was
92 taken from any party, nor was there any notice of the Court's
93 review, the Court having made the determination that a decision
94 could be made solely on review of the documentation under the
95 authority vested in the Court under W.Va. Code, §38-16-101,
96 *et seq.*

97 The Court finds as follows (only an item checked and
98 initialed is a valid court ruling):

99 [] The documentation attached to the motion herein refers to
100 a legally constituted court, judicial entity, or judicial officer
101 created by or established under the constitution or laws of
102 this state or of the United States. This judicial finding and
103 conclusion of law does not constitute a finding as to any
104 underlying claims of the parties.

105 [] The documentation attached to the motion herein DOES
 106 NOT refer to a legally constituted court, judicial entity, or
 107 judicial officer created by or established under the constitu-
 108 tion or laws of this state or of the United States. There is no
 109 valid judgment lien created by the documentation.

110 This court makes no finding as to any underlying claims of
 111 the parties involved and expressly limits its findings of fact and
 112 conclusions of law to a ministerial act. The county clerk shall
 113 file this finding of fact and conclusion of law in the same class
 114 of records as the subject documentation was originally filed,
 115 and the court directs the county clerk to index it using the same
 116 names that were used in indexing the subject document.

117 Signed this _____ day of _____, _____.

118 _____
 119 Judge,
 120 Circuit Court of__ County,
 121 West Virginia

122 **§38-16-403. Action on fraudulent lien on property.**

123 (a) A person who is the purported debtor or obligor or who
 124 owns real or personal property or an interest in real or personal
 125 property, and who has reason to believe that the document
 126 purporting to create a lien or a claim against the real or personal
 127 property or an interest in the real or personal property previ-
 128 ously filed or submitted for filing and recording is fraudulent,
 129 may complete and file with the clerk of the circuit court a
 130 verified motion that contains, at a minimum, the information in
 131 the following suggested form:

132 IN THE CIRCUIT COURT OF _____,
 133 WEST VIRGINIA

134 In Re: A Purported Lien or Claim Against

135 (Name of Purported Debtor)

136 MOTION FOR JUDICIAL REVIEW OF
 137 DOCUMENTATION PURPORTING TO
 138 CREATE A LIEN OR CLAIM

139 Now comes (name) and files this motion requesting a
140 judicial determination of the status of documentation or an
141 instrument purporting to create an interest in real or personal
142 property or a lien or claim on real or personal property or an
143 interest in real or personal property filed in the office of the
144 Clerk of (county name) County, West Virginia, and in support
145 of the motion would show the court as follows:

146

I.

147 (Name), movant herein, is the purported obligor or debtor
148 or person who owns the real or personal property or the interest
149 in real or personal property described in the documentation.

150

II.

151 On (date), in the exercise of official duties as Clerk of the
152 County Commission of (county name) County, West Virginia,
153 the county clerk received and filed and recorded the documen-
154 tation attached hereto and containing (number) pages. The
155 documentation purports to have created a lien on real or
156 personal property or an interest in real or personal property
157 against one (name of purported debtor).

158

III.

159 Movant alleges that the documentation or instrument
160 attached hereto is fraudulent, as defined by W.Va. Code, §38-
161 16-101, *et seq.*, and that the documentation or instrument
162 should therefore not be accorded lien status.

163

IV.

164 Movant attests that assertions herein are true and correct.

165

V.

166 Movant does not request the court to make a finding as to
167 any underlying claim of the parties involved and acknowledges
168 that this motion does not seek to invalidate a legitimate lien.
169 Movant further acknowledges that movant may be subject to
170 sanctions, as provided by Rule 11 of the West Virginia Rules of
171 Civil Procedure for Trial Courts of Record, if this motion is
172 determined to be frivolous.

173

PRAYER

174 Movant requests the court to review the attached documen-
175 tation and enter an order determining whether it should be
176 accorded lien status, together with such other orders as the court
177 deems appropriate.

178 Respectfully submitted,

179

180

(Signature and typed name and address)

181 (b) The acknowledgment must be as follows:

182 THE STATE OF WEST VIRGINIA,
183 COUNTY OF _____, To-wit:

184 I, _____, a notary public of said
185 county; (or other officer or person authorized to take acknowl-
186 edgments), do certify that _____,
187 whose name (or names) is (or are) signed to the attached
188 motion, dated the _____ day of _____,
189 has (or have) this day acknowledged the same before me, in my
190 said _____.

191 Given under my hand this _____ day of
192 _____, _____.

193

194

Notary Public, State of West Virginia

195 Notary's printed name:

196 My commission expires:

197 (c) A motion under this section may be ruled on by a circuit
198 judge in the county where the subject document was filed. The
199 court's finding may be made solely on a review of the docu-
200 mentation attached to the motion and without hearing any
201 testimonial evidence. The court's review may be made ex parte
202 without delay or notice of any kind.

203 (d) The clerk of the circuit court may not collect a filing fee
204 for filing a motion under this section.

205 (e) After reviewing the documentation attached to a motion
206 under this section, the circuit judge shall enter appropriate
207 findings of fact and conclusions of law, which must be filed and
208 indexed in the same class of records in which the subject
209 documentation or instrument was originally filed. A copy of the
210 findings of fact and conclusions of law shall be sent, by first
211 class mail, to the movant and to the person who filed the
212 fraudulent lien or claim at the last known address of each
213 person within seven days of the date that the finding of fact and
214 conclusion of law is issued by the judge.

215 (f) The county clerk may not collect a fee for filing a
216 district judge's finding of fact and conclusion of law under this
217 section.

218 (g) A suggested form order appropriate to comply with this
219 section is as follows:

220 IN THE CIRCUIT COURT OF _____ COUNTY,
221 WEST VIRGINIA

222 In Re: A Purported Judgment Lien Against
223 (Name of Purported Debtor)

224 JUDICIAL FINDINGS OF FACT AND CONCLUSIONS
225 OF LAW REGARDING A DOCUMENTATION
226 PURPORTING TO CREATE A JUDGMENT LIEN

227 On the (number) day of (month), (year), in the above
228 entitled action, this court reviewed a motion verified by (name)
229 and the documentation attached thereto. No testimony was
230 taken from any party, nor was there any notice of the court's
231 review, the court having made the determination that a decision
232 could be made solely on review of the documentation under the
233 authority vested in the court under W.Va. Code, §38-16-101, *et*
234 *seq.*

235 The court finds as follows (only an item checked and
236 initialed is a valid court ruling):

237 [] The documentation or instrument attached to the motion
238 herein IS asserted against real or personal property or an
239 interest in real or personal property and:

- 240 (1) IS provided for by specific state or federal statutes or
241 constitutional provisions;
- 242 (2) IS created by implied or express consent or agreement
243 of the obligor, debtor, or the owner of the real or
244 personal property or an interest in the real or personal
245 property, or by consent of an agent, fiduciary, or other
246 representative of that person; or
- 247 (3) IS an equitable, constructive, or other lien imposed by
248 a court of competent jurisdiction created or established
249 under the constitution or laws of this state or of the
250 United States.

251 [] The documentation or instrument attached to the motion:

- 252 (1) IS NOT provided for by specific state or federal
253 statutes or constitutional provisions;
- 254 (2) IS NOT created by implied or express consent or
255 agreement of the obligor, debtor, or the owner of the
256 real or personal property or an interest in the real or
257 personal property, or by implied or express consent or
258 agreement of an agent, fiduciary, or other representa-
259 tive of that person;
- 260 (3) IS NOT an equitable, constructive, or other lien im-
261 posed by a court of competent jurisdiction created by
262 or established under the constitution or laws of this
263 state or the United States; or
- 264 (4) IS NOT asserted against real or personal property or an
265 interest in real or personal property. There is no valid
266 lien or claim created by this documentation or instru-
267 ment.

268 This court makes no finding as to any underlying claims of
269 the parties involved and expressly limits its finding of fact and
270 conclusion of law to a ministerial act. The county clerk shall
271 file this finding of fact and conclusion of law in the same class
272 of records as the subject documentation was originally filed,
273 and the court directs the county clerk to index it using the same
274 names that were used in indexing the subject document.

275 Signed this _____ day of _____, _____.

276 _____

277 Judge,

278 Circuit Court of _____ County, West Virginia

§38-16-404. Costs and attorneys' fees.

1 If, following a hearing on the matter, the court determines
 2 that the claim of lien is invalid, the court shall issue an order
 3 awarding costs and reasonable attorneys' fees to the petitioner
 4 to be paid by the lien claimant. If the court determines that the
 5 claim of lien is valid, the court shall issue an order so stating
 6 and may award costs and reasonable attorneys' fees to the lien
 7 claimant to be paid by the movant.

§38-16-405. Warning sign.

1 A clerk of the county commission shall post a sign, in
 2 letters at least one inch in height, that is clearly visible to the
 3 general public in or near the clerk's office stating that it is a
 4 crime to intentionally or knowingly file a fraudulent court
 5 record or a fraudulent instrument with the clerk.

§38-16-406. Documents filed with secretary of state.

1 (a) If the lien or other claim that is the subject of judicial
 2 findings of fact and conclusions of law authorized by this article
 3 is one that is authorized by law to be filed with the secretary of
 4 state, any person may file a certified copy of the judicial
 5 findings of fact and conclusions of law in the records of the
 6 secretary of state, who shall file the certified copy of the finding
 7 in the same class of records as the subject document or instru-
 8 ment was originally filed and index it using the same names
 9 that were used in indexing the subject document or instrument.

10 (b) The secretary of state may charge a filing fee of five
 11 dollars for filing a certified copy of judicial findings of fact and
 12 conclusions of law under this section.

**PART 5. LIABILITY FOR FRAUDULENT COURT RECORD OR A
 FRAUDULENT LIEN.**

§38-16-501. Liability.

1 (a) A person may not make, present, or use a document or
2 other record with:

3 (1) Knowledge that the document or other record is a
4 fraudulent court record or a fraudulent lien or claim against real
5 or personal property or an interest in real or personal property;

6 (2) Intent that the document or other record be given the
7 same legal effect as a court record or document of a court
8 created by or established under the constitution or laws of this
9 state or the United States, evidencing a valid lien or claim
10 against real or personal property or an interest in real or
11 personal property; and

12 (3) Intent to cause another person to suffer:

13 (A) Physical injury;

14 (B) Financial injury; or

15 (C) Mental anguish or emotional distress.

16 (b) A person who violates subsection (a) is liable to each
17 injured person for:

18 (1) The greater of:

19 (A) \$10,000; or

20 (B) The actual damages caused by the violation;

21 (2) Court costs;

22 (3) Reasonable attorney's fees; and

23 (4) Exemplary damages in an amount determined by the
24 court.

§38-16-502. Cause of action.

1 The following persons may bring an action to enjoin
2 violation of this article or to recover damages under this article:

3 (1) In the case of a fraudulent judgment lien, the person
4 against whom the judgment is rendered; and

5 (2) In the case of a fraudulent lien or claim against real or
6 personal property or an interest in real or personal property, the

7 obligor or debtor, or a person who owns an interest in the real
8 or personal property.

§38-16-503. Venue.

1 An action under this part 5 may be brought in any circuit
2 court in the county in which the recorded document is recorded
3 or in which the real property is located.

§38-16-504. Filing fees.

1 (a) The fee for filing an action under this chapter is fifteen
2 dollars. The plaintiff must pay the fee to the clerk of the court
3 in which the action is filed. Except as provided by subsection
4 (b), the plaintiff may not be assessed any other fee, cost, charge,
5 or expense by the clerk of the court or other public official in
6 connection with the action.

7 (b) The fee for service of notice of an action under this
8 section charged to the plaintiff may not exceed:

9 (1) Twenty dollars if the notice is delivered in person; or

10 (2) The cost of postage if the service is by registered or
11 certified mail.

12 (c) A plaintiff who is unable to pay the filing fee and fee for
13 service of notice may file with the court an affidavit of inability
14 to pay.

15 (d) Since the fee imposed under subsection (a) of this
16 section is less than the filing fee the court imposes for filing
17 other similar actions, if the plaintiff prevails in the action, the
18 court may order a defendant to pay to the court the differences
19 between the fee paid under subsection (a) and the filing fee the
20 court imposes for filing other similar actions.

§38-16-505. Plaintiff's costs.

1 (a) The court shall award the plaintiff the costs of bringing
2 the action if:

3 (1) The plaintiff prevails; and

4 (2) The court finds that the defendant, at the time the
5 defendant caused the recorded document to be recorded or filed,

6 knew or should have known that the recorded document is
7 fraudulent.

8 (b) For purposes of this section, the costs of bringing the
9 action include all court costs, attorney's fees, and related
10 expenses of bringing the action, including investigative
11 expenses.

§38-16-506. Effect on other law.

1 This part 5 is cumulative of other law under which a person
2 may obtain judicial relief with respect to a recorded document
3 or other record.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-27. Intimidation of and retaliation against public officers and employees,
jurors and witnesses; fraudulent official proceedings and legal
processes against public officials and employees; penalties.

§61-5-27a. Fraudulent official proceedings; causing a public employee or official to
file a fraudulent legal process; impersonation of a public official,
employee or tribunal; penalties.

**§61-5-27. Intimidation of and retaliation against public officers
and employees, jurors and witnesses; fraudulent
official proceedings and legal processes against
public officials and employees; penalties.**

1 (a) *Definitions.* — As used in this section:

2 (1) "Fraudulent" means not legally issued or sanctioned
3 under the laws of this state or of the United States, including
4 forged, false and materially misstated;

5 (2) "Legal process" means an action, appeal, document
6 instrument or other writing issued, filed or recorded to pursue
7 a claim against person or property, exercise jurisdiction,
8 enforce a judgment, fine a person, put a lien on property,
9 authorize a search and seizure, arrest a person, incarcerate a
10 person or direct a person to appear, perform or refrain from
11 performing a specified act. "Legal process" includes, but is not
12 limited to, a complaint, decree, demand, indictment, injunction,
13 judgment, lien, motion, notice, order, petition, pleading,
14 sentence, subpoena, summons, warrant or writ;

15 (3) "Official proceeding" means a proceeding involving a
16 legal process or other process of a tribunal of this state or of the
17 United States;

18 (4) "Person" means an individual, group, association,
19 corporation or any other entity;

20 (5) "Public official or employee" means an elected or
21 appointed official or employee, of a state or federal court,
22 commission, department, agency, political subdivision or any
23 governmental instrumentality;

24 (6) "Recorder" means a clerk or other employee in charge
25 of recording instruments in a court, commission or other
26 tribunal of this state or of the United States; and

27 (7) "Tribunal" means a court or other judicial or quasi-
28 judicial entity, or an administrative, legislative or executive
29 body, or that of a political subdivision, created or authorized
30 under the constitution or laws of this state or of the United
31 States.

32 (b) *Intimidation; harassment.* — It is unlawful for a person
33 to use intimidation, physical force, harassment or a fraudulent
34 legal process or official proceeding, or to threaten or attempt to
35 do so, with the intent to:

36 (1) Impede or obstruct a public official or employee from
37 performing his or her official duties;

38 (2) Impede or obstruct a juror or witness from performing
39 his or her official duties in an official proceeding;

40 (3) Influence, delay or prevent the testimony of any person
41 in an official proceeding; or

42 (4) Cause or induce a person to: (A) Withhold testimony, or
43 withhold a record, document or other object from an official
44 proceeding; (B) alter, destroy, mutilate or conceal a record,
45 document or other object impairing its integrity or availability
46 for use in an official proceeding; (C) evade an official proceed-
47 ing summoning a person to appear as a witness or produce a
48 record, document or other object for an official proceeding; or

49 (D) be absent from an official proceeding to which such person
50 has been summoned.

51 (c) *Retaliation.* — It is unlawful for a person to cause injury
52 or loss to person or property, or to threaten or attempt to do so,
53 with the intent to:

54 (1) Retaliate against a public official or employee for the
55 performance or nonperformance of an official duty;

56 (2) Retaliate against a juror or witness for performing his or
57 her official duties in an official proceeding;

58 (3) Retaliate against any other person for attending,
59 testifying or participating in an official proceeding, or for the
60 production of any record, document or other object produced by
61 a person in an official proceeding.

62 (d) *Subsection (b) offense.* — A person who is convicted of
63 an offense under subsection (b) is guilty of a misdemeanor and
64 shall be confined in jail for not more than one year or fined not
65 more than one thousand dollars, or both.

66 (e) *Subsection (c) or subsequent offense.* — A person
67 convicted of an offense under subsection (c) or a second offense
68 under subsection (b) is guilty of a felony and shall be confined
69 in the penitentiary not less than one nor more than ten years or
70 fined not more than two thousand dollars, or both.

71 (f) *Civil cause of action.* — A person who violates this
72 section is liable in a civil action to any person harmed by the
73 violation for injury or loss to person or property incurred as a
74 result of the commission of the offense and for reasonable
75 attorney's fees, court costs and other expenses incurred as a
76 result of prosecuting a civil action commenced under this
77 subsection, which is not the exclusive remedy of a person who
78 suffers injury or loss to person or property as a result of a
79 violation of this section.

80 (g) *Civil sanctions.* — In addition to the criminal and civil
81 penalties set forth in this section, any fraudulent official
82 proceeding or legal process brought in a tribunal of this state in
83 violation of this section shall be dismissed by the tribunal and

84. the person may be ordered to reimburse the aggravated person
85 for reasonable attorney's fees, court costs and other expenses
86 incurred in defending or dismissing such action.

87 (1) *Refusal to record.* — A recorder may refuse to record a
88 clearly fraudulent lien or other legal process against a public
89 official or employee or his or her property. The recorder does
90 not have a duty to inspect or investigate whether a lien or other
91 legal process is fraudulent nor is the recorder liable for refusing
92 to record a lien or other legal process that the recorder believes
93 is in violation of this section.

94 (2) If a fraudulent lien or other legal process against a
95 public official or employee or his or her property is recorded
96 then:

97 (A) *Request to release lien.* — The public official or
98 employee may send a written request by certified mail to the
99 person who filed the fraudulent lien or legal process, requesting
100 the person to release or dismiss the lien or legal process. If such
101 lien or legal process is not properly released or dismissed
102 within twenty-one days, then it shall be inferred that the person
103 intended to harass the public official or employee in violation
104 of subsection (b) of this section and shall be subject to the
105 criminal penalties in subsection (d) of this section and any other
106 remedies provided for in this section; or

107 (B) *Notice of fraudulent lien.* — A government attorney on
108 behalf of the public official or employee may record a notice of
109 fraudulent lien or legal process with the recorder who accepted
110 the lien or legal process for filing. Such notice shall invalidate
111 the fraudulent lien or legal process and cause it to be removed
112 from the records. No filing fee shall be charged for the filing of
113 the notice.

114 (h) A person's lack of belief in the jurisdiction or authority
115 of this state or of the United States is no defense to prosecution
116 of a civil or criminal action under this section.

117 (i)(1) Nothing in this section prohibits or in any way limits
118 the lawful acts of legitimate public officials or employees.

119 (2) Nothing in this section prohibits or in any way limits a
120 person's lawful and legitimate right to freely assemble, express
121 opinions or designate group affiliation.

122 (3) Nothing in this section prohibits or in any way limits a
123 person's lawful and legitimate access to a tribunal of this state
124 or prevents a person from instituting or responding to a lawful
125 action.

**§61-5-27a. Fraudulent official proceedings; causing a public
employee or official to file a fraudulent legal
process; impersonation of a public official, em-
ployee or tribunal; penalties.**

1 (a) *Definitions.* — For the purpose of this section, the
2 following terms have the meaning ascribed to them in section
3 twenty-seven of this article: “Fraudulent”, “legal process”,
4 “official proceeding”, “person”, “public official or employee”,
5 “recorder”, and “tribunal”.

6 (b) *Fraudulent official proceedings.* — It is unlawful for a
7 person to knowingly engage in a fraudulent official proceeding
8 or legal process.

9 (c) *Fraudulent filings.* — It is unlawful for a person to
10 knowingly cause a public official or employee to file, record or
11 deliver a fraudulent claim of indebtedness, common law lien or
12 other lien, financial statement, complaint, summons, judgment,
13 warrant or other legal process, including those issued as the
14 result of a fraudulent official proceeding.

15 (d) *Fraudulent service.* — It is unlawful for a person to
16 knowingly serve a public official or employee with a fraudulent
17 claim of indebtedness, common law lien or other lien, financial
18 statement, complaint, summons, judgment, warrant or other
19 legal process, including those issued as the result of a fraudu-
20 lent official proceeding.

21 (e) *Impersonation.* — It is unlawful for a person to know-
22 ingly impersonate or purport to exercise any function of a
23 public official, employee, tribunal or official proceeding
24 without legal authority to do so and with the intent to induce a

25 person to submit to or rely on the fraudulent authority of the
26 person.

27 (f) *First offense.* — Any person who violates a provision of
28 this section is guilty of a misdemeanor and, upon conviction
29 thereof, shall be confined in a county or regional jail for not
30 more than one year or fined not more than one thousand dollars,
31 or both.

32 (g) *Second offense.* — Any person convicted of a second or
33 subsequent offense under this section is guilty of a felony and
34 shall be confined in the penitentiary not less than one nor more
35 than ten years or fined not more than two thousand dollars, or
36 both.

37 (h) *Civil cause of action.* — A person who violates this
38 section is liable in a civil action to any person harmed by the
39 violation for injury or loss to person or property incurred as a
40 result of the commission of the offense and for reasonable
41 attorney's fees, court costs and other expenses incurred as a
42 result of prosecuting the civil action commenced under this
43 subsection, which is not the exclusive remedy of a person who
44 suffers injury or loss to person or property as a result of a
45 violation of this section.

46 (i) *Civil sanctions.* — In addition to the criminal and civil
47 penalties set forth in this section, a fraudulent official proceed-
48 ing or legal process brought in a tribunal in violation of this
49 section shall be dismissed by the tribunal and the person may be
50 ordered to reimburse the aggravated person for reasonable
51 attorney's fees, court costs and other expenses incurred in
52 defending or dismissing such action.

53 (1) *Refusal to record.* — A recorder may refuse to record a
54 clearly fraudulent lien or other legal process against a person or
55 his or her property. The recorder does not have a duty to inspect
56 or investigate whether a lien or other legal process is fraudulent
57 nor is the recorder liable for refusing to record a lien or other
58 legal process that the recorder believes is in violation of this
59 section.

60 (2) If a fraudulent lien or other legal process against a
61 person or his or her property is recorded then:

62 (A) *Request to release lien.* — A person may send a written
63 request by certified mail to the person who filed the fraudulent
64 lien or legal process, requesting the person to release or dismiss
65 the lien or legal process. If such lien or legal process is not
66 properly released or dismissed within twenty-one days, then the
67 person shall be presumed to have intended to have committed
68 a violation of this section and shall be subject to the penalties
69 provided for in this section; or

70 (B) *Petition to circuit court.* — A person may petition the
71 circuit court of the county where the fraudulent lien or legal
72 process was recorded for an order that may be granted *ex parte*
73 directing the person who filed the lien or legal process to appear
74 before the court and show cause why the lien or legal process
75 should not be released or dismissed, deemed fraudulent and the
76 person penalized as provided for in this section.

77 (i) The petition shall set forth a concise statement of the
78 facts and the grounds upon which relief is requested.

79 (ii) No filing fee shall be charged for the filing of such
80 petitions.

81 (iii) The order to show cause shall be served upon the
82 person who filed the lien or legal process according to rule 4 of
83 the rules of civil procedure and the date of the hearing set
84 within twenty-one days of the order.

85 (iv) The order to show cause shall clearly state that if the
86 person who filed the lien or legal process fails to appear at the
87 time and place noticed in the order, then the lien or legal
88 process shall be released or dismissed, deemed fraudulent and
89 the person shall be subject to the penalties provided for in this
90 section.

91 (v) If a hearing takes place or if, on its own motion, the
92 circuit court determines that the lien or legal process is fraudu-
93 lent, then the circuit court shall release or dismiss it and subject
94 the person to the penalties provided for in this section.

95 (vi) If the circuit court determines that the lien or legal
96 process is valid, then the circuit court shall issue an order
97 stating such and may award reasonable attorney's fees, court
98 costs and other expenses to the prevailing party.

99 (j) A person's lack of belief in the jurisdiction or authority
100 of this state or of the United States is no defense to prosecution
101 of a civil or criminal action under this section.

102 (k)(1) Nothing in this section prohibits or in any way limits
103 the lawful acts of a legitimate public official or employee.

104 (2) Nothing in this section prohibits or in any way limits a
105 person's lawful and legitimate right to freely assemble, express
106 opinions or designate group affiliation.

107 (3) Nothing in this section prohibits or in any way limits a
108 person's lawful and legitimate access to a tribunal of this state,
109 or prevents a person from instituting or responding to a lawful
110 action.

CHAPTER 172

(S. B. 374 — By Senator Craigo)

[Passed March 10, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to clarifying that in each criminal case in a magistrate court in which a defendant is convicted, costs are to be assessed by the magistrate.

Be it enacted by the Legislature of West Virginia:

That section two, article three, 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 3. COSTS, FINES AND RECORDS.

§50-3-2. Costs in criminal proceedings.

- 1 (a) In each criminal case before a magistrate court in which
2 the defendant is convicted, whether by plea or at trial, there
3 shall be imposed, in addition to other costs, fines, forfeitures or
4 penalties as may be allowed by law, costs in the amount of
5 fifty-five dollars. A magistrate shall not collect costs in
6 advance. A magistrate court shall deposit five dollars from each
7 of the criminal proceedings fees collected pursuant to this
8 section in the court security fund created in section fourteen,
9 article three, chapter fifty-one of this code.
- 10 (b) A magistrate shall assess costs in the amount of two
11 dollars and fifty cents for issuing a sheep warrant and the
12 appointment and swearing appraisers and docketing the
13 proceedings.
- 14 (c) In each criminal case which must be tried by the circuit
15 court but in which a magistrate renders some service, costs in
16 the amount of ten dollars shall be imposed by the magistrate
17 court and shall be certified to the clerk of the circuit court in
18 accordance with the provisions of section six, article five,
19 chapter sixty-two of this code.

CHAPTER 173

(H. B. 2731 — By Delegates Staton, Hines, Capito,
Johnson, Faircloth, Lynch and Hunt)

[Passed March 4, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections six-a, six-b, six-c, six-d and twenty, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section six of said article; and to further amend said article by adding thereto three new sections, designated sections seven, eight and eight-a, all relating to applications for a marriage license; eliminating requirements for a blood test; prescribing

which county clerks may issue licenses, based on residency of applicants; establishing a three-day waiting period before a license may issue if either or both applicants is under eighteen years of age; providing for a circuit judge to dispense with or shorten the waiting period in case of emergency or extraordinary circumstances; setting forth the contents of an application for a marriage license; providing for execution and recordation of the marriage license; requiring proof of age by applicants; and prohibiting certain unlawful acts by the clerk of the county commission, and defining misdemeanor offenses and establishing penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. MARRIAGE.

§48-1-6. Waiting period before issuance of marriage license; issuance of license in case of emergency or extraordinary circumstances.

§48-1-7. Contents of application for marriage license; execution of application; recordation of application.

§48-1-8. Proof of age.

§48-1-8a. Unlawful acts by clerk of county commission; penalties.

§48-1-6. Waiting period before issuance of marriage license; issuance of license in case of emergency or extraordinary circumstances.

1 (a) If one or both of the applicants are residents of this
2 state, they may apply for a marriage license to be issued by the
3 clerk of the county commission of the county in which a
4 resident applicant usually resides. If both parties are nonresi-
5 dents of this state, they may apply for a license to be issued by
6 the clerk of the county commission in any county in this state.

7 (b) Except as otherwise provided in subsection (c) of this
8 section, if either or both of the applicants for a marriage license
9 is under eighteen years of age, the clerk of the county commis-

10 sion may not issue a marriage license until two full days elapse
11 after the day the license application is filed.

12 (c) In case of an emergency or extraordinary circumstances,
13 as shown by affidavit or other proof, a circuit judge of the
14 county in which an application for a marriage license will be
15 filed may order the clerk of the county commission to issue a
16 license at any time before the expiration of the waiting period
17 prescribed in subsection (b) of this section. The clerk of the
18 county commission shall attach a certified copy of the judge's
19 order to the application and issue the marriage license in
20 accordance with the order. If the judge or judges of the county
21 in which the application will be filed are absent or incapacitated,
22 the order may be made and directed to the clerk of the
23 county commission of the county by a circuit judge in any
24 adjoining judicial circuit, or a special judge appointed by the
25 supreme court of appeals.

26 (d) Applications for licenses may be received and licenses
27 may be issued by the clerk of the county commission at anytime
28 the office of the clerk is officially open for the conduct of
29 business.

**§48-1-7. Contents of application for marriage license; execution
of application; recordation of application.**

1 (a) The application for a marriage license must contain a
2 statement of the full names of both parties, their social security
3 account numbers, dates of birth, places of birth and residence
4 addresses. If either of the parties is a legal alien in the United
5 States of America and has no social security account number,
6 the tourist or visitor visa number or number equivalent to a
7 United States social security account number must be provided.

8 (b) Every application for a marriage license must contain
9 the following statement:

10 "The laws of this state affirm your right to enter into this
11 marriage and at the same time to live within the marriage free
12 from violence and abuse. Neither of you is the property of the
13 other. Physical abuse, sexual abuse, battery and assault of a
14 spouse or other family member, and other provisions of the

15 criminal laws of this state are applicable to spouses and other
16 family members and these violations are punishable by law.”

17 (c) Both parties to a contemplated marriage are required to
18 sign the application for a marriage license, under oath, before
19 the clerk of the county commission or another person autho-
20 rized to administer oaths under the laws of this state.

21 (d) The clerk shall record the application for a marriage
22 license in the register of marriages provided for in section
23 eleven of this article. The clerk shall note the date of the filing
24 of the application in the register. The notation, or a certified
25 copy thereof, is legal evidence of the facts contained in the
26 license.

§48-1-8. Proof of age.

1 (a) At the time of the execution of the application, the clerk
2 or the person administering the oath to the applicants shall
3 require evidence of the age of each of the applicants. Evidence
4 of age may be as follows:

5 (1) A certified copy of a birth certificate or a duplicate
6 thereof produced by any means that accurately reproduces the
7 original;

8 (2) A voter’s registration certificate;

9 (3) An operator’s or chauffeur’s license;

10 (4) The affidavit of both parents or the legal guardian of the
11 applicant; or

12 (5) Other good and sufficient evidence.

13 (b) If an affidavit is relied upon as evidence of the age of an
14 applicant, and if one parent is dead, the affidavit of the surviv-
15 ing parent or of the guardian of the applicant is sufficient. If
16 both parents are dead, the affidavit of the guardian of the
17 applicant is sufficient. If the parents of the applicant live
18 separate and apart, the affidavit of the parent having legal
19 custody of the applicant is sufficient.

§48-1-8a. Unlawful acts by clerk of the county commission; penalties.

1 (a) It is unlawful for a clerk of the county commission to do
2 any of the following acts:

3 (1) To make a false entry as to the date of application for a
4 marriage license;

5 (2) To issue a marriage license prior to the end of the
6 required three-day period (unless a circuit judge dispenses with
7 this requirement by order pursuant to subsection (c), section six
8 of this article);

9 (3) To issue a license on any Sunday or a legal holiday; or

10 (4) To receive an application for a marriage license or issue
11 a marriage license in any place other than the office of the clerk
12 of the county commission.

13 (b) A clerk of the county commission who violates the
14 provisions of subsection (a) of this section is guilty of a
15 misdemeanor and, upon conviction thereof, shall be punished
16 by a fine of not less than two hundred dollars nor more than one
17 thousand dollars, or by confinement in jail for not less than
18 three months nor more than nine months, or by both such fine
19 and confinement, in the discretion of the court.

20 (c) A clerk of the county commission who otherwise
21 knowingly issues a marriage license contrary to law is guilty of
22 a misdemeanor and, upon conviction thereof, shall be punished
23 by a fine not exceeding five hundred dollars, or by confinement
24 in jail for not more than one year, or by both such fine and
25 confinement, in the discretion of the court.

CHAPTER 174

(S. B. 524 — By Senators Prezioso, Edgell, Plymale and Minard)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one-f, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten, relating to requiring compliance with the Military Selective Service Act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1F. PRIVILEGES AND PROHIBITIONS.

§15-1F-10. Selective service registration and compliance.

1 (a) A person may not enroll in a state-supported institution
2 of postsecondary higher education unless he is in compliance
3 with the Military Selective Service Act, 50 U. S. C. Appendix
4 §451, et seq., and the amendments thereto.

5 (b) A person may not receive a loan, grant, scholarship or
6 other financial assistance for postsecondary higher education
7 funded by state revenue, including federal funds or gifts and
8 grants accepted by this state, or receive a student loan guaran-
9 teed by the state unless he is in compliance with the Military
10 Selective Service Act.

11 (c) No male person who has attained the age of eighteen
12 years who fails to be in compliance with the Military Selective
13 Service Act is eligible for employment by or service with the
14 state or a political subdivision of the state, including all boards,
15 commissions, departments, agencies, institutions and instru-
16 mentalities.

17 (d) It is the duty of all officials having charge of and
18 authority over the hiring of employees by the state or political
19 subdivisions, and over state-supported institutions of
20 postsecondary higher education, and over the granting of state
21 supported financial assistance for postsecondary higher
22 education as described in this section to assure themselves that
23 applicants are in compliance with the Military Selective Service
24 Act.

25 (e) A person may not be denied a right, privilege or benefit
26 under this section by reason of failure to present himself for and
27 submit to the requirement to register pursuant to the Military
28 Selective Service Act if:

29 (1) The requirement for the person to so register has
30 terminated or become inapplicable to the person; and

31 (2) The person is or has already served in the armed forces
32 or has a condition that would preclude acceptability for military
33 service.

CHAPTER 175

(H. B. 2617 — By Delegates Michael, Warner and Frederick)

[Passed March 13, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-nine; and to amend and reenact section sixty-three, article two of said chapter, all relating to office of miners' health, safety and training; administration; enforcement; reciprocity of mine foreman certification and experienced miner certification; fees for permits and certificates of approval; providing that the fees collected for certificates be placed in the operating permit fees fund and providing for expenditure of moneys placed in the fund.

Be it enacted by the Legislature of West Virginia:

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

Article

1. **Office of Miners' Health, Safety And Training; Administration; Enforcement.**
2. **Underground Mines.**

**ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING;
ADMINISTRATION; ENFORCEMENT.****§22A-1-39. Reciprocity of mine foreman certification and experienced miner certification.**

1 (a) Beginning the first day of April, one thousand nine
2 hundred ninety-nine, and notwithstanding any other provisions
3 in this code to the contrary, the director, in consultation with the
4 board of miner training, education and certification, established
5 pursuant to the provisions of article seven of this chapter, shall
6 make reciprocity of mine foreman certification and experienced
7 miner certification available to any person certified by a state
8 which accepts West Virginia's mine foreman or experienced
9 miner certifications, if that state's qualifications, examination
10 and certification criteria are substantially equivalent to those
11 utilized by this state.

12 (b) A person requesting either of these certifications by
13 reciprocity shall submit photographic identification, a current
14 copy of his or her certification card or certificate, verifiable
15 documentation of all degrees held, continuing education
16 successfully completed, and documentation of other training, if
17 required for the certification, and shall also comply with any
18 other criteria as the director, in consultation with the board of
19 miner training, education and certification, may reasonably
20 require from time to time to effectively carry out the provisions
21 of this section: *Provided*, That the criteria shall include, but is
22 not limited to, the following minimum requirements: (1) When
23 a reciprocity agreement applicable to mine foreman certifica-
24 tion has been established with another state, any applicant
25 holding a mine foreman certificate from that state shall take the
26 component of the West Virginia mine foreman certification
27 examination that pertains only to specific West Virginia mining
28 laws and rules and shall pass the examination with a score of at
29 least eighty percent prior to being issued a West Virginia mine
30 foreman certificate; (2) when a reciprocity agreement applica-

31 ble to experienced miner certification has been established with
32 another state, any applicant holding an experienced miner's
33 certificate from that state shall receive hazard training in
34 accordance with provisions contained in 30 CFR Part 48.11 if
35 the applicant is an underground miner, or in accordance with
36 the provisions contained in 30 CFR Part 48.31 if the applicant
37 is a surface miner, and shall receive instruction in West
38 Virginia mining laws and rules pertinent to any duties that are
39 or will be assigned the miner prior to the miner performing any
40 duties; and (3) records of all training and instruction shall be
41 kept in a book provided exclusively for that purpose which shall
42 be made available upon request to an authorized representative
43 of the director and to authorized representatives of miners in or
44 at the mine.

ARTICLE 2. UNDERGROUND MINES.

§22A-2-63. No mine to be opened or reopened without prior approval of the director of the office of miners' health, safety and training; certificate of approval; approval fees; extension of certificate of approval; certificates of approval not transferable; section to be printed on certificates of approval.

1 (a) No mine may be opened or reopened unless prior
2 approval has been obtained from the director of the office of
3 miners' health, safety and training. The director may not
4 unreasonably withhold approval. The operator shall pay a fee of
5 one hundred dollars for the approval, which shall be tendered
6 with the application for approval: *Provided*, That mines
7 producing coal solely for the operator's use shall be issued a
8 permit without charge if coal production will be less than fifty
9 tons a year.

10 Within thirty days after the first day of January of each
11 year, the holder of a permit to open a mine shall apply for the
12 extension of the permit for an additional year. The permit,
13 evidenced by a document issued by the director, shall be
14 granted as a matter of right for a fee of one hundred dollars if,
15 at the time application is made, the permit holder is in compli-

16 ance with the provisions of section seventy-seven of this article
17 and has paid or otherwise appealed all coal mine assessments
18 issued to the mine if operated by the permit holder and imposed
19 under article one of this chapter. Applications for extension of
20 permits not submitted within the time required shall be pro-
21 cessed as an application to open or reopen a mine and shall be
22 accompanied by a fee of one hundred dollars.

23 (b) Permits issued pursuant to this section are not transfer-
24 able.

25 (c) If the operator of a mine is not the permit holder as
26 defined in subsection (a) of this section, then the operator shall
27 apply for and obtain a certificate of approval to operate the
28 mine on which the permit is held prior to commencing opera-
29 tions. The operator shall pay a fee of one hundred dollars,
30 which payment shall be tendered with the application for
31 approval. The approval, evidenced by a certificate issued by the
32 director, shall be granted if, at the time application is made, the
33 applicant is in compliance with the provisions of section
34 seventy-seven of this article and has paid or otherwise appealed
35 all coal mine assessments imposed on the applicant for the
36 certificate of approval under article one of this chapter.

37 (d) In addition to the director's authority to file a petition
38 for enforcement under subdivision (4), subsection (a), section
39 twenty-one, article one of this chapter, if an operator holding a
40 certificate of approval issued pursuant to subsection (c) of this
41 section, has been assessed a civil penalty in accordance with
42 section twenty-one, article one of this chapter, and its imple-
43 menting rules, and the penalty has become final, fails to pay the
44 penalty within the time prescribed in the order, the director or
45 the authorized representative of the director, by certified mail,
46 return receipt requested, shall send a notice to the operator
47 advising the operator of the unpaid penalty. If the penalty is not
48 paid in full within sixty days from the issuance of the notice of
49 delinquency by the director, then the director may revoke the
50 operator's certificate of approval: *Provided*, That the operator
51 to whom the delinquency notice is issued has thirty days from
52 receipt of the delinquency notice to request, by certified mail,

53 return receipt requested, a public hearing held in accordance
54 with the procedures of section seventeen, article one of this
55 chapter, and its implementing rules, including application for
56 temporary relief. Once the operator's certificate of approval is
57 revoked pursuant to this subsection, the operator may not obtain
58 any certificate of approval under the provisions of this section
59 to operate any other mine until that operator pays the delinquent
60 penalties that have become final.

61 (e) Every firm, corporation, partnership or individual that
62 contracts to perform services or construction at a coal mine is
63 considered to be an operator and shall apply for and obtain a
64 certificate of approval prior to commencing operations:
65 *Provided*, That these persons shall only be required to obtain
66 one certificate annually: *Provided, however*, That persons such
67 as, but not limited to, consultants, mine vendors, office equip-
68 ment suppliers and maintenance and delivery personnel are
69 excluded from this requirement to obtain a certificate of
70 approval. Operators who are required to obtain a certificate of
71 approval pursuant to the provisions of this subsection shall pay
72 a fee of one hundred dollars which shall be tendered with the
73 application for approval. Approval evidenced by a certificate
74 issued by the director, shall be granted if, at the time the
75 application is made, the applicant has paid or otherwise
76 appealed all coal mine assessments imposed on the applicant
77 under article one of this chapter.

78 Within thirty days after the first day of January of each
79 year, the holder of a certificate of approval shall apply for the
80 extension of that approval for an additional year. Applications
81 for extension shall be accompanied by a fee of one hundred
82 dollars. An extension shall be granted if, at the time application
83 is made, the applicant has paid or otherwise appealed all coal
84 mine assessments imposed on the applicant under article one of
85 this chapter. All delinquent assessments which have been
86 imposed upon a certificate of approval holder or applicants
87 under this section may not be imposed upon any permit holder
88 or certificate of approval holder or any applicant pursuant to
89 subsection (a) or (c) of this section.

90 (f) The provisions of this section shall be printed on the
91 reverse side of every permit issued under subsection (a) of this
92 section and certificate of approval issued under subsection (e)
93 of this section.

94 (g) The district mine inspector shall conduct a pre-inspec-
95 tion of the area proposed for underground mining prior to
96 issuance of any new opening permit approval.

97 (h) All moneys collected by the office of miners' health,
98 safety and training for the approval fees set forth in subsections
99 (a), (c) and (e) of this section shall be deposited with the
100 treasurer of the state of West Virginia to the credit of the
101 general administration—operating permit fees fund. The
102 operating permit fees fund shall be used by the director who is
103 authorized to expend the moneys in the fund for the administra-
104 tion of this chapter.

CHAPTER 176

(Com. Sub. for S. B. 123 — By Senator Dittmar)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twelve-b, all relating to motorboat operation, numbering and registration; increasing registration fees; requiring education certification for certain individuals; providing for certain exemptions; establishing the requirements for a boating safety education certificate; and criminal offenses.

Be it enacted by the Legislature of West Virginia:

That section twelve, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be

amended and reenacted; and that said article be further amended by adding thereto a new section, designated section twelve-b, all to read as follows:

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-12. Motorboat identification numbers required; application for numbers; fee; displaying; reciprocity; change of ownership; conformity with United States regulations; records; renewal of certificate; transfer of interest, abandonment, etc.; change of address; unauthorized numbers; information to be furnished assessors.

§20-7-12b. Boating safety education certificate.

§20-7-12. Motorboat identification numbers required; application for numbers; fee; displaying; reciprocity; change of ownership; conformity with United States regulations; records; renewal of certificate; transfer of interest, abandonment, etc.; change of address; unauthorized numbers; information to be furnished assessors.

1 Every motorboat, as defined in this section, operating upon
2 public waters within the territorial limits of this state, shall be
3 numbered as provided in this section:

4 (a) The owner of each motorboat requiring numbering by
5 this state shall file an application for a number with the com-
6 missioner on forms approved by the division of motor vehicles.
7 The application shall be signed by the owner of the motorboat
8 and shall be accompanied by a fee of fifteen dollars for a three-
9 year registration period if the motorboat is propelled by a motor
10 of three or more horsepower: *Provided*, That beginning on the
11 first day of April, two thousand, the fee for a three-year
12 registration period is as follows:

13 (1) Class A, motorboats less than sixteen feet in length,
14 thirty dollars;

15 (2) Class 1, motorboats sixteen feet or over and less than
16 twenty-six feet in length, forty-five dollars;

17 (3) Class 2, motorboats twenty-six feet or over and less than
18 forty feet in length, sixty dollars; and

19 (4) Class 3, forty feet in length or over, seventy-five dollars.

20 The fee may be prorated by the commissioner for periods
21 of less than three years. There is no fee for motorboats pro-
22 pelled by motors of less than three horsepower. All fees,
23 including those received under subdivision (b) of this section,
24 shall be deposited in the state treasury and fifty percent shall be
25 credited to the division of motor vehicles and shall be used and
26 paid out upon order of the commissioner solely for the adminis-
27 tration of the certificate of number system. The remaining fifty
28 percent shall be credited to the division of natural resources and
29 shall be used and paid out upon order of the director solely for
30 the enforcement and safety education of the state boating
31 system. Upon receipt of the application in approved form, the
32 commissioner shall enter the application upon the records of the
33 division and issue to the applicant a number awarded to the
34 motorboat and the name and address of the owner. The owner
35 shall paint on or attach to each side of the bow of the motorboat
36 the identification number in the manner prescribed by rules of
37 the commissioner in order that it is clearly visible. The owner
38 shall maintain the number in legible condition. The certificate
39 of number shall be pocket size and shall be available at all
40 times for inspection on the motorboat for which it is issued,
41 whenever the motorboat is in operation.

42 (b) In order to permit a motorboat sold to a purchaser by a
43 dealer to be operated pending receipt of the certificate of
44 number from the commissioner, the commissioner may deliver
45 temporary certificates of number to in turn be issued to pur-
46 chasers of motorboats to dealers, upon application by the dealer
47 and payment of one dollar for each temporary certificate. Every
48 person who is issued a temporary certificate by a dealer shall,
49 under the provisions of subdivision (a) of this section, apply for
50 a certificate of number no later than ten days from the date of
51 issuance of the temporary certificate. A temporary certificate
52 expires upon receipt of the certificate, upon rescision of the
53 contract to purchase the motorboat in question or upon the
54 expiration of forty days from the date of issuance, whichever
55 occurs first. It is unlawful for any dealer to issue any temporary
56 certificate knowingly containing any misstatement of fact or

57 knowingly to insert any false information on the face of the
58 temporary certificate. The commissioner may by rule prescribe
59 additional requirements upon the dealers and purchasers that are
60 consistent with the effective administration of this section.

61 (c) The owner of any motorboat already covered by a
62 number in full force and effect which has been awarded to it
63 pursuant to then operative federal law or a federally approved
64 numbering system of another state shall record the number prior
65 to operating the motorboat on the waters of this state in excess
66 of the sixty-day reciprocity period provided for in section
67 fourteen of this article. The recordation shall be in the manner
68 and pursuant to procedure required for the award of a number
69 under subdivision (a) of this section, except that the commis-
70 sioner shall not issue an additional or substitute number.

71 (d) If the ownership of a motorboat changes, the new owner
72 shall file a new application form with the required fee with the
73 commissioner who shall award a new certificate of number in
74 the same manner as provided for in an original award of
75 number.

76 (e) In the event that an agency of the United States govern-
77 ment has in force an overall system of identification numbering
78 for motorboats within the United States, the numbering system
79 employed pursuant to this article by the division of motor
80 vehicles shall be in conformity with the federal system.

81 (f) The license is valid for a maximum period of three
82 years. If at the expiration of that period ownership has remained
83 unchanged, the commissioner shall, upon application and
84 payment of the proper fee, grant the owner a renewal of the
85 certificate of number for an additional three-year period.

86 (g) The owner shall furnish the commissioner notice of the
87 transfer of all or any part of an interest, other than the creation
88 of a security interest, in a motorboat numbered in this state
89 pursuant to subdivisions (a) and (b) of this section, or of the
90 destruction or abandonment of the motorboat, within fifteen
91 days of the transfer of interest, destruction or abandonment. The
92 transfer, destruction or abandonment shall terminate the

93 certificate of number for the motorboat, except that in the case
94 of a transfer of a part interest which does not affect the owner's
95 right to operate the motorboat, the transfer shall not terminate
96 the certificate of number.

97 (h) Any holder of a certificate of number shall notify the
98 commissioner within fifteen days if his or her address no longer
99 conforms to the address appearing on the certificate and shall,
100 as a part of the notification, furnish the commissioner with his
101 or her new address. The commissioner may provide by rule for
102 the surrender of the certificate bearing the former address and
103 its replacement with a certificate bearing the new address or for
104 the alteration of an outstanding certificate to show the new
105 address of the holder.

106 (i) An owner shall not paint, attach or otherwise display a
107 number other than the number awarded to a motorboat or
108 granted reciprocity pursuant to this article on either side of the
109 bow of the motorboat.

110 (j) The commissioner shall on or before the thirtieth day of
111 August of each year, forward to the assessor of each county a
112 list of the names and addresses of all persons, firms and
113 corporations owning vessels and operating the vessels or other
114 boats registered with the commissioner under the provisions of
115 this article. In furnishing this information to each county
116 assessor, the commissioner shall include information on the
117 make and model of the vessels and other equipment required to
118 be registered for use by the owner or operator of the boats under
119 the provisions of this article: *Provided*, That the commissioner
120 is not required to furnish the information to the assessor if the
121 cost price of the vessel does not exceed five hundred dollars or
122 the cost of the motor does not exceed two hundred fifty dollars.

123 (k) No person may operate an unlicensed motorboat upon
124 any waters of this state without first acquiring the certificate of
125 number or license as required by law.

§20-7-12b. Boating safety education certificate.

1 (a) Except as otherwise provided in subsection (c) of this
2 section, beginning on the first day of January, two thousand

3 one, no person born on or after the thirty-first day of December,
4 one thousand nine hundred eighty-six, may operate a motorboat
5 or personal watercraft on any waters of this state without first
6 having obtained a certificate of boating safety education from
7 this or any other state, which certificate was obtained by
8 satisfactorily completing a course of instruction in boating
9 safety education administered by the United States coast guard
10 auxiliary; the United States power squadron; the West Virginia
11 division of natural resources; any person certified to teach the
12 course administered by West Virginia natural resources boating
13 safety education section personnel; or any person authorized to
14 teach the course prescribed by the national association of state
15 boating law administrators in this or any other state.

16 (b) Any person who is subject to subsection (a) of this
17 section shall possess the certificate of boating safety education
18 when operating a motorboat or personal watercraft on the
19 waters of this state and shall show the certificate on demand of
20 any West Virginia conservation officer or other law-enforce-
21 ment officer authorized to enforce the provisions of this
22 chapter.

23 (c) The following persons are exempt from the require-
24 ments of subsection (a) of this section:

25 (1) A person who is a nonresident of this state and who is
26 visiting the state for sixty days or less in a motorboat or
27 personal watercraft from another state if that person:

28 (A) Is fifteen years of age or older; and

29 (B) Has been issued a boating safety education certificate
30 by his or her state of residence in accordance with the criteria
31 recommended by the national association of state boating law
32 administration;

33 (2) A person who is visiting the state for ninety days or less
34 in a motorboat or personal watercraft from a country other than
35 the United States;

36 (3) A person who is operating a motorboat or personal
37 watercraft in connection with commercial purposes; and

38 (4) A person who is operating a motorboat or personal
39 watercraft which was purchased by the person within the
40 previous forty-five-day period and who has not been previously
41 charged with a violation of any provision of this chapter
42 involving the use or registration of a motorboat or personal
43 watercraft.

44 (d) The division shall issue a certificate of boating safety
45 education to a person who:

46 (1) Passes any course prescribed in subsection (a) of this
47 section; or

48 (2) Passes a boating safety equivalency examination
49 administered by persons authorized to administer a boating
50 safety education course as outlined in subsection (a) of this
51 section. Upon request, the division shall provide, without
52 charge, boating safety education materials to persons who plan
53 to take the boating safety equivalency examination.

54 (e) No person who owns a motorboat or personal watercraft
55 or who has charge over a motorboat or personal watercraft may
56 authorize or knowingly permit it to be operated in violation of
57 subsection (a) of this section.

58 (f) The provisions of subsection (a) of this section may only
59 be enforced as a secondary action when the officer detains an
60 operator of a motorboat or personal watercraft upon probable
61 cause of a violation of another provision of this code or rules
62 adopted in accordance with the code. A person may not be
63 taken immediately to a court or detention facility solely for a
64 violation of subsection (a) of this section.

CHAPTER 177

(S. B. 244 — By Senator Ross)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and seven, article fourteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the definition of "motor carrier"; and eliminating the limitation that a trip permit can only be issued three times in one fiscal year.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14A. MOTOR CARRIER ROAD TAX.

§11-14A-2. Definitions.

§11-14A-7. Identification markers; fees; criminal penalty.

§11-14A-2. Definitions.

1 For purposes of this article:

2 (1) "Commissioner" or "tax commissioner" means the tax
3 commissioner of the state of West Virginia or his duly autho-
4 rized agent.

5 (2) "Gallon" means two hundred thirty-one cubic inches of
6 liquid measurement, by volume: *Provided*, That the commis-
7 sioner may by rule prescribe other measurement or definition of
8 gallon.

9 (3) "Gasoline" means any product commonly or commer-
10 cially known as gasoline, regardless of classification, suitable
11 for use as fuel in an internal combustion engine, except special
12 fuel as hereinafter defined.

13 (4) "Highway" means every way or place of whatever
14 nature open to the use of the public as a matter of right for the
15 purpose of vehicular travel, which is maintained by this state or
16 some taxing subdivision or unit thereof or the federal govern-
17 ment or any of its agencies.

18 (5) "Identification marker" means the decal issued by the
19 commissioner for display upon a particular motor carrier and
20 authorizing a person to operate or cause to be operated a motor
21 carrier upon any highway of the state.

22 (6) "Lease" means any oral or written contract for valuable
23 consideration granting the use of a motor carrier.

24 (7) "Motor carrier" means any vehicle used, designed or
25 maintained for the transportation of persons or property and
26 having two axles and a gross vehicle weight exceeding twenty-
27 six thousand pounds or having three or more axles regardless of
28 weight or is used in combination when the weight of such
29 combination exceeds twenty-six thousand pounds or registered
30 gross vehicle weight: *Provided*, That the gross vehicle weight
31 rating of the vehicles being towed is in excess of ten thousand
32 pounds. The term motor carrier does not include any type of
33 recreational vehicle.

34 (8) "Operation" means any operation of any motor carrier,
35 whether loaded or empty, whether for compensation or not, and
36 whether owned by or leased to the person who operates or
37 causes to be operated such motor carrier.

38 (9) "Person" means and includes any individual, firm,
39 partnership, limited partnership, joint venture, association,
40 company, corporation, organization, syndicate, receiver, trust
41 or any other group or combination acting as a unit, in the plural
42 as well as the singular number, and means and includes the
43 officers, directors, trustees or members of any firm, partnership,
44 limited partnership, joint venture, association, company,
45 corporation, organization, syndicate, receiver, trust or any other
46 group or combination acting as a unit, in the plural as well as
47 the singular number, unless the intention to give a more limited
48 meaning is disclosed by the context.

49 (10) "Pool operation" means any operation whereby two or
50 more taxpayers combine to operate or cause to be operated a
51 motor carrier or motor carriers upon any highway in this state.

52 (11) "Purchase" means and includes any acquisition of
53 ownership of property or of a security interest for a consider-
54 ation.

55 (12) "Recreational vehicles" means vehicles such as motor
56 homes, pickup trucks with attached campers and buses, when
57 used exclusively for personal pleasure by an individual. In order

58 to qualify as a recreational vehicle, the vehicle shall not be used
59 in connection with any business endeavor.

60 (13) "Road tractor" means every motor carrier designed and
61 used for drawing other vehicles and not so constructed as to
62 carry any load thereon either independently or any part of the
63 weight of a vehicle or load so drawn.

64 (14) "Sale" means any transfer, exchange, gift, barter or
65 other disposition of any property or security interest for a
66 consideration.

67 (15) "Special fuel" means any gas or liquid, other than
68 gasoline, used or suitable for use as fuel in an internal combus-
69 tion engine. The term "special fuel" shall include products
70 commonly known as natural or casinghead gasoline but shall
71 not include any petroleum product or chemical compound such
72 as alcohol, industrial solvent, heavy furnace oil, lubricant, etc.,
73 not commonly used nor practicably suited for use as fuel in an
74 internal combustion engine.

75 (16) "Tax" includes, within its meaning, interest, additions
76 to tax and penalties, unless the intention to give it a more
77 limited meaning is disclosed by the context.

78 (17) "Taxpayer" means any person liable for any tax,
79 interest, additions to tax or penalty under the provisions of this
80 article.

81 (18) "Tractor truck" means every motor carrier designed
82 and used primarily for drawing other vehicles and not so
83 constructed as to carry a load other than a part of the weight of
84 the vehicle and load so drawn.

85 (19) "Truck" means every motor carrier designed, used or
86 maintained primarily for the transportation of property and
87 having more than two axles.

§11-14A-7. Identification markers; fees; criminal penalty.

1 (a) *Registration of motor carriers.* — No person may
2 operate, or cause to be operated, in this state any motor carrier
3 subject to this article without first securing from the commis-

4 sioner an identification marker for each such motor carrier,
5 except as provided in subsection (b) or (c) of this section. Each
6 identification marker for a particular motor carrier shall bear a
7 number. This identification marker shall be displayed on the
8 driver's side of the motor carrier as required by the commis-
9 sioner. The commissioner, after issuance of any identification
10 marker to a motor carrier, shall cause an internal cross-check to
11 be made in his office as to any state tax which he administers,
12 to aid in determination of any noncompliance in respect to
13 failure to file returns or payment of tax liabilities. The identifi-
14 cation markers herein provided for shall be valid for the period
15 of one year, ending December thirty-first of each year. A fee of
16 five dollars shall be paid to the commissioner for issuing each
17 identification marker which is reasonably related to the
18 commissioner's costs of issuing such identification. All tax or
19 reports due under this article shall be paid or reports filed
20 before the issuance of a new identification marker. Failure by
21 a taxpayer to file the returns or pay the taxes imposed by this
22 article shall give cause to the commissioner to revoke or refuse
23 to renew the identification marker previously issued.

24 (b) *Trip permit.* — A motor carrier that does not have a
25 motor carrier identification marker issued under subsection (a)
26 of this section may obtain a trip permit which authorizes the
27 motor carrier specified therein to be operated in this state
28 without an identification marker for a period of not more than
29 ten consecutive days beginning and ending on the dates
30 specified on the face of the permit. The fee for this permit shall
31 be twenty-four dollars.

32 (1) Fees for trip permits shall be in lieu of the tax otherwise
33 due under this article on account of the vehicles specified in the
34 permit operating in this state during the period of the permit,
35 and no reports of mileage shall be required with respect to that
36 vehicle.

37 (2) A trip permit shall be carried in the cab of the motor
38 vehicle for which it was issued at all times while it is in this
39 state.

40 (3) A trip permit may be obtained from the commissioner
41 or from wire services authorized by the commissioner to issue
42 such permits. The cost of the telegram or similar transmissions
43 shall be the responsibility of the motor carrier requesting the
44 trip permit.

45 (c) *Transportation permit.* — The commissioner is hereby
46 authorized to grant, in his discretion, a special permit to a new
47 motor vehicle dealer for use on new motor vehicles driven
48 under their own power from the factory or distributing place of
49 a manufacturer, or other dealer, to a place of business of the
50 new vehicle dealer, or from the place of business of a new
51 vehicle dealer to a place of business of another dealer, or when
52 delivered from the place of business of the new vehicle dealer
53 to the place of business of a purchaser to whom title passes on
54 delivery. A transporter's permit must be carried in the cab of
55 the motor vehicle being transported. A person to whom a
56 transporter's permit is issued shall file the reports required by
57 section five of this article and pay any tax due. The fee for such
58 transporter's permit shall be fifteen dollars and a transporter's
59 permit is valid for the fiscal year for which it is issued unless
60 surrendered or revoked by the tax commissioner.

61 (d) *Criminal penalty.* — Any person, whether such person
62 be the owner, licensee or lessee, or the employee, servant or
63 agent thereof, who operates or causes to be operated in this
64 state, a motor carrier in violation of this section, is guilty of a
65 misdemeanor and, upon conviction thereof, shall be fined not
66 less than fifty nor more than five hundred dollars; and each day
67 such violation continues or reoccurs shall constitute a separate
68 offense.

69 (e) Notwithstanding the provisions of section five-d, article
70 ten of this chapter, the commissioner shall deliver to or receive
71 from the commissioner of the division of motor vehicles and
72 the commissioner of the public service commission, the
73 information contained in the application filed by a motor carrier
74 for a trip permit under this section, when the information is
75 used to administer a combined trip permit registration program
76 for motor carriers operating in this state, which program may be

77 administered by one agency or any combination of the three
78 agencies, as embodied in a written agreement executed by the
79 head of each agency participating in the program. Such agen-
80 cies have authority to enter into such an agreement notwith-
81 standing any provision of this code to the contrary; and the fee
82 for such combined trip permit shall be twenty-four dollars,
83 which shall be in lieu of the fee set forth in subsection (b) of
84 this section.

CHAPTER 178

(H. B. 2258— By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article two, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article two, chapter seventeen-b of said code by adding thereto two new sections, designated sections one-b and five-a; to amend and reenact sections five, seven, seven-b, seven-c and fifteen of said article; and to amend and reenact sections nine and twenty-three, article one, chapter seventeen-e of said code, all relating to testing for driver's licenses; requiring the commissioner of motor vehicles to report possible or suspected violations of law to the state police; transfer of driver's licensing examination functions from the state police to the division of motor vehicles; delegation of responsibilities; authorizing the division of motor vehicles to administer the examinations of all applicants for motor vehicle licenses, motorcycle licenses and commercial driver's licenses; transferring the motorcycle license examination fund to the division of motor vehicles; authorizing the commissioner of said division to administer the funds; and providing for retention of commercial drivers license fees by the division.

Be it enacted by the Legislature of West Virginia:

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

Chapter

17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.

17B. Motor Vehicle Driver's Licenses.

17E. Uniform Commercial Driver's License Act.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

ARTICLE 2. DEPARTMENT OF MOTOR VEHICLES.

§17A-2-9. Same — Powers and duties; rules; seal.

1 (a) The commissioner shall observe, administer and enforce
2 the provisions of this chapter and all laws the enforcement of
3 which is now or hereafter vested in the department: *Provided,*
4 That nothing in this chapter shall deprive the public service
5 commission of West Virginia of any of the duties or powers
6 now vested in it with regard to the regulation of motor vehicle
7 carriers.

8 (b) The commissioner may adopt and enforce any rules that
9 are necessary to carry out the provisions of this chapter and any
10 other laws the enforcement and administration of which are
11 vested in the department.

12 (c) The commissioner may adopt an official seal for the use
13 of the department.

14 (d) The commissioner shall, in instances where division
15 personnel become aware of a possible or suspected violation of
16 law where enforcement jurisdiction would be that of the West
17 Virginia state police, communicate the violation to the state
18 police.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.**ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.**

§17B-2-1b. Transfer of driver's licensing examination function.

§17B-2-5. Qualifications, issuance and fee for instruction permits.

§17B-2-5a. Training, certification and monitoring of license examiners.

§17B-2-7. Examination of applicants.

§17B-2-7b. Separate examination and endorsement for a license valid for operation of motorcycle.

§17B-2-7c. Motorcycle license examination fund.

§17B-2-15. Authority for rules.

§17B-2-1b. Transfer of driver's licensing examination function.

1 (a) Effective the first day of July, one thousand nine
2 hundred ninety-nine, the responsibility for driver's licensing
3 examinations and civilian employees of the West Virginia state
4 police whose primary governmental duties as of the thirtieth
5 day of June, one thousand nine hundred ninety-nine, involve the
6 examination of applicants for instruction permits and driver's
7 licenses shall be transferred from the West Virginia state police
8 to the division of motor vehicles.

9 (b) Effective the first day of July, one thousand nine
10 hundred ninety-nine, until the thirty-first day of December, two
11 thousand, the commissioner of motor vehicles may delegate
12 responsibility for the supervision of the civilian employees and
13 the operation of the examination program to the superintendent
14 of the West Virginia state police pending the orderly transfer
15 and hiring of the necessary personnel, transfer and purchase of
16 necessary equipment and supplies and the establishment of
17 suitable examination locations. The commissioner may also
18 reimburse the West Virginia state police for the services of
19 personnel, equipment, supplies and office space at state police
20 facilities necessary to maintain the examination program at its
21 current level of service during the transfer period. The commis-
22 sioner may also utilize existing state police locations as
23 examination and licensing locations unless in his or her opinion,
24 more suitable locations are available. The commissioner shall
25 reimburse the West Virginia state police for that use.

§17B-2-5. Qualifications, issuance and fee for instruction permits.

1 (a) Any person who is at least fifteen years of age may
2 apply to the division for an instruction permit. The division
3 may, in its discretion, after the applicant has successfully
4 passed all parts of the examination other than the driving test
5 and presented documentation of compliance with the provisions
6 of section eleven, article eight, chapter eighteen of this code,
7 issue to the applicant an instruction permit which entitles the
8 applicant while having the permit in his or her immediate
9 possession to drive a motor vehicle upon the public highways
10 when accompanied by a licensed driver of at least twenty-one
11 years of age, a driver's education or driving school instructor
12 that is acting in an official capacity as an instructor, or a
13 certified division license examiner acting in an official capacity
14 as an examiner, who is occupying a seat beside the driver,
15 except in the event the permittee is operating a motorcycle. In
16 no event may the permittee operate a motorcycle upon a public
17 highway until reaching sixteen years of age.

18 Any instruction permit issued to a person under the age of
19 sixteen years expires sixty days after the permittee reaches
20 sixteen years of age: *Provided*, That only permittees who have
21 reached their sixteenth birthday may take the driving examina-
22 tion as provided in section six of this article. The instruction
23 permit may be renewed for one additional period of sixty days.
24 Any permit issued to a person who has reached the age of
25 sixteen years is valid for a period of sixty days and may be
26 renewed for an additional period of sixty days or a new permit
27 issued. The fee for the instruction permit is four dollars, one
28 dollar of which shall be paid into the state treasury and credited
29 to the state road fund, and the other three dollars of which shall
30 be paid into the state treasury and credited to the general fund
31 to be appropriated to the state police for application in the
32 enforcement of the road law.

33 (b) Any person sixteen years of age or older may apply to
34 the division for a motorcycle instruction permit. The division
35 may, in its discretion, after the applicant has successfully
36 passed all parts of the motorcycle examination other than the

37 driving test, and presented documentation of compliance with
38 the provisions of section eleven, article eight, chapter eighteen
39 of this code, issue to the applicant an instruction permit which
40 entitles the applicant while having the permit in his or her
41 immediate possession to drive a motorcycle upon the public
42 streets or highways for a period of ninety days, during the
43 daylight hours between sunrise and sunset only. No holder of a
44 motorcycle instruction permit shall operate a motorcycle while
45 carrying any passenger on the vehicle.

46 A motorcycle instruction permit is not renewable, but a
47 qualified applicant may apply for a new permit. The fee for a
48 motorcycle instruction permit is five dollars, which shall be
49 paid into a special fund in the state treasury known as the
50 motorcycle license examination fund as established in section
51 seven-c, article two of this chapter.

§17B-2-5a. Training, certification and monitoring of license examiners.

1 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.

§17B-2-7. Examination of applicants.

1 (a) Upon the presentment by the applicant under the age of
2 eighteen years of the applicant's birth certificate, or a certified
3 copy of the birth certificate, as evidence that the applicant is of
4 lawful age, the division of motor vehicles shall examine every
5 applicant for a license to operate a motor vehicle in this state,
6 except as otherwise provided in this section. The examination
7 shall include a test of the applicant's eyesight, the applicant's
8 ability to read and understand highway signs regulating,
9 warning, and directing traffic, the applicant's knowledge of the
10 traffic laws of this state, and the applicant's knowledge of the
11 effects of alcohol upon persons and the dangers of driving a
12 motor vehicle under the influence of alcohol. The examination

13 shall also include an actual demonstration of ability to exercise
14 ordinary and reasonable control in the operation of a motor
15 vehicle, and any further physical and mental examination as the
16 division of motor vehicles considers necessary to determine the
17 applicant's fitness to operate a motor vehicle safely upon the
18 highways.

19 (b) The commissioner shall propose legislative rules for
20 promulgation in accordance with the provisions of article three,
21 chapter twenty-nine-a of this code concerning the examination
22 of applicants for licenses and the qualifications required of
23 applicants, and the examination of applicants by the division
24 shall be in accordance with the rules. The rules shall provide for
25 the viewing of educational material or films on the medical,
26 biological, and psychological effects of alcohol upon persons,
27 the dangers of driving a motor vehicle while under the influence
28 of alcohol and the criminal penalties and administrative
29 sanctions for alcohol and drug related motor vehicle violations.

30 (c) After successful completion of the examination required
31 by this section or section seven-b of this article, and prior to the
32 issuance of a license pursuant to the provisions of section eight
33 of this article, every applicant for a driver's license, junior
34 driver's license or motorcycle-only license shall attend a
35 mandatory education class on the dangers and social conse-
36 quences of driving a motor vehicle while under the influence of
37 alcohol. To the extent practicable, the commissioner shall
38 utilize as lecturers at those classes persons who can relate
39 first-hand experiences as victims or family members of victims
40 of alcohol-related accidents or drivers who have been involved
41 in alcohol-related accidents which caused serious bodily injury
42 or death.

**§17B-2-7b. Separate examination and endorsement for a license
valid for operation of motorcycle.**

1 The state police shall administer a separate motorcycle
2 examination for applicants for a license valid for operation of
3 a motorcycle. On and after the first day of July, two thousand,
4 the division of motor vehicles shall administer the examination
5 provided for in this section. Any applicant for a license valid for

6 operation of a motorcycle shall be required to successfully
7 complete the motorcycle examination, which is in addition to
8 the examination administered pursuant to section seven of this
9 article: *Provided*, That the commissioner may exempt an
10 applicant for a motorcycle driver license or endorsement from
11 all or part of the motorcycle license examination as provided in
12 section six, article one-d of this chapter. The motorcycle
13 examination shall test the applicant's knowledge of the opera-
14 tion of a motorcycle and of any traffic laws specifically relating
15 to the operation of a motorcycle and shall include an actual
16 demonstration of the ability to exercise ordinary and reasonable
17 control in the operation of a motorcycle. An applicant for a
18 license valid for the operation of only a motorcycle shall be
19 tested as provided in this section and in section seven of this
20 article, but need not demonstrate actual driving ability in any
21 vehicle other than a motorcycle. The examination provided in
22 this section shall not be made a condition upon the renewal of
23 the license of any person under this section.

24 For an applicant who successfully completes the motorcy-
25 cle examination, upon payment of the required fee, the division
26 shall issue a motorcycle endorsement on the driver's license of
27 the applicant, or shall issue a special motorcycle-only license if
28 the applicant does not possess a driver's license.

29 Every person, including those holding a valid driver's
30 license, is required to take the examination specified in this
31 section to obtain a motorcycle license or endorsement.

§17B-2-7c. Motorcycle license examination fund.

1 There is hereby created a special revolving fund in the state
2 treasury which shall be designated as the "motorcycle license
3 examination fund". The fund shall consist of all moneys
4 received from fees collected for motorcycle instruction permits
5 under this article and any other moneys specifically allocated to
6 the fund. The fund shall not be treated by the auditor or
7 treasurer as part of the general revenue of the state. The fund
8 shall be used and paid out upon order of the West Virginia state
9 police solely for the purposes specified in this article. On the
10 thirtieth day of June, two thousand, the special revolving fund

11 created in this section shall be established under the division of
12 motor vehicles and shall be paid out upon order of the commis-
13 sioner. Any unexpended balance remaining in the special
14 revolving fund on the thirtieth day of June, two thousand, shall
15 be transferred to the fund established under the division of
16 motor vehicles.

17 The fund shall be used by the division to defray the costs of
18 implementing and administering a special motorcycle license
19 examination, including a motorcycle driving test.

§17B-2-15. Authority for rules.

1 The commissioner may propose legislative rules for
2 promulgation that are necessary to carry out the examination,
3 license and endorsement provisions of this chapter and the
4 provisions regarding motor vehicle registration in accordance
5 with the provisions of article three, chapter twenty-nine-a of
6 this code.

CHAPTER 17E. UNIFORM COMMERCIAL DRIVER'S LICENSE ACT.

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-9. Commercial driver license qualification standards.

§17E-1-23. Funding for the commercial driver's license fees.

§17E-1-9. Commercial driver license qualification standards.

1 (a) (1) *General.* — No person may be issued a commercial
2 driver's license unless that person is a resident of this state and
3 has passed a knowledge and skills test for driving a commercial
4 motor vehicle which complies with minimum federal standards
5 established by federal regulations enumerated in 49 C.F.R. part
6 383, sub-parts G and H, and has satisfied all other requirements
7 of the Federal Commercial Motor Vehicle Safety Act in
8 addition to other requirements imposed by state law or federal
9 regulations. The tests will be administered by the West Virginia
10 state police according to rules promulgated by the commis-
11 sioner. After the thirtieth day of June, two thousand, the tests
12 will be administered by the division of motor vehicles.

13 (2) *Third party testing.* — The commissioner may authorize
14 a person, including an agency of this or another state, an
15 employer, private individual or institution, department, agency
16 or instrumentality of local government, to administer the skills
17 test specified by this section: *Provided*, That: (i) The test is the
18 same which would otherwise be administered by the state; and
19 (ii) the party has entered into an agreement with the state which
20 complies with the requirements of 49 C.F.R. part 383.75.

21 (3) *Indemnification of driver examiners.* — No person who
22 has been officially trained and certified by the state as a driver
23 examiner, who administers a driving test, and no other person,
24 firm or corporation by whom or with which that person is
25 employed or is in any way associated, may be criminally liable
26 for the administration of the tests, or civilly liable in damages
27 to the person tested or other persons or property unless for gross
28 negligence or willful or wanton injury.

29 (4) The West Virginia state police shall monitor third party
30 testing according to rules promulgated by the commissioner.
31 After the thirtieth day of June, two thousand, the division shall
32 monitor third party testing.

33 (b) *Waiver of skills test.* — The commissioner may waive
34 the skills test specified in this section for a commercial driver
35 license applicant who meets the requirements of 49 C.F.R. part
36 383.77 and those requirements specified by the commissioner.

37 (c) *Limitations on issuance of license.* — A commercial
38 driver's license or commercial driver's instruction permit may
39 not be issued to a person while the person is subject to a
40 disqualification from driving a commercial motor vehicle, or
41 while the person's driver's license is suspended, revoked or
42 canceled in any state; nor may a commercial driver's license be
43 issued by any other state unless the person first surrenders all
44 such licenses to the department, which must be returned to the
45 issuing state(s) for cancellation. The division shall issue a
46 restricted commercial driver's license to a person who has
47 failed to pay overdue child support or comply with subpoenas
48 or warrants relating to paternity or child support proceedings,

49 if a circuit court orders restrictions of the person's license as
50 provided in article five-a, chapter forty-eight-a of this code.

51 (d) *Commercial driver's instruction permit.* — (1) A
52 commercial driver's instruction permit may be issued to an
53 individual who holds a valid operator or Class "D" driver
54 license who has passed the vision and written tests required for
55 issuance of a commercial driver license. (2) The commercial
56 instruction permit may not be issued for a period to exceed six
57 months. Only one renewal or reissuance may be granted within
58 a two-year period. The holder of a commercial driver's instruc-
59 tion permit may drive a commercial motor vehicle on a
60 highway only when accompanied by the holder of a commercial
61 driver license valid for the type of vehicle driven who occupies
62 a seat beside the individual for the purpose of giving instruction
63 or testing. (3) A commercial driver's instruction permit may
64 only be issued to an individual who is at least eighteen years of
65 age and has held an operator's or junior operator's license for
66 at least two years. (4) The applicant for a commercial driver's
67 instruction permit shall also be otherwise qualified to hold a
68 commercial driver's license.

§17E-1-23. Funding for the commercial driver's license fees.

1 Each application for a commercial driver's license shall be
2 accompanied by the fees provided for in this section and the
3 fees shall be deposited in a special revolving fund for the
4 operation by the division of its functions established by this
5 chapter.

6 The fee for a commercial driver's license shall be estab-
7 lished by the commissioner to cover all necessary costs for
8 program administration. The fees for knowledge and road
9 testing shall also be established by the commissioner to cover
10 all program costs projected to be incurred by the division and
11 the West Virginia state police. The commissioner shall transfer
12 into a special revolving fund under the control of the superin-
13 tendent of the West Virginia state police those amounts
14 required by the West Virginia state police and determined by
15 the commissioner as necessary to administer its responsibilities
16 under this article until the first day of July, two thousand.

CHAPTER 179

(S. B. 225 — By Senators Ross, Sharpe, Anderson and Ball)

[Passed March 9, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article two, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the commissioner of motor vehicles to enter into reciprocal driver's license agreements with other nations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF MOTOR VEHICLES.

§17A-2-10. Motor vehicles commissioner — Reciprocal agreements with other states.

1 The motor vehicle commissioner in cooperation with the
2 state auditor, state road commissioner, the public service
3 commission and the superintendent of state police as appropri-
4 ate may enter into reciprocal agreements as he may deem
5 proper or expedient with the proper authorities of other states,
6 jurisdictions or nations, regulating the licensing of drivers and
7 the use, on the roads and highways of this state, of trucks,
8 automobiles and any other vehicles owned and duly licensed in
9 other states, jurisdictions or nations. The commissioner may
10 enter into reciprocal agreements under which the registration of
11 vehicles owned in this state, and the licenses of drivers residing
12 in this state shall be recognized by other states, jurisdictions or
13 other nations.

CHAPTER 180

(Com. Sub. for H. B. 2295 — By Delegates Johnson, Fleischauer,
Hutchins, Rowe, Tillis, Riggs and Trump)

[Passed February 9, 1999; in effect March 1, 1999. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article nine of said chapter; to amend and reenact sections one and nine, article two, chapter seventeen-b of said code; to amend and reenact sections four, four-a, four-b and six, article three, chapter seventeen-c of said code; to amend and reenact sections three-a and five, article six of said chapter; to amend and reenact sections one, two, three, five, six, seven, eight, nine, eleven and twelve, article seven of said chapter; to amend and reenact sections two, three, four, six and eight, article eight of said chapter; to amend article nine of said chapter by adding thereto a new section, designated section six; to amend article ten of said chapter by adding thereto a new section, designated section seven; to amend and reenact section six, article twelve of said chapter; to amend and reenact sections one, three and four, article thirteen of said chapter; to amend and reenact sections one, two, four, five, six, seven, eight, nine, ten and thirteen, article fourteen of said chapter; to amend and reenact section thirty-six-a, article fifteen of said chapter; to amend said article by adding thereto a new section, designated section six; to amend and reenact sections four and nine, article two-a, chapter seventeen-d of said code; to amend and reenact section thirty-one, article two, chapter twenty of said code; to amend and reenact section twenty-six, article seven of said chapter; to amend and reenact section nine, article six, chapter sixty of said code; and to amend and reenact section thirty-nine-a, article three, chapter sixty-one of said code, all relating to eliminating the jail penalty for certain offenses; eliminating the jail penalty for first convictions of driving or moving or for allowing one's motor vehicle to be

driven or moved when such motor vehicle is not registered or for which a certificate of title has not been issued or applied for or for which the appropriate fee has not been paid; eliminating the jail penalty for first convictions of operating a motor vehicle without evidence of registration; eliminating the jail penalty for first convictions of driving a motor vehicle without obtaining a valid driver's license; eliminating the jail penalty for driving a motor vehicle without possessing a driver's license for immediate display; eliminating the jail penalty for failing to obey instructions of official traffic control devices; eliminating the jail penalty for failing to obey law-enforcement officers or persons authorized by the commissioner of highways or by proper local authorities to operate traffic control devices; eliminating the jail penalty for exceeding the posted speed restriction or traffic restriction at a construction site; eliminating the jail penalty for violating the pedestrian walk and wait signals; eliminating the jail penalty for violating the minimum speed limit; eliminating the jail penalty for violating special speed limitations; eliminating the jail penalty for violating the restrictions on driving on the right side of the roadway; eliminating the jail penalty for violating the restrictions on passing vehicles proceeding in the opposite direction; eliminating the jail penalty for violating the restrictions on overtaking passing vehicles proceeding in the same direction; eliminating the jail penalty for violating the restrictions on overtaking on the left; eliminating the jail penalty for violating the restrictions on driving to the left of the center of the roadway; eliminating the jail penalty for violating the restrictions on no-passing zones; eliminating the jail penalty for violating the restrictions on one-way roadways and rotary traffic islands; eliminating the jail penalty for violating the restrictions on driving on roadways laned for traffic; eliminating the jail penalty for violating the restrictions on driving on divided highways; eliminating the jail penalty for driving onto or from controlled-access roadways; eliminating the jail penalty for violating the restrictions on making right turns; eliminating the jail penalty for violating the restrictions on making left turns; eliminating the jail penalty for violating the restrictions on making left turns on other than two-way roadways; eliminating the jail penalty for violating the restrictions on turning on a curve or the crest of a grade; eliminating the jail penalty for

violating the restrictions on turning movements and required signals; eliminating the jail penalty for violating the provisions outlining the right-of-way; eliminating the jail penalty for violating the provisions outlining the pedestrians' rights and duties; eliminating the jail penalty for stopping before emerging from an alley or private driveway; eliminating the jail penalty for violating the restrictions on stopping, standing or parking outside a business or residence district; eliminating the jail penalty for stopping, standing or parking in specified places; eliminating the jail penalty for violating restrictions on parking; eliminating the jail penalty for violating the restrictions on leaving a motor vehicle unattended; eliminating the jail penalty for violating the limitations on backing; eliminating the jail penalty for violating the restrictions on obstruction of the driver's view or driving mechanisms; eliminating the jail penalty for violating the restrictions on passengers in the seat with the driver; eliminating the jail penalty for violating the restrictions on passengers on the running board; eliminating the jail penalty for violating the restrictions on driving on mountain highways; eliminating the jail penalty for violating the restrictions on coasting; eliminating the jail penalty for violating the restrictions on following authorized emergency vehicles; eliminating the jail penalty for violating the restrictions on crossing fire hoses; eliminating the jail penalty for violating the restrictions on parking on private property; eliminating the jail penalty on violating the restrictions on necessary equipment on motor vehicles; eliminating the jail penalty on violating the restrictions on sun screening devices; eliminating the jail penalty on first convictions for the failure to carry and furnish proof of insurance; eliminating the jail penalty for first convictions of altering, mutilating or defacing any department of natural resources license, tag or permit, or the entries thereon; eliminating the jail penalty for second convictions for littering; eliminating the jail penalty for first convictions of being intoxicated in public; eliminating the jail penalty for first convictions of drinking alcohol in public; eliminating the jail penalty for first convictions of tendering alcohol to another person in public or possessing alcohol in amounts in excess of ten gallons without the proper authorization; and eliminating the jail penalty for first and second convictions of making a worthless check.

Be it enacted by the Legislature of West Virginia:

That section one, 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 two, article nine of said chapter be amended and reenacted; that sections one and nine, article two, chapter seventeen-b of said code be amended and reenacted; that sections four, four-a, four-b and six, article three, chapter seventeen-c of said code be amended and reenacted; that sections three-a and five, article six of said chapter be amended and reenacted; that sections one, two, three, five, six, seven, eight, nine, eleven and twelve, article seven of said chapter be amended and reenacted; that sections two, three, four, six and eight, article eight of said chapter be amended and reenacted; that article nine of said chapter be amended by adding thereto a new section, designated section six; that article ten of said chapter be amended by adding thereto a new section, designated section seven; that section six, article twelve of said chapter be amended and reenacted; that sections one, three and four, article thirteen of said chapter be amended and reenacted; that sections one, two, four, five, six, seven, eight, nine, ten and thirteen, article fourteen of said chapter be amended and reenacted; that section thirty-six-a, article fifteen of said chapter be amended and reenacted; that said article be amended by adding thereto a new section, designated section six; that sections four and nine, article two-a, chapter seventeen-d of said code be amended and reenacted; that section thirty-one, article two, chapter twenty of said code be amended and reenacted; that section twenty-six, article seven of said chapter be amended and reenacted; that section nine, article six, chapter sixty of said code be amended and reenacted; and that section thirty-nine-a, article three, chapter sixty-one of said code be amended and reenacted, all to read as follows:

Chapter

- 17A. Motor Vehicle Administration, Registration, Certificate of Title and Antitheft Provisions.**
- 17B. Motor Vehicle Driver's Licenses.**
- 17C. Traffic Regulations and Laws of the Road.**
- 17D. Motor Vehicle Safety Responsibility Law.**
- 20. Natural Resources.**
- 60. State Control of Alcoholic Liquors.**
- 61. Crimes and Their Punishment.**

**CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION,
REGISTRATION, CERTIFICATE OF TITLE AND
ANTITHEFT PROVISIONS.**

Article

3. Original and Renewal of Registration; Issuance of Certificate of Title.
9. Offenses Against Registration Laws and Suspension or Revocation of Registration.

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

§17A-3-1. Misdemeanor to violate provisions of article; penalty.

1 (a) It is unlawful for any person to drive or move or for an
2 owner knowingly to permit to be driven or moved upon any
3 highway any vehicle of a type required to be registered under
4 this article which is not registered or for which a certificate of
5 title has not been issued or applied for or for which the appro-
6 priate fee has not been paid when and as required under this
7 article, except as otherwise permitted by the provisions of this
8 chapter: *Provided*, That in the event of the sale of a vehicle by
9 a person other than a registered dealer, the person purchasing
10 the same may, for a period of not more than ten days, operate
11 such vehicle under the registration of its previous owner and
12 display the registration thereof: *Provided, however*, That he or
13 she shall have and display on the demand of any proper officer
14 the consent in writing of such previous owner so to use such
15 registration.

16 (b) Unless otherwise provided for in this article, any person
17 violating the provisions of this article is guilty of a misde-
18 meanor and, upon conviction thereof, shall be fined not more
19 than five hundred dollars; and upon a second or subsequent
20 conviction thereof, shall be fined not more than five hundred
21 dollars, or confined in the county or regional jail not more than
22 six months, or both.

**ARTICLE 9. OFFENSES AGAINST REGISTRATION LAWS AND SUSPEN-
SION OR REVOCATION OF REGISTRATION.**

**§17A-9-2. Operation of vehicles without evidences of registration;
use of temporary facsimile; penalty.**

1 (a) No person shall operate, nor shall an owner knowingly
 2 permit to be operated, upon any highway any vehicle required
 3 to be registered under this article unless there shall be attached
 4 thereto and displayed thereon or shall be in the possession of
 5 the operator when and as required by this chapter a valid
 6 registration card and registration plate or plates issued therefor
 7 by the department for the current registration year, except as
 8 otherwise expressly permitted in this chapter.

9 (b) In the event that the registration plate or plates origi-
 10 nally issued are lost, destroyed or stolen, a temporary facsimile
 11 of the plate or plates, showing the number of the same, may be
 12 attached to the vehicle by the owner for a period of not more
 13 than fifteen days, or until a new plate or plates are issued by the
 14 department, whichever is earlier: *Provided*, That no such
 15 facsimile shall be used and no such vehicle shall be driven upon
 16 the highways of this state, until the owner shall have notified in
 17 writing the West Virginia state police of the loss of such
 18 registration plate or plates.

19 (c) Any person violating the provisions of this section is
 20 guilty of a misdemeanor and, upon conviction thereof, shall be
 21 fined not more than five hundred dollars; and upon a second or
 22 subsequent conviction thereof, shall be fined not more than five
 23 hundred dollars, or confined in the county or regional jail not
 24 more than six months, or both.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards; penalty.

§17B-2-9. License to be carried and exhibited on demand; penalty.

***§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards; penalty.**

1 (a) No person, except those hereinafter expressly exempted,
 2 may drive any motor vehicle upon a street or highway in this

* Clerk's Note: This section was also amended by HB 2274 (Chapter 191) and SB 497 (Chapter 192), which passed subsequent to this act.

3 state or upon any subdivision street, as used in article twenty-
4 four, chapter eight of this code, when the use of such subdivi-
5 sion street is generally used by the public unless the person has
6 a 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 such
12 privilege by any county, municipality or local board or body
13 having authority to adopt local police regulations.

14 (b) The division, upon issuing a driver's license, shall
15 indicate on the license the type or general class or classes of
16 vehicle or vehicles the licensee may operate in accordance with
17 the provisions of this code, federal law or rule.

18 (c) Driver's licenses issued by the division shall be classi-
19 fied in the following manner:

20 (1) Class A, B or C license shall be issued to those persons
21 eighteen years of age or older with two years driving experience
22 and who have qualified for the commercial driver's license
23 established by chapter seventeen-e of this code and the federal
24 Commercial Motor Vehicle Safety Act of 1986, Title XII of
25 public law 99870 and subsequent rules, and have paid the
26 required fee.

27 (2) Class D license shall be issued to those persons eighteen
28 years and older with one year driving experience who operate
29 motor vehicles other than those types of vehicles which require
30 the operator to be licensed under the provisions of chapter
31 seventeen-e of this code and federal law and rule and whose
32 primary function or employment is the transportation of persons
33 or property for compensation or wages and have paid the
34 required fee. For the purposes of the regulation of the operation
35 of a motor vehicle, wherever the term chauffeur's license is
36 used in this code, it shall be construed to mean the Class A, B,
37 C or D license described in this section or chapter seventeen-e
38 of this code or federal law or rule: *Provided*, That anyone who

39 is not required to be licensed under the provisions of chapter
40 seventeen-e of this code and federal law or rule and who
41 operates a motor vehicle which is registered or which is
42 required to be registered as a Class A motor vehicle as that term
43 is defined in section three, article ten, chapter seventeen-a of
44 this code with a gross vehicle weight rating of less than eight
45 thousand one pounds, is not required to obtain a Class D
46 license.

47 (3) Class E license shall be issued to those persons who
48 have qualified under the provisions of this chapter and who are
49 not required to obtain a Class A, B, C or D license and who
50 have paid the required fee. The Class E license may be en-
51 dorsed under the provisions of section seven-b of this article for
52 motorcycle operation.

53 (4) Class F license shall be issued to those persons who
54 successfully complete the motorcycle examination procedure
55 provided for by this chapter and have paid the required fee, but
56 who do not possess a Class A, B, C and D or E driver's license.

57 (d) No person, except those hereinafter expressly exempted,
58 shall drive any motorcycle upon a street or highway in this state
59 or upon any subdivision street, as used in article twenty-four,
60 chapter eight of this code, when the use of such subdivision
61 street is generally used by the public unless the person has a
62 valid motorcycle license or a valid license which has been
63 endorsed under section seven-b of this article for motorcycle
64 operation or has a valid motorcycle instruction permit.

65 (e) (1) A nonoperator identification card may be issued to
66 any person who:

67 (A) Is a resident of this state in accordance with the
68 provisions of section one-a, article three, chapter seventeen-a of
69 this code;

70 (B) Does not have a valid driver's license;

71 (C) Has reached the age of sixteen years;

72 (D) Has paid the required fee of ten dollars: *Provided, That*
73 such fee is not required if the applicant is sixty-five years or
74 older or is legally blind; and

75 (E) Presents a birth certificate or other proof of age and
76 identity acceptable to the division with a completed application
77 on a form furnished by the division.

78 (2) The nondriver identification card shall contain the same
79 information as a driver's license except that such identification
80 card shall be clearly marked as identification card. The identifi-
81 cation card shall expire every four years. It may be renewed on
82 application and payment of the fee required by this section.

83 (A) After the thirtieth day of June, one thousand nine
84 hundred ninety-six, every identification card issued to persons
85 who have attained their twenty-first birthday shall expire on the
86 last day of the month in which the applicant's birthday occurs
87 in those years in which the applicant's age is evenly divisible
88 by five. Except as provided in paragraph (B) of this subdivision,
89 no identification card may be issued for less than three years
90 nor more than seven years and such identification card shall be
91 renewed in the month in which the applicant's birthday occurs
92 and shall be valid for a period of five years expiring in the
93 month in which the applicant's birthday occurs and in a year in
94 which the applicant's age is evenly divisible by five.

95 (B) Every identification card issued to persons who have
96 not attained their twenty-first birthday shall expire on the last
97 day of the month in the year in which the applicant attains the
98 age of twenty-one years.

99 (3) The identification card shall be surrendered to the
100 division when the holder is issued a driver's license. The
101 division may issue an identification card to an applicant whose
102 privilege to operate a motor vehicle has been refused, canceled,
103 suspended or revoked under the provisions of this code.

104 (f) Any person violating the provisions of this section is
105 guilty of a misdemeanor and, upon conviction thereof, shall be
106 fined not more than five hundred dollars; and upon a second or
107 subsequent conviction, shall be fined not more than five
108 hundred dollars, or confined in the county or regional jail not
109 more than six months, or both.

§17B-2-9. License to be carried and exhibited on demand; penalty.

1 (a) Every licensee shall have his or her driver's license in
 2 such person's immediate possession at all times when operating
 3 a motor vehicle and shall display the same, upon demand of a
 4 magistrate, municipal judge, circuit court judge, peace officer,
 5 or an employee of the division.

6 (b) Any person violating the provisions of this section is
 7 guilty of a misdemeanor and, upon conviction thereof, shall be
 8 fined not more than five hundred dollars: *Provided*, That no
 9 person charged with violating this section shall be convicted if
 10 such person produces in court or at the office of the arresting
 11 officer a driver's license issued to such person and valid at the
 12 time of such person's arrest.

**CHAPTER 17C. TRAFFIC REGULATIONS
 AND LAWS OF THE ROAD.**

Article

- 3. **Traffic Signs, Signals and Markings.**
- 6. **Speed Restrictions.**
- 7. **Driving on Right Side of Roadway, Overtaking and Passing, Etc.**
- 8. **Turning and Starting and Signals on Stopping and Turning.**
- 9. **Right-of-Way.**
- 10. **Pedestrians' Rights and Duties.**
- 12. **Special Stops Required.**
- 13. **Stopping, Standing and Parking.**
- 14. **Miscellaneous Rules.**
- 15. **Equipment.**

ARTICLE 3. TRAFFIC SIGNS, SIGNALS AND MARKINGS.

- §17C-3-4. Obedience to traffic-control devices; official signs to be in proper position, etc; penalty.
- §17C-3-4a. Obedience to traffic-control instructions at site of street or highway construction or maintenance; penalty.
- §17C-3-4b. Traffic violations in construction zones; posting requirement; criminal penalty.
- §17C-3-6. Pedestrian walk and wait signals; penalty.

§17C-3-4. Obedience to traffic-control devices; official signs to be in proper position, etc; penalty.

1 (a) The driver of any vehicle and the operator of any
2 streetcar shall obey the instructions of any official traffic-
3 control device applicable thereto placed in accordance with the
4 provisions of this chapter, unless otherwise directed by a traffic
5 or police officer, subject to the exceptions granted the driver of
6 an authorized emergency vehicle in this chapter.

7 (b) Any person violating the provisions of this section is
8 guilty of a misdemeanor and, upon conviction thereof, shall be
9 fined not more than one hundred dollars; upon a second
10 conviction within one year thereafter, shall be fined not more
11 than two hundred dollars; and upon a third or subsequent
12 conviction, shall be fined not more than five hundred dollars.

13 (c) No provision of this chapter for which signs are required
14 shall be enforced against an alleged violator if at the time and
15 place of the alleged violation an official sign is not in proper
16 position and sufficiently legible to be seen by an ordinarily
17 observant person. Whenever a particular section does not state
18 that signs are required, such section shall be effective even
19 though no signs are erected or in place.

**§17C-3-4a. Obedience to traffic-control instructions at site of
street or highway construction or maintenance;
penalty.**

1 (a) The driver of any vehicle shall obey the traffic-control
2 instructions of any law-enforcement officer or persons autho-
3 rized by the commissioner of highways or by proper local
4 authorities to operate traffic-control devices, act as flagmen or
5 operate authorized vehicles engaged in work at or near the site
6 of street or highway construction maintenance work, for the
7 purpose of regulating, warning or guiding traffic, subject to the
8 exceptions granted the driver of an authorized emergency
9 vehicle in this chapter.

10 (b) Any person failing to comply with the requirements of
11 this section is guilty of a misdemeanor and, upon conviction
12 thereof, shall be fined not more than one hundred dollars; upon
13 a second conviction within one year thereafter, shall be fined
14 not more than two hundred dollars; and upon a third or subse-

15 quent conviction, shall be fined not more than five hundred
16 dollars.

***§17C-3-4b. Traffic violations in construction zones; posting
requirement; criminal penalty.**

1 (a) At each and every location where street or highway
2 construction work is to be conducted a sign shall be posted at
3 least one thousand feet from the construction site, or as close to
4 one thousand feet from the construction site as is practicable
5 given the location of the site when workers are present,
6 notifying all motorists as to the speed limit and displaying the
7 words "construction work".

8 (b) Any person who exceeds any posted speed restriction or
9 traffic restriction at a construction site referred to in subsection
10 (a) of this section is guilty of a misdemeanor and, upon conviction
11 thereof, shall be fined not less than one hundred dollars nor
12 more than five hundred dollars.

13 (c) Nothing in this section shall be construed to preclude
14 prosecution of any operator of a motor vehicle who commits a
15 violation of any other provision of this code for such violation.

§17C-3-6. Pedestrian walk and wait signals; penalty.

1 (a) Whenever special pedestrian-control signals exhibiting
2 the words "Walk" or "Wait" are in place such signals shall
3 indicate as follows:

4 (1) *Walk*. — Pedestrians facing such signal may proceed
5 across the roadway in the direction of the signal and shall be
6 given the right-of-way by the drivers of all vehicles.

7 (2) *Wait*. — No pedestrian shall start to cross the roadway
8 in the direction of such signal, but any pedestrian who has
9 partially completed his or her crossing on the walk signal shall
10 proceed to a sidewalk or safety island while the wait signal is
11 showing.

12 (b) Any person violating the provisions of this section is
13 guilty of a misdemeanor and, upon conviction thereof, shall be
14 fined not more than one hundred dollars; upon a second

* Clerk's Note: This section was also amended by HB 2294 (Chapter 285), which passed subsequent to this act.

15 conviction within one year thereafter, shall be fined not more
16 than two hundred dollars; and upon a third or subsequent
17 conviction, shall be fined not more than five hundred dollars.

ARTICLE 6. SPEED RESTRICTIONS.

§17C-6-3a. Minimum speed regulations; penalty.

§17C-6-5. Special speed limitations; penalty.

§17C-6-3a. Minimum speed regulations; penalty.

1 (a) No person shall drive a motor vehicle at such a slow
2 speed as to impede the normal and reasonable movement of
3 traffic except when reduced speed is necessary for safe opera-
4 tion or in compliance with law.

5 (b) Whenever the commissioner or local authorities within
6 their respective jurisdiction determine on the basis of an
7 engineering and traffic investigation that slow speeds on any
8 part of the highway consistently impede the normal and
9 reasonable movement of traffic, the commissioner or such local
10 authority may determine and declare a minimum speed limit
11 below which no person shall drive a vehicle except when
12 necessary for safe operation or in compliance with law.

13 (c) Any person who violates the provisions of this section
14 is guilty of a misdemeanor and, upon conviction thereof, shall
15 be fined not more than one hundred dollars; upon a second
16 conviction within one year thereafter, shall be fined not more
17 than two hundred dollars; and upon a third or subsequent
18 conviction within two years thereafter, shall be fined not more
19 than five hundred dollars.

§17C-6-5. Special speed limitations; penalty.

1 (a) No person shall drive any vehicle equipped with other
2 than pneumatic tires at a speed greater than a maximum of ten
3 miles per hour.

4 (b) No person shall drive a vehicle over any bridge or other
5 elevated structure constituting a part of a highway at a speed
6 which is greater than the maximum speed which can be
7 maintained with safety to such bridge or structure, when such
8 structure is signposted as provided in this section.

9 (c) The commissioner of highways upon request from any
10 local authority shall, or upon its own initiative may, conduct an
11 investigation of any bridge or other elevated structure constitut-
12 ing a part of a highway, and if it shall thereupon find that such
13 structure cannot with safety to itself withstand vehicles travel-
14 ing at the speed otherwise permissible under this chapter, the
15 commissioner shall determine and declare the maximum speed
16 of vehicles which such structure can withstand, and shall cause
17 or permit suitable signs stating such maximum speed to be
18 erected and maintained at a distance of one hundred feet before
19 each end of such structure.

20 (d) Upon the trial of any person charged with a violation of
21 this section, proof of said determination of the maximum speed
22 by said commissioner and the existence of said signs shall
23 constitute conclusive evidence of the maximum speed which
24 can be maintained with safety to such bridge or structure.

25 (e) Any person violating the provisions of this section is
26 guilty of a misdemeanor and, upon conviction thereof, shall be
27 fined not more than one hundred dollars; upon a second
28 conviction within one year thereafter, shall be fined not more
29 than two hundred dollars; and upon a third or subsequent
30 conviction, shall be fined not more than five hundred dollars.

ARTICLE 7. DRIVING ON RIGHT SIDE OF ROADWAY, OVERTAKING AND PASSING, ETC.

§17C-7-1. Driving on right side of roadway; exceptions; penalty.

§17C-7-2. Passing vehicles proceeding in opposite directions; penalty.

§17C-7-3. Overtaking and passing vehicle proceeding in same direction—Passing
on the left generally; penalty.

§17C-7-5. Same—Limitations on overtaking on the left; penalty.

§17C-7-6. Same—Further limitations on driving to left of center of roadway;
penalty.

§17C-7-7. Same—No-passing zones; penalty.

§17C-7-8. One-way roadways and rotary traffic islands; penalty.

§17C-7-9. Driving on roadways laned for traffic; penalty.

§17C-7-11. Driving on divided highways; penalty.

§17C-7-12. Controlled-access roadway—Driving onto or from; penalty.

§17C-7-1. Driving on right side of roadway; exceptions; penalty.

1 (a) Upon all roadways of sufficient width a vehicle shall be
2 driven upon the right half of the roadway, except as follows:

3 (1) When overtaking and passing another vehicle proceed-
4 ing in the same direction under the rules governing such
5 movement;

6 (2) When the right half of a roadway is closed to traffic
7 while under construction or repair;

8 (3) Upon a roadway divided into three marked lanes for
9 traffic under the rules applicable thereon; or

10 (4) Upon a roadway designated and signposted for one-way
11 traffic.

12 (b) Upon all roadways any vehicle proceeding at less than
13 the normal speed of traffic at the time and place and under the
14 conditions then existing shall be driven in the right-hand lane
15 then available for traffic, or as close as practicable to the right-
16 hand curb or edge of the roadway, except when overtaking and
17 passing another vehicle proceeding in the same direction or
18 when preparing for a left turn at an intersection or into a private
19 road or driveway.

20 (c) Any person violating the provisions of this section is
21 guilty of a misdemeanor and, upon conviction thereof, shall be
22 fined not more than one hundred dollars; upon a second
23 conviction within one year thereafter, shall be fined not more
24 than two hundred dollars; and upon a third or subsequent
25 conviction, shall be fined not more than five hundred dollars.

**§17C-7-2. Passing vehicles proceeding in opposite directions;
penalty.**

1 (a) Drivers of vehicles proceeding in opposite directions
2 shall pass each other to the right, and upon roadways having
3 width for not more than one line of traffic in each direction each
4 driver shall give to the other at least one half of the main-
5 traveled portion of the roadway as nearly as possible.

6 (b) Any person violating the provisions of this section is
7 guilty of a misdemeanor and, upon conviction thereof, shall be

8 fined not more than one hundred dollars; upon a second
9 conviction within one year thereafter, shall be fined not more
10 than two hundred dollars; and upon a third or subsequent
11 conviction, shall be fined not more than five hundred dollars.

§17C-7-3. Overtaking and passing vehicle proceeding in same direction — Passing on the left generally; penalty.

1 (a) The following rules shall govern the overtaking and
2 passing of vehicles proceeding in the same direction, subject to
3 these limitations, exceptions, and special rules hereinafter
4 stated.

5 (1) The driver of a vehicle overtaking another vehicle
6 proceeding in the same direction shall give an audible signal
7 and pass to the left thereof at a safe distance and shall not again
8 drive to the right side of the roadway until safely clear of the
9 overtaken vehicle.

10 (2) Except when overtaking and passing on the right is
11 permitted, the driver of an overtaken vehicle shall give way to
12 the right in favor of the overtaking vehicle on audible signal
13 and shall not increase the speed of his or her vehicle until
14 completely passed by the overtaking vehicle.

15 (b) Any person violating the provisions of this section is
16 guilty of a misdemeanor and, upon conviction thereof, shall be
17 fined not more than one hundred dollars; upon a second
18 conviction within one year thereafter, shall be fined not more
19 than two hundred dollars; and upon a third or subsequent
20 conviction, shall be fined not more than five hundred dollars.

§17C-7-5. Same — Limitations on overtaking on the left; penalty.

1 (a) No vehicle shall be driven to the left side of the center
2 of the roadway in overtaking and passing another vehicle
3 proceeding in the same direction unless such left side is clearly
4 visible and is free of oncoming traffic for a sufficient distance
5 ahead to permit such overtaking and passing to be completely
6 made without interfering with the safe operation of any vehicle
7 approaching from the opposite direction or any vehicle over-
8 taken. In every event the overtaking vehicle must return to the

9 right-hand side of the roadway before coming within one
10 hundred feet of any vehicle approaching from the opposite
11 direction.

12 (b) Any person violating the provisions of this section is
13 guilty of a misdemeanor and, upon conviction thereof, shall be
14 fined not more than one hundred dollars; upon a second
15 conviction within one year thereafter, shall be fined not more
16 than two hundred dollars; and upon a third or subsequent
17 conviction, shall be fined not more than five hundred dollars.

**§17C-7-6. Same — Further limitations on driving to left of center
of roadway; penalty.**

1 (a) No vehicle shall at any time be driven to the left side of
2 the roadway under the following conditions:

3 (1) When approaching the crest of a grade or upon a curve
4 in the highway where the driver's view is obstructed within
5 such distance as to create a hazard in the event another vehicle
6 might approach from the opposite direction;

7 (2) When approaching within one hundred feet of or
8 traversing any intersection or railroad grade crossing;

9 (3) When the view is obstructed upon approaching within
10 one hundred feet of any bridge, viaduct, or tunnel.

11 (b) The foregoing limitations shall not apply upon a one-
12 way roadway.

13 (c) Any person violating the provisions of this section is
14 guilty of a misdemeanor and, upon conviction thereof, shall be
15 fined not more than one hundred dollars; upon a second
16 conviction within one year thereafter, shall be fined not more
17 than two hundred dollars; and upon a third or subsequent
18 conviction, shall be fined not more than five hundred dollars.

§17C-7-7. Same — No-passing zones; penalty.

1 (a) The commissioner of highways is hereby authorized to
2 determine those portions of any highway where overtaking and
3 passing or driving to the left of the roadway would be espe-
4 cially hazardous and may by appropriate signs or markings on

5 the roadway indicate the beginning and end of such zones and
6 when such signs or markings are in place and clearly visible to
7 an ordinarily observant person every driver of a vehicle shall
8 obey the directions thereof.

9 (b) Any person violating the provisions of this section is
10 guilty of a misdemeanor and, upon conviction thereof, shall be
11 fined not more than one hundred dollars; upon a second
12 conviction within one year thereafter, shall be fined not more
13 than two hundred dollars; and upon a third or subsequent
14 conviction, shall be fined not more than five hundred dollars.

§17C-7-8. One-way roadways and rotary traffic islands; penalty.

1 (a) The commissioner of highways may designate any
2 highway or any separate roadway under its jurisdiction for one-
3 way traffic and shall erect appropriate signs giving notice
4 thereof.

5 (b) Upon a roadway designated and signposted for one-way
6 traffic a vehicle shall be driven only in the direction designated.

7 (c) A vehicle passing around a rotary traffic island shall be
8 driven only to the right of such island.

9 (d) Any person violating the provisions of this section is
10 guilty of a misdemeanor and, upon conviction thereof, shall be
11 fined not more than one hundred dollars; upon a second
12 conviction within one year thereafter, shall be fined not more
13 than two hundred dollars; and upon a third or subsequent
14 conviction, shall be fined not more than five hundred dollars.

§17C-7-9. Driving on roadways laned for traffic; penalty.

1 (a) Whenever any roadway has been divided into two or
2 more clearly marked lanes for traffic the following rules in
3 addition to all others consistent herewith shall apply:

4 (1) A vehicle shall be driven as nearly as practicable
5 entirely within a single lane and shall not be moved from such
6 lane until the driver has first ascertained that such movement
7 can be made with safety.

8 (2) Upon a roadway which is divided into three lanes a

9 vehicle shall not be driven in the center lane which is clearly
10 marked as a left turn lane except in preparation for a left turn or
11 where such center lane is at the time allocated exclusively to
12 traffic moving in the direction the vehicle is proceeding and is
13 signposted to give notice of such allocation.

14 (3) Official signs may be erected directing slow-moving
15 traffic to use a designated lane or designating those lanes to be
16 used by traffic moving in a particular direction regardless of the
17 center of the roadway and drivers of vehicles shall obey the
18 directions of every such sign.

19 (b) Any person violating the provisions of this section is
20 guilty of a misdemeanor and, upon conviction thereof, shall be
21 fined not more than one hundred dollars; upon a second
22 conviction within one year thereafter, shall be fined not more
23 than two hundred dollars; and upon a third or subsequent
24 conviction, shall be fined not more than five hundred dollars.

§17C-7-11. Driving on divided highways; penalty.

1 (a) Whenever any highway has been divided into two
2 roadways by leaving an intervening space or by a physical
3 barrier or clearly indicated dividing section so constructed as to
4 impede vehicular traffic, every vehicle shall be driven only
5 upon the right-hand roadway and no vehicle shall be driven
6 over, across, or within any such dividing space, barrier, or
7 section, except through an opening in such physical barrier or
8 dividing section or space or at a crossover or intersection
9 established by public authority.

10 (b) Any person violating the provisions of this section is
11 guilty of a misdemeanor and, upon conviction thereof, shall be
12 fined not more than one hundred dollars; upon a second
13 conviction within one year thereafter, shall be fined not more
14 than two hundred dollars; and upon a third or subsequent
15 conviction, shall be fined not more than five hundred dollars.

**§17C-7-12. Controlled-access roadway — Driving onto or from;
penalty.**

1 (a) No person shall drive a vehicle onto or from any
2 controlled-access roadway except at such entrances and exits as
3 are established by public authority.

4 (b) Any person violating the provisions of this section is
5 guilty of a misdemeanor and, upon conviction thereof, shall be
6 fined not more than one hundred dollars; upon a second
7 conviction within one year thereafter, shall be fined not more
8 than two hundred dollars; and upon a third or subsequent
9 conviction, shall be fined not more than five hundred dollars.

**ARTICLE 8. TURNING AND STARTING AND SIGNALS ON STOPPING
AND TURNING.**

§17C-8-2. Right turns; penalty.

§17C-8-3. Left turns on two-way roadways; penalty.

§17C-8-4. Left turns on other than two-way roadways; penalty.

§17C-8-6. Turning on curve or crest of grade prohibited; penalty.

§17C-8-8. Turning movements and required signals; penalty.

§17C-8-2. Right turns; penalty.

1 (a) Both the approach for a right turn and a right turn shall
2 be made as close as practicable to the right-hand curb or edge
3 of the roadway.

4 (b) Any person violating the provisions of this section is
5 guilty of a misdemeanor and, upon conviction thereof, shall be
6 fined not more than one hundred dollars; upon a second
7 conviction within one year thereafter, shall be fined not more
8 than two hundred dollars; and upon a third or subsequent
9 conviction, shall be fined not more than five hundred dollars.

§17C-8-3. Left turns on two-way roadways; penalty.

1 (a) At any intersection where traffic is permitted to move in
2 both directions on each roadway entering the intersection, an
3 approach for a left turn shall be made in that portion of the right
4 half of the roadway nearest the center line thereof and by
5 passing to the right of such center line where it enters the
6 intersection and after entering the intersection the left turn shall
7 be made so as to leave the intersection to the right of the center
8 line of the roadway being entered. Whenever practicable the left

9 turn shall be made in that portion of the intersection to the left
10 of the center of the intersection.

11 (b) Any person violating the provisions of this section is
12 guilty of a misdemeanor and, upon conviction thereof, shall be
13 fined not more than one hundred dollars; upon a second
14 conviction within one year thereafter, shall be fined not more
15 than two hundred dollars; and upon a third or subsequent
16 conviction, shall be fined not more than five hundred dollars.

§17C-8-4. Left turns on other than two-way roadways; penalty.

1 (a) At any intersection where traffic is restricted to one
2 direction on one or more of the roadways, the driver of a
3 vehicle intending to turn left at any such intersection shall
4 approach the intersection in the extreme left-hand lane lawfully
5 available to traffic moving in the direction of travel of such
6 vehicle and after entering the intersection the left turn shall be
7 made so as to leave the intersection, as nearly as practicable, in
8 the left-hand lane lawfully available to traffic moving in such
9 direction upon the roadway being entered.

10 (b) Any person violating the provisions of this section is
11 guilty of a misdemeanor and, upon conviction thereof, shall be
12 fined not more than one hundred dollars; upon a second
13 conviction within one year thereafter, shall be fined not more
14 than two hundred dollars; and upon a third or subsequent
15 conviction, shall be fined not more than five hundred dollars.

§17C-8-6. Turning on curve or crest of grade prohibited; penalty.

1 (a) No vehicle shall be turned so as to proceed in the
2 opposite direction upon any curve, or upon the approach to, or
3 near the crest of a grade, where such vehicle cannot be seen by
4 the driver of any other vehicle approaching from either direc-
5 tion within five hundred feet.

6 (b) Any person violating the provisions of this section is
7 guilty of a misdemeanor and, upon conviction thereof, shall be
8 fined not more than one hundred dollars; upon a second
9 conviction within one year thereafter, shall be fined not more
10 than two hundred dollars; and upon a third or subsequent

11 conviction, shall be fined not more than five hundred dollars.

§17C-8-8. Turning movements and required signals; penalty.

1 (a) No person shall turn a vehicle at an intersection unless
2 the vehicle is in proper position upon the roadway as required
3 in sections two, three, four or five of this article, or turn a
4 vehicle to enter a private road or driveway or otherwise turn a
5 vehicle from a direct course or move right or left upon a
6 roadway unless and until such movement can be made with
7 reasonable safety. No person shall so turn any vehicle without
8 giving an appropriate signal in the manner hereinafter provided
9 in the event any other traffic may be affected by such move-
10 ment.

11 (b) A signal of intention to turn right or left when required
12 shall be given continuously during not less than the last one
13 hundred feet traveled by the vehicle before turning.

14 (c) No person shall stop or suddenly decrease the speed of
15 a vehicle without first giving an appropriate signal in the
16 manner provided herein to the driver of any vehicle immedi-
17 ately to the rear when there is opportunity to give such signal.

18 (d) Any person violating the provisions of this section is
19 guilty of a misdemeanor and, upon conviction thereof, shall be
20 fined not more than one hundred dollars; upon a second
21 conviction within one year thereafter, shall be fined not more
22 than two hundred dollars; and upon a third or subsequent
23 conviction, shall be fined not more than five hundred dollars.

ARTICLE 9. RIGHT-OF-WAY.

§17C-9-6. Misdemeanor to violate provisions of article; penalty.

1 Any person violating the provisions of this article is guilty
2 of a misdemeanor and, upon conviction thereof, shall be fined
3 not more than one hundred dollars; upon a second conviction
4 within one year thereafter, shall be fined not more than two
5 hundred dollars; and upon a third or subsequent conviction,
6 shall be fined not more than five hundred dollars.

ARTICLE 10. PEDESTRIANS' RIGHTS AND DUTIES.

§17C-10-7. Penalty for pedestrians violating the provisions of this article.

1 Any person violating the provisions of this article is guilty
2 of a misdemeanor and, upon conviction thereof, shall be fined
3 not more than one hundred dollars; upon a second conviction
4 within one year thereafter, shall be fined not more than two
5 hundred dollars; and upon a third or subsequent conviction,
6 shall be fined not more than five hundred dollars.

ARTICLE 12. SPECIAL STOPS REQUIRED.

§17C-12-6. Stopping before emerging from alley or private driveway; penalty.

1 (a) The driver of a vehicle within a business or residence
2 district emerging from any alley, driveway, or building shall
3 stop such vehicle immediately prior to driving onto a sidewalk
4 or onto the sidewalk area extending across any alleyway or
5 private driveway, and shall yield the right-of-way to any
6 pedestrian as may be necessary to avoid collision, and upon
7 entering the roadway shall yield the right-of-way to all vehicles
8 approaching on said roadway.

9 (b) Any person violating the provisions of this section is
10 guilty of a misdemeanor and, upon conviction thereof, shall be
11 fined not more than one hundred dollars; upon a second
12 conviction within one year thereafter, shall be fined not more
13 than two hundred dollars; and upon a third or subsequent
14 conviction, shall be fined not more than five hundred dollars.

ARTICLE 13. STOPPING, STANDING AND PARKING.

§17C-13-1. Stopping, standing or parking outside of business or residence districts; penalty.

§17C-13-3. Stopping, standing or parking prohibited in specified places; penalty.

§17C-13-4. Right and left parallel parking; angle parking; highway signs restricting parking, etc; penalty.

§17C-13-1. Stopping, standing or parking outside of business or residence districts; penalty.

1 (a) Upon any highway outside of a business or residence
2 district no person shall stop, park, or leave standing any vehicle,
3 whether attended or unattended, upon the paved or main-

4 traveled part of the highway when it is practicable to stop, park,
5 or so leave such vehicle off such part of said highway, but in
6 every event an unobstructed width of the highway opposite a
7 standing vehicle shall be left for the free passage of other
8 vehicles and a clear view of such stopped vehicles shall be
9 available from a distance of two hundred feet in each direction
10 upon such highway.

11 (b) Any person violating the provisions of this section is
12 guilty of a misdemeanor and, upon conviction thereof, shall be
13 fined not more than one hundred dollars; upon a second
14 conviction within one year thereafter, shall be fined not more
15 than two hundred dollars; and upon a third or subsequent
16 conviction, shall be fined not more than five hundred dollars.

17 (c) This section shall not apply to the driver of any vehicle
18 which is disabled while on the paved or main-traveled portion
19 of a highway in such manner and to such extent that it is
20 impossible to avoid stopping and temporarily leaving such
21 disabled vehicle in such position.

§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
43 yellow 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.

**§17C-13-4. Right and left parallel parking; angle parking; high-
way signs restricting parking, etc.; penalty.**

1 (a) Except as otherwise provided in this section, every
2 vehicle stopped or parked upon a roadway where there are
3 adjacent curbs shall be so stopped or parked with the right-hand
4 wheels of such vehicle parallel to and within eighteen inches of
5 the right-hand curb. Any person violating the provisions of this
6 subsection is guilty of a misdemeanor and, upon conviction
7 thereof, shall be fined not more than one hundred dollars; upon
8 a second conviction within one year thereafter, shall be fined
9 not more than two hundred dollars; and upon a third or subse-
10 quent conviction, shall be fined not more than five hundred
11 dollars.

12 (b) Local authorities may by ordinance permit parking of
13 vehicles with the left-hand wheels adjacent to and within
14 eighteen inches of the left-hand curb of a one-way roadway.

15 (c) Local authorities may by ordinance permit angle
16 parking on any roadway, except that angle parking shall not be
17 permitted on any federal-aid or state highway unless the
18 division of highways has determined by resolution or order
19 entered in its minutes that the roadway is of sufficient width to
20 permit angle parking without interfering with the free move-
21 ment of traffic.

22 (d) The division of highways with respect to highways
23 under its jurisdiction may place signs prohibiting or restricting
24 the stopping, standing, or parking of vehicles on any highway
25 where in its opinion, as evidenced by resolution or order

26 entered in its minutes, such stopping, standing, or parking is
27 dangerous to those using the highway or where the stopping,
28 standing, or parking of vehicles would unduly interfere with the
29 free movement of traffic thereon. Such signs shall be official
30 signs and no person shall stop, stand, or park any vehicle in
31 violation of the restrictions stated on such signs. Any person
32 violating the provisions of this subsection is guilty of a misde-
33 meanor and, upon conviction thereof, shall be fined not more
34 than one hundred dollars; upon a second conviction within one
35 year thereafter, shall be fined not more than two hundred
36 dollars; and upon a third or subsequent conviction, shall be
37 fined not more than five hundred dollars.

ARTICLE 14. MISCELLANEOUS RULES.

§17C-14-1. Unattended motor vehicle; penalty.

§17C-14-2. Limitations on backing; penalty.

§17C-14-4. Obstruction to driver's view or driving mechanism; penalty.

§17C-14-5. Passengers in seat with operator; penalty.

§17C-14-6. Passengers on running board; penalty.

§17C-14-7. Driving on mountain highways; penalty.

§17C-14-8. Coasting prohibited; penalty.

§17C-14-9. Following authorized emergency vehicles; penalty.

§17C-14-10. Crossing fire hose; penalty.

§17C-14-13. Vehicles parked on private property; penalty.

§17C-14-1. Unattended motor vehicle; penalty.

1 (a) No person driving or in charge of a motor vehicle shall
2 permit it to stand unattended without first stopping the engine,
3 locking the ignition, removing the key, and effectively setting
4 the brake thereon and, when standing upon any grade, turning
5 the front wheels to the curb or side of the highway.

6 (b) Any person violating the provisions of this section is
7 guilty of a misdemeanor and, upon conviction thereof, shall be
8 fined not more than one hundred dollars; upon a second
9 conviction within one year thereafter, shall be fined not more
10 than two hundred dollars; and upon a third or subsequent
11 conviction, shall be fined not more than five hundred dollars.

§17C-14-2. Limitations on backing; penalty.

1 (a) The driver of a vehicle shall not back the same unless
2 such movement can be made with reasonable safety and without
3 interfering with other traffic.

4 (b) Any person violating the provisions of this section is
5 guilty of a misdemeanor and, upon conviction thereof, shall be
6 fined not more than one hundred dollars; upon a second
7 conviction within one year thereafter, shall be fined not more
8 than two hundred dollars; and upon a third or subsequent
9 conviction, shall be fined not more than five hundred dollars.

**§17C-14-4. Obstruction to driver's view or driving mechanism;
penalty.**

1 (a) No person shall drive a vehicle when it is so loaded as
2 to obstruct the view of the driver to the front or sides of the
3 vehicle or as to interfere with the driver's control over the
4 driving mechanism of the vehicle.

5 (b) No passenger in a vehicle or streetcar shall ride in such
6 position as to interfere with the driver's or operator's view
7 ahead or to the sides, or to interfere with his or her control over
8 the driving mechanism of the vehicle or streetcar.

9 (c) Any person violating the provisions of this section is
10 guilty of a misdemeanor and, upon conviction thereof, shall be
11 fined not more than one hundred dollars; upon a second
12 conviction within one year thereafter, shall be fined not more
13 than two hundred dollars; and upon a third or subsequent
14 conviction, shall be fined not more than five hundred dollars.

§17C-14-5. Passengers in seat with operator; penalty.

1 (a) No more than three persons including the operator shall
2 ride or be permitted by such operator to ride in the seat with the
3 operator of any motor vehicle while said motor vehicle is being
4 operated on the streets or highways of this state: *Provided*, That
5 the limitation of this section shall not apply to a truck cab or
6 truck crew compartment properly designed for the occupancy
7 of four persons including the operator, and so designated on the
8 registration card by the division of motor vehicles.

9 (b) Any person violating the provisions of this section is
10 guilty of a misdemeanor and, upon conviction thereof, shall be
11 fined not more than one hundred dollars; upon a second
12 conviction within one year thereafter, shall be fined not more
13 than two hundred dollars; and upon a third or subsequent
14 conviction, shall be fined not more than five hundred dollars.

§17C-14-6. Passengers on running board; penalty.

1 (a) No passenger shall ride nor shall the operator permit any
2 passenger to ride on the running boards of any motor vehicle
3 while such vehicle is being operated on the streets or highways
4 of this state.

5 (b) Any person violating the provisions of this section is
6 guilty of a misdemeanor and, upon conviction thereof, shall be
7 fined not more than one hundred dollars; upon a second
8 conviction within one year thereafter, shall be fined not more
9 than two hundred dollars; and upon a third or subsequent
10 conviction, shall be fined not more than five hundred dollars.

§17C-14-7. Driving on mountain highways; penalty.

1 (a) The driver of a motor vehicle traveling through defiles
2 or canyons or on mountain highways shall hold such motor
3 vehicle under control and as near the right-hand edge of the
4 highway as reasonably possible and, upon approaching any
5 curve where the view is obstructed within a distance of two
6 hundred feet along the highway, shall give audible warning
7 with the horn of such motor vehicle.

8 (b) Any person violating the provisions of this section is
9 guilty of a misdemeanor and, upon conviction thereof, shall be
10 fined not more than one hundred dollars; upon a second
11 conviction within one year thereafter, shall be fined not more
12 than two hundred dollars; and upon a third or subsequent
13 conviction, shall be fined not more than five hundred dollars.

§17C-14-8. Coasting prohibited; penalty.

1 (a) The driver of any motor vehicle when traveling upon a
2 down grade shall not coast with the gears of such vehicle in
3 neutral.

4 (b) The driver of a commercial motor vehicle when
5 traveling upon a down grade shall not coast with the clutch
6 disengaged.

7 (c) Any person violating the provisions of this section is
8 guilty of a misdemeanor and, upon conviction thereof, shall be
9 fined not more than one hundred dollars; upon a second
10 conviction within one year thereafter, shall be fined not more
11 than two hundred dollars; and upon a third or subsequent
12 conviction, shall be fined not more than five hundred dollars.

§17C-14-9. Following authorized emergency vehicles; penalty.

1 (a) The driver of any vehicle other than one on official
2 business may not follow any authorized emergency vehicle
3 traveling in response to a fire alarm or other emergency closer
4 than five hundred feet or drive into or park such vehicle within
5 the block where such authorized emergency vehicle has stopped
6 in answer to a fire alarm or other emergency.

7 (b) Any person violating the provisions of this section is
8 guilty of a misdemeanor and, upon conviction thereof, shall be
9 fined not more than one hundred dollars; upon a second
10 conviction within one year thereafter, shall be fined not more
11 than two hundred dollars; and upon a third or subsequent
12 conviction, shall be fined not more than five hundred dollars.

§17C-14-10. Crossing fire hose; penalty.

1 (a) No streetcar or vehicle shall be driven over any unpro-
2 tected hose of a fire department when laid down on any street,
3 private driveway, or streetcar track, to be used at any fire or
4 alarm of fire, without the consent of the fire department official
5 in command.

6 (b) Any person violating the provisions of this section is
7 guilty of a misdemeanor and, upon conviction thereof, shall be
8 fined not more than one hundred dollars; upon a second
9 conviction within one year thereafter, shall be fined not more
10 than two hundred dollars; and upon a third or subsequent
11 conviction, shall be fined not more than five hundred dollars.

§17C-14-13. Vehicles parked on private property; penalty.

1 (a) It shall be unlawful for any driver of a vehicle to stop,
2 park or leave standing unattended any vehicle on a private road
3 or driveway or on private property without having express or
4 implied permission from the owner, tenant or lessee of such
5 land.

6 (b) Any person violating the provisions of this section is
7 guilty of a misdemeanor and, upon conviction thereof, shall be
8 fined not more than one hundred dollars; upon a second
9 conviction within one year thereafter, shall be fined not more
10 than two hundred dollars; and upon a third or subsequent
11 conviction, shall be fined not more than five hundred dollars.

12 (c) The owner, tenant or lessee of such private road or
13 driveway or private property may move, or have moved, any
14 vehicle stopped, parked or left standing unattended on his or her
15 private road, driveway, or private property as above prohibited
16 without any liability for the cost of moving any vehicle, nor
17 shall he or she be liable to the owner of the vehicle for any
18 damage done to such vehicle in moving it, unless the owner,
19 tenant or lessee of such private road or driveway or private
20 property was negligent in removing or authorizing the removal
21 of the vehicle. The owner of such vehicle shall be responsible
22 to the persons removing such vehicle for paying all removal
23 costs. Any person who removes any vehicle under the provi-
24 sions of this section shall notify the West Virginia state police
25 of such action, and, if such vehicle is removed within a municipi-
26 tality, shall, in addition notify the police department of such
27 municipality.

ARTICLE 15. EQUIPMENT.

§17C-15-6. Penalty for violations of the provisions of this article.

§17C-15-36a. Sun screening devices; penalty.

§17C-15-6. Penalty for violations of the provisions of this article.

1 (a) Unless otherwise provided for in this article and, except
2 as otherwise provided in subsection (b) of this section, any
3 person violating the provisions of this article is guilty of a
4 misdemeanor and, upon conviction thereof, shall be fined not

5 more than one hundred dollars; upon a second conviction within
6 one year thereafter, shall be fined not more than two hundred
7 dollars; and upon a third or subsequent conviction, shall be
8 fined not more than five hundred dollars.

9 (b) Any person violating the provisions of sections thirty-
10 one or thirty-two of this article is guilty of a misdemeanor and,
11 upon conviction thereof, shall be fined not more than one
12 hundred dollars, or confined in the county or regional jail for
13 not more than ten days, or both; upon a second conviction
14 within one year thereafter, shall be fined not more than two
15 hundred dollars, or confined in the county or regional jail for
16 not more than twenty days, or both; and upon a third or subse-
17 quent conviction, shall be fined not more than five hundred
18 dollars, or confined in the county or regional jail not more than
19 six months, or both.

§17C-15-36a. Sun screening devices; penalty.

1 (a) No person may operate a motor vehicle that is registered
2 or required to be registered in the state on any public highway,
3 road or street that has a sun screening device on the windshield,
4 the front side wings and side windows adjacent to the right and
5 left of the driver and windows adjacent to the rear of the driver
6 that do not meet the requirements of this section.

7 (b) A sun screening device when used in conjunction with
8 the windshield must be nonreflective and may not be red,
9 yellow or amber in color. A sun screening device may be used
10 only along the top of the windshield and may not extend
11 downward beyond the ASI line or more than five inches from
12 the top of the windshield whichever is closer to the top of the
13 windshield.

14 (c) A sun screening device when used in conjunction with
15 the automotive safety glazing materials of the side wings or
16 side windows located at the immediate right and left of the
17 driver shall be a nonreflective type with reflectivity of not more
18 than twenty percent and have a light transmission of not less
19 than thirty-five percent. The side windows behind the driver
20 and the rear most windows may have a sun screening device

21 that is designed to be used on automotive safety glazing
22 materials that has a light transmission of not less than
23 thirty-five percent and a reflectivity of not more than twenty
24 percent. If a sun screening device is used on glazing behind the
25 driver, one right and one left outside rear view mirror is
26 required.

27 (d) Each manufacturer shall:

28 (1) Certify to the West Virginia state police and division of
29 motor vehicles that a sun screening device used by it is in
30 compliance with the reflectivity and transmittance requirements
31 of this section;

32 (2) Provide a label not to exceed one and one-half square
33 inches in size, with a means for the permanent and legible
34 installations between the sun screening material and each
35 glazing surface to which it is applied that contains the manufac-
36 turer's name and its percentage of light transmission; and

37 (3) Include instructions with the product or material for
38 proper installation, including the affixing of the label specified
39 in this section. The labeling or marking must be placed in the
40 left lower corner of each glazing surface when facing the
41 vehicle from the outside.

42 (e) No person may:

43 (1) Offer for sale or for use any sun screening product or
44 material for motor vehicle use not in compliance with this
45 section; or

46 (2) Install any sun screening product or material on vehicles
47 intended for use on public roads without permanently affixing
48 the label specified in this section.

49 (f) The provisions of this section do not apply to a motor
50 vehicle registered in this state in the name of a person, or the
51 person's legal guardian, who has an affidavit signed by a
52 physician or an optometrist licensed to practice in this state that
53 states that the person has a physical condition that makes it
54 necessary to equip the motor vehicle with sun screening
55 material which would be of a light transmittance or luminous

56 reflectance in violation of this section. The affidavit must be in
57 the possession of the person so afflicted, or the person's legal
58 guardian, at all times while being transported in the motor
59 vehicle.

60 (g) The light transmittance requirement of this section does
61 not apply to windows behind the driver on trucks, buses,
62 trailers, mobile homes and multipurpose passenger vehicles.

63 (h) As used in this section:

64 (1) "Bus" means a motor vehicle with motive power, except
65 a trailer, designed for carrying more than ten persons.

66 (2) "Light transmission" means the ratio of the amount of
67 total light to pass through a product or material to the amount
68 of the total light falling on the product or material.

69 (3) "Luminous reflectants" means the ratio of the amount
70 of total light that is reflected outward by the product or material
71 to the amount of the total light falling on the product or
72 materials.

73 (4) "Manufacturer" means any person engaged in the
74 manufacturing or assembling of sun screening products or
75 materials designed to be used in conjunction with vehicle
76 glazing materials for the purpose of reducing the effects of the
77 sun.

78 (5) "Motor homes" means vehicular units designed to
79 provide temporary living quarters built into and an integral part
80 of or permanently attached to a self-propelled motor vehicle
81 chassis.

82 (6) "Multipurpose passenger vehicle" means a motor
83 vehicle with motive power, except a trailer, designed to carry
84 ten persons or less which is constructed either on a truck chassis
85 or with special features for occasional off-road operation.

86 (7) "Nonreflective" means a product or material designed
87 to absorb light rather than to reflect it.

88 (8) "Passenger car" means a motor vehicle with motive
89 power, except a multipurpose passenger vehicle, motorcycle or
90 trailer, designed for carrying ten persons or less.

91 (9) "Sun screening device" means film material or device
92 that is designed to be used in conjunction with motor vehicle
93 safety glazing materials for reducing the effects of the sun.

94 (10) "Truck" means a motor vehicle with motive power,
95 except a trailer, designed primarily for the transportation of
96 property or special purpose equipment.

97 (i) Any person violating the provisions of this section is
98 guilty of a misdemeanor and, upon conviction thereof, shall be
99 fined not more than two hundred dollars.

CHAPTER 17D. MOTOR VEHICLE SAFETY RESPONSIBILITY LAW.

ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.

§17D-2A-4. Certificate of insurance.

§17D-2A-9. Criminal penalty.

§17D-2A-4. Certificate of insurance.

1 (a) All insurance carriers transacting insurance in this state
2 shall supply a certificate to the insured or to any person subject
3 to the registration provisions of article three, chapter seventeen-
4 a of this code, certifying that there is in effect a motor vehicle
5 liability policy upon such motor vehicle in accordance with the
6 provisions of article three, chapter seventeen-a of this code. The
7 certificate shall give its effective date and the effective date of
8 the policy and, unless the policy is issued to a person who is not
9 the owner of a motor vehicle, must designate by explicit
10 description, in such detail as the commissioner of the division
11 of motor vehicles shall by rule require, all motor vehicles
12 covered and all replacement vehicles of similar classification:
13 *Provided*, That on and after the first day of July, one thousand
14 nine hundred eighty-four, insurance companies shall supply a
15 certificate of insurance in duplicate for each policy term and for
16 each vehicle included in a policy, except for those listed in a
17 fleet policy. Each such certificate of insurance shall list the
18 name of the policyholder and the name of the vehicle owner if
19 different from the policyholder.

20 The certificate must specify for each vehicle listed therein,
21 that there is a minimum liability insurance coverage not less

22 than the requirements of section two, article four, chapter
23 seventeen-d of this code.

24 (b) The certificate provided pursuant to the provisions of
25 this section or other proof of insurance shall be carried by the
26 insured in the appropriate vehicle for use as proof of security,
27 and must be presented at the time of vehicle inspection as
28 required by article sixteen, chapter seventeen-c of this code.
29 Any person violating the provisions of this subsection is guilty
30 of a misdemeanor and, upon conviction thereof, shall be fined
31 not less than two hundred dollars nor more than five thousand
32 dollars; and upon a second or subsequent conviction, shall be
33 fined not less than two hundred dollars nor more than five
34 thousand dollars, or confined in the county or regional jail for
35 not less than fifteen days nor more than one year, or both:
36 *Provided*, That an insured shall not be guilty of a violation of
37 this subsection (b) if he or she furnishes proof that such
38 insurance was in effect within seven days of being cited for not
39 carrying such certificate or other proof in such vehicle.

40 (c) As used in this section, proof of insurance means a
41 certificate of insurance, an insurance policy, a mechanically
42 reproduced copy of an insurance policy, a certificate of self-
43 insurance, or a copy of the current registration issued to a motor
44 carrier by the public service commission: (1) Through the
45 single state registration system established pursuant to section
46 fourteen, article six-a, chapter twenty-four-a of this code; or (2)
47 pursuant to the provisions of section four, article six, chapter
48 twenty-four-a of this code.

§17D-2A-9. Criminal penalty.

1 In addition to any administrative penalty provided for
2 violation of any provision of this article, any person who
3 violates any provision of this article for which another penalty
4 is not provided in this article is guilty of a misdemeanor and,
5 upon conviction thereof, shall be fined not less than two
6 hundred dollars nor more than five thousand dollars, or con-
7 fined in the county or regional jail not less than fifteen days nor
8 more than one year, or both.

9 The arrest procedures authorized in section four, article
10 nineteen, chapter seventeen-c of this code shall apply to the
11 enforcement of the provisions of this article.

CHAPTER 20. NATURAL RESOURCES.

Article

2. Wildlife Resources.

7. Law Enforcement, Motorboating, Litter.

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-31. Size and form of license and tag; contents; unlawful to alter licenses or permits; penalty.

1 (a) The size, content and form of all licenses, tags, and
2 permits shall be prescribed by the director. The information
3 which a licensee is required to furnish shall be placed upon the
4 license by the license issuing authority before delivery of such
5 license to the licensee.

6 (b) It shall be unlawful for any person to alter, mutilate, or
7 deface any license, tag, or permit, or the entries thereon, for the
8 purpose of evading the provisions of this chapter.

9 Any person violating the provisions of this subsection is
10 guilty of a misdemeanor and, upon conviction thereof, shall be
11 fined not less than twenty dollars nor more than three hundred
12 dollars; and upon a second and subsequent conviction thereof,
13 shall be fined not less than twenty dollars nor more than three
14 hundred dollars, or confined in the county or regional jail not
15 less than ten nor more than one hundred days, or both.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-26. Unlawful disposal of litter; civil and criminal penalty; litter control fund; evidence; notice violations; litter receptacle placement; penalty; duty to enforce violations.

1 (a) (1) Any person who places, deposits, dumps or throws
2 or causes to be placed, deposited, dumped or thrown any litter
3 as defined in section twenty-four of this article, in or upon any
4 public or private highway, road, street or alley, or upon any
5 private property without the consent of the owner, or in or upon

6 any public park or other public property other than in such
7 place as may be set aside for such purpose by the governing
8 body having charge thereof, is guilty of a misdemeanor and,
9 upon his or her first conviction, shall be fined not less than fifty
10 dollars nor more than five hundred dollars: *Provided*, That a
11 person shall not be held responsible for the actions of animals
12 under their direct control. At the request of the defendant or in
13 the discretion of the court, the court may sentence the defendant
14 to pick up and remove from any public highway, road, street,
15 alley or any other public park or public property as designated
16 by the court, any and all litter, garbage, refuse, trash, cans,
17 bottles, papers, ashes, carcass of any dead animal or any part
18 thereof, offal or any other offensive or unsightly matter placed,
19 deposited, dumped or thrown contrary to the provisions of this
20 section by anyone prior to the date of such conviction. For the
21 first offense, the alternative sentence of litter pickup shall be
22 not less than eight hours nor more than sixteen hours in lieu of
23 a fine. For purposes of this subdivision, the term "court"
24 includes circuit, magistrate and municipal courts.

25 (2) Upon his or her second conviction, such person shall be
26 fined not less than two hundred fifty dollars nor more than one
27 thousand dollars: *Provided*, That a person shall not be held
28 responsible for the actions of animals under their direct control.
29 At the request of the defendant or in the discretion of the court,
30 the court may sentence the defendant to pick up and remove
31 from any public highway, road, street, alley or any other public
32 park or public property as designated by the court, any and all
33 litter, garbage, refuse, trash, cans, bottles, papers, ashes, carcass
34 of any dead animal or any part thereof, offal or any other
35 offensive or unsightly matter placed, deposited, dumped or
36 thrown contrary to the provisions of this section by anyone
37 prior to the date of such conviction. For the second offense, the
38 alternative sentence of litter pickup shall be not less than
39 sixteen hours nor more than thirty-two hours in lieu of a fine.
40 For purposes of this subdivision, the term "court" shall include
41 circuit and magistrate courts.

42 (3) Upon such person's third and successive conviction, he
43 or she shall be fined not less than five hundred dollars nor more

44 than two thousand dollars and confined in the county or
45 regional jail not less than forty-eight hours nor more than one
46 year: *Provided*, That a person shall not be held responsible for
47 the actions of animals under their direct control. At the request
48 of the defendant or in the discretion of the court, the court may
49 sentence the defendant to pick up and remove from any public
50 highway, road, street, alley or any other public park or public
51 property as designated by the court, any and all litter, garbage,
52 refuse, trash, cans, bottles, papers, ashes, carcass of any dead
53 animal or any part thereof, offal or any other offensive or
54 unsightly matter placed, deposited, dumped or thrown contrary
55 to the provisions of this section by anyone prior to the date of
56 such conviction. Upon a third conviction, the alternative
57 sentence of litter pickup shall be not less than thirty-two hours
58 nor more than sixty-four hours in lieu of such fine or incarceration,
59 but not both. For purposes of this subdivision, the term
60 "court" includes circuit and magistrate courts.

61 (4) The alternative sentence of litter pickup herein set forth
62 shall be verified by the conservation officers from the division
63 of natural resources or environmental inspectors from the
64 division of environmental protection or a regional engineering
65 technician from the division of environmental protection
66 pollution prevention and open dumps program (PPOD) of the
67 county in which the offense occurred. Any defendant receiving
68 the herein specified alternative sentence of litter pickup shall
69 provide within a time to be set by the court written acknowledgment
70 from said conservation officers or environmental officers
71 that the sentence has been completed.

72 (5) Any person who has been found by the court to have
73 willfully failed to comply with the terms of an alternative
74 sentence imposed by the court pursuant to this section is subject
75 at the discretion of the court to up to twice the original penalty
76 provisions available to the court at the time of conviction.

77 (6) If any litter is thrown or cast from a motor vehicle or
78 boat, such action is prima facie evidence that the driver of such
79 motor vehicle or boat intended to violate the provisions of this
80 section. If any litter is dumped or discharged from a motor

81 vehicle or boat, such action is prima facie evidence that the
82 owner and driver of such motor vehicle or boat intended to
83 violate the provisions of this section.

84 (b) Any litter found on any public or private property with
85 any indication of ownership on it will be evidence creating a
86 rebuttable inference it was deposited improperly by the person
87 whose identity is indicated, and any person who improperly
88 disposes of litter is subject to either a civil fine of up to five
89 hundred dollars for such litter or required to pay the costs of
90 removal of such litter if the removal of such litter is required to
91 be done by the division, at the discretion of the director. All
92 such fines and costs shall be deposited to the litter control fund:
93 *Provided*, That no inference shall be drawn solely from the
94 presence of any logo, trademark, trade name or other similar
95 mass reproduced identifying character appearing on litter found.

96 (c) Every person who is convicted of or pleads guilty to
97 disposing of litter in violation of subsection (a) of this section
98 shall pay the sum of not less than fifty dollars nor more than
99 five hundred dollars as costs for clean-up, investigation and
100 prosecution in such case, in addition to any other court costs
101 that the court is otherwise required by law to impose upon such
102 convicted person.

103 The clerk of the circuit court, magistrate court or municipal
104 court wherein such additional costs are imposed shall, on or
105 before the last day of each month, transmit all such costs
106 received under this subsection to the state treasurer for deposit
107 in the state treasury to the credit of a special revenue fund to be
108 known as the litter control fund which is hereby continued.
109 Expenditures for purposes set forth in this section are not
110 authorized from collections but are to be made only in accord-
111 dance with appropriation and in accordance with the provisions
112 of article three, chapter twelve of this code and upon fulfillment
113 of the provisions set forth in article two, chapter five-a of this
114 code: *Provided*, That for the fiscal year ending the thirtieth day
115 of June, one thousand nine hundred ninety-three, expenditures
116 shall be authorized from collections. Amounts collected which
117 are found from time to time to exceed the funds needed for the

118 purposes set forth in this article may be transferred to other
119 accounts or funds and redesignated for other purposes by
120 appropriation of the Legislature.

121 (d) (1) The commissioner of the division of motor vehicles,
122 upon registering a motor vehicle or issuing an operator's or
123 chauffeur's license, shall issue to the owner or licensee, as the
124 case may be, a copy of subsection (a) of this section.

125 (2) The commissioner of the division of highways shall
126 cause appropriate signs to be placed at the state boundary on
127 each primary and secondary road, and at other locations
128 throughout the state, informing those entering the state of the
129 maximum penalty provided for disposing of litter in violation
130 of subsection (a) of this section.

131 (e) Any state agency or political subdivision that owns,
132 operates or otherwise controls any public area as may be
133 designated by the director by rule promulgated pursuant to
134 subdivision (8), subsection (a), section twenty-five of this
135 article, shall procure and place litter receptacles at its own
136 expense upon its premises and shall remove and dispose of litter
137 collected in such litter receptacles. After receiving two written
138 warnings from any law-enforcement officer or officers to
139 comply with this subsection or the said rules of the director, any
140 person who fails to place and maintain such litter receptacles
141 upon his or her premises in violation of this subsection or the
142 rules of the director shall be fined fifteen dollars per day of
143 such violation.

144 (f) No portion of this section shall be construed to restrict
145 a private owner in the use of the owner's own private property
146 in any manner otherwise authorized by law.

147 (g) Any law-enforcement officer who shall observe a
148 person violating the provisions of this section has a mandatory
149 duty to arrest or otherwise prosecute the violator to the limits
150 provided herein. The West Virginia division of highways shall
151 investigate and cause to be prosecuted violations of this section
152 occurring upon the highways of the state as the term "high-
153 ways" is defined in chapter seventeen of this code.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-9. Intoxication or drinking in public places; illegal possession of alcoholic liquor; arrests by sheriffs or their deputies for violation in their presence; penalties.

1 (a) A person shall not:

2 (1) Appear in a public place in an intoxicated condition;

3 (2) Drink alcoholic liquor in a public place;

4 (3) Drink alcoholic liquor in a motor vehicle on any
5 highway, street, alley or in a public garage;

6 (4) Tender a drink of alcoholic liquor to another person in
7 a public place;

8 (5) Possess alcoholic liquor in the amount in excess of ten
9 gallons, in containers not bearing stamps or seals of the
10 commissioner, without having first obtained written authority
11 from the said commissioner therefor; or

12 (6) Possess any alcoholic liquor which was manufactured
13 or acquired in violation of the provisions of this chapter.

14 (b) Any law-enforcement officer may arrest without a
15 warrant and take the following actions against a person who, in
16 his or her presence, violates subdivision (1) of subsection (a) of
17 this section: (1) If there is some nonintoxicated person who will
18 accept responsibility for the intoxicated person, the officer may
19 issue the intoxicated person a citation specifying a date for
20 appearance before a judicial officer and release him or her to
21 the custody of the individual accepting responsibility: *Provided,*
22 That the issuance of a citation shall be used whenever feasible;
23 (2) if it does not impose an undue burden on the officer, he or
24 she may, after issuance of such a citation, transport the individ-
25 ual to the individual's present residence or arrange for such
26 transportation; (3) if the individual is incapacitated or the
27 alternatives provided in subdivisions (1) and (2) of this subsection
28 are not possible, the officer shall transport or arrange for
29 transportation to the appropriate judicial officer as defined by

30 section seventeen, article eleven, chapter twenty-seven of this
31 code; or (4) if the individual is incapacitated and, in the law-
32 enforcement officer's judgment, is in need of acute medical
33 attention, that officer shall arrange for transportation by
34 ambulance or otherwise to a hospital emergency room. The
35 officer shall accompany the individual until he or she is
36 discharged from the emergency room or admitted to the
37 hospital. If the individual is released from the emergency room,
38 the officer may proceed as described in subdivisions (1), (2)
39 and (3) of this subsection. If the individual is admitted to the
40 hospital, the officer shall issue a citation to the individual
41 specifying a date for appearance before a judicial officer.

42 (c) Upon presentment before the proper judicial officer, the
43 law-enforcement officer shall serve as the chief complaining
44 witness. The judicial officer must make a finding that there is
45 probative evidence that the individual may be guilty of the
46 charge of public intoxication. If such evidence is not presented,
47 the charge shall be dismissed and the individual released. If
48 sufficient evidence is presented, the judicial officer shall issue
49 a warrant and establish bail or issue a summons to the individ-
50 ual. Once a warrant or summons has been issued, the following
51 actions may be taken: (1) If the individual is no longer incapacitated,
52 he or she may be released; (2) if the individual is still
53 incapacitated but a nonintoxicated person is available to accept
54 responsibility for him or her, he or she may be released to the
55 responsible person; or (3) if the individual is still incapacitated
56 and no responsible person is available, the judicial officer shall
57 proceed under the provisions of article five or six-a, chapter
58 twenty-seven of this code.

59 (d) Any law-enforcement officer is hereby authorized and
60 empowered to arrest and hold in custody, without a warrant,
61 until complaint may be made before a judicial officer and a
62 warrant or summons issued, any person who in the presence of
63 the law-enforcement officer violates any one or more of
64 subdivisions (1) through (6), subsection (a) of this section:
65 *Provided*, That the law-enforcement officer may use reasonable
66 force to prevent harm to himself or herself, the individual
67 arrested or others in carrying out the provisions of this section.

68 (e) Any person who violates subdivision (1), subsection (a)
69 of this section shall be guilty of a misdemeanor and, upon
70 conviction thereof, shall be sentenced by a judicial officer in
71 accordance with the following options: (1) Upon first offense,
72 a fine of not less than five dollars nor more than one hundred
73 dollars. If the individual, prior to conviction, agrees to volun-
74 tarily attend an alcohol education program of not more than six
75 hours duration at the nearest community mental health —
76 mental retardation center, the judicial officer may delay
77 sentencing until the program is completed and upon completion
78 may dismiss the charges; (2) upon conviction for a second
79 offense, a fine of not less than five dollars nor more than one
80 hundred dollars and not more than sixty days in the county or
81 regional jail or completion of not less than five hours of
82 alcoholism counseling at the nearest community mental health
83 — mental retardation center; (3) upon third and subsequent
84 convictions, a fine of not less than five dollars nor more than
85 one hundred dollars and not less than five nor more than sixty
86 days in county or regional jail or a fine of not less than five
87 dollars nor more than one hundred dollars and completion of
88 not less than five hours of alcoholism counseling at the nearest
89 community mental health — mental retardation center: *Pro-*
90 *vided*, That three convictions for public intoxication within the
91 preceding six months shall be considered evidence of alcohol-
92 ism: *Provided, however*, That for the educational counseling
93 programs described in this subsection the community mental
94 health — mental retardation center may charge each participant
95 its usual and customary fee and shall certify in writing to the
96 referring judicial officer the completion or failure to complete
97 the prescribed program for each individual.

98 (f) A person charged with a violation of subdivision (1),
99 subsection (a) of this section who is an alcoholic shall be found
100 not guilty by reason of addiction and proper disposition made
101 pursuant to articles five and six-a, chapter twenty-seven of this
102 code.

103 (g) Any person who violates subdivision (2), subsection (a)
104 of this section shall be guilty of a misdemeanor and, upon
105 conviction thereof, shall be fined not less than five nor more

106 than one hundred dollars; and upon a second or subsequent
107 conviction thereof, shall be fined not less than five nor more
108 than one hundred dollars, or confined in the county or regional
109 jail not more than sixty days, or both.

110 (h) Any person who violates subdivision (3), subsection (a)
111 of this section shall be guilty of a misdemeanor and, upon
112 conviction thereof, shall be fined not less than five nor more
113 than one hundred dollars, or confined in the county or regional
114 jail not more than sixty days, or both.

115 (i) Any person who violates subdivision (4) or (5), subsec-
116 tion (a) of this section shall be guilty of a misdemeanor and,
117 upon his or her first conviction, shall be fined not less than one
118 hundred dollars nor more than five hundred dollars; and upon
119 conviction of second or subsequent offense, he or she shall be
120 guilty of a felony and shall be confined in the penitentiary of
121 this state for a period of not less than one year nor more than
122 three years.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-39a. Making, issuing, etc., worthless checks; penalty.

1 (a) It shall be unlawful for any person, firm or corporation
2 to make, draw, issue, utter or deliver any check, draft or order
3 for the payment of money or its equivalent upon any bank or
4 other depository, knowing or having reason to know there is not
5 sufficient funds on deposit in or credit with such bank or other
6 depository with which to pay the same upon presentation. The
7 making, drawing, issuing, uttering or delivering of any such
8 check, draft or order, for or on behalf of any corporation, or its
9 name, by any officer or agent of such corporation, shall subject
10 such officer or agent to the penalty of this section to the same
11 extent as though such check, draft or order was his or her own
12 personal act.

13 (b) This section shall not apply to any such check, draft or
14 order when the payee or holder knows or has been expressly
15 notified prior to the acceptance of same or has reason to believe
16 that the drawer did not have on deposit or to his or her credit

17 with the drawee sufficient funds to insure payment as aforesaid,
18 nor shall this section apply to any postdated check, draft or
19 order. This section shall not apply when such insufficiency of
20 funds or credit is caused by any adjustment to the drawer's
21 account by the bank or other depository without notice to the
22 drawer or is caused by the dishonoring of any check, draft or
23 order deposited in the account unless there is knowledge or
24 reason to believe that such check, draft or order would be so
25 dishonored.

26 (c) Any person who shall violate the provisions of this
27 section shall be guilty of a misdemeanor and, upon conviction
28 thereof, shall be fined not more than one hundred dollars; and
29 upon a third or subsequent conviction thereof, shall be fined not
30 more than one hundred dollars, or confined in the county or
31 regional jail not more than ten days, or both.

CHAPTER 181

(Com. Sub. for S. B. 355 — By Senators Ross and Sharpe)

[Passed March 9, 1999; in effect July 1, 1999. Approved by the Governor.]

AN ACT to amend and reenact section two, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article six-b of said chapter, all relating to eliminating two special revenue accounts maintained by the division of motor vehicles; and allowing assessors to retain the entire fee for farm-use exemption certificates.

Be it enacted by the Legislature of West Virginia:

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

Article

3. Original And Renewal of Registration; Issuance of Certificates of Title.
6B. License Services.

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.**§17A-3-2. Every motor vehicle, etc., subject to registration and certificate of title provisions; exceptions.**

1 (a) Every motor vehicle, trailer, semitrailer, pole trailer and
2 recreational vehicle when driven or moved upon a highway is
3 subject to the registration and certificate of title provisions of
4 this chapter except:

5 (1) Any vehicle driven or moved upon a highway in
6 conformance with the provisions of this chapter relating to
7 manufacturers, transporters, dealers, lienholders or nonresidents
8 or under a temporary registration permit issued by the division
9 as authorized under this chapter;

10 (2) Any implement of husbandry upon which is securely
11 attached a machine for spraying fruit trees and plants of the
12 owner or lessee or for any other implement of husbandry which
13 is used exclusively for agricultural or horticultural purposes on
14 lands owned or leased by the owner of the implement and
15 which is not operated on or over any public highway of this
16 state for any other purpose other than for the purpose of
17 operating it across a highway or along a highway other than an
18 expressway as designated by the commissioner of the division
19 of highways from one point of the owner's land to another part
20 of the owner's land, irrespective of whether or not the tracts
21 adjoin: *Provided*, That the distance between the points may not
22 exceed twenty-five miles, or for the purpose of taking it or other
23 fixtures attached to the implement, to and from a repair shop for
24 repairs. The exemption in this subdivision from registration and
25 license requirements also applies to any vehicle described in
26 this subsection or to any farm trailer owned by the owner or
27 lessee of the farm on which the trailer is used, when the trailer
28 is used by the owner of the trailer for the purpose of moving
29 farm produce and livestock from the farm along a public
30 highway for a distance not to exceed twenty-five miles to a

31 storage house or packing plant, when the use is a seasonal
32 operation:

33 (A) The exemptions contained in this section also apply to
34 farm machinery and tractors: *Provided*, That the machinery and
35 tractors may use the highways in going from one tract of land
36 to another tract of land regardless of whether the land is owned
37 by the same or different persons;

38 (B) Any vehicle exempted under this subsection from the
39 requirements of annual registration certificate and license plates
40 and fees for the registration certificate and license plate may not
41 use the highways between sunset and sunrise;

42 (C) Any vehicle exempted under this section from the
43 requirements of annual registration certificate and license plates
44 may use the highways as provided in this section whether the
45 exempt vehicle is self-propelled, towed by another exempt
46 vehicle or towed by another vehicle required to be registered;

47 (D) Any vehicle used as an implement of husbandry exempt
48 under this section shall have the words "farm use" affixed to
49 both sides of the implement in ten inch letters. Any vehicle
50 which would be subject to registration as a Class A or B vehicle
51 if not exempted by this section shall display a farm-use
52 exemption certificate on the lower driver's side of the wind-
53 shield:

54 (i) The farm-use exemption certificate shall be provided by
55 the commissioner and shall be issued annually by the assessor
56 of the applicant's county of residence. The assessor shall issue
57 a farm-use exemption certificate to the applicant upon his or her
58 determination pursuant to an examination of the property books
59 or documentation provided by the applicant that the vehicle has
60 been properly assessed as Class I personal property. The
61 assessor shall charge a fee of two dollars for each certificate,
62 which shall be retained by the assessor;

63 (ii) A farm-use exemption certificate shall not exempt the
64 applicant from maintaining the security required by chapter
65 seventeen-d of this code on any vehicle being operated on the
66 roads or highways of this state;

67 (iii) No person charged with the offense of operating a
68 vehicle without a farm-use exemption certificate, if required
69 under this section, may be convicted of the offense if he or she
70 produces in court, or in the office of the arresting officer, a
71 valid farm-use exemption certificate for the vehicle in question
72 within five days;

73 (3) Any vehicle which is propelled exclusively by electric
74 power obtained from overhead trolley wires though not
75 operated upon rails;

76 (4) Any vehicle of a type subject to registration which is
77 owned by the government of the United States;

78 (5) Any wrecked or disabled vehicle towed by a licensed
79 wrecker or dealer on the public highways of this state;

80 (6) The following recreational vehicles are exempt from the
81 requirements of annual registration, license plates and fees,
82 unless otherwise specified by law, but are subject to the
83 certificate of title provisions of this chapter regardless of
84 highway use: Motorboats, all-terrain vehicles and snowmobiles;
85 and

86 (7) Any special mobile equipment as defined in subsection
87 (r), section one, article one of this chapter.

88 (b) Notwithstanding the provisions of subsection (a) of this
89 section:

90 (1) Mobile homes or manufactured homes are exempt from
91 the requirements of annual registration, license plates and fees;

92 (2) House trailers may be registered and licensed; and

93 (3) Factory-built homes are subject to the certificate of title
94 provisions of this chapter.

ARTICLE 6B. LICENSE SERVICES.

§17A-6B-3. Fee required for license certificate; special fund created.

1 The initial application fee for a certificate to engage in the
2 license service business is twenty-five dollars. The renewal fee
3 for the certificate is twenty-five dollars.

CHAPTER 182

(S. B. 357 — By Senators Ross, Sharpe, Snyder, Sprouse, Ball and Kessler)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, ten and twelve, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section seventeen-a; to amend and reenact section seven, article four of said chapter; to amend and reenact sections one, four, seven, eight and ten, article four-a of said chapter; to further amend said article by adding thereto a new section, designated section two-a; and to amend article six of said chapter by adding thereto a new section, designated section one-b, all relating to removing the privilege tax on vehicles sold to automobile rental businesses and imposing a daily tax of twenty-five cents to be paid by the rental businesses; allowing the use of electronic transmission and recording of vehicle registration, title and lien information among dealers, banks and the division of motor vehicles; providing that a copy of the electronic record of a certificate of title or lien is admissible as evidence; authorizing dealers to issue vehicle registration documents and plates after collecting all fees and taxes; setting fees for recordation of lien releases; providing criminal penalties for an agent of the division of motor vehicles who issues vehicle registration without first performing certain duties; providing for issuance of liens, titles and registration in electronic format; authorizing service providers to administer electronic exchange of information, documents and fees and to provide forms and materials; providing for revocation of authority; authorizing the motor vehicle dealer advisory board to establish fees charged by motor vehicle dealers; requiring bond; and providing that when a vehicle is subject to an electronic lien, the certificate of title shall be considered held by the lienholder for certain purposes.

Be it enacted by the Legislature of West Virginia:

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

Article

3. Original and Renewal of Registration; Issuance of Certificates of Title.
4. Transfers of Title or Interest.
- 4A. Liens and Encumbrances on Vehicles to be Shown on Certificate of Title, Notice to Creditors and Purchasers.
6. Licensing of Dealers, Wreckers or Dismantlers; Special Plates; Temporary Plates or Markers.

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; penalty for false swearing.
- §17A-3-10. Division to issue registration card; duplicate to county assessor.
- §17A-3-12. Commissioner to issue certificate of title; signatures on certificate; certificate of title to be delivered to owner or lienor.
- §17A-3-17a. Application for registration; certain motor vehicle dealers authorized to issue certificates of registration for certain vehicles.

***§17A-3-4. Application for certificate of title; tax for privilege of certification of title; penalty for false swearing.**

- 1 (a) Certificates of registration of any vehicle or 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

* Clerk's Note: This section was also amended by SB 384 (Chapter 183), which passed prior to this act.

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 retile 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
140 titling of vehicles rented daily or monthly by West Virginia
141 businesses. A tax is imposed upon the daily payments for the
142 rental of any motor vehicle rented in West Virginia, which tax
143 is twenty-five cents for each day of the period of rental of the
144 motor vehicle. The tax shall be remitted to the division of motor
145 vehicles on a monthly basis by the lessor of the vehicle.

146 (c) Notwithstanding any provisions of this code to the
147 contrary, the owners of trailers, semitrailers, recreational
148 vehicles and other vehicles not subject to the certificate of title
149 tax prior to the enactment of this chapter are subject to the
150 privilege tax imposed by this section: *Provided*, That the
151 certification of title of any recreational vehicle owned by the
152 applicant on the thirtieth day of June, one thousand nine
153 hundred eighty-nine, is not subject to the tax imposed by this
154 section: *Provided, however*, That mobile homes, manufactured
155 homes, modular homes and similar nonmotive propelled
156 vehicles, except recreational vehicles and house trailers,

157 susceptible of being moved upon the highways but primarily
158 designed for habitation and occupancy, rather than for trans-
159 porting persons or property, or any vehicle operated on a
160 nonprofit basis and used exclusively for the transportation of
161 mentally retarded or physically handicapped children when the
162 application for certificate of registration for the vehicle is
163 accompanied by an affidavit stating that the vehicle will be
164 operated on a nonprofit basis and used exclusively for the
165 transportation of mentally retarded and physically handicapped
166 children, are not subject to the tax imposed by this section, but
167 are taxable under the provisions of articles fifteen and fifteen-a,
168 chapter eleven of this code.

169 (d) Any person making any affidavit required under any
170 provision of this section, who knowingly swears falsely, or any
171 person who counsels, advises, aids or abets another in the
172 commission of false swearing, or any person, while acting as an
173 agent of the division of motor vehicles issues a vehicle registra-
174 tion without first collecting the fees and taxes or fails to
175 perform any other duty required by this chapter to be performed
176 before a vehicle registration is issued is on the first offense
177 guilty of a misdemeanor and, upon conviction thereof, shall be
178 fined not more than five hundred dollars or be confined in the
179 county or regional jail for a period not to exceed six months or,
180 in the discretion of the court, both fined and confined. For a
181 second or any subsequent conviction within five years, that
182 person is guilty of a felony and, upon conviction thereof, shall
183 be fined not more than five thousand dollars or be imprisoned
184 in the penitentiary for not less than one year nor more than five
185 years or, in the discretion of the court, fined and imprisoned.

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

193 (f) No person may transfer, purchase or sell a factory-built
194 home without a certificate of title issued by the commissioner
195 in accordance with the provisions of this article:

196 (1) Any person who fails to provide a certificate of title
197 upon the transfer, purchase or sale of a factory-built home is
198 guilty of a misdemeanor and, upon conviction thereof, shall for
199 the first offense be fined not less than one hundred dollars nor
200 more than one thousand dollars, or be confined in the county or
201 regional jail for not more than one year or, both fined and
202 confined. For each subsequent offense, the fine may be in-
203 creased to not more than two thousand dollars, with confine-
204 ment in the county or regional jail not more than one year or,
205 both fined and confined.

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

210 (g) Notwithstanding any other provision to the contrary,
211 whenever reference is made to the application for or issuance
212 of any title or the recordation or release of any lien, it shall be
213 understood to include the application, transmission, recordation,
214 transfer of ownership and storage of information in an elec-
215 tronic format.

**§17A-3-10. Division to issue registration card; duplicate to county
assessor.**

1 The division upon registering a vehicle, or an agent of the
2 division upon collecting the required fees and taxes in accor-
3 dance with the provisions of section one-b, article six of this
4 chapter, shall issue a registration card to be delivered to the
5 owner and containing thereon the date issued, the name and
6 address of the owner, the registration number assigned to the
7 vehicle and such description of the vehicle as determined by the
8 commissioner. The division shall send a duplicate of said
9 registration card to the assessor of the county in which the
10 owner resides, or in cases of nonresidents of the state, to the
11 assessor of the county wherein the vehicle is located.

§17A-3-12. Commissioner to issue certificate of title; signatures on certificate; certificate of title to be delivered to owner or lienor.

- 1 (a) The commissioner, if satisfied that the applicant for a
2 certificate of title is the owner of such vehicle, or otherwise
3 entitled to have the same registered in the applicant's name,
4 shall issue an appropriate certificate of title in either an elec-
5 tronic or paper format. The certificate of title in an electronic
6 format shall contain all of the information required by this
7 section.
- 8 (b) The certificate of title shall contain upon the face
9 thereof the date issued, the name and address of the owner, the
10 description of the vehicle as determined by the commissioner,
11 and a statement of the owner's title and of all liens and encum-
12 brances upon the vehicle therein described and whether
13 possession is held by the owner under a lease, contract of
14 conditional sale or other like agreement, and shall bear thereon
15 the seal of the division.
- 16 (c) The certificate of title shall contain upon the reverse
17 side a space for the signature of the owner and the owner shall
18 write his or her name with pen and ink in the space upon receipt
19 of the certificate. The certificate shall also contain upon the
20 reverse side forms for assignment of title or interest and
21 warranty thereof by the owner with space for notation of liens
22 and encumbrances upon the vehicle at the time of a transfer.
- 23 (d) The commissioner, upon issuing a certificate of title,
24 shall deliver same in either an electronic or paper format to the
25 person who holds legal title to the vehicle described on the face
26 of said certificate: *Provided*, That when a certificate of title is
27 issued showing upon the face thereof a lien or encumbrance of
28 liens or encumbrances, the certificate of title shall be delivered
29 to the lienholder in either an electronic or paper format in order
30 of priority. It shall be unlawful and constitute a misdemeanor
31 for a lienor who holds a certificate of title, as hereinabove in
32 this section provided, to refuse or fail to surrender the certifi-
33 cate of title to the person legally entitled thereto within ten days
34 after the lien or encumbrance or liens or encumbrances shown
35 on the face thereof shall have been paid and satisfied.

§17A-3-17a. Application for registration; certain motor vehicle dealers authorized to issue certificates of registration for certain vehicles.

1 The division may authorize a motor vehicle dealer as
2 defined and licensed in accordance with the provisions of
3 article six of this chapter to issue or transfer motor vehicle
4 registration plates upon the sale of any motor vehicle in
5 compliance with the provisions of section one-b, article six of
6 this chapter. The division shall provide to an authorized motor
7 vehicle dealer the necessary supplies, registration plates,
8 registration decals and instructions necessary for the issuance
9 and transfer of motor vehicle registrations. The division may
10 authorize a service provider to distribute the necessary supplies.

ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.

§17A-4-7. Release by lienholder to owner.

1 A person holding a lien or encumbrance as shown upon a
2 certificate of title upon a vehicle may release the lien or
3 encumbrance or assign his or her interest to the owner without
4 affecting the registration of the vehicle. The division, upon
5 receiving an electronic acknowledgment of a release of lien
6 from the lienholder or a certificate of title upon which a
7 lienholder has released or assigned his or her interest to the
8 owner or upon receipt of a certificate of title not so endorsed
9 but accompanied by a legal release from a lienholder of this
10 interest in or to a vehicle, shall issue a new certificate of title as
11 upon an original application. The division, upon receiving an
12 electronic acknowledgment of a release of lien from the
13 lienholder shall issue, without further application or fee a new
14 certificate of title free of any lien or encumbrance to the vehicle
15 owner to the address shown in the division's records.

ARTICLE 4A. LIENS AND ENCUMBRANCES ON VEHICLES TO BE SHOWN ON CERTIFICATE OF TITLE, NOTICE TO CREDITORS AND PURCHASERS.

§17A-4A-1. Certificate to show liens or encumbrances.

§17A-4A-2a. Electronic transfer of liens.

§17A-4A-4. Deferred purchase money lien or encumbrance may be filed within sixty days after purchase; effective date of lien; dealer to record lien; fees.

§17A-4A-7. Release of lien or encumbrance shown on certificate of title.

§17A-4A-8. Failure to execute release or to surrender certificate when lien paid.

§17A-4A-10. Fee for recording and release of lien.

§17A-4A-1. Certificate to show liens or encumbrances.

1 The division upon receiving an application for a certificate
2 of title to a vehicle, trailer, semitrailer, pole trailer, factory-built
3 home or recreational vehicle for which a certificate of title is
4 required under article three of this chapter, all of which are
5 hereinafter in this article referred to as vehicles, showing liens
6 or encumbrances upon the vehicle, shall, upon issuing to the
7 owner thereof a certificate of title therefor, show upon the face
8 of the certificate of title all liens or encumbrances disclosed by
9 the application. All liens or encumbrances shall be shown in the
10 order of their priority being according to the information
11 contained in the application. When an application shows liens
12 and encumbrances, the information as evidence of the lien in
13 connection therewith as the division may consider necessary
14 shall also be furnished. The information shall include the name
15 and address of the lienholder, the nature and kind of the lien,
16 the date thereof and the amount thereby secured. However, only
17 the name and address of the lienholder will be endorsed on the
18 title certificate. Upon issuing the certificate, the division shall
19 thereupon send or deliver it by either paper or electronic means
20 to the holder of the first lien.

§17A-4A-2a. Electronic transfer of liens.

1 (a) Notwithstanding any requirement in this chapter that a
2 lien on a motor vehicle shall be noted on the face of the
3 certificate of title, if there are one or more liens or encumbrance
4 on a vehicle, trailer, semitrailer, pole trailer, factory-built home
5 or recreational vehicle, the division may electronically transmit
6 the lien to the first lienholder and notify the first lienholder of
7 any additional liens. Subsequent lien satisfactions may be
8 electronically transmitted to the division and shall include the
9 name and address of the person satisfying the lien and any other
10 information required by the division as a condition of partici-
11 pating in the electronic lien information exchange program.

12 (b) The division may enter into agreements with a service
13 provider or providers to administer the electronic exchange of
14 lien information between dealers, financial institutions and the
15 division. For the purposes of this section the term financial
16 institutions shall have the same meaning as defined in section
17 ten-b, article six of this chapter.

18 (c) When electronic transmission of liens and lien satisfac-
19 tion is used, a hard copy certificate of title need not be issued
20 until the last lien is satisfied and a clear hard copy certificate of
21 title is issued to the owner of the vehicle. When a vehicle is
22 subject to an electronic lien, the certificate of title for the
23 vehicle shall be considered to be physically held by the lien-
24 holder for the purpose of compliance with state and federal
25 odometer disclosure requirements and for any other require-
26 ment of this code. A duly certified copy of the division's
27 electronic record of the lien shall be admissible in any civil,
28 criminal or administrative proceeding in this state as evidence
29 of the existence of the lien.

30 (d) For the purposes of this chapter, whenever reference is
31 made by this code to the physical production of a certificate of
32 title as a paper document, or reference to the completion of
33 information related to recording a lien as a paper document, the
34 reference shall be understood to also include the transmission
35 and recordation of the information in an electronic format.

**§17A-4A-4. Deferred purchase money lien or encumbrance may
be filed within sixty days after purchase; effective
date of lien; dealer to record lien; fees.**

1 (a) A deferred purchase money lien or encumbrance upon
2 any motor vehicle may be perfected by recording in either
3 electronic or paper format the name and address of the
4 lienholder upon the face of the certificate of title for the motor
5 vehicle. If an application for a certificate of title is filed with
6 the division of motor vehicles within sixty days after the date of
7 purchase of the motor vehicle, the effective date of the lien or
8 encumbrance shall be the date the lien or encumbrance was
9 created. If an application for a certificate of title is not filed
10 within the sixty-day period, the lien shall be perfected from the
11 date it was filed with the division of motor vehicles.

12 (b) In all transactions involving a deferred purchase money
13 lien or encumbrance upon a motor vehicle, the motor vehicle
14 dealer shall collect and remit to the division of motor vehicles
15 the title, tax and registration fees required under section four,
16 article three of this chapter and file and record with the division
17 of motor vehicles any lien created as a result of the transaction:
18 *Provided*, That a motor vehicle dealer may remit the title, tax
19 and registration fees through any license service that is licensed
20 by the division of motor vehicles.

21 (c) No fee may be charged by a motor vehicle dealer for its
22 services required under this section except that fee authorized
23 by section one-b, article six of this chapter, or subdivision (6),
24 subsection (a), section one hundred nine, article three, chapter
25 forty-six-a of this code.

**§17A-4A-7. Release of lien or encumbrance shown on certificate
of title.**

1 An owner upon securing the release of any lien or encum-
2 brance upon a vehicle shown upon the certificate of title issued
3 therefor may exhibit the document evidencing such release,
4 signed by the person or persons making the release and ac-
5 knowledged before a notary public or someone authorized by
6 the laws of this state to take acknowledgments of deeds, and
7 this document together with the certificate of title shall be
8 returned to the division; or the lienholder may release the lien
9 by endorsing across the lien in his or her favor on the face of
10 the title or closely adjacent thereto the following words or
11 words of similar effect or purport: "This lien, this day fully
12 paid, satisfied and released, this day of , " and duly signing
13 and executing said endorsement and acknowledging the same
14 before a notary public and having the notary public execute a
15 certificate of the acknowledgment in the form required for
16 releasing deeds of trust in this state; or when it is impossible to
17 secure either such release from the beneficiary or holder of the
18 lien, the owner may exhibit to the division whatever evidence
19 may be available showing that the debt secured has been
20 satisfied, together with a statement by the owner under oath that
21 the debt has been paid and the certificate of title to such vehicle.

22 The division when satisfied as to the genuineness and regularity
23 thereof shall issue to the owner either a new certificate of title
24 in proper form or an endorsement or rider showing the release
25 of the lien or encumbrance which the division shall attach to the
26 outstanding certificate of title. For the purposes of this article,
27 the term release shall mean either an electronic or paper
28 transaction format.

**§17A-4A-8. Failure to execute release or to surrender certificate
when lien paid.**

1 It shall be unlawful and constitute a misdemeanor for a
2 lienor who holds a certificate of title either electronically or in
3 a paper format as provided in this article to refuse or fail to
4 execute a release as provided for in the next preceding section,
5 or to refuse or fail to surrender the certificate of title to the
6 person legally entitled thereto within fifteen days after the lien
7 shall have been paid and satisfied.

§17A-4A-10. Fee for recording and release of lien.

1 The division of motor vehicles is hereby authorized to
2 charge a fee of five dollars for the recording of any lien either
3 in an electronic or paper format created by the voluntary act of
4 the owner and endorsing it upon the title certificate issued
5 pursuant to this article, and the division of motor vehicles is
6 hereby authorized to charge a fee of fifty cents for recordation
7 of any release of a lien created by the voluntary act of the
8 owner: *Provided*, That no charge shall be made for the endorse-
9 ment and recordation of liens or releases thereof as provided
10 under section nine of this article. No charge shall be made for
11 the issuance of a title to the owner of a vehicle upon the receipt
12 of an electronic release of the final lien.

**ARTICLE 6. LICENSING OF DEALERS, WRECKERS OR DISMANTLERS;
SPECIAL PLATES; TEMPORARY PLATES OR MARK-
ERS.**

§17A-6-1b. Dealers authorized to issue motor vehicle registration.

1 (a) Notwithstanding any other provision in this chapter, the
2 division may allow a licensed motor vehicle dealer as defined
3 in section one of this article, authority to issue or transfer motor

4 vehicle registrations for vehicles sold by the dealer. The
5 authority to issue and transfer motor vehicle registrations shall
6 be contingent upon the dealer collecting all fees and taxes
7 required for the titling and registration of vehicles, receiving
8 proof of insurance as described in subsection (e), section three,
9 article three of this chapter, and if applicable receiving the
10 receipt showing full payment of personal property taxes in
11 accordance with section three-a, article three of this chapter.

12 (b) Authorization to issue and transfer motor vehicle
13 registrations shall be contingent on the dealer completing an
14 application provided by the division and meeting all criteria
15 established by the division. The authority shall also be contin-
16 gent upon the dealer agreeing to participate fully in a computer-
17 ized system of electronic submission of registration, titling and
18 lien information and all fees and taxes required under the
19 provisions of this chapter, either directly to the division or
20 through an authorized service provider selected and approved
21 by the division. Any transaction conducted under the provisions
22 of this section shall be conditional pending the determination by
23 the division that the application for title, registration and lien
24 recordation is complete, accurate and in accordance with the
25 provisions of this chapter.

26 (c) The authority to participate in the electronic transmis-
27 sion of title, registration and lien information shall be immedi-
28 ately revoked upon revocation or cancellation of a dealer's
29 license issued under the provisions of this chapter: *Provided,*
30 That the authority to issue and transfer motor vehicle registra-
31 tions may be revoked by the division immediately and sepa-
32 rately from any other action against the dealer's license if the
33 division determines that the terms of the agreement or agree-
34 ments authorizing issuance, transfer or renewal of a vehicle
35 registration or the electronic transmission of information have
36 been violated.

37 (d) A fee established by the motor vehicle dealer advisory
38 board may be charged by a motor vehicle dealer for its services
39 required under this section.

40 (e) Only motor vehicle registrations of a type specified by
41 the division may be issued, transferred or renewed by the
42 authorized dealer.

43 (f) All fees and taxes collected by an authorized dealer
44 under the provisions of this section shall be deposited in a
45 financial institution designated by the division or the service
46 provider in the manner prescribed by the division.

47 (g) The division may authorize a service provider to supply
48 an authorized dealer with the necessary forms, supplies,
49 registration plates and registration renewal decals necessary to
50 enable the authorized dealer to perform the duties and functions
51 specified in this section.

52 (1) Any service provider authorized to perform services
53 under the provisions of this section shall post a bond of the
54 applicant in the penal sum of one million dollars, in the form
55 prescribed by the commissioner, conditioned that the applicant
56 will not in the conduct of business practice any fraud which, or
57 make any fraudulent representation which, shall cause a
58 financial loss to any dealer, financial institution or agency, or
59 the state of West Virginia, with a corporate surety thereon
60 authorized to do business in this state, which bond shall be
61 effective as of the date on which the authorization to provide
62 services commences.

63 (2) The service provider is solely responsible for the
64 inventory, tracking, safety and reconciliation of all supplies,
65 registration plates, registration decals or other motor vehicle
66 credentialing items in accordance with procedures established
67 by the division and subject to audits by the division.

68 (3) The division may rescind without notice the authority
69 of a service provider to perform services when the division has
70 cause to believe that any state or federal law has been violated
71 or that the service provider is not adhering to the terms and
72 conditions of the authorization agreement.

73 (h) The service provider and the authorized dealer assume
74 full responsibility for the care, custody, control, disclosure and
75 use of any information provided by the division in order to

76 execute the duties and responsibilities required by this section.
 77 Each service provider and each authorized dealer agrees to
 78 ensure that the disclosure of information to it and its handling
 79 of information received from the division complies with all
 80 federal and state statutes and division directives governing the
 81 disclosure and protection of such information.

CHAPTER 183

(S. B. 384 — By Senator Bailey)

[Passed March 9, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing the privilege tax on vehicles sold to automobile rental businesses; and imposing a daily tax of twenty-five cents to be paid by the rental business.

Be it enacted by the Legislature of West Virginia:

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

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

***§17A-3-4. Application for certificate of title; tax for privilege of certification of title; 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 charged with the duty, unless the applicant
 5 therefor already has received, or at the same time makes
 6 application for and is granted, an official certificate of title of

* Clerk's Note: This section was also amended by SB 357 (Chapter 182), which passed subsequent to this act.

7 the vehicle. The application shall be upon a blank form to be
8 furnished by the division of motor vehicles and shall contain a
9 full description of the vehicle, which description shall contain
10 a manufacturer's serial or identification number or other
11 number as determined by the commissioner and any distin-
12 guishing marks, together with a statement of the applicant's
13 title and of any liens or encumbrances upon the vehicle, the
14 names and addresses of the holders of the liens and any other
15 information as the division of motor vehicles may require. The
16 application shall be signed and sworn to by the applicant.

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

21 (1) If the vehicle is new, the actual purchase price or
22 consideration to the purchaser of the vehicle is the value of the
23 vehicle. If the vehicle is a used or secondhand vehicle, the
24 present market value at time of transfer or purchase is the value
25 of the vehicle for the purposes of this section: *Provided*, That
26 so much of the purchase price or consideration as is represented
27 by the exchange of other vehicles on which the tax imposed by
28 this section has been paid by the purchaser shall be deducted
29 from the total actual price or consideration paid for the vehicle,
30 whether the vehicle be new or secondhand. If the vehicle is
31 acquired through gift, or by any manner whatsoever, unless
32 specifically exempted in this section, the present market value
33 of the vehicle at the time of the gift or transfer is the value of
34 the vehicle for the purposes of this section.

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

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

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

73 (5) The tax imposed by this section does not apply to
74 vehicles to be registered as Class H vehicles or Class M
75 vehicles, as defined in section one, article ten of this chapter,
76 which are used or to be used in interstate commerce. Nor does
77 the tax imposed by this section apply to the titling of Class B
78 vehicles registered at a gross weight of fifty-five thousand
79 pounds or more, or to the titling of Class C semitrailers, full
80 trailers, pole trailers and converter gear: *Provided*, That if an
81 owner of a vehicle has previously titled the vehicle at a declared

82 gross weight of fifty-five thousand pounds or more and the title
83 was issued without the payment of the tax imposed by this
84 section, then before the owner may obtain registration for the
85 vehicle at a gross weight less than fifty-five thousand pounds,
86 the owner shall surrender to the commissioner the exempted
87 registration, the exempted certificate of title, and pay the tax
88 imposed by this section based upon the current market value of
89 the vehicle: *Provided, however,* That notwithstanding the
90 provisions of section nine, article fifteen, chapter eleven of this
91 code, the exemption from tax under this section for Class B
92 vehicles in excess of fifty-five thousand pounds and Class C
93 semitrailers, full trailers, pole trailers and converter gear does
94 not subject the sale or purchase of the vehicles to the consumers
95 sales tax.

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

104 (7) The tax imposed by this section does not apply to titling
105 of vehicles by a registered dealer of this state for resale only,
106 nor does the tax imposed by this section apply to titling of
107 vehicles by this state or any political subdivision thereof, or by
108 any volunteer fire department or duly chartered rescue or
109 ambulance squad organized and incorporated under the laws of
110 the state of West Virginia as a nonprofit corporation for
111 protection of life or property. The total amount of revenue
112 collected by reason of this tax shall be paid into the state road
113 fund and expended by the commissioner of highways for
114 matching federal funds allocated for West Virginia. In addition
115 to the tax, there is a charge of five dollars for each original
116 certificate of title or duplicate certificate of title so issued:
117 *Provided,* That this state or any political subdivision of this
118 state, or any volunteer fire department, or duly chartered rescue
119 squad is exempt from payment of the charge.

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

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

128 (10) A person who has paid the tax imposed by this section
129 is not required to pay the tax a second time for the same motor
130 vehicle, but is required to pay a charge of five dollars for the
131 certificate of retitle of that motor vehicle, except that the tax
132 shall be paid by the person when the title to the vehicle has
133 been transferred either in this or another state from the person
134 to another person and transferred back to the person.

135 (11) The tax imposed by this section does not apply to
136 titling of vehicles rented daily or monthly by West Virginia
137 businesses. A tax is imposed upon the daily payments for the
138 rental of any motor vehicle rented in West Virginia, which tax
139 is twenty-five cents for each day of the period of rental of the
140 motor vehicle. The tax shall be remitted to the division of motor
141 vehicles on a monthly basis by the lessor of the vehicle.

142 (c) Notwithstanding any provisions of this code to the
143 contrary, the owners of trailers, semitrailers, recreational
144 vehicles and other vehicles not subject to the certificate of title
145 tax prior to the enactment of this chapter are subject to the
146 privilege tax imposed by this section: *Provided*, That the
147 certification of title of any recreational vehicle owned by the
148 applicant on the thirtieth day of June, one thousand nine
149 hundred eighty-nine, is not subject to the tax imposed by this
150 section: *Provided, however*, That mobile homes, manufactured
151 homes, modular homes and similar nonmotive propelled
152 vehicles, except recreational vehicles and house trailers,
153 susceptible of being moved upon the highways but primarily
154 designed for habitation and occupancy, rather than for trans-
155 porting persons or property, or any vehicle operated on a
156 nonprofit basis and used exclusively for the transportation of

157 mentally retarded or physically handicapped children when the
158 application for certificate of registration for the vehicle is
159 accompanied by an affidavit stating that the vehicle will be
160 operated on a nonprofit basis and used exclusively for the
161 transportation of mentally retarded and physically handicapped
162 children, are not subject to the tax imposed by this section, but
163 are taxable under the provisions of articles fifteen and fifteen-a,
164 chapter eleven of this code.

165 (d) Any person making any affidavit required under any
166 provision of this section, who knowingly swears falsely, or any
167 person who counsels, advises, aids or abets another in the
168 commission of false swearing is on the first offense guilty of a
169 misdemeanor and, upon conviction thereof, shall be fined not
170 more than five hundred dollars or be confined in the county or
171 regional jail for a period not to exceed six months or, in the
172 discretion of the court, both fined and confined. For a second or
173 any subsequent conviction within five years, that person is
174 guilty of a felony and, upon conviction thereof, shall be fined
175 not more than five thousand dollars or be imprisoned in the
176 penitentiary for not less than one year nor more than five years
177 or, in the discretion of the court, fined and imprisoned.

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

185 (f) No person may transfer, purchase or sell a factory-built
186 home without a certificate of title issued by the commissioner
187 in accordance with the provisions of this article:

188 (1) Any person who fails to provide a certificate of title
189 upon the transfer, purchase or sale of a factory-built home is
190 guilty of a misdemeanor and, upon conviction thereof, shall for
191 the first offense be fined not less than one hundred dollars nor
192 more than one thousand dollars, or be confined in the county or
193 regional jail for not more than one year or, both fined and

194 confined. For each subsequent offense, the fine may be in-
 195 creased to not more than two thousand dollars, with confine-
 196 ment in the county or regional jail not more than one year or,
 197 both fined and confined.

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

CHAPTER 184

(S. B. 366 — By Senators Tomblin, Mr. President, and Sprouse)
 [By Request of the Executive]

[Passed February 23, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to special registration plates; prohibiting the commissioner of motor vehicles from approving or authorizing any new special registration plates for nonprofit, charitable and educational organizations; and authorizing nonprofit, charitable and educational organizations which were previously approved for a special registration plate to continue to market plates to their members and the general public.

Be it enacted by the Legislature of West Virginia:

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

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

§17A-3-14. Registration plates generally; description of plates; issuance of special numbers and plates; registration fees; special application fees; exemptions;

commissioner to promulgate forms; suspension and nonrenewal.

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 owned by
37 the official or his or her spouse: *Provided*, That the division
38 may not issue more than two plates for each official.

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

46 (C) An annual fee of fifteen dollars shall be charged for
47 every registration plate issued pursuant to this subdivision,
48 which is in addition to all other fees required by this chapter.

49 (3) Members of the national guard forces may be issued
50 special registration plates as follows:

51 (A) Upon receipt of an application on a form prescribed by
52 the division and receipt of written evidence from the chief
53 executive officer of the army national guard or air national
54 guard, as appropriate, or the commanding officer of any United
55 States armed forces reserve unit that the applicant is a member
56 thereof, the division shall issue to any member of the national
57 guard of this state or a member of any reserve unit of the United
58 States armed forces a special registration plate designed by the
59 commissioner for any number of Class A motor vehicles owned
60 by the member.

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

67 (C) A surviving spouse may continue to use his or her
68 deceased spouse's national guard forces license plate until the

69 surviving spouse dies, remarries or does not renew the license
70 plate.

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

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

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

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

91 (5) Honorably discharged veterans may be issued special
92 registration plates as follows:

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

99 (B) A special initial application fee of ten dollars shall be
100 charged in addition to all other fees required by law. This
101 special fee is to compensate the division of motor vehicles for
102 additional costs and services required in the issuing of the
103 special registration and shall be collected by the division and

104 deposited in a special revolving fund to be used for the adminis-
105 tration of this section: *Provided*, That nothing in this section
106 may be construed to exempt any veteran from any other
107 provision of this chapter.

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

112 (6) Disabled veterans may be issued special registration
113 plates as follows:

114 (A) Upon appropriate application, there shall be issued to
115 any disabled veteran who is exempt from the payment of
116 registration fees under the provisions of this chapter a registra-
117 tion plate for a vehicle titled in the name of the qualified
118 applicant which bears the letters "DV" in red and also the
119 regular identification numerals in red.

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

124 (C) A qualified disabled veteran may obtain a second
125 disabled veteran license plate as described in this section for
126 use on a passenger vehicle titled in the name of the qualified
127 applicant. An annual fee of fifteen dollars, in addition to all
128 other fees required by this chapter, shall be charged for the
129 second plate.

130 (7) Recipients of the distinguished purple heart medal may
131 be issued special registration plates as follows:

132 (A) Upon appropriate application, there shall be issued to
133 any armed service person holding the distinguished purple heart
134 medal for persons wounded in combat a registration plate for a
135 vehicle titled in the name of the qualified applicant bearing
136 letters or numbers. The registration plate shall be designed by
137 the commissioner of motor vehicles and shall denote that those
138 individuals who are granted this special registration plate are

139 recipients of the purple heart. All letterings shall be in purple
140 where practical.

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

144 (C) A surviving spouse may continue to use his or her
145 deceased spouse's purple heart medal license plate until the
146 surviving spouse dies, remarries or does not renew the license
147 plate.

148 (D) A recipient of the purple heart medal may obtain a
149 second purple heart medal license plate as described in this
150 section for use on a passenger vehicle titled in the name of the
151 qualified applicant. An annual fee of fifteen dollars, in addition
152 to all other fees required by this chapter, shall be charged for
153 the second plate.

154 (8) Survivors of the attack on Pearl Harbor may be issued
155 special registration plates as follows:

156 (A) Upon appropriate application, the owner of a motor
157 vehicle who was enlisted in any branch of the armed services
158 that participated in and survived the attack on Pearl Harbor on
159 the seventh day of December, one thousand nine hundred forty-
160 one, shall be issued a special registration plate for a vehicle
161 titled in the name of the qualified applicant. The registration
162 plate shall be designed by the commissioner of motor vehicles.

163 (B) Registration plates issued pursuant to this subdivision
164 are exempt from the payment of all registration fees otherwise
165 required by the provisions of this chapter.

166 (C) A surviving spouse may continue to use his or her
167 deceased spouse's survivors of the attack on Pearl Harbor
168 license plate until the surviving spouse dies, remarries or does
169 not renew the license plate.

170 (D) A survivor of the attack on Pearl Harbor may obtain a
171 second survivors of the attack on Pearl Harbor license plate as
172 described in this section for use on a passenger vehicle titled in
173 the name of the qualified applicant. An annual fee of fifteen

174 dollars, in addition to all other fees required by this chapter,
175 shall be charged for the second plate.

176 (9) Nonprofit charitable and educational organizations
177 previously authorized may be issued special registration plates
178 as follows:

179 (A) Nonprofit charitable and educational organizations
180 authorized under the program established under the prior
181 enactment of this subdivision may continue to market the
182 special registration plate previously approved to organization
183 members and the general public. However, after the effective
184 date of the reenactment of this section, the commissioner shall
185 not approve or authorize any additional nonprofit charitable and
186 educational organizations to design or market registration
187 license plates.

188 (B) Approved nonprofit charitable and educational organi-
189 zations authorized under the prior enactment of this subdivision
190 may accept and collect applications for special registration
191 plates from owners of Class A motor vehicles together with a
192 special annual fee of fifteen dollars, which is in addition to all
193 other fees required by this chapter. The applications and fees
194 shall be submitted to the division of motor vehicles with the
195 request that the division issue a registration plate bearing a
196 combination of letters or numbers with the organizations' logo
197 or emblem, with the maximum number of letters or numbers to
198 be determined by the commissioner.

199 (C) The commissioner shall propose rules for legislative
200 approval in accordance with the provisions of chapter
201 twenty-nine-a of this code regarding the procedures for and
202 approval of special registration plates issued pursuant to this
203 subdivision.

204 (D) The commissioner shall set an appropriate fee to defray
205 the administrative costs associated with designing and manufac-
206 turing special registration plates for a nonprofit charitable or
207 educational organization. The nonprofit charitable or educa-
208 tional organization shall collect this fee and forward it to the
209 division for deposit in a special revolving fund to pay the

210 administrative costs. The nonprofit charitable or educational
211 organization may also collect a fee for marketing the special
212 registration plates.

213 (10) Specified emergency or volunteer registration plates
214 may be issued as follows:

215 (A) Any owner of a motor vehicle who is a resident of the
216 state of West Virginia and who is a certified paramedic or
217 emergency medical technician, a member of a volunteer fire
218 company or a paid fire department, a member of the state fire
219 commission, the state fire marshal, the state fire marshal's
220 assistants, the state fire administrator and voluntary rescue
221 squad members may apply for a special license plate for any
222 number of Class A vehicles titled in the name of the qualified
223 applicant which bears the insignia of the profession, group or
224 commission. Any insignia shall be designed by the commis-
225 sioner. License plates issued pursuant to this subdivision shall
226 bear the requested insignia in addition to the registration
227 number issued to the applicant pursuant to the provisions of this
228 article.

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

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

245 (11) Special scenic registration plates:

246 (A) Upon appropriate application, the commissioner shall
247 issue a special registration plate displaying a scenic design of
248 West Virginia no later than the first day of January, one
249 thousand nine hundred ninety-six. This special plate shall
250 display the words "Wild Wonderful" as a slogan.

251 (B) A special one-time initial application fee of ten dollars
252 shall be charged in addition to all other fees required by this
253 chapter. All initial application fees collected by the division
254 shall be deposited into a special revolving fund to be used in the
255 administration of this chapter.

256 (12) Honorably discharged marine corps league members
257 may be issued special registration plates as follows:

258 (A) Upon appropriate application, there shall be issued to
259 any honorably discharged marine corps league member a
260 special registration plate for any number of vehicles titled in the
261 name of the qualified applicant with an insignia designed by the
262 commissioner of the division of motor vehicles.

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

272 (C) A surviving spouse may continue to use his or her
273 deceased spouse's honorably discharged marine corps league
274 license plate until the surviving spouse dies, remarries or does
275 not renew the license plate.

276 (13) Military organization registration plates:

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

282 (B) Upon appropriate application, members of the chartered
283 organization in good standing, as determined by the governing
284 body of the chartered organization, may be issued a special
285 registration plate for any number of vehicles titled in the name
286 of the qualified applicant.

287 (C) A special one-time initial application fee of ten dollars
288 shall be charged for each special license plate in addition to all
289 other fees required by this chapter. All initial application fees
290 collected by the division shall be deposited into a special
291 revolving fund to be used in the administration of this chapter:
292 *Provided*, That nothing in this section may be construed to
293 exempt any veteran from any other provision of this 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) Special nongame wildlife registration plates:

299 (A) Upon appropriate application, the division shall issue
300 a special registration plate displaying a species of West Virginia
301 nongame wildlife no later than the first day of January, one
302 thousand nine hundred ninety-eight. This special plate shall
303 display a species of nongame wildlife native to West Virginia
304 as prescribed and designated by the commissioner and the
305 director of the division of natural resources.

306 (B) An annual fee of fifteen dollars shall be charged for
307 each special nongame wildlife registration plate in addition to
308 all other fees required by this chapter. All annual fees collected
309 for nongame wildlife registration plates shall be deposited in a
310 special revenue account designated the nongame wildlife fund
311 and credited to the division of natural resources.

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

317 (15) Members of the silver haired legislature may be issued
318 special registration plates as follows:

319 (A) Upon appropriate application, there shall be issued to
320 any person who is a duly qualified member of the silver haired
321 legislature a specialized registration plate which bears recogni-
322 tion of the applicant as a member of the silver haired legisla-
323 ture.

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. An annual fee of fifteen dollars, in addition to all
328 other fees required by this chapter, shall be charged for the
329 plate. All annual fees collected by the division shall be depos-
330 ited in a special revolving fund to be used in the administration
331 of this chapter.

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

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

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

346 (3) Qualified former prisoners of war and recipients of the
347 congressional medal of honor may obtain a second special
348 registration plate for use on a passenger vehicle titled in the
349 name of the qualified applicant. An annual fee of fifteen dollars,
350 in addition to all other fees required by this chapter, shall be
351 charged for the second special plate.

352 (f) Special ten-year registration plates may be issued as
353 follows:

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

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

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

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

384 (i) Any license plate issued or renewed pursuant to this
385 chapter, which is paid for by a check that is returned for
386 nonsufficient funds, is void without further notice to the
387 applicant. The applicant may not reinstate the registration until

388 the returned check is paid by the applicant in cash, money order
389 or certified check and all applicable fees assessed as a result
390 thereof have been paid.

CHAPTER 185

(S. B. 223 — By Senator Ross)

[Passed March 9, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section thirteen, article two, chapter seventeen-b of said code, all relating to change of address; requiring notice of change of address if assigned new address by the postal service; and eliminating certain criminal penalties.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section thirteen, article two, chapter seventeen-b of said code be amended and reenacted, all to read as follows:

Chapter

17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.

17B. Motor Vehicle Driver's Licenses.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

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

§17A-3-18. Notice of change of address or name.

1 (a) Whenever any person after making application for or
2 obtaining the registration of a vehicle or a certificate of title
3 shall move from the address named in the application or shown
4 upon a registration card or certificate of title the person shall
5 within ten days thereafter notify the division in writing of the
6 old and new addresses.

7 (b) Whenever any person, after making application for or
8 obtaining the registration of a vehicle or a certificate of title, is
9 assigned a new address by the United States postal service or
10 other legally constituted authority, the person shall notify the
11 division in writing of the old and new address and of the
12 registration or title number of the vehicle held by the person.
13 The notification of change of address shall be made at least ten
14 days prior to the last date on which mail with the old address is
15 deliverable by the United States postal service.

16 (c) Whenever the name of any person who has made
17 application for or obtained the registration of a vehicle or a
18 certificate of title is thereafter changed by marriage or other-
19 wise the person shall within ten days notify the division of the
20 former name and new name upon a form prescribed by the
21 commissioner. The notification shall be accompanied by
22 application for retitle under the new name.

23 (d) The provisions of section one, article eleven of this
24 chapter relating to imprisonment do not apply to persons who
25 violate the provisions of this section.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-13. Notice of change of address or name.

1 (a) Whenever any person after applying for or receiving a
2 driver's license moves from the address named in the applica-
3 tion or in the license issued to the person, or when the name of
4 a licensee is changed by marriage or otherwise, the person shall
5 within twenty days thereafter notify the division in writing of
6 the old and new addresses or of the former and new names and
7 of the number of any license then held by the person on the
8 forms prescribed by the division.

9 (b) Whenever any person, after applying for or receiving a
10 driver's license, is assigned a new address by the United States
11 postal service or other legally constituted authority, the person
12 shall notify the division in writing of the old and new address
13 and of the number of any license held by the person. The
14 notification of change of address shall be made at least twenty
15 days prior to the final date on which mail with the old address
16 is deliverable by the United States postal service.

17 (c) The provisions of section one, article five of this chapter
18 relating to imprisonment do not apply to persons who violate
19 the provisions of this section.

CHAPTER 186

(H. B. 2448 — By Delegates Cann, Angotti, Jenkins,
Davis, Laird, Capito and Tillis)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article four-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three hundred two, article nine, chapter forty-six, all relating to the creation and perfection of a lien against a vehicle held as inventory for lease by a person in the business of leasing vehicles.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 17A. **Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.**
46. **Uniform Commercial Code.**

**CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION,
REGISTRATION, CERTIFICATE OF TITLE, AND
ANTITHEFT PROVISIONS.**

**ARTICLE 4A. LIENS AND ENCUMBRANCES ON VEHICLES TO BE
SHOWN ON CERTIFICATE OF TITLE; NOTICE TO
CREDITORS AND PURCHASERS.**

§17A-4A-2. Liens and encumbrances subsequently created.

§17A-4A-3. Notice of lien; noninventory lien created by voluntary act of the owner not shown on certificate of title void as to subsequent purchasers and lien creditors; exceptions.

§17A-4A-2. Liens and encumbrances subsequently created.

1 (a) Liens or encumbrances placed on vehicles by the
2 voluntary act of the owner after the original issue of title to be
3 properly recorded must be shown on the certificate of title. In
4 such cases, the owner or lienholder shall file application with
5 the department on a blank furnished for that purpose, setting
6 forth the lien or liens and such information and evidence of the
7 lien in connection therewith as the department may deem
8 necessary. Such information shall include the name and address
9 of the lienholder, the kind of and nature of the lien, the date
10 thereof, and the amount thereby secured. However, only the
11 name and address of the lienholder shall be endorsed on the title
12 certificate with the endorsement of the fact of such lien as
13 hereinafter provided. The department, if satisfied that it is
14 proper that the same be recorded, and upon surrender of the
15 certificate of title covering the vehicle, shall thereupon issue a
16 new certificate of title, showing the liens or encumbrances in
17 the order of their filing being according to the date, hour and
18 minute of receipt by the department of the application for same.
19 For the purpose of recording a subsequent lien on a certificate
20 of title, the subsequent lienholder shall make a written request
21 upon the lienholder in possession of the certificate of title,
22 accompanied by proof of the existence of the subsequent lien,
23 stating his or her need to have possession of the certificate of
24 title for the purpose of having his or her lien recorded thereon
25 by the division of motor vehicles. Thereupon, the lienholder in
26 possession of the certificate shall within a reasonable time, not
27 to exceed ten days from the receipt of said written request,

28 deliver the certificate of title to the requesting subsequent
29 lienholder.

30 Upon delivery of the certificate of title, the subsequent
31 lienholder shall immediately forward it and the lienholder's
32 own application to the division of motor vehicles for the filing
33 of the lien and for the recording of the same on the certificate
34 of title. Upon issuing the new certificate, the department shall
35 thereupon send or deliver it to the holder of the first lien.

36 (b) The provisions of subsection (a) of this section shall not
37 apply to: (1) Vehicles held as inventory for sale by a registered
38 dealer holding title by assignment entered upon a certificate of
39 title; or (2) vehicles for which certificates of title have been
40 issued and are held as inventory for lease by a vehicle rental
41 agency or similar person engaged solely in the business of
42 leasing vehicles. Any lien or encumbrance placed on such
43 vehicles by the voluntary act of the owner shall be created and
44 perfected in accordance with the provisions of article nine,
45 chapter forty-six of this code.

**§17A-4A-3. Notice of lien; noninventory lien created by voluntary
act of the owner not shown on certificate of title
void as to subsequent purchasers and lien credi-
tors; exceptions.**

1 (a) A certificate of title, when issued by the department
2 showing a lien or encumbrance, shall be deemed from and after
3 the filing with the department of the application therefor
4 adequate notice to the state and its agencies, boards and
5 commissions, to the United States government and its agencies,
6 boards and commissions, to creditors and to purchasers that a
7 lien against the vehicle exists and the recording of such
8 reservation of title, lien or encumbrance in the county wherein
9 the purchaser or debtor resides or elsewhere is not necessary
10 and shall not be required or have any effect. Notwithstanding
11 any other provision of this code to the contrary, and subject to
12 the provisions of subsection (b) of this section and of section
13 four of this article, any lien or encumbrance placed upon a
14 vehicle by the voluntary act of the owner but not shown on such
15 certificate of title shall be void as to any purchaser for value or

16 lien creditor, who, in either case, without notice of such lien or
17 encumbrance, purchases such vehicle or acquires by attach-
18 ment, levy or otherwise a lien thereupon.

19 (b) The creation and perfection of a lien against: (1) A
20 vehicle held as inventory for sale by a registered dealer holding
21 title by assignment; or (2) a vehicle for which a certificate of
22 title has been issued and is held as inventory for lease by a
23 vehicle rental agency or similar person engaged solely in the
24 business of leasing vehicles in accordance with the provisions
25 of article nine, chapter forty-six of this code shall be deemed
26 adequate notice to the state and its agencies, boards and
27 commissions, to the United States government and its agencies,
28 boards and commissions, to creditors and to purchasers that a
29 lien against the vehicle exists, subject to the provisions of
30 section three hundred seven, article nine, chapter forty-six of
31 this code, except that any lien or encumbrance on such a vehicle
32 shall not be effective against the rights of any purchaser for
33 value who purchases such vehicle primarily for personal,
34 family, household or agricultural purposes unless such lien or
35 encumbrance is recorded on the certificate of title or specified
36 on the bill of sale.

CHAPTER 46. UNIFORM COMMERCIAL CODE.

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

**§46-9-302. When filing is required to perfect security interest;
security interests to which filing provisions of this
article do not apply.**

1 (1) A financing statement must be filed to perfect all
2 security interests except the following:

3 (a) A security interest in collateral in possession of the
4 secured party under section 9-305;

5 (b) A security interest temporarily perfected in instruments,
6 certificated securities or documents without delivery under
7 section 9-304 or in proceeds for a ten-day period under section
8 9-306;

9 (c) A security interest created by an assignment of a
10 beneficial interest in a trust or a decedent's estate;

11 (d) A purchase money security interest in consumer goods;
12 but filing is required for a motor vehicle required to be regis-
13 tered; and fixture filing is required for priority over conflicting
14 interests in fixtures to the extent provided in section 9-313;

15 (e) An assignment of accounts which does not alone or in
16 conjunction with other assignments to the same assignee
17 transfer a significant part of the outstanding accounts of the
18 assignor;

19 (f) A security interest of a collecting bank (section 4-208)
20 or arising under the article on sales (see section 9-113) or
21 covered in subsection (3) of this section;

22 (g) An assignment for the benefit of all the creditors of the
23 transferor, and subsequent transfers by the assignee thereunder;

24 (h) A security interest in investment property which is
25 perfected without filing under section 9-115 or section 9-116.

26 (2) If a secured party assigns a perfected security interest,
27 no filing under this article is required in order to continue the
28 perfected status of the security interest against creditors of and
29 transferees from the original debtor.

30 (3) The filing of a financing statement otherwise required
31 by this article is not necessary or effective to perfect a security
32 interest in property subject to:

33 (a) A statute or treaty of the United States which provides
34 for a national or international registration or a national or
35 international certificate of title or which specifies a place of
36 filing different from that specified in this article for filing of the
37 security interest; or

38 (b) The following statute of this state: Chapter seventeen-a
39 of this code; but during any period in which collateral is
40 inventory: (i) Held for sale by a person who is in the business
41 of selling goods of that kind; or (ii) held for lease by a vehicle
42 rental agency or similar persons engaged solely in the business

43 of leasing vehicles, the filing provisions of this article (Part 4)
44 apply to a security interest in that collateral created by him or
45 her as debtor; or

46 (c) A certificate of title statute of another jurisdiction under
47 the law of which indication of a security interest on the certifi-
48 cate is required as a condition of perfection (subsection (2) of
49 section 9-103).

50 (4) Compliance with a statute or treaty described in
51 subsection (3) of this section is equivalent to the filing of a
52 financing statement under this article, and a security interest in
53 property subject to the statute or treaty can be perfected only by
54 compliance therewith except as provided in section 9-103 on
55 multiple state transactions. Duration and renewal of perfection
56 of a security interest perfected by compliance with the statute
57 or treaty are governed by the provisions of the statute or treaty;
58 in other respects the security interest is subject to this article.

CHAPTER 187

(Com. Sub. for H. B. 2143 — By Delegate Warner)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, six, seven, ten and thirteen, article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to motor vehicle dealers; changing the definition of an established place of business with respect to motor vehicle dealers; and clarifying the criteria for issuance of a dealer license and the use of dealer special license plates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS, ETC.

§17A-6-1. Definitions.

§17A-6-6. Refusal or issuance of license certificate; license certificate not transferable.

§17A-6-7. When application to be made; expiration of license certificate; renewal.

§17A-6-10. Fee required for license certificate; dealer special plates.

§17A-6-13. Use of special plates; records to be maintained by dealer.

§17A-6-1. Definitions.

1 (a) Unless the context in which used clearly requires a
2 different meaning, as used in this article:

3 (1) "New motor vehicle dealer" means every person (other
4 than agents and employees, if any, while acting within the
5 scope of their authority or employment), engaged in, or held out
6 to the public to be engaged in, the business in this state of
7 selling five or more new motor vehicles or new and used motor
8 vehicles in any fiscal year of a type required to be registered
9 under the provisions of this chapter, except, for the purposes of
10 this article only, motorcycles.

11 (2) "Used motor vehicle dealer" means every person (other
12 than agents and employees, if any, while acting within the
13 scope of their authority or employment), engaged in, or held out
14 to the public to be engaged in, the business in this state of
15 selling five or more used motor vehicles in any fiscal year of a
16 type required to be registered under the provisions of this
17 chapter, except, for the purposes of this article only, motorcy-
18 cles.

19 (3) "House trailer dealer" means every person (other than
20 agents and employees, if any, while acting within the scope of
21 their authority or employment), engaged in, or held out to the
22 public to be engaged in, the business in this state of selling new
23 or used house trailers, or both, or new or used, or both, house
24 trailers and trailers or new or used, or both, manufactured
25 homes and mobile homes.

26 (4) "Trailer dealer" means every person (other than agents
27 and employees, if any, while acting within the scope of their

28 authority or employment), engaged in, or held out to the public
29 to be engaged in, the business in this state of selling new or
30 used trailers.

31 (5) "Motorcycle dealer" means every person (other than
32 agents and employees, if any, while acting within the scope of
33 their authority or employment), engaged in, or held out to the
34 public to be engaged in, the business in this state of selling new
35 or used motorcycles.

36 (6) "Used parts dealer" means every person (other than
37 agents and employees, if any, while acting within the scope of
38 their authority or employment), engaged in, or held out to the
39 public to be engaged in, the business in this state of selling any
40 used appliance, accessory, member, portion or other part of any
41 vehicle.

42 (7) "Wrecker/dismantler/rebuilder" means every person
43 (other than agents and employees, if any, while acting within
44 the scope of their authority or employment), engaged in, or held
45 out to the public to be engaged in, the business in this state of
46 dealing in wrecked or damaged motor vehicles or motor vehicle
47 parts for the purpose of selling the parts thereof or scrap
48 therefrom or who is in the business of rebuilding salvage motor
49 vehicles for the purpose of resale to the public.

50 (8) "New motor vehicles" means all motor vehicles, except
51 motorcycles and used motor vehicles, of a type required to be
52 registered under the provisions of this chapter.

53 (9) "Used motor vehicles" means all motor vehicles, except
54 motorcycles, of a type required to be registered under the
55 provisions of this chapter which have been sold and operated,
56 or which have been registered or titled, in this or any other state
57 or jurisdiction.

58 (10) "House trailers" means all trailers designed and used
59 for human occupancy on a continual nonrecreational basis, but
60 may not include fold down camping and travel trailers, mobile
61 homes or manufactured homes.

62 (11) "Trailers" means all types of trailers other than house
63 trailers, and shall include, but not be limited to, pole trailers and
64 semitrailers but excluding recreational vehicles.

65 (12) "Sales instrument" means any document resulting from
66 the sale of a vehicle, which shall include, but not be limited to,
67 a bill of sale, invoice, conditional sales contract, chattel
68 mortgage, chattel trust deed, security agreement or similar
69 document.

70 (13) "Sell", "sale" or "selling," in addition to the ordinary
71 definitions of the terms, includes offering for sale, soliciting
72 sales of, negotiating for the sale of, displaying for sale or
73 advertising for sale, any vehicle, whether at retail, wholesale or
74 at auction. "Selling," in addition to the ordinary definition of
75 that term, also includes buying and exchanging.

76 (14) "Applicant" means any person making application for
77 an original or renewal license certificate under the provisions of
78 this article.

79 (15) "Licensee" means any person holding any license
80 certificate issued under the provisions of this article.

81 (16) "Predecessor" means the former owner or owners or
82 operator or operators of any new motor vehicle dealer business
83 or used motor vehicle dealer business.

84 (17) "Established place of business" means, in the case of
85 a new motor vehicle dealer, a permanent location, not a
86 temporary stand or other temporary quarters, owned or leased
87 by the licensee or applicant and actually occupied or to be
88 occupied by him or her, as the case may be, which is or is to be
89 used exclusively for the purpose of selling new motor vehicles
90 or new and used motor vehicles, which shall have space under
91 roof for the display of at least one new motor vehicle and
92 facilities and space therewith for the servicing and repair of at
93 least one motor vehicle, which servicing and repair facilities
94 and space is adequate and suitable to carry out servicing and to
95 make repairs necessary to keep and carry out all representa-
96 tions, warranties and agreements made or to be made by the
97 dealer with respect to motor vehicles sold by him or her, which

98 is easily accessible to the public, which conforms to all applica-
99 ble laws of this state and the ordinances of the municipality in
100 which it is located, if any, which displays thereon at least one
101 permanent sign, clearly visible from the principal public street
102 or highway nearest the location and clearly stating the business
103 which is or shall be conducted thereat, and which has adequate
104 facilities to keep, maintain and preserve records, papers and
105 documents necessary to carry on the business and to make the
106 business available to inspection by the commissioner at all
107 reasonable times: *Provided*, That each established place of
108 business shall have a display area which may be outside or
109 inside or a combination thereof of at least twelve hundred
110 square feet which is to be used exclusively for the display of
111 vehicles which are offered for sale by the dealer, office space
112 of at least one hundred forty-four square feet and a telephone
113 listed in the name of the dealership. Each established place of
114 business shall be open to the public a minimum of twenty hours
115 per week at least forty weeks per calendar year with at least ten
116 of those hours being between the hours of nine-thirty a.m. and
117 eight-thirty p.m., Monday through Saturday: *Provided, how-*
118 *ever*, That the requirement of exclusive use is met even though:
119 (A) Some new and any used motor vehicles sold or to be sold
120 by the dealer or sold or are to be sold at a different location or
121 locations not meeting the definition of an established place of
122 business of a new motor vehicle dealer, if each location is or is
123 to be served by other facilities and space of the dealer for the
124 servicing and repair of at least one motor vehicle, adequate and
125 suitable as aforesaid, and each location used for the sale of
126 some new and any used motor vehicles otherwise meets the
127 definition of an established place of business of a used motor
128 vehicle dealer; (B) house trailers, trailers or motorcycles are
129 sold or are to be sold thereat, if, subject to the provisions of
130 section five of this article, a separate license certificate is
131 obtained for each type of vehicle business, which license
132 certificate remains unexpired, unsuspended and unrevoked; (C)
133 farm machinery is sold thereat; (D) accessory, gasoline and oil,
134 or storage departments are maintained thereat, if the depart-
135 ments are operated for the purpose of furthering and assisting
136 in the licensed business or businesses; and (E) the established

137 place of business has an attached single residential rental unit
138 with an outside separate entrance and occupied by a person or
139 persons with no financial or operational interest in the dealer-
140 ship where the established place of business has space under
141 roof for the display of at least three new motor vehicles and
142 facilities and space therewith for the concurrent servicing and
143 repair of at least two motor vehicles and otherwise meets the
144 requirements set forth in this subdivision.

145 (18) "Farm machinery" means all machines and tools used
146 in the production, harvesting or care of farm products.

147 (19) "Established place of business," in the case of a used
148 motor vehicle dealer, means a permanent location, not a
149 temporary stand or other temporary quarters, owned or leased
150 by the licensee or applicant and actually occupied or to be
151 occupied by him or her, as the case may be, which is or is to be
152 used exclusively for the purpose of selling used motor vehicles,
153 which shall have facilities and space therewith for the servicing
154 and repair of at least one motor vehicle, which servicing and
155 repair facilities and space shall be adequate and suitable to
156 carry out servicing and to make repairs necessary to keep and
157 carry out all representations, warranties and agreements made
158 or to be made by the dealer with respect to used motor vehicles
159 sold by him or her, which is easily accessible to the public,
160 conforms to all applicable laws of this state, and the ordinances
161 of the municipality in which it is located, if any, which displays
162 thereon at least one permanent sign, clearly visible from the
163 principal public street or highway nearest the location and
164 clearly stating the business which is or shall be conducted
165 thereat, and which has adequate facilities to keep, maintain and
166 preserve records, papers and documents necessary to carry on
167 the business and to make the business available to inspection by
168 the commissioner at all reasonable times: *Provided*, That each
169 established place of business shall have a display area which
170 may be outside or inside or a combination thereof of at least
171 twelve hundred square feet which is to be used exclusively for
172 the display of vehicles which are offered for sale by the dealer,
173 office space of at least one hundred forty-four square feet and
174 a telephone listed in the name of the dealership. Each estab-

175 lished place of business shall be open to the public a minimum
176 of twenty hours per week at least forty weeks per calendar year
177 with at least ten of those hours being between the hours of nine-
178 thirty a.m. and eight-thirty p.m., Monday through Saturday:
179 *Provided, however,* That if a used motor vehicle dealer has
180 entered into a written agreement or agreements with a person or
181 persons owning or operating a servicing and repair facility or
182 facilities adequate and suitable as aforesaid, the effect of which
183 agreement or agreements is to provide the servicing and repair
184 services and space in like manner as if the servicing and repair
185 facilities and space were located in or on the dealer's place of
186 business, then, so long as the agreement or agreements are in
187 effect, it is not necessary for the dealer to maintain the servicing
188 and repair facilities and space at the place of business in order
189 for the place of business to be an established place of business
190 as herein defined: *Provided further,* That the requirement of
191 exclusive use is met even though: (A) House trailers, trailers or
192 motorcycles are sold or are to be sold thereat, if, subject to the
193 provisions of section five of this article, a separate license
194 certificate is obtained for each type of vehicle business, which
195 license certificate remains unexpired, unsuspended and
196 unrevoked; (B) farm machinery is sold thereat; (C) accessory,
197 gasoline and oil, or storage departments are maintained thereat,
198 if the departments are operated for the purpose of furthering and
199 assisting in the licensed business or businesses; and (D) the
200 established place of business has an attached single residential
201 rental unit with an outside separate entrance and occupied by a
202 person or persons with no financial or operational interest in the
203 dealership where the established place of business has space
204 under roof for the display of at least three motor vehicles and
205 facilities and space therewith for the concurrent servicing and
206 repair of at least two motor vehicles and otherwise meets the
207 requirements set forth herein.

208 (20) "Established place of business," in the case of a house
209 trailer dealer, trailer dealer, recreational vehicle dealer, motor-
210 cycle dealer, used parts dealer and wrecker or dismantler,
211 means a permanent location, not a temporary stand or other
212 temporary quarters, owned or leased by the licensee or appli-

213 cant and actually occupied or to be occupied by the licensee, as
214 the case may be, which is easily accessible to the public, which
215 conforms to all applicable laws of this state and the ordinances
216 of the municipality in which it is located, if any, which displays
217 thereon at least one permanent sign, clearly visible from the
218 principal public street or highway nearest the location and
219 clearly stating the business which is or shall be conducted
220 thereat, and which has adequate facilities to keep, maintain and
221 preserve records, papers and documents necessary to carry on
222 the business and to make the business available to inspection by
223 the commissioner at all reasonable times.

224 (21) "Manufacturer" means every person engaged in the
225 business of reconstructing, assembling or reassembling vehicles
226 with a special type body required by the purchaser if the vehicle
227 is subject to the title and registration provisions of this code.

228 (22) "Transporter" means every person engaged in the
229 business of transporting vehicles to or from a manufacturing,
230 assembling or distributing plant to dealers or sales agents of a
231 manufacturer, or purchasers.

232 (23) "Recreational vehicle dealer" means every person
233 (other than agents and employees, if any, while acting within
234 the scope of their authority or employment), engaged in, or held
235 out to the public to be engaged in, the business in this state of
236 selling new or used recreational vehicles, or both.

237 (24) "Motorboat" means any vessel propelled by an
238 electrical, steam, gas, diesel or other fuel propelled or driven
239 motor, whether or not the motor is the principal source of
240 propulsion, but does not include a vessel which has a valid
241 marine document issued by the bureau of customs of the United
242 States government or any federal agency successor thereto.

243 (25) "Motorboat trailer" means every vehicle designed for
244 or ordinarily used for the transportation of a motorboat.

245 (26) "All-terrain vehicle" (ATV) means any motor vehicle
246 designed for off-highway use and designed for operator use
247 only with no passengers, having a seat or saddle designed to be
248 straddled by the operator, and handlebars for steering control.

249 (27) "Travel trailer" means every vehicle, mounted on
250 wheels, designed to provide temporary living quarters for
251 recreational, camping or travel use of such size or weight as not
252 to require special highway movement permits when towed by
253 a motor vehicle and of gross trailer area less than four hundred
254 square feet.

255 (28) "Fold down camping trailer" means every vehicle
256 consisting of a portable unit mounted on wheels and con-
257 structed with collapsible partial sidewalls which fold for towing
258 by another vehicle and unfold at the camp site to provide
259 temporary living quarters for recreational, camping or travel
260 use.

261 (29) "Motor home" means every vehicle, designed to
262 provide temporary living quarters, built into an integral part of
263 or permanently attached to a self-propelled motor vehicle,
264 chassis or van including: (1) Type A motor home built on an
265 incomplete truck chassis with the truck cab constructed by the
266 second stage manufacturer; (2) Type B motor home consisting
267 of a van-type vehicle which has been altered to provide
268 temporary living quarters; and (3) Type C motor home built on
269 an incomplete van or truck chassis with a cab constructed by
270 the chassis manufacturer.

271 (30) "Snowmobile" means a self-propelled vehicle intended
272 for travel primarily on snow and driven by a track or tracks in
273 contact with the snow and steered by a ski or skis in contact
274 with the snow.

275 (31) "Recreational vehicle" means a motorboat, motorboat
276 trailer, all-terrain vehicle, travel trailer, fold down camping
277 trailer, motor home or snowmobile.

278 (32) "Major component" means any one of the following
279 subassemblies of a motor vehicle: (A) Front clip assembly
280 consisting of fenders, grille, hood, bumper and related parts; (B)
281 engine; (C) transmission; (D) rear clip assembly consisting of
282 quarter panels and floor panel assembly; or (E) two or more
283 doors.

284 (33) "Factory-built home" includes mobile homes, house
285 trailers and manufactured homes.

286 (34) "Manufactured home" has the same meaning as the
287 term is defined in section two, article nine, chapter twenty-one
288 of this code which meets the National Manufactured Housing
289 Construction and Safety Standards Act of 1974 (42 U.S.C.
290 §5401 et seq.), effective on the fifteenth day of June, one
291 thousand nine hundred seventy-six, and the federal manufact-
292 ured home construction and safety standards and regulations
293 promulgated by the secretary of the United States department
294 of housing and urban development.

295 (35) "Mobile home" means a transportable structure that is
296 wholly, or in substantial part, made, fabricated, formed or
297 assembled in manufacturing facilities for installation or
298 assembly and installation on a building site and designed for
299 long-term residential use and built prior to enactment of the
300 federal manufactured housing construction and safety standards
301 institute (ANSI) — A119.1 standards for mobile homes.

302 (b) Under no circumstances whatever may the terms "new
303 motor vehicle dealer", "used motor vehicle dealer", "house
304 trailer dealer", "trailer dealer", "recreational vehicle dealer",
305 "motorcycle dealer", "used parts dealer" or "wrecker/
306 dismantler/rebuilder" be construed or applied under this article
307 in such a way as to include a banking institution, insurance
308 company, finance company, or other lending or financial
309 institution, or other person, the state or any agency or political
310 subdivision thereof, or any municipality, who or which owns or
311 comes in possession or ownership of, or acquires contract
312 rights, or security interests in or to, any vehicle or vehicles or
313 any part thereof and sells the vehicle or vehicles or any part
314 thereof for purposes other than engaging in and holding out to
315 the public to be engaged in the business of selling vehicles or
316 any part thereof.

317 (c) It is recognized that throughout this code the term
318 "trailer" or "trailers" is used to include, among other types of
319 trailers, house trailers. It is also recognized that throughout this
320 code the term "trailer" or "trailers" is seldom used to include

321 semitrailers or pole trailers. However, for the purposes of this
322 article only, the term "trailers" has the meaning ascribed to it in
323 subsection (a) of this section.

§17A-6-6. Refusal or issuance of license certificate; license certificate not transferable.

1 (a) Upon the basis of the application and all other informa-
2 tion before him or her, the commissioner shall make and enter
3 an order denying the application for a license certificate and
4 refusing the license certificate sought, which denial and refusal
5 are final and conclusive unless an appeal is taken in accordance
6 with the provisions of section twenty-one of this article, if the
7 commissioner finds that the applicant (individually, if an
8 individual, or the partners, if a copartnership, or the officers and
9 directors, if a corporation):

10 (1) Has failed to furnish the required bond;

11 (2) Has failed to furnish the required certificate of insur-
12 ance;

13 (3) Has knowingly made false statement of a material fact
14 in his or her application;

15 (4) Has habitually defaulted on financial obligations in this
16 state or any other state or jurisdiction;

17 (5) Has been convicted of a felony: *Provided*, That upon
18 appeal, the motor vehicle dealers advisory board established
19 pursuant to the provisions of section eighteen-a of this article
20 has the authority to grant as exemption of this restriction if the
21 felony did not involve financial matters, the motor vehicle
22 industry or matters of moral turpitude.

23 (6) So far as can be ascertained, has not complied with and
24 will not comply with the registration and title laws of this state
25 or any other state or jurisdiction;

26 (7) Does not or will not have or maintain at each place of
27 business (subject to the qualification contained in subdivision
28 (17), subsection (a), section one of this article with respect to a

29 new motor vehicle dealer) an established place of business as
30 defined for the business in question in said section one;

31 (8) Has been convicted of any fraudulent act in connection
32 with the business of new motor vehicle dealer, used motor
33 vehicle dealer, house trailer dealer, trailer dealer, recreational
34 vehicle dealer, motorcycle dealer, used parts dealer, or wrecker
35 or dismantler in this state or any other state or jurisdiction;

36 (9) Has done any act or has failed or refused to perform any
37 duty for which the license certificate sought could be suspended
38 or revoked were it then issued and outstanding;

39 (10) Is not age eighteen years or older;

40 (11) Is delinquent in the payment of any taxes owed to the
41 United States, the state of West Virginia or any political
42 subdivision thereof;

43 (12) Has been denied a license in another state or has been
44 the subject of license revocation or suspension in another state;

45 (13) Has committed any action in another state which, if it
46 had been committed in this state, would be grounds for denial
47 and refusal of the application for a license certificate; or

48 (14) Has failed to pay any civil penalty assessed by this
49 state or any other state.

50 Otherwise, the commissioner shall issue to the applicant the
51 appropriate license certificate which shall entitle the licensee to
52 engage in the business of new motor vehicle dealer, used motor
53 vehicle dealer, house trailer dealer, trailer dealer, recreational
54 vehicle dealer, motorcycle dealer, used parts dealer, or wrecker
55 or dismantler, as the case may be, during the period, unless
56 sooner suspended or revoked, for which the license certificate
57 is issued.

58 (b) A license certificate issued in accordance with the
59 provisions of this article is not transferable.

**§17A-6-7. When application to be made; expiration of license
certificate; renewal.**

1 (a) Every license certificate issued in accordance with the
2 provisions of this article shall, unless sooner suspended or
3 revoked, expire on June thirtieth next following the issuance
4 thereof.

5 (b) A license certificate may be renewed each year in the
6 same manner, for the same fee as prescribed in section ten of
7 this article and upon the same basis as an original license
8 certificate is issued under section six of this article. All applica-
9 tions for the renewal of any license certificate shall be filed
10 with the commissioner at least thirty days before the expiration
11 thereof. Any application for renewal of any license certificate
12 not filed at least thirty days before the expiration may not be
13 renewed except upon payment of the same fee as an original
14 license certificate as prescribed in subsection (a), section ten of
15 this article. The commissioner may allow the delinquent
16 applicant to complete an abbreviated application for renewal in
17 lieu of an original application.

§17A-6-10. Fee required for license certificate; dealer special plates.

1 (a) The initial application fee for a license certificate to
2 engage in the business of a new motor vehicle dealer, used
3 motor vehicle dealer, house trailer dealer, trailer dealer,
4 motorcycle dealer, recreational vehicle dealer or wrecker/
5 dismantler/rebuilder is two hundred fifty dollars: *Provided,*
6 That if an application for a license certificate is denied or
7 refused in accordance with section six of this article, one
8 hundred twenty-five dollars shall be refunded to the applicant.
9 The initial application fee entitles the licensee to dealer special
10 plates as prescribed by subsections (b), (c), (d) and (e) of this
11 section.

12 (b) The annual renewal fee required for a license certificate
13 to engage in the business of new motor vehicle dealer is one
14 hundred dollars. This fee shall also entitle the licensee to one
15 dealer's special plate which shall be known as a Class D special
16 plate. Up to two additional Class D special plates shall be
17 issued to the licensee upon application on a form prescribed by
18 the commissioner for such purpose and the payment of a fee of

19 five dollars for each additional Class D special plate. Any
20 licensee is also entitled to receive additional Class D special
21 plates on a formula basis, that is, one additional Class D special
22 plate per twenty new and used motor vehicles sold at retail and
23 wholesale by the licensee or predecessor during the preceding
24 fiscal year, upon application on a form prescribed by the
25 commissioner for such purpose and the payment of a fee of five
26 dollars for each additional Class D special plate: *Provided*, That
27 in the case of a licensee who did not own or operate the
28 business during the preceding fiscal year and who has no
29 predecessor who owned or operated a business during the fiscal
30 year, additional Class D plates shall be issued for the ensuing
31 fiscal year only on a formula basis of one additional Class D
32 plate per twenty new and used motor vehicles which the
33 licensee estimates on his or her application for his or her license
34 certificate he or she will sell at retail and wholesale during the
35 ensuing fiscal year. The licensee may revise his or her estimate
36 if actual sales of new and used motor vehicles in the initial year
37 exceed the estimate by filing an amended application for his or
38 her license certificate. Additional Class D plates shall be issued
39 for the remaining portion of the fiscal year only on a formula
40 basis of one additional Class D plate per twenty new and used
41 vehicles in the revised estimate. A licensee may receive no
42 more than five additional Class D special license plates upon a
43 showing that the licensee's new vehicle retail sale business
44 requires more special license plates than authorized under the
45 formula established under the provisions of this section. Such
46 showing shall include evidence of the geographical divergence
47 of the licensee's customer base and the number of licensees
48 holding similar franchises of a particular brand of a motor
49 vehicle to show the need for additional Class D special plates.

50 (c) The annual renewal fee required for a license certificate
51 to engage in the business of used motor vehicle dealer is one
52 hundred dollars. This fee also entitles the licensee to one
53 dealer's special plate which shall be known as a Class D-U/C
54 special plate. Up to two additional Class D-U/C special plates
55 shall be issued to the licensee upon application on a form
56 prescribed by the commissioner for such purpose and the

57 payment of a fee of five dollars for each additional Class D-U/C
58 special plate. Any licensee is also entitled to receive additional
59 Class D-U/C special plates on a formula basis, that is, one
60 additional Class D-U/C special plate per twenty used motor
61 vehicles sold at retail and/or wholesale by the licensee or his or
62 her predecessor during the preceding fiscal year, upon applica-
63 tion therefor on a form prescribed by the commissioner for such
64 purpose and the payment of a fee of five dollars for each
65 additional Class D-U/C special plate: *Provided*, That in the case
66 of a licensee who did not own or operate the business during the
67 preceding fiscal year and who has no predecessor who owned
68 or operated the business during the preceding fiscal year,
69 additional Class D-U/C plates shall be issued for the ensuing
70 fiscal year only on a formula basis of one additional Class D-
71 U/C plate per twenty used motor vehicles which the licensee
72 estimates on his or her application for the license certificate he
73 or she will sell at retail and/or wholesale during the ensuing
74 fiscal year. The licensee may revise his or her estimate if actual
75 sales of used motor vehicles in the ensuing fiscal year exceed
76 the estimate by filing an amended application for his or her
77 license certificate. Additional Class D-U/C plates shall be
78 issued for the remaining portion of the fiscal year only on a
79 formula basis of one additional Class D-U/C plate per twenty
80 used vehicles in the revised estimate.

81 (d) The annual renewal fee required for a license certificate
82 to engage in the business of house trailer dealer or trailer dealer,
83 as the case may be, is twenty-five dollars. This fee also entitles
84 the licensee to four dealer's special plates which shall be known
85 as Class D-T/R special plates. Additional Class D-T/R special
86 plates shall be issued to any licensee upon application therefor
87 on a form prescribed by the commissioner for such purpose and
88 the payment of a fee of five dollars for each such additional
89 Class D-T/R special plate.

90 (e) The annual renewal fee required for a license certificate
91 to engage in the business of recreational vehicle dealer is one
92 hundred dollars. This fee shall also entitle the licensee to four
93 dealer special plates which shall be known as Class D-R/V
94 special plates. Additional Class D-R/V special plates shall be

95 issued to any licensee upon application therefor on a form
96 prescribed by the commissioner for such purpose on the
97 payment of a fee of twenty-five dollars for each additional
98 Class D-R/V special plate.

99 (f) The annual renewal fee required for a license certificate
100 to engage in the business of motorcycle dealer is ten dollars.
101 This fee shall also entitle the licensee to two dealer's special
102 plates which shall be known as Class F special plates. Addi-
103 tional Class F special plates shall be issued to any dealer upon
104 application therefor on a form prescribed by the commissioner
105 for such purpose and the payment of a fee of five dollars for
106 each additional Class F special plate.

107 (g) The annual renewal fee required for a license certificate
108 to engage in the business of wrecker/dismantler/rebuilder is
109 fifteen dollars. Upon payment of the fee for the license certifi-
110 cate, a licensee is entitled to up to four special license plates
111 which shall be known as Class WD special plates. The plates
112 shall be issued to any licensee upon application therefor on a
113 form prescribed by the commissioner for such purpose and the
114 payment of a fee of twenty-five dollars for each plate. The plate
115 issued under the provisions of this subsection shall have the
116 words "Towing Only" affixed thereon. A wrecker/dismantler/
117 rebuilder is entitled to one special plate known as a Class
118 WD/Demo special plate upon payment of a twenty-five dollar
119 fee. This plate shall only be used for demonstrating rebuilt
120 automobiles owned by the wrecker/dismantler/rebuilder.

121 (h) All of the special plates provided for in this section shall
122 be of such form and design and contain such other distinguish-
123 ing marks or characteristics as the commissioner may prescribe.

§17A-6-13. Use of special plates; records to be maintained by dealer.

1 (a) The Class D special plates and the Class D-U/C special
2 plates authorized in this article may be used for any purpose on
3 any motor vehicle owned by the dealer to whom issued and
4 which is being operated with his or her knowledge and consent
5 and not otherwise: *Provided*, That under no circumstances
6 whatever may a Class D special plate or Class D-U/C special

7 plate be used on any work or service vehicle owned by a dealer,
8 on any vehicle owned by a dealer and offered for hire or lease,
9 or on any vehicle which has been sold by a dealer to a cus-
10 tomer: *Provided, however,* That a dealer is authorized to use a
11 Class D or Class D-U/C special plate on no more than one
12 courtesy vehicle per dealership: *Provided further,* That a Class
13 D licensee is authorized to use a Class D special plate on no
14 more than one Class A type pickup truck or van which is
15 specifically identified as a parts truck for the Class D licensee
16 and which is used exclusively for the transportation of parts for
17 the dealership.

18 (b) Under no circumstances whatever may a Class D-T/R
19 special plate be used for the purpose of operating a motor
20 vehicle upon the streets and highways, or on any house trailer
21 or other trailer owned by a dealer and offered for hire or lease,
22 or on any house trailer or other trailer which has been sold by
23 a dealer to a customer: *Provided,* That notwithstanding the sale
24 or any provision of this code to the contrary, a Class D-T/R
25 special plate may be used in moving a house trailer sold by a
26 house trailer dealer to a customer for one trip only from the
27 house trailer dealer's established place of business to a place
28 designated by the customer.

29 (c) Under no circumstances whatever may a Class D-R/V
30 special plate be used for the purpose of operating a motor
31 vehicle upon the streets and highways, or on any recreational
32 vehicle owned by a dealer and offered for hire or lease, or on
33 any recreational vehicle which has been sold by a dealer to a
34 customer: *Provided,* That notwithstanding any provision of this
35 code to the contrary, a Class D-R/V special plate may be used
36 upon the streets and highways for demonstration purposes only
37 on those recreational vehicles that are subject to registration
38 under article three of this chapter.

39 (d) Under no circumstances whatever may a Class F special
40 plate be used for the purpose of operating any type of motor
41 vehicle other than a motorcycle on the streets and highways, or
42 on a motorcycle owned by a dealer and offered for hire or lease,
43 or on any motorcycle which has been sold by a dealer to a
44 customer.

45 (e) Under no circumstances whatever may a special plate
 46 authorized under the provisions of this section be subcon-
 47 tracted, brokered, leased or rented.

48 (f) Every dealer entitled to and issued a special plate or
 49 plates under the provisions of this article shall keep a written
 50 record of the salesman, mechanic, employee, agent, officer or
 51 other person to whom a special plate or plates have been
 52 assigned by the dealer. Every record shall be open to inspection
 53 by the commissioner or his or her representatives or any law-
 54 enforcement officer.

CHAPTER 188

(S. B. 540 —By Senators Dittmar, Plymale, Love, Bowman,
 Unger, Helmick, Ross and Kessler)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen-a, relating to recognizing certain automobile dealer practices as proper.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS, ETC.

§17A-6-17a. Approved practices.

1 Notwithstanding any other provision of this code, a motor
 2 vehicle dealer may, consistent with applicable federal law and
 3 regulations, advance money to retire an amount owed against a
 4 motor vehicle used as a trade-in and finance repayment of that
 5 money in a retail installment contract.

CHAPTER 189

(Com. Sub. for H. B. 2880 — By Delegates Hutchins,
L. White, Amores, Hunt and Johnson)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article eight, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the unlawful taking of a vehicle; providing that second or subsequent violations are felonies; and providing enhanced penalties for second and subsequent convictions.

Be it enacted by the Legislature of West Virginia:

That section four, article eight, 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 8. SPECIAL ANTITHEFT LAWS.

§17A-8-4. Unlawful taking of vehicle.

1 (a) Any person who drives a vehicle, not his or her own,
2 without consent of the owner thereof, and with intent tempo-
3 rarily to deprive said owner of his or her possession of such
4 vehicle, without intent to steal the same, is guilty of a misde-
5 meanor. The consent of the owner of a vehicle to its taking or
6 driving shall not in any case be presumed or implied because of
7 such owner's consent on a previous occasion to the taking or
8 driving of such vehicle by the same or a different person. Any
9 person who assists in, or is a party or accessory to or an
10 accomplice in any such unauthorized taking or driving, is guilty
11 of a misdemeanor.

12 (b) Any person violating the provisions of this section is,
13 for the first offense, guilty of a misdemeanor and, upon
14 conviction thereof, shall be fined not more than five hundred

15 dollars, or confined in the county or regional jail not more than
16 six months, or both; for the second offense, is guilty of a felony
17 and, upon conviction thereof, shall be fined not more than three
18 thousand dollars, or imprisoned in a state correctional facility
19 for not less than one nor more than three years, or imprisoned
20 in a regional jail for not more than one year, or both fined and
21 imprisoned; for third or subsequent offenses, is guilty of a
22 felony and, upon conviction thereof, shall be fined not more
23 than five thousand dollars, or imprisoned in a state correctional
24 facility for not less than one nor more than three years or both.

CHAPTER 190

(Com. Sub. for H. B. 2425 — By Delegates Michael,
Martin, Campbell, Willis and Coleman)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and three, article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to raising the maximum gross weight limit for farm trucks from sixty-four thousand pounds to eighty thousand pounds.

Be it enacted by the Legislature of West Virginia:

That sections one and three, article ten, 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 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-1. Classification of vehicles for purpose of registration.

§17A-10-3. Registration fees for vehicles equipped with pneumatic tires.

§17A-10-1. Classification of vehicles for purpose of registration.

- 1 Vehicles subject to registration under the provisions of this
- 2 chapter shall be placed in the following classes for the purpose
- 3 of registration:

4 Class A. Motor vehicles of passenger type and trucks with
5 a gross weight of not more than eight thousand pounds;

6 Class B. Motor vehicles designated as trucks with a gross
7 weight of more than eight thousand pounds, truck tractors or
8 road tractors;

9 Class C. All trailers and semitrailers, except house trailers
10 and trailers or semitrailers designed to be drawn by Class A
11 motor vehicles and having a gross weight of less than two
12 thousand pounds;

13 Class G. Motorcycles and parking enforcement vehicles;

14 Class H. Motor vehicles operated regularly for the transpor-
15 tation of persons for compensation under a certificate of
16 convenience and necessity or contract carrier permit issued by
17 the public service commission;

18 Class J. Motor vehicles operated for transportation of
19 persons for compensation by common carriers, not running over
20 a regular route or between fixed termini;

21 Class M. Mobile equipment as defined in subdivision (oo),
22 section one, article one of this chapter;

23 Class R. House trailers;

24 Class T. Trailers or semitrailers of a type designed to be
25 drawn by Class A vehicles and having a gross weight of less
26 than two thousand pounds; and

27 Class Farm Truck. Motor vehicles designated as trucks
28 having a minimum gross weight of more than eight thousand
29 pounds and a maximum gross weight of eighty thousand
30 pounds, used exclusively in the conduct of a farming business,
31 engaged in the production of agricultural products by means of:
32 (a) The planting, cultivation and harvesting of agricultural,
33 horticultural, vegetable or other products of the soil; or (b) the
34 raising, feeding and care of livestock, poultry, bees and dairy
35 cattle. A farm truck may be used only for the transportation of
36 agricultural products produced by the owner of the truck, for
37 the transportation of agricultural supplies used in the production
38 or for private passenger use.

§17A-10-3. Registration fees for vehicles equipped with pneumatic tires.

1 The following registration fees for the classes indicated
2 shall be paid to the division for the registration of vehicles
3 subject to registration under this chapter when equipped with
4 pneumatic tires:

5 (a) Registration fees for the following classes shall be paid
6 to the division annually:

7 (1) *Class A.* — The registration fee for all motor vehicles of
8 this class is twenty-eight dollars and fifty cents: *Provided,* That
9 the registration fees and any other fees required by this chapter
10 for Class A vehicles under the optional biennial staggered
11 registration system shall be multiplied by two and paid bienni-
12 ally to the division.

13 No license fee may be charged for vehicles owned by
14 churches, or by trustees for churches, which are regularly used
15 for transporting parishioners to and from church services.
16 Notwithstanding the exemption, the certificate of registration
17 and license plates shall be obtained the same as other cards and
18 plates under this article.

19 (2) *Class B.* — The registration fee for all motor vehicles of
20 this class is as follows:

21 (A) For declared gross weights of eight thousand one
22 pounds to sixteen thousand pounds — twenty-eight dollars plus
23 five dollars for each one thousand pounds or fraction of one
24 thousand pounds that the gross weight of the vehicle or combi-
25 nation of vehicles exceeds eight thousand pounds.

26 (B) For declared gross weights greater than sixteen thou-
27 sand pounds, but less than fifty-five thousand pounds —
28 seventy-eight dollars and fifty cents plus ten dollars for each
29 one thousand pounds or fraction of one thousand pounds that
30 the gross weight of the vehicle or combination of vehicles
31 exceeds sixteen thousand pounds.

32 (C) For declared gross weights of fifty-five thousand
33 pounds or more — seven hundred thirty-seven dollars and fifty

34 cents plus fifteen dollars and seventy-five cents for each one
35 thousand pounds or fraction of one thousand pounds that the
36 gross weight of the vehicle or combination of vehicles exceeds
37 fifty-five thousand pounds.

38 (3) *Class G.* — The registration fee for each motorcycle or
39 parking enforcement vehicle is eight dollars.

40 (4) *Class H.* — The registration fee for all vehicles for this
41 class operating entirely within the state is five dollars; and for
42 vehicles engaged in interstate transportation of persons, the
43 registration fee is the amount of the fees provided by this
44 section for Class B, reduced by the amount that the mileage of
45 the vehicles operated in states other than West Virginia bears to
46 the total mileage operated by the vehicles in all states under a
47 formula to be established by the division of motor vehicles.

48 (5) *Class J.* — The registration fee for all motor vehicles of
49 this class is eighty-five dollars. Ambulances and hearses used
50 exclusively as ambulances and hearses are exempt from the
51 special fees set forth in this section.

52 (6) *Class M.* — The registration fee for all vehicles of this
53 class is seventeen dollars and fifty cents.

54 (7) *Class farm truck.* — The registration fee for all motor
55 vehicles of this class is as follows:

56 (A) For farm trucks of declared gross weights of eight
57 thousand one pounds to sixteen thousand pounds — thirty
58 dollars.

59 (B) For farm trucks of declared gross weights of sixteen
60 thousand one pounds to twenty-two thousand pounds — sixty
61 dollars.

62 (C) For farm trucks of declared gross weights of
63 twenty-two thousand one pounds to twenty-eight thousand
64 pounds — ninety dollars.

65 (D) For farm trucks of declared gross weights of
66 twenty-eight thousand one pounds to thirty-four thousand
67 pounds — one hundred fifteen dollars.

68 (E) For farm trucks of declared gross weights of thirty-four
69 thousand one pounds to forty-four thousand pounds — one
70 hundred sixty dollars.

71 (F) For farm trucks of declared gross weights of forty-four
72 thousand one pounds to fifty-four thousand pounds — two
73 hundred five dollars.

74 (G) For farm trucks of declared gross weights of fifty-four
75 thousand one pounds to eighty thousand pounds — two hundred
76 fifty dollars: *Provided*, That the provisions of subsection (a)
77 section eight, article one, chapter seventeen-e do not apply if
78 the vehicle exceeds sixty-four thousand pounds and is a truck
79 tractor or road tractor.

80 (b) Registration fees for the following classes shall be paid
81 to the division for a maximum period of three years, or portion
82 of a year based on the number of years remaining in the three-
83 year period designated by the commissioner:

84 (1) *Class R.* — The annual registration fee for all vehicles
85 of this class is twelve dollars.

86 (2) *Class T.* — The annual registration fee for all vehicles
87 of this class is eight dollars.

88 (c) The fees paid to the division for a multiyear registration
89 provided for by this chapter shall be the same as the annual
90 registration fee established by this section and any other fee
91 required by this chapter multiplied by the number of years for
92 which the registration is issued.

93 (d) The registration fee for all Class C vehicles is fifty dollars.
94 On or before the first day of July, two thousand, all Class C
95 trailers shall be registered for the duration of the owner's
96 interest in the trailer and do not expire until either sold or
97 otherwise permanently removed from the service of the owner.

CHAPTER 191

(H. B. 2274 — By Delegates Williams, Everson,
Stalnaker, Willison, Warner, Houston and Marshall)

[Passed February 22, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and six, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to authorizing the division of motor vehicles to add an optional classification on driver's license for diabetics; and eliminating the jail penalty for driving a motor vehicle without possessing a valid driver's license.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards.

§17B-2-6. Application for license or instruction permit; fee to accompany application.

***§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards.**

- 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 such subdivi-
- 5 sion street is generally used by the public unless the person has
- 6 a valid driver's license under the provisions of this code for the
- 7 type or class of vehicle being driven.

* Clerk's Note: This section was also amended by HB 2295 (Chapter 180), which passed prior to this act, and SB 497 (Chapter 192), which passed subsequent to this act.

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 such
12 privilege by any county, municipality or local board or body
13 having authority to adopt local police regulations.

14 (b) The division, upon issuing a driver's license, shall
15 indicate on the license the type or general class or classes of
16 vehicle or vehicles the licensee may operate in accordance with
17 the provisions of this code, federal law or rule.

18 (c) Driver's licenses issued by the division shall be classi-
19 fied in the following manner:

20 (1) Class A, B or C license shall be issued to those persons
21 eighteen years of age or older with two years driving experience
22 and who have qualified for the commercial driver's license
23 established by chapter seventeen-e of this code and the federal
24 Commercial Motor Vehicle Safety Act of 1986, Title XII of
25 public law 99870 and subsequent rules, and have paid the
26 required fee.

27 (2) Class D license shall be issued to those persons eighteen
28 years and older with one year driving experience who operate
29 motor vehicles other than those types of vehicles which require
30 the operator to be licensed under the provisions of chapter
31 seventeen-e of this code and federal law and rule and whose
32 primary function or employment is the transportation of persons
33 or property for compensation or wages and have paid the
34 required fee. For the purposes of the regulation of the operation
35 of a motor vehicle, wherever the term chauffeur's license is
36 used in this code, it shall be construed to mean the Class A, B,
37 C or D license described in this section or chapter seventeen-e
38 of this code or federal law or rule: *Provided*, That anyone who
39 is not required to be licensed under the provisions of chapter
40 seventeen-e of this code and federal law or rule and who
41 operates a motor vehicle which is registered or which is
42 required to be registered as a Class A motor vehicle as that term
43 is defined in section one, article ten, chapter seventeen-a of this
44 code with a gross vehicle weight rating of less than eight

45 thousand one pounds, is not required to obtain a Class D
46 license.

47 (3) Class E license shall be issued to those persons who
48 have qualified under the provisions of this chapter and who are
49 not required to obtain a Class A, B, C or D license and who
50 have paid the required fee. The Class E license may be en-
51 dorsed under the provisions of section seven-b of this article for
52 motorcycle operation.

53 (4) Class F license shall be issued to those persons who
54 successfully complete the motorcycle examination procedure
55 provided for by this chapter and have paid the required fee, but
56 who do not possess a Class A, B, C and D or E driver's license.

57 (5) All licenses issued under this section may contain
58 information designating the licensee as a diabetic, if the
59 licensee requests this information to be on the license.

60 (d) No person, except those hereinafter expressly exempted,
61 shall drive any motorcycle upon a street or highway in this state
62 or upon any subdivision street, as used in article twenty-four,
63 chapter eight of this code, when the use of such subdivision
64 street is generally used by the public unless the person has a
65 valid motorcycle license or a valid license which has been
66 endorsed under section seven-b of this article for motorcycle
67 operation or has a valid motorcycle instruction permit.

68 (e) (1) A nonoperator identification card may be issued to
69 any person who:

70 (A) Is a resident of this state in accordance with the
71 provisions of section one-a, article three, chapter seventeen-a of
72 this code;

73 (B) Does not have a valid driver's license;

74 (C) Has reached the age of sixteen years;

75 (D) Has paid the required fee of ten dollars: *Provided*, That
76 such fee is not required if the applicant is sixty-five years or
77 older or is legally blind; and

78 (E) Presents a birth certificate or other proof of age and
79 identity acceptable to the division with a completed application
80 on a form furnished by the division.

81 (2) The nondriver identification card shall contain the same
82 information as a driver's license except that such identification
83 card shall be clearly marked as identification card. The identifi-
84 cation card shall expire every four years. It may be renewed on
85 application and payment of the fee required by this section.

86 (A) After the thirtieth day of June, one thousand nine
87 hundred ninety-six, every identification card issued to persons
88 who have attained their twenty-first birthday shall expire on the
89 last day of the month in which the applicant's birthday occurs
90 in those years in which the applicant's age is evenly divisible
91 by five. Except as provided in paragraph (B) of this subdivision,
92 no identification card may be issued for less than three years
93 nor more than seven years and such identification card shall be
94 renewed in the month in which the applicant's birthday occurs
95 and shall be valid for a period of five years expiring in the
96 month in which the applicant's birthday occurs and in a year in
97 which the applicant's age is evenly divisible by five.

98 (B) Every identification card issued to persons who have
99 not attained their twenty-first birthday shall expire on the last
100 day of the month in the year in which the applicant attains the
101 age of twenty-one years.

102 (3) The identification card shall be surrendered to the
103 division when the holder is issued a driver's license. The
104 division may issue an identification card to an applicant whose
105 privilege to operate a motor vehicle has been refused, canceled,
106 suspended or revoked under the provisions of this code.

107 (f) Any person violating the provisions of this section is
108 guilty of a misdemeanor and, upon conviction thereof, shall be
109 fined not more than five hundred dollars; and upon a second or
110 subsequent conviction, shall be fined not more than five
111 hundred dollars, or confined in the county or regional jail not
112 more than six months, or both.

§17B-2-6. Application for license or instruction permit; fee to accompany application.

1 Every application for an instruction permit or for a
2 driver's license shall be made upon a form furnished by the
3 division. Every application shall be accompanied by the proper
4 fee and payment of such fee shall entitle the applicant to not
5 more than three attempts to pass the examination within a
6 period of sixty days from the date of application, except that no
7 applicant may be examined twice within a period of one week.

8 Every said application shall state the full name, date of
9 birth, sex, and residence address of the applicant, and briefly
10 describe the applicant, and shall state whether the applicant has
11 theretofore been a licensed driver, and, if so, when and by what
12 state or country, and whether any such license has ever been
13 suspended or revoked within the five years next preceding the
14 date of application, or whether an application has ever been
15 refused, and, if so, the date of and reason for such suspension,
16 revocation or refusal, whether the applicant desires a notation
17 on the drivers license indicating that the applicant is a diabetic,
18 and such other pertinent information as the commissioner may
19 require.

CHAPTER 192

(Com. Sub. for S. B. 497 — By Senators Craigo, Anderson, Bailey, Ball, Boley, Chafin, Deem, Dittmar, Edgell, Fanning, Helmick, Hunter, Jackson, Kessler, Love, McCabe, McKenzie, Minard, Minear, Mitchell, Oliverio, Plymale, Prezioso, Redd, Ross, Schoonover, Sharpe, Snyder, Sprouse, Unger, Walker, Wooton and Tomblin, Mr. President)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and twelve, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the expiration date of driver's licenses; and allowing the commissioner of the

division of motor vehicles to change the date that a driver's license expires to the driver's birthday, and providing for lowering the age for nondriver's identification cards.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards.

§17B-2-12. Expiration of licenses; renewal; renewal fees.

***§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards.**

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 such subdivi-
5 sion street is generally used by the public unless the person has
6 a 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 such
12 privilege by any county, municipality or local board or body
13 having authority to adopt local police regulations.

14 (b) The division, upon issuing a driver's license, shall
15 indicate on the license the type or general class or classes of
16 vehicle or vehicles the licensee may operate in accordance with
17 the provisions of this code, federal law or rule.

18 (c) Driver's licenses issued by the division shall be classi-
19 fied in the following manner:

* Clerk's Note: This section was also amended by HB 2274 (Chapter 191), and HB 2295 (Chapter 180), which passed prior to this act.

20 (1) Class A, B or C license shall be issued to those persons
21 eighteen years of age or older with two years driving experience
22 and who have qualified for the commercial driver's license
23 established by chapter seventeen-e of this code and the federal
24 Commercial Motor Vehicle Safety Act of 1986, Title XII of
25 public law 99-570 and subsequent rules, and have paid the
26 required fee.

27 (2) Class D license shall be issued to those persons eighteen
28 years and older with one year driving experience who operate
29 motor vehicles other than those types of vehicles which require
30 the operator to be licensed under the provisions of chapter
31 seventeen-e of this code and federal law and rule and whose
32 primary function or employment is the transportation of persons
33 or property for compensation or wages and have paid the
34 required fee. For the purposes of the regulation of the operation
35 of a motor vehicle, wherever the term chauffeur's license is
36 used in this code, it shall be construed to mean the Class A, B,
37 C or D license described in this section or chapter seventeen-e
38 of this code or federal law or rule: *Provided*, That anyone who
39 is not required to be licensed under the provisions of chapter
40 seventeen-e of this code and federal law or rule and who
41 operates a motor vehicle which is registered or which is
42 required to be registered as a Class A motor vehicle as that term
43 is defined in section one, article ten, chapter seventeen-a of this
44 code with a gross vehicle weight rating of less than eight
45 thousand one pounds, is not required to obtain a Class D
46 license.

47 (3) Class E license shall be issued to those persons who
48 have qualified under the provisions of this chapter and who are
49 not required to obtain a Class A, B, C or D license and who
50 have paid the required fee. The Class E license may be en-
51 dorsed under the provisions of section seven-b of this article for
52 motorcycle operation.

53 (4) Class F license shall be issued to those persons who
54 successfully complete the motorcycle examination procedure
55 provided for by this chapter and have paid the required fee, but
56 who do not possess a Class A, B, C and D or E driver's license.

57 (5) All licenses issued under this section may contain
58 information designating the licensee as a diabetic, if the
59 licensee requests this information on the license.

60 (d) No person, except those hereinafter expressly exempted,
61 shall drive any motorcycle upon a street or highway in this state
62 or upon any subdivision street, as used in article twenty-four,
63 chapter eight of this code, when the use of such subdivision
64 street is generally used by the public unless the person has a
65 valid motorcycle license or a valid license which has been
66 endorsed under section seven-b of this article for motorcycle
67 operation or has a valid motorcycle instruction permit.

68 (e) (1) A nonoperator identification card may be issued to
69 any person who:

70 (A) Is a resident of this state in accordance with the
71 provisions of section one-a, article three, chapter seventeen-a of
72 this code;

73 (B) Does not have a valid driver's license;

74 (C) Has reached the age of two years. The division may
75 also issue a nonoperator identification card to a person under
76 the age of two years for good cause shown;

77 (D) Has paid the required fee of two dollars and fifty cents
78 per year for each year the identification card is issued to be
79 valid: *Provided*, That such fee is not required if the applicant is
80 sixty-five years or older or is legally blind; and

81 (E) Presents a birth certificate or other proof of age and
82 identity acceptable to the division with a completed application
83 on a form furnished by the division.

84 (2) The nondriver identification card shall contain the same
85 information as a driver's license except that such identification
86 card shall be clearly marked as identification card. However,
87 the division may issue an identification card with less informa-
88 tion to persons under the age of sixteen. It may be renewed on
89 application and payment of the fee required by this section.

90 (A) Every identification card issued to persons who have
91 attained their twenty-first birthday shall expire on the day of the
92 month designated by the commissioner in which the applicant's
93 birthday occurs in those years in which the applicant's age is
94 evenly divisible by five. Except as provided in paragraph (B) of
95 this subdivision, no identification card may be issued for less
96 than three years nor more than seven years and shall be valid
97 for a period of five years expiring in the month in which the
98 applicant's birthday occurs and in a year in which the appli-
99 cant's age is evenly divisible by five.

100 (B) Every identification card issued to persons who have
101 not attained their twenty-first birthday shall expire on the day
102 of the month designated by the commissioner in the year in
103 which the applicant attains the age of twenty-one years.

104 (C) Every identification card issued to persons under the
105 age of sixteen shall expire on the day of the month designated
106 by the commissioner in which the applicant's birthday occurs
107 and shall be issued for a period of two years.

108 (3) The identification card shall be surrendered to the
109 division when the holder is issued a driver's license. The
110 division may issue an identification card to an applicant whose
111 privilege to operate a motor vehicle has been refused, canceled,
112 suspended or revoked under the provisions of this code.

113 (f) Any person violating the provisions of this section is
114 guilty of a misdemeanor and, upon conviction thereof, shall be
115 fined not more than five hundred dollars; and upon a second or
116 subsequent conviction, shall be fined not more than five
117 hundred dollars, or confined in the county or regional jail not
118 more than six months, or both.

§17B-2-12. Expiration of licenses; renewal; renewal fees.

1 (a) Every driver's license shall expire five years from the
2 date of its issuance.

3 (b)(1) Every driver's license issued to persons who have
4 attained their twenty-first birthday shall expire on the day of the
5 month designated by the commissioner in which the applicant's

6 birthday occurs in those years in which the applicant's age is
7 evenly divisible by five. Except as provided in the following
8 subdivisions, no driver's license may be issued for less than
9 three years nor more than seven years and shall be valid for a
10 period of five years, expiring in the month in which the
11 applicant's birthday occurs and in a year in which the appli-
12 cant's age is evenly divisible by five.

13 (2) Every driver's license issued to persons who have not
14 attained their twenty-first birthday shall expire on the day of the
15 month designated by the commissioner in the year in which the
16 applicant attains the age of twenty-one years.

17 (3) The driver's license of any person in the armed forces
18 is extended for a period of six months from the date the person
19 is separated under honorable circumstances from active duty in
20 the armed forces.

21 (4) The commissioner may change the date that a driver's
22 license expires from the last day of the month in those years
23 specified in subdivisions (1) and (2) of this subsection to the
24 day of the month in which the applicant's birthday occurs in
25 those years. If the commissioner changes the expiration date,
26 the change may only affect new licenses and renewed licenses.

27 (c) A person who allows his or her driver's license to expire
28 may apply to the division for renewal of the license. Applica-
29 tion shall be made upon a form furnished by the division and
30 shall be accompanied by payment of the fee required by section
31 eight of this article plus an additional fee of five dollars. The
32 commissioner shall determine whether the person qualifies for
33 a renewed license and may, in the commissioner's discretion,
34 renew any expired license without examination of the applicant.

35 (d) Each renewal of a driver's license shall contain a new
36 color photograph of the licensee. By first class mail to the
37 address last known to the division, the commissioner shall
38 notify each person who holds a valid driver's license of the
39 expiration date of the license. The notice shall be mailed at least
40 thirty days prior to the expiration date of the license and shall
41 include a renewal application form.

CHAPTER 193

(Com. Sub. for H. B. 2311 — By Delegates Boggs, Leach, Staton and Warner)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter seventeen-b 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 exempting certain railroad employees from the duty to produce a driver's license while operating a train and requiring that the crew members produce photo identification issued by the railroad employer or other state or federal authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-9a. Exemptions of certain railroad workers.

1 Notwithstanding any provision of this code to the contrary,
2 in any circumstance involving an accident or alleged violation
3 of law in which the engineer or any other crew member of any
4 train is detained by any law-enforcement officer, the engineer
5 and all crew members shall not be required to furnish a driver's
6 license issued by the division of motor vehicles: *Provided*, That
7 the engineer and all crew members shall be required to produce
8 photo identification issued by the railroad employer or any
9 other state or federal authority other than the division of motor
10 vehicles upon request of any law-enforcement officer during the
11 course of investigating an accident or alleged violation of law
12 involving the operation of a train.

CHAPTER 194

(H. B. 2022 — By Delegates Coleman and Stemple)

[Passed March 13, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article four, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to altering the criminal and administrative penalties for driving a motor vehicle while the operator's license is suspended or revoked.

Be it enacted by the Legislature of West Virginia:

That section three, article four, 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 4. VIOLATIONS OF LICENSE PROVISIONS.

§17B-4-3. Driving while license suspended or revoked; driving while license revoked for driving under the influence of alcohol, controlled substances or drugs, or while having alcoholic concentration in the blood of ten hundredths of one percent or more, by weight, or for refusing to take secondary chemical test of blood alcohol contents.

1 (a) Except as otherwise provided in subsection (b) or (d) of
2 this section, any person who drives a motor vehicle on any
3 public highway of this state at a time when his or her privilege
4 to do so has been lawfully suspended or revoked by this state or
5 any other jurisdiction is, for the first offense, guilty of a
6 misdemeanor and, upon conviction thereof, shall be fined not
7 less than one hundred dollars nor more than five hundred
8 dollars; for the second offense, the person is guilty of a misde-
9 meanor and, upon conviction thereof, shall be confined in jail
10 for a period of ten days and, in addition to the mandatory jail

11 sentence, shall be fined not less than one hundred dollars nor
12 more than five hundred dollars; for the third or any subsequent
13 offense, the person is guilty of a misdemeanor and, upon
14 conviction thereof, shall be confined in jail for six months and,
15 in addition to the mandatory jail sentence, shall be fined not
16 less than one hundred fifty dollars nor more than five hundred
17 dollars.

18 (b) Any person who drives a motor vehicle on any public
19 highway of this state at a time when his or her privilege to do
20 so has been lawfully revoked for driving under the influence of
21 alcohol, controlled substances or other drugs, or for driving
22 while having an alcoholic concentration in his or her blood of
23 ten hundredths of one percent or more, by weight, or for
24 refusing to take a secondary chemical test of blood alcohol
25 content, is, for the first offense, guilty of a misdemeanor and,
26 upon conviction thereof, shall be confined in jail for six months
27 and in addition to the mandatory jail sentence, shall be fined not
28 less than one hundred dollars nor more than five hundred
29 dollars; for the second offense, the person is guilty of a misde-
30 meanor and, upon conviction thereof, shall be confined in jail
31 for a period of one year and, in addition to the mandatory jail
32 sentence, shall be fined not less than one thousand dollars nor
33 more than three thousand dollars; for the third or any subse-
34 quent offense, the person is guilty of a felony and, upon
35 conviction thereof, shall be imprisoned in the penitentiary for
36 not less than one year nor more than three years and, in addition
37 to the mandatory prison sentence, shall be fined not less than
38 three thousand dollars nor more than five thousand dollars.

39 (c) Upon receiving a record of the first or subsequent
40 conviction of any person under subsection (b) of this section
41 upon a charge of driving a vehicle while the license of such
42 person was lawfully suspended or revoked, the division shall
43 extend the period of such suspension or revocation for an
44 additional period of one year from and after the date such
45 person would otherwise have been entitled to apply for a new
46 license. Upon receiving a record of the second or subsequent
47 conviction of any person under subsection (a) of this section
48 upon a charge of driving a vehicle while the license of such

49 person was lawfully suspended or revoked, the division shall
50 extend the period of such suspension or revocation for an
51 additional period of one year from and after the date such
52 person would otherwise have been entitled to apply for a new
53 license.

54 (d) Any person who drives a motor vehicle on any public
55 highway of this state at a time when his or her privilege to do
56 so has been lawfully suspended for driving while under the age
57 of twenty-one years with an alcohol concentration in his or her
58 blood of two hundredths of one percent or more, by weight, but
59 less than ten hundredths of one percent, by weight, is guilty of
60 a misdemeanor and, upon conviction thereof, shall be confined
61 in jail for twenty-four hours or shall be fined not less than fifty
62 dollars nor more than five hundred dollars, or both.

63 (e) An order for home detention by the court pursuant to the
64 provisions of article eleven-b, chapter sixty-two of this code
65 may be used as an alternative sentence to any period of incar-
66 ceration required by this section.

CHAPTER 195

(S. B. 703 — By Senators Redd, Wooton, Ball, Dittmar, Hunter, McCabe,
Minard, Mitchell, Oliverio, Ross, Snyder, Deem and McKenzie)

[Passed March 10, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixty-four; and to amend article twelve of said chapter by adding thereto a new section, designated section seven-a, all relating to establishing safety requirements for certain vehicles used to transport children; defining "passenger van"; requiring certain warning signs and equipment on passenger vans; establishing requirements for motorists meeting or overtaking passenger vans; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

Article

1. **Words and Phrases Defined.**
12. **Special Stops Required.**

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17C-1-64. Passenger van.

- 1 "Passenger van" means any van or other motor vehicle
- 2 owned by any agency, business or other legal entity and
- 3 operated for the purpose of transportation of children under the
- 4 age of eighteen years, other than a van utilized for private use,
- 5 taxicab, bus or school bus. Passenger vans include, but are not
- 6 limited to, vehicles used by daycare centers, after-school
- 7 centers and nursery schools.

ARTICLE 12. SPECIAL STOPS REQUIRED.

§17C-12-7a. Signs and warning lights or alternative warning devices upon passenger vans; passing passenger van; criminal penalties.

- 1 (a) Every passenger van used for the transportation of
- 2 children, as defined in section sixty-four, article one of this
- 3 chapter shall bear upon the front and rear thereof a plainly
- 4 visible sign containing the warning "Caution: Loading and
- 5 Unloading Passengers" in letters not less than six inches in
- 6 height. Every such passenger van shall be equipped with either
- 7 flashing warning signal lights as are contemplated and referred
- 8 to in section eight of this article, or a red caution flag which the
- 9 driver or some other adult must use by exiting the passenger
- 10 van and displaying while assisting in the loading or unloading
- 11 of passengers. Such vehicles may also be equipped with a white
- 12 flashing strobotron warning light that meets the requirements
- 13 set forth in subsection (e), section twenty-six, article fifteen of
- 14 this chapter.

15 (b) The driver of a vehicle upon meeting or overtaking from
16 any direction any passenger van which has stopped for the
17 purpose of loading or unloading passengers shall stop his or her
18 vehicle before reaching the passenger van when there is in
19 operation on the passenger van flashing warning signal lights or
20 when an adult is outside the passenger van with a red caution
21 flag and assisting with the loading or unloading of passengers.
22 The driver of a vehicle may not proceed until he or she is
23 signaled by the passenger van driver to proceed, the passenger
24 van flashing signal lights are no longer actuated, or the passen-
25 ger van resumes motion. This section applies wherever the passen-
26 ger van is loading or unloading children on any street, highway,
27 parking lot, private road or driveway: *Provided*, That the driver
28 of a vehicle upon a controlled access highway need not stop
29 upon meeting or passing a passenger van which is on a different
30 roadway or adjacent to the highway and where pedestrians are
31 not permitted to cross the roadway. Any driver acting in
32 violation of this subsection is guilty of a misdemeanor and,
33 upon conviction thereof, shall be fined not less than fifty nor
34 more than two hundred dollars, or imprisoned in the county or
35 regional jail not more than six months, or both fined and
36 imprisoned. If the identity of the driver cannot be ascertained,
37 then any owner or lessee of the vehicle in violation of this
38 subsection is guilty of a misdemeanor and, upon conviction
39 thereof, shall be fined not less than twenty-five nor more than
40 one hundred dollars: *Provided, however*, That the conviction
41 may not subject the owner or lessee to further administrative or
42 other penalties for the offense, notwithstanding other provisions
43 of this code to the contrary.

CHAPTER 196

(Com. Sub. for H. B. 2253 — By Delegate Warner)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections six and seven, article four, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to revising accident reporting requirements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. ACCIDENTS.

§17C-4-6. Immediate reports of accidents.

§17C-4-7. Written reports of accidents.

§17C-4-6. Immediate reports of accidents.

1 The driver of a vehicle involved in an accident resulting in
2 injury to or death of any person or total property damage to an
3 apparent extent of five hundred dollars or more shall immedi-
4 ately by the quickest means of communication, whether oral or
5 written, give notice of such accident to the local police depart-
6 ment if such accident occurs within a municipality, otherwise
7 to the office of the county sheriff or the nearest office of the
8 West Virginia state police.

§17C-4-7. Written reports of accidents.

1 Every law-enforcement officer who, in the regular course
2 of duty, investigates a motor vehicle accident occurring on the
3 public highways of this state resulting in bodily injury to or
4 death of any person or total property damage to an apparent
5 extent of five hundred dollars or more shall, either at the time
6 of and at the scene of the accident or thereafter by interviewing
7 participants or witnesses, within twenty-four hours after
8 completing such investigation, forward a written report of such
9 accident to the division. The division shall prepare a form for
10 such accident report and, after approval of such form by the
11 commissioner, the superintendent of the West Virginia state
12 police and the commissioner of highways, shall supply copies
13 of such form to police departments, sheriffs and other appropri-
14 ate law-enforcement agencies. Every accident report required
15 under the provisions of this section shall be made on such form.

CHAPTER 197

(S. B. 474 — By Senators Ross, Schoonover, Ball and Anderson)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-six, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the use of strobotron warning lights on public transit vehicles and vehicles hauling solid waste.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. EQUIPMENT.

§17C-15-26. Special restrictions on lamps.

1 (a) Any lighted lamp or illuminating device upon a motor
2 vehicle other than head lamps, spot lamps, auxiliary lamps or
3 flashing front-direction signals which projects a beam of light
4 of an intensity greater than three hundred candlepower shall be
5 so directed that no part of the beam will strike the level of the
6 roadway on which the vehicle stands at a distance of more than
7 seventy-five feet from the vehicle.

8 (b) No person shall drive or move any vehicle or equipment
9 upon any highway with any lamp or device thereon displaying
10 other than a white or amber light visible from directly in front
11 of the center thereof except as authorized by subsection (d) of
12 this section.

13 (c) Except as authorized in subsections (d) and (f) of this
14 section and authorized in section nineteen of this article,

15 flashing lights are prohibited on motor vehicles: *Provided*, That
16 any vehicle as a means for indicating right or left turn, or any
17 vehicle as a means of indicating the same is disabled or
18 otherwise stopped for an emergency may have blinking or
19 flashing lights.

20 (d) Notwithstanding any other provisions of this chapter,
21 the following colors of flashing warning lights are restricted for
22 the use of the type of vehicle designated:

23 (1) Blue flashing warning lights are restricted to police
24 vehicles. Authorization for police vehicles shall be designated
25 by the chief administrative official of each police department.

26 (2) Except for standard vehicle equipment authorized by
27 section nineteen of this article, red flashing warning lights are
28 restricted to ambulances; firefighting vehicles; hazardous
29 material response vehicles; industrial fire brigade vehicles;
30 school buses; Class A vehicles, as defined by section one,
31 article ten, chapter seventeen-a of this code, of those firefighters
32 who are authorized by their fire chiefs to have the lights; Class
33 A vehicles of members of ambulance services or duly chartered
34 rescue squads who are authorized by their respective chiefs to
35 have the lights; and Class A vehicles of out-of-state residents
36 who are active members of West Virginia fire departments,
37 ambulance services or duly chartered rescue squads who are
38 authorized by their respective chiefs to have the lights. Red
39 flashing warning lights attached to the Class A vehicles shall be
40 operated only when responding to or engaged in handling an
41 emergency requiring the attention of the firefighters, members
42 of the ambulance services, or chartered rescue squads.

43 (3) The use of red flashing warning lights shall be autho-
44 rized as follows:

45 (A) Authorization for all ambulances shall be designated by
46 the department of health and human resources and the sheriff of
47 the county of residence.

48 (B) Authorization for all fire department vehicles shall be
49 designated by the fire chief and the state fire marshal's office.

50 (C) Authorization for all hazardous material response
51 vehicles and industrial fire brigades shall be designated by the
52 chief of the fire department and the state fire marshal's office.

53 (D) Authorization for all rescue squad vehicles not operat-
54 ing out of a fire department shall be designated by the squad
55 chief, the sheriff of the county of residence and the department
56 of health and human resources.

57 (E) Authorization for school buses shall be designated as
58 set out in section twelve, article fourteen, chapter seventeen-c.

59 (F) Authorization for firefighters to operate Class A
60 vehicles shall be designated by their fire chiefs and the state fire
61 marshal's office.

62 (G) Authorization for members of ambulance services or
63 any other emergency medical service personnel to operate Class
64 A vehicles shall be designated by their chief official, the
65 department of health and human resources and the sheriff of the
66 county of residence.

67 (H) Authorization for members of duly chartered rescue
68 squads not operating out of a fire department to operate Class
69 A vehicles shall be designated by their squad chiefs, the sheriff
70 of the county of residence and the department of health and
71 human resources.

72 (I) Authorization for out-of-state residents operating Class
73 A vehicles who are active members of a West Virginia fire
74 department, ambulance services or duly chartered rescue squads
75 shall be designated by their respective chiefs.

76 (4) Yellow flashing warning lights are restricted to the
77 following:

78 (A) All other emergency vehicles, including tow trucks and
79 wreckers, authorized by this chapter and by section twenty-
80 seven of this article;

81 (B) Postal service vehicles and rural mail carriers, as
82 authorized in section nineteen of this article;

83 (C) Rural newspaper delivery vehicles;

- 84 (D) Flag car services;
- 85 (E) Vehicles providing road service to disabled vehicles;
- 86 (F) Service vehicles of a public service corporation;
- 87 (G) Snow removal equipment; and
- 88 (H) School buses.

89 (5) The use of yellow flashing warning lights shall be
90 authorized as follows:

91 (A) Authorization for tow trucks, wreckers, rural newspaper
92 delivery vehicles, flag car services, vehicles providing road
93 service to disabled vehicles, service vehicles of a public service
94 corporation and postal service vehicles shall be designated by
95 the sheriff of the county of residence.

96 (B) Authorization for snow removal equipment shall be
97 designated by the commissioner of the division of highways.

98 (C) Authorization for school buses shall be designated as
99 set out in section twelve, article fourteen, chapter seventeen-c.

100 (e) Notwithstanding the foregoing provisions of this
101 section, any vehicle belonging to a county board of education,
102 an organization receiving funding from the state or federal
103 transit administration for the purpose of providing general
104 public transportation, or hauling solid waste may be equipped
105 with a white flashing strobotron warning light. This strobe light
106 may be installed on the roof of a school bus, a public transpor-
107 tation vehicle, or a vehicle hauling solid waste not to exceed
108 one-third the body length forward from the rear of the roof
109 edge. The light shall have a single clear lens emitting light three
110 hundred sixty degrees around its vertical axis and may not
111 extend above the roof more than six and one-half inches. A
112 manual switch and a pilot light must be included to indicate the
113 light is in operation.

114 (f) It shall be unlawful for flashing warning lights of an
115 unauthorized color to be installed or used on a vehicle other
116 than as specified in this section, except that a police vehicle
117 may be equipped with either or both blue or red warning lights.

CHAPTER 198

(Com. Sub. for H. B. 2743 — By Delegates Michael and Warner)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing for special overweight permits for vehicles hauling containerized freight bound to or from a seaport or inland waterway port.

Be it enacted by the Legislature of West Virginia:

That section eleven, article seventeen, 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 17. SIZE, WEIGHT AND LOAD.

§17C-17-11. Permits for excess size and weight.

- 1 (a) The commissioner of highways may, in his or her
- 2 discretion, upon application in writing and good cause being
- 3 shown therefor issue a special permit in writing authorizing: (1)
- 4 The applicant, in crossing any highway of this state, to operate
- 5 or move a vehicle or combination of vehicles of a size or weight
- 6 or load exceeding the maximum specified in this chapter or
- 7 otherwise not in conformity with the provisions of this chapter,
- 8 whether the operation be continuous or not, provided the
- 9 applicant shall agree to compensate the commissioner of
- 10 highways for all damages or expenses incurred in connection
- 11 with the crossing; (2) the applicant to operate or move a vehicle
- 12 or combination of vehicles of a size or weight of vehicles or
- 13 load exceeding the maximum specified in this chapter or
- 14 otherwise not in conformity with the provisions of this chapter,
- 15 except that a permit shall not be issued for continuous operation
- 16 of a vehicle not in conformity with the provisions of this article
- 17 relating to weight limitations; and (3) the applicant to move or

18 operate, for limited or continuous operation, a vehicle hauling
19 containerized cargo in a sealed, seagoing container to or from
20 a seaport or inland waterway port that has or will be transported
21 by marine shipment where the vehicle is not, as a result of
22 hauling the container, in conformity with the provisions of this
23 article relating to weight limitations, upon the conditions that:
24 (A) The container be hauled only on the roadways and high-
25 ways designated by the commissioner of highways; (B) the
26 contents of the container are not changed from the time it is
27 loaded by the consignor or the consignor's agent to the time it
28 is delivered to the consignee or the consignee's agent; and (C)
29 such additional conditions as the commissioner may impose to
30 otherwise ensure compliance with the provisions of this
31 chapter.

32 (b) The application for any permit shall specifically
33 describe the vehicle or vehicles and load to be operated or
34 moved along or across the highway and the particular highway
35 or crossing of the highway for which permit to operate is
36 requested, and whether the permit is requested for a single trip
37 or for a continuous operation.

38 (c) The commissioner of highways is authorized to issue or
39 withhold a permit at his or her discretion; or, if the permit is
40 issued, to limit the number of trips, or to establish seasonal or
41 other time limitations within which the vehicles described may
42 be operated on or across the highways indicated, or otherwise
43 to limit or prescribe conditions of operation of the vehicle or
44 vehicles, when necessary to assure against undue damage to the
45 road foundations, surface, or structures, and may require the
46 undertaking, bond or other security as may be considered
47 necessary to compensate for any injury to any roadway struc-
48 ture and to specify the type, number and the location for escort
49 vehicles for any vehicle.

50 The commissioner may charge a fee not to exceed five
51 dollars for the issuance of a permit for a mobile home and a
52 reasonable fee for the issuance of a permit for any other vehicle
53 under the provisions of this section to pay the administrative
54 costs thereof.

55 (d) Every permit shall be carried in the vehicle or combina-
56 tion of vehicles to which it refers and shall be open to inspec-
57 tion by any police officer or authorized agent of the commis-
58 sioner of highways granting the permit, and no person shall
59 violate any of the terms or conditions of the special permit.

CHAPTER 199

(S. B. 150 — By Senators Wooton, Ball, Dittmar, Fanning, Hunter, Kessler,
McCabe, Mitchell, Oliverio, Redd, Ross, Snyder and McKenzie)

[Passed February 18, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article two-a, chapter seventeen-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to investigation by duly authorized law-enforcement officer to include inquiry regarding required security; duty of courts to notify division of motor vehicles of person found not to have security; and time limits.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.

§17D-2A-6. Investigation by duly authorized law-enforcement officer to include inquiry regarding required security; notice by officer or court to division of motor vehicles.

1 At the time of investigation of a motor vehicle offense or
2 accident in this state by the department of public safety or other
3 law-enforcement agency or when a vehicle is stopped by a law-
4 enforcement officer for reasonable cause, the officer of such
5 agency making such investigation shall inquire of the operator
6 of any motor vehicle involved as to the existence upon such

7 vehicle or vehicles of the proof of insurance or other security
8 required by the provisions of this code and upon a finding by
9 such law-enforcement agency, officer or agent thereof that the
10 security required by the provisions of this article is not in effect,
11 as to any vehicle, he or she shall notify the department of motor
12 vehicles of such finding within five days if no citation requiring
13 a court appearance is issued: *Provided*, That such law-enforce-
14 ment officer or agent shall not stop vehicles solely to inquire as
15 to the certificate of insurance. A defendant, who is charged with
16 a traffic offense that requires an appearance in court, shall
17 present the court at the time of his or her appearance or subse-
18 quent appearance with proof that the defendant had security at
19 the time of the traffic offenses as required by this article. If, as
20 a result of the defendant's failure to show proof, the court
21 determines that the defendant has violated this article, it shall
22 notify the department of motor vehicles within five days. For
23 purposes of this section, presentation of a certificate of insur-
24 ance reflecting insurance to be in effect on the date in question
25 shall constitute proof of surety.

CHAPTER 200

(Com. Sub. for S. B. 222 — By Senators Ross, Kessler and Anderson)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, seven, twelve, thirteen, fourteen and fifteen, article one, chapter seventeen-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to commercial driver's licenses; revising definitions of serious traffic violation and conviction; adding definitions of out-of-service order and violation thereof; providing for disqualification periods upon convictions of certain offenses and upon refusal to take test for determining intoxication; making violation of out-of-service order a disqualifying offense; clarifying when licenses expire; clarifying certain

alcohol-related offenses; and providing for procedure upon certain arrests.

Be it enacted by the Legislature of West Virginia:

That sections three, seven, twelve, thirteen, fourteen and fifteen, article one, chapter seventeen-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-3. Definitions.

§17E-1-7. Commercial driver's license required; disqualification for driving without valid license.

§17E-1-12. Classifications, endorsements and restrictions.

§17E-1-13. Disqualification and cancellation.

§17E-1-14. Commercial drivers prohibited from driving with blood alcohol concentration of four hundredths of one percent or more; refusal of preliminary breath test to determine alcohol content of blood; criminal penalties.

§17E-1-15. Implied consent requirements for commercial motor vehicle drivers; disqualification for driving with blood alcohol concentration of four hundredths of one percent or more, by weight.

§17E-1-3. Definitions.

1 Notwithstanding any other provision of this code, the
2 following definitions apply to this article:

3 "Alcohol" means:

4 (a) Any substance containing any form of alcohol, includ-
5 ing, but not limited to, ethanol, methanol, propanol and
6 isopropanol;

7 (b) Beer, ale, port or stout and other similar fermented
8 beverages (including sake or similar products) of any name or
9 description containing one half of one percent or more of
10 alcohol by volume, brewed or produced from malt, wholly or in
11 part, or from any substitute therefor;

12 (c) Distilled spirits or that substance known as ethyl
13 alcohol, ethanol, or spirits of wine in any form (including all
14 dilutions and mixtures thereof from whatever source or by
15 whatever process produced); or

16 (d) Wine of not less than one half of one percent of alcohol
17 by volume.

18 "Alcohol concentration" means:

19 (a) The number of grams of alcohol per one hundred
20 milliliters of blood; or

21 (b) The number of grams of alcohol per two hundred ten
22 liters of breath; or

23 (c) The number of grams of alcohol per sixty-seven
24 milliliters of urine.

25 "Commercial driver license" means a license issued in
26 accordance with the requirements of this article to an individual
27 which authorizes the individual to drive a class of commercial
28 motor vehicle.

29 "Commercial driver license information system" is the
30 information system established pursuant to the federal commer-
31 cial motor vehicle safety act to serve as a clearinghouse for
32 locating information related to the licensing and identification
33 of commercial motor vehicle drivers.

34 "Commercial driver instruction permit" means a permit
35 issued pursuant to subsection (d), section nine of this article.

36 "Commercial motor vehicle" means a motor vehicle
37 designed or used to transport passengers or property:

38 (a) If the vehicle has a gross vehicle weight rating as
39 determined by federal regulation;

40 (b) If the vehicle is designed to transport sixteen or more
41 passengers, including the driver; or

42 (c) If the vehicle is transporting hazardous materials and is
43 required to be placarded in accordance with 49 C.F.R. part 172,
44 sub-part F.

45 "Commissioner" means the commissioner of motor
46 vehicles of this state.

47 "Controlled substance" means any substance so classified
48 under the provisions of chapter sixty-a of this code (uniform

49 controlled substances act) and includes all substances listed on
50 Schedules I through V, article two of said chapter sixty-a, as
51 they may be revised from time to time.

52 “Conviction” means the final judgment in a judicial or
53 administrative proceeding or a verdict or finding of guilty, a
54 plea of guilty, a plea of nolo contendere or a forfeiture of bond
55 or collateral upon a charge of a disqualifying offense, as a result
56 of proceedings upon any violation of the requirement of this
57 article.

58 “Division” means the division of motor vehicles.

59 “Disqualification” means a prohibition against driving a
60 commercial motor vehicle.

61 “Drive” means to drive, operate or be in physical control of
62 a motor vehicle in any place open to the general public for
63 purposes of vehicular traffic. For purposes of sections twelve,
64 thirteen and fourteen of this article “drive” includes operation
65 or physical control of a motor vehicle anywhere in this state.

66 “Driver” means any person who drives, operates or is in
67 physical control of a commercial motor vehicle, in any place
68 open to the general public for purposes of vehicular traffic, or
69 who is required to hold a commercial driver license.

70 “Driver license” means a license issued by a state to an
71 individual which authorizes the individual to drive a motor
72 vehicle of a specific class.

73 “Employee” means a person who is employed by an
74 employer to drive a commercial motor vehicle, including
75 independent contractors. An employee who is self-employed as
76 a commercial motor vehicle driver must comply with both the
77 requirements of this article pertaining to employees and
78 employers.

79 “Employer” means any person, including the United States,
80 a state, or a political subdivision of a state, who owns or leases
81 a commercial motor vehicle, or assigns a person to drive a
82 commercial motor vehicle.

83 “Farm vehicle” includes a motor vehicle or combination
84 vehicle registered to the farm owner or entity operating the
85 farm and used exclusively in the transportation of agricultural
86 or horticultural products, livestock, poultry and dairy products
87 from the farm or orchard on which they are raised or produced
88 to markets, processing plants, packing houses, canneries,
89 railway shipping points and cold storage plants and in the
90 transportation of agricultural or horticultural supplies and
91 machinery to such farms or orchards to be used thereon.

92 “Farmer” includes owner, tenant, lessee, occupant or person
93 in control of the premises used substantially for agricultural or
94 horticultural pursuits, who is at least eighteen years of age with
95 two years licensed driving experience.

96 “Farmer vehicle driver” means the person employed and
97 designated by the “farmer” to drive a “farm vehicle” as long as
98 driving is not his sole or principal function on the farm, who is
99 at least eighteen years of age with two years licensed driving
100 experience.

101 “Gross combination weight rating (GCWR)” means the
102 value specified by the manufacturer as the loaded weight of a
103 combination (articulated) vehicle. In the absence of a value
104 specified by the manufacturer, GCWR will be determined by
105 adding the GVWR of the power unit and the total weight of the
106 towed unit and any load thereon.

107 “Gross vehicle weight rating (GVWR)” means the value
108 specified by the manufacturer as the loaded weight of a single
109 vehicle. In the absence of a value specified by the manufacturer
110 the GVWR will be determined by the total weight of the vehicle
111 and any load thereon.

112 “Hazardous materials” has the meaning as that found in the
113 Hazardous Materials Transportation Act (49 U.S.C. 5101 et seq.
114 (1998)).

115 “Motor vehicle” means every vehicle which is
116 self-propelled, and every vehicle which is propelled by electric
117 power obtained from overhead trolley wires but not operated
118 upon rails.

119 “Out-of-service order” means a temporary prohibition
120 against driving a commercial motor vehicle as a result of a
121 determination by a federal agency or the public service com-
122 mission, pursuant to chapter twenty-four-a of this code, that: (a)
123 The continued use of a commercial motor vehicle may result in
124 death, serious injury or severe personal injury; or (b) the
125 continued actions by the driver of a commercial motor vehicle
126 poses an imminent hazard to public safety.

127 “Violation of an out-of-service order” means: (a) The
128 operation of a commercial motor vehicle during the period the
129 driver was placed out of service; or (b) the operation of a
130 commercial motor vehicle by a driver after the vehicle was
131 placed out of service and before the required repairs are made.

132 “Serious traffic violation” means:

133 (a) Excessive speeding defined as fifteen miles per hour in
134 excess of all posted limits;

135 (b) Reckless driving as defined in section three, article five,
136 chapter seventeen-c of this code including erratic lane changes
137 and following the vehicle ahead too closely;

138 (c) A violation of state or local law relating to motor
139 vehicle traffic control (other than a parking violation) arising in
140 connection with a fatal traffic accident. Vehicle weight and
141 vehicle defects are excluded as serious traffic violations; or

142 (d) Any other serious violations as may be determined by
143 the U. S. Secretary of Transportation.

144 “State” means a state of the United States and the District
145 of Columbia.

146 “Tank vehicle” means any commercial motor vehicle that
147 is designed to transport any liquid or gaseous materials within
148 a tank that is either permanently or temporarily attached to the
149 vehicle or the chassis. Such vehicles include, but are not limited
150 to, cargo tanks and portable tanks, as defined in 49 C.F.R. Part
151 171 (1998). However, this definition does not include portable
152 tanks having a rated capacity under one thousand gallons.

153 “**At fault traffic accident**” means for the purposes of
154 waiving the road test, a determination, by the official filing the
155 accident report, of fault as evidenced by an indication of
156 contributing circumstances in the accident report.

**§17E-1-7. Commercial driver’s license required; disqualification
for driving without valid license.**

1 (a) On or after the first day of April, one thousand nine
2 hundred ninety-two, except when driving under a commercial
3 driver’s instruction permit accompanied by the holder of a
4 commercial driver’s license valid for the vehicle being driven,
5 no person may drive a commercial motor vehicle unless the
6 person holds a commercial driver’s license and applicable
7 endorsements valid for the vehicle they are driving.

8 (b) No person may drive a commercial motor vehicle while
9 their driving privilege is suspended, revoked, canceled, expired,
10 subject to a disqualification, or in violation of an out-of-service
11 order.

12 (c) Drivers of a commercial motor vehicle must have a
13 commercial driver’s license in their possession at all times
14 while driving.

15 (d) The commissioner shall suspend for a period of ninety
16 days the driving privileges of any person who is convicted of
17 operating a commercial motor vehicle without holding a valid
18 commercial driver’s license and the applicable endorsements
19 valid for the vehicle he or she is driving or for any conviction
20 for operating a commercial motor vehicle while disqualified
21 from operating a commercial motor vehicle. Any person not
22 holding a commercial driver’s license who is convicted of an
23 offense that requires disqualification from operating a commer-
24 cial motor vehicle shall also be disqualified from eligibility for
25 a commercial driver’s license for the same time periods as
26 prescribed in federal law or rule or this chapter for commercial
27 driver’s license holders.

§17E-1-12. Classifications, endorsements and restrictions.

1 Commercial driver’s licenses may be issued, with the
2 following classifications, endorsements and restrictions; the

3 holder of a valid commercial driver's license may drive all
4 vehicles in the class for which that license is issued, and all
5 lesser classes of vehicles and vehicles which require an
6 endorsement, unless the proper endorsement appears on the
7 license:

8 (a) *Classifications.* —

9 (1) Class A - Any combination of vehicles with a gross
10 combined vehicle weight rating of twenty-six thousand one
11 pounds or more, provided the gross vehicle weight rating of the
12 vehicle(s) being towed is in excess of ten thousand pounds.

13 (2) Class B - Any single vehicle with a gross vehicle weight
14 rating of twenty-six thousand one pounds or more, and any such
15 vehicle towing a vehicle not in excess of ten thousand pounds.

16 (3) Class C - Any single vehicle or combination vehicle
17 with a gross vehicle weight rating of less than twenty-six
18 thousand one pounds or any such vehicle towing a vehicle with
19 a gross vehicle weight rating not in excess of ten thousand
20 pounds comprising:

21 (A) Vehicles designed to transport sixteen or more passen-
22 gers, including the driver; and

23 (B) Vehicles used in the transportation of hazardous
24 materials which requires the vehicle to be placarded under 49
25 C.F.R., Part 172, sub-part F.

26 (b) *Endorsements and restrictions.* — The commissioner
27 upon issuing a commercial driver's license shall have the
28 authority to impose such endorsements or restrictions as the
29 commissioner may determine to be appropriate to assure the
30 safe operation of a motor vehicle, and to comply with the
31 federal Motor Vehicle Act of 1986 and federal rules implement-
32 ing such act.

33 (c) *Applicant record check.* — Before issuing a commercial
34 driver's license, the commissioner must obtain driving record
35 information through the commercial driver's license informa-
36 tion system, the national driver register and from each state in
37 which the person has been commercially licensed.

38 (d) *Notification of license issuance.* — Within ten days
39 after issuing a commercial driver's license, the commissioner
40 shall notify the commercial driver's license information system
41 of that fact, providing all information required to ensure
42 identification of the person.

43 (e) *Expiration of license.* —

44 (1) Every commercial driver's license issued to persons
45 who have attained their twenty-first birthday shall expire on the
46 last day of the month in which the applicant's birthday occurs
47 in those years in which the applicant's age is evenly divisible
48 by five. Except as provided in subdivision (2) of this subsection,
49 no commercial driver's license may be issued for less than
50 three years nor more than seven years and such commercial
51 driver's license shall be renewed in the month in which the
52 applicant's birthday occurs and shall be valid for a period of
53 five years, expiring in the month in which the applicant's
54 birthday occurs and in a year in which the applicant's age is
55 evenly divisible by five.

56 (2) Every commercial driver's license issued to persons
57 who have not attained their twenty-first birthday shall expire on
58 the last day of the month in the year in which the applicant
59 attains the age of twenty-one years.

60 (3) Commercial driver's licenses held by any person in the
61 armed forces which expire while that person is on active duty
62 shall remain valid for thirty days from the date on which that
63 person reestablishes residence in West Virginia.

64 (4) Any person applying to renew a commercial driver's
65 license which has been expired for two years or more must
66 follow the procedures for an initial issuance of a commercial
67 driver's license, including the testing provisions.

68 (f) *License renewal procedures.* — When applying for
69 renewal of a commercial driver's license, the applicant must
70 complete the application form and provide updated information
71 and required certifications. If the applicant wishes to retain a
72 hazardous materials endorsement, the written test for a hazardous
73 materials endorsement must be taken and passed.

§17E-1-13. Disqualification and cancellation.

1 (a) *Disqualification offenses.* — Any person is disqualified
2 from driving a commercial motor vehicle for a period of one
3 year if convicted of a first violation of:

4 (1) Driving a commercial motor vehicle under the influence
5 of alcohol or a controlled substance;

6 (2) Driving a commercial motor vehicle while the person's
7 alcohol concentration of the person's blood, breath or urine is
8 four hundredths of one percent or more, by weight;

9 (3) Leaving the scene of an accident involving a commer-
10 cial motor vehicle driven by the person;

11 (4) Using a commercial motor vehicle in the commission of
12 any felony as defined in this article: *Provided*, That the com-
13 mission of any felony involving the manufacture, distribution,
14 or dispensing of a controlled substance, or possession with
15 intent to manufacture, distribute or dispense a controlled
16 substance falls under the provisions of subsection (e) of this
17 section;

18 (5) Refusal to submit to a test to determine the driver's
19 alcohol concentration while driving a commercial motor
20 vehicle;

21 (6) Manslaughter or negligent homicide resulting from the
22 operation of a motor vehicle as defined in section five, article
23 three, chapter seventeen-b, and section one, article five, chapter
24 seventeen-c of this code;

25 (7) Driving while license is suspended or revoked, as
26 defined in section three, article four, chapter seventeen-b of this
27 code;

28 (8) Perjury or making a false affidavit or statement under
29 oath to the department of motor vehicles, as defined in subsec-
30 tion (4), section five, article three, and section two, article four,
31 chapter seventeen-b of this code.

32 If any of the above violations occurred while transporting
33 a hazardous material required to be placarded, the person is

34 disqualified for a period of not less than three years for a first
35 violation.

36 (b) A person is disqualified for life if convicted of two or
37 more violations of any of the offenses specified in subsection
38 (a) of this section, or any combination of those offenses, arising
39 from two or more separate incidents.

40 (c) The commissioner may issue rules establishing guide-
41 lines, including conditions, under which a disqualification for
42 life under subsection (b) of this section may be reduced to a
43 period of not less than ten years.

44 (d) A person is disqualified from driving a commercial
45 motor vehicle for life who uses a commercial motor vehicle in
46 the commission of any felony involving the manufacture,
47 distribution or dispensing of a controlled substance, or posses-
48 sion with intent to manufacture, distribute or dispense a
49 controlled substance.

50 (e) A person is disqualified from driving a commercial
51 motor vehicle for a period of sixty days if convicted of two
52 serious traffic violations, or one hundred twenty days if
53 convicted of three serious violations, committed in a commer-
54 cial motor vehicle arising from separate incidents occurring
55 within a three-year period.

56 (f) In addition, in accordance with the provision of 49
57 C.F.R. §391.15 and §383.15 (1998), a conviction of violating an
58 out-of-service order is a disqualifying offense. For the first
59 offense, the period of disqualification shall be for ninety days.
60 For the second offense within a ten-year period for violations
61 in separate incidents, the period of disqualification shall be for
62 a period of one year. For the third or subsequent offense within
63 a ten-year period for violations in separate incidents, the period
64 of disqualification shall be for a period of three years. If the
65 violation of the out-of-service order occurred while the person
66 was operating a commercial motor vehicle transporting
67 hazardous material required to be placarded under the Hazard-
68 ous Transportation Act (49 U.S.C. §5101 et seq.) or while
69 operating a motor vehicle designed to transport sixteen or more

70 passengers including the driver, the period of disqualification
71 for the first offense shall be for one hundred eighty days. For
72 the second or subsequent offense within a ten-year period for
73 violations in separate incidents, the period of disqualification
74 shall be for three years.

75 (g) A person is disqualified from driving a commercial
76 motor vehicle if he or she has failed to pay overdue child
77 support or comply with subpoenas or warrants relating to
78 paternity or child support proceedings, if a circuit court has
79 ordered the suspension of the commercial driver's license as
80 provided in article five-a, chapter forty-eight-a of this code and
81 the child support enforcement division has forwarded to the
82 division a copy of the court order suspending the license, or has
83 forwarded its certification that the licensee has failed to comply
84 with a new or modified order that stayed the suspension and
85 provided for the payment of current support and any arrearage
86 due. A disqualification under this section shall continue until
87 the division has received a court order restoring the license or
88 a certification by the child support enforcement division that the
89 licensee is complying with the original support order or a new
90 or modified order that provides for the payment of current
91 support and any arrearage due.

92 (h) After suspending, revoking or canceling a commercial
93 driver's license, the division shall update its records to reflect
94 that action within ten days.

**§17E-1-14. Commercial drivers prohibited from driving with
blood alcohol concentration of four hundredths of
one percent or more; refusal of preliminary
breath test to determine alcohol content of blood;
criminal penalties.**

1 (a) In addition to any other penalties provided by this code,
2 any person who drives, operates or is in physical control of a
3 commercial motor vehicle while having an alcohol concentra-
4 tion in his or her blood, breath or urine of four hundredths of
5 one percent or more, by weight, is guilty of a misdemeanor and,
6 upon conviction thereof, shall be confined in jail for not less
7 than twenty-four hours nor more than six months, and shall be

8 fined not less than one hundred dollars nor more than five
9 hundred dollars. A person convicted of a second or any subse-
10 quent offense under the provisions of this subsection shall be
11 confined in jail for a period of not less than six months nor
12 more than one year, and the court may, in its discretion, impose
13 a fine of not less than one thousand dollars nor more than three
14 thousand dollars.

15 (b) A person who violates the provisions of subsection (a)
16 of this section shall be treated in the same manner set forth in
17 section three, article nineteen, chapter seventeen-c of this code,
18 as if he or she had been arrested for driving under the influence
19 of alcohol or of any controlled substance.

20 (c) In addition to any other penalties provided by this code,
21 a person who drives, operates or is in physical control of a
22 commercial motor vehicle having any measurable alcohol in
23 such person's system or who refuses to take a preliminary
24 breath test to determine such person's blood alcohol content as
25 provided by section fifteen of this article must be placed out of
26 service for twenty-four hours by the arresting law-enforcement
27 officer.

**§17E-1-15. Implied consent requirements for commercial motor
vehicle drivers; disqualification for driving with
blood alcohol concentration of four hundredths of
one percent or more, by weight.**

1 (a) A person who drives a commercial motor vehicle within
2 this state is deemed to have given consent, subject to provisions
3 of section four, article five, chapter seventeen-c of this code, to
4 take a test or tests of that person's blood, breath or urine for the
5 purpose of determining that person's alcohol concentration, or
6 the presence of other drugs.

7 (b) A test or tests may be administered at the direction of a
8 law-enforcement officer, who after lawfully stopping or
9 detaining the commercial motor vehicle driver, has reasonable
10 cause to believe that driver was driving a commercial motor
11 vehicle while having alcohol in his or her system.

12 (c) A person requested to submit to a test as provided in
13 subsection (a) of this section must be warned by the law-
14 enforcement officer requesting the test that a refusal to submit
15 to the test will result in that person being disqualified from
16 operating a commercial motor vehicle under section thirteen or
17 fifteen of this article.

18 (d) If the person refuses testing, or submits to a test which
19 discloses an alcohol concentration of four hundredths of one
20 percent or more, by weight, that law-enforcement officer must
21 submit a sworn report to the division of motor vehicles certifi-
22 ing that the test was requested pursuant to subsection (a) of this
23 section and that the person refused to submit to testing, or
24 submitted to a test which disclosed an alcohol concentration of
25 four hundredths of one percent or more, by weight.

26 (e) Upon receipt of the sworn report of a law-enforcement
27 officer submitted under subsection (d) of this section, the
28 commissioner must enter an order disqualifying the driver from
29 driving a commercial motor vehicle for one year.

CHAPTER 201

(Com. Sub. for H. B. 2474 — By Delegates C. White, Campbell,
J. Smith, Marshall, Yeager, Ashley and Martin)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article twelve, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to powers of municipalities and providing for the naming or renaming of streets and for consultation with local postal authorities, the division of highways and the directors of county emergency communications centers, to assure uniform, nonduplicative addressing on a permanent basis.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-5. General powers of every municipality and the governing body thereof.

1 In addition to the powers and authority granted by: (i) The
2 constitution of this state; (ii) other provisions of this chapter;
3 (iii) other general law; and (iv) any charter, and to the extent
4 not inconsistent or in conflict with any of the foregoing except
5 special legislative charters, every municipality and the govern-
6 ing body thereof shall have plenary power and authority therein
7 by ordinance or resolution, as the case may require, and by
8 appropriate action based thereon:

9 (1) To lay off, establish, construct, open, alter, curb, recurb,
10 pave or repave and keep in good repair, or vacate, discontinue
11 and close, streets, avenues, roads, alleys, ways, sidewalks,
12 drains and gutters, for the use of the public, and to improve and
13 light the same, and have them kept free from obstructions on or
14 over them which have not been authorized pursuant to the
15 succeeding provisions of this subdivision (1); and, subject to
16 such terms and conditions as the governing body shall pre-
17 scribe, to permit, without in any way limiting the power and
18 authority granted by the provisions of article sixteen of this
19 chapter, any person to construct and maintain a passageway,
20 building or other structure overhanging or crossing the airspace
21 above a public street, avenue, road, alley, way, sidewalk or
22 crosswalk, but before any such permission for any person to
23 construct and maintain a passageway, building or other struc-
24 ture overhanging or crossing any such airspace is granted, a
25 public hearing thereon shall be held by the governing body after
26 publication of a notice of the date, time, place and purpose of
27 such public hearing has been published as a Class I legal
28 advertisement in compliance with the provisions of article
29 three, chapter fifty-nine of this code, and the publication area

30 for such publication shall be the municipality: *Provided*, That
31 any such permit so granted shall automatically cease and
32 terminate in the event of abandonment and nonuse thereof for
33 the purposes intended for a period of ninety days, and all rights
34 therein or thereto shall revert to such municipality for its use
35 and benefit;

36 (2) To provide for the opening and excavation of streets,
37 avenues, roads, alleys, ways, sidewalks, crosswalks and public
38 places belonging to the municipality and regulate the conditions
39 under which any such opening may be made;

40 (3) To prevent by proper penalties the throwing, depositing
41 or permitting to remain on any street, avenue, road, alley, way,
42 sidewalk, square or other public place any glass, scrap iron,
43 nails, tacks, wire, other litter, or any offensive matter or
44 anything likely to injure the feet of individuals or animals or the
45 tires of vehicles;

46 (4) To regulate the use of streets, avenues, roads, alleys,
47 ways, sidewalks, crosswalks and public places belonging to the
48 municipality, including the naming or renaming thereof, and to
49 consult with local postal authorities, the division of highways
50 and the directors of county emergency communications centers
51 to assure uniform, nonduplicative addressing on a permanent
52 basis;

53 (5) To regulate the width of streets, avenues and roads, and,
54 subject to the provisions of article eighteen of this chapter, to
55 order the sidewalks, footways and crosswalks to be paved,
56 repaved, curbed or recurbed and kept in good order, free and
57 clean, by the owners or occupants thereof or of the real property
58 next adjacent thereto;

59 (6) To establish, construct, alter, operate and maintain, or
60 discontinue, bridges, tunnels and ferries and approaches thereto;

61 (7) To provide for the construction and maintenance of
62 water drains, the drainage of swamps or marshlands and
63 drainage systems;

64 (8) To provide for the construction, maintenance and
65 covering over of watercourses;

- 66 (9) To control and administer the waterfront and waterways
67 of the municipality, and to acquire, establish, construct, operate
68 and maintain and regulate flood control works, wharves and
69 public landings, warehouses and all adjuncts and facilities for
70 navigation and commerce and the utilization of the waterfront
71 and waterways and adjacent property;
- 72 (10) To prohibit the accumulation and require the disposal
73 of garbage, refuse, debris, wastes, ashes, trash and other similar
74 accumulations whether on private or public property;
- 75 (11) To construct, establish, acquire, equip, maintain and
76 operate incinerator plants and equipment and all other facilities
77 for the efficient removal and destruction of garbage, refuse,
78 wastes, ashes, trash and other similar matters;
- 79 (12) To regulate or prohibit the purchase or sale of articles
80 intended for human use or consumption which are unfit for such
81 use or consumption, or which may be contaminated or other-
82 wise unsanitary;
- 83 (13) To prevent injury or annoyance to the public or
84 individuals from anything dangerous, offensive or unwhole-
85 some;
- 86 (14) To regulate the keeping of gunpowder and other
87 combustibles;
- 88 (15) To make regulations guarding against danger or
89 damage by fire;
- 90 (16) To arrest, convict and punish any individual for
91 carrying about his person any revolver or other pistol, dirk,
92 bowie knife, razor, slingshot, billy, metallic or other false
93 knuckles, or any other dangerous or other deadly weapon of like
94 kind or character;
- 95 (17) To arrest, convict and punish any person for importing,
96 printing, publishing, selling or distributing any pornographic
97 publications;
- 98 (18) To arrest, convict and punish any person for keeping
99 a house of ill fame, or for letting to another person any house or
100 other building for the purpose of being used or kept as a house

101 of ill fame, or for knowingly permitting any house owned by
102 him or under his control to be kept or used as a house of ill
103 fame, or for loafing, boarding or loitering in a house of ill fame,
104 or frequenting same;

105 (19) To prevent and suppress conduct and practices which
106 are immoral, disorderly, lewd, obscene and indecent;

107 (20) To prevent the illegal sale of intoxicating liquors,
108 drinks, mixtures and preparations;

109 (21) To arrest, convict and punish any individual for driving
110 or operating a motor vehicle while intoxicated or under the
111 influence of liquor, drugs or narcotics;

112 (22) To arrest, convict and punish any person for gambling
113 or keeping any gaming tables, commonly called "A, B, C," or
114 "E, O," table or faro bank or keno table, or table of like kind,
115 under any denomination, whether the gaming table be played
116 with cards, dice or otherwise, or any person who shall be a
117 partner or concerned in interest, in keeping or exhibiting such
118 table or bank, or keeping or maintaining any gaming house or
119 place, or betting or gambling for money or anything of value;

120 (23) To provide for the elimination of hazards to public
121 health and safety and to abate or cause to be abated anything
122 which in the opinion of a majority of the governing body is a
123 public nuisance;

124 (24) To license, or for good cause to refuse to license in a
125 particular case, or in its discretion to prohibit in all cases, the
126 operation of pool and billiard rooms and the maintaining for
127 hire of pool and billiard tables notwithstanding the general law
128 as to state licenses for any such business and the provisions of
129 section four, article thirteen of this chapter; and when the
130 municipality, in the exercise of its discretion, shall have refused
131 to grant a license to operate a pool or billiard room, mandamus
132 shall not lie to compel such municipality to grant such license
133 unless it shall clearly appear that the refusal of the municipality
134 to grant such license is discriminatory or arbitrary; and in the
135 event that the municipality determines to license any such
136 business, the municipality shall have plenary power and

137 authority, and it shall be the duty of its governing body to make
138 and enforce reasonable ordinances regulating the licensing and
139 operation of such businesses;

140 (25) To protect places of divine worship and to preserve
141 peace and order in and about the premises where held;

142 (26) To regulate or prohibit the keeping of animals or fowls
143 and to provide for the impounding, sale or destruction of
144 animals or fowls kept contrary to law or found running at large;

145 (27) To arrest, convict and punish any person for cruelly,
146 unnecessarily or needlessly beating, torturing, mutilating,
147 killing or overloading or overdriving, or willfully depriving of
148 necessary sustenance, any domestic animal;

149 (28) To provide for the regular building of houses or other
150 structures, for the making of division fences by the owners of
151 adjacent premises and for the drainage of lots by proper drains
152 and ditches;

153 (29) To provide for the protection and conservation of
154 shade or ornamental trees, whether on public or private prop-
155 erty, and for the removal of trees or limbs of trees in a danger-
156 ous condition;

157 (30) To prohibit with or without zoning the location of
158 occupied house trailers or mobile homes in certain residential
159 areas;

160 (31) To regulate the location and placing of signs, bill-
161 boards, posters, and similar advertising;

162 (32) To erect, establish, construct, acquire, improve,
163 maintain and operate a gas system, a waterworks system, an
164 electric system, or sewer system and sewage treatment and
165 disposal system, or any combination of the foregoing (subject
166 to all of the pertinent provisions of articles nineteen and twenty
167 of this chapter and particularly to the limitations or qualifica-
168 tions on the right of eminent domain set forth in said articles
169 nineteen and twenty), within or without the corporate limits of
170 the municipality, except that the municipality shall not erect
171 any such system partly without the corporate limits of the
172 municipality to serve persons already obtaining service from an

173 existing system of the character proposed, and where such
174 system is by the municipality erected, or has heretofore been so
175 erected, partly within and partly without the corporate limits of
176 the municipality, the municipality shall have the right to lay and
177 collect charges for service rendered to those served within and
178 those served without the corporate limits of the municipality,
179 and to prevent injury to such system or the pollution of the
180 water thereof and its maintenance in a healthful condition for
181 public use within the corporate limits of the municipality;

182 (33) To acquire watersheds, water and riparian rights, plant
183 sites, rights-of-way and any and all other property and appurte-
184 nances necessary, appropriate, useful, convenient or incidental
185 to any such system, waterworks or sewage treatment and
186 disposal works, as aforesaid, subject to all of the pertinent
187 provisions of articles nineteen and twenty of this chapter;

188 (34) To establish, construct, acquire, maintain and operate
189 and regulate markets, and prescribe the time of holding the
190 same;

191 (35) To regulate and provide for the weighing of articles
192 sold or for sale;

193 (36) To establish, construct, acquire, maintain and operate
194 public buildings, municipal buildings or city halls, auditoriums,
195 arenas, jails, juvenile detention centers or homes, motor vehicle
196 parking lots, or any other public works;

197 (37) To establish, construct, acquire, provide, equip,
198 maintain and operate recreational parks, playgrounds and other
199 recreational facilities for public use, and in this connection also
200 to proceed in accordance with the provisions of article two,
201 chapter ten of this code;

202 (38) To establish, construct, acquire, maintain and operate
203 a public library or museum or both for public use;

204 (39) To provide for the appointment and financial support
205 of a library board in accordance with the provisions of article
206 one, chapter ten of this code;

207 (40) To establish and maintain a public health unit in
208 accordance with the provisions of section two, article two,

209 chapter sixteen of this code, which unit shall exercise its powers
210 and perform its duties subject to the supervision and control of
211 the West Virginia board of health and state department of
212 health;

213 (41) To establish, construct, acquire, maintain and operate
214 hospitals, sanitarium and dispensaries;

215 (42) To acquire, by purchase, condemnation or otherwise,
216 land within or near the corporate limits of the municipality for
217 providing and maintaining proper places for the burial of the
218 dead and to maintain and operate the same and regulate
219 interments therein upon such terms and conditions as to price
220 and otherwise as may be determined by the governing body,
221 and, in order to carry into effect such authority the governing
222 body may acquire any cemetery or cemeteries already estab-
223 lished;

224 (43) To exercise general police jurisdiction over any
225 territory without the corporate limits owned by the municipality
226 or over which it has a right-of-way;

227 (44) To protect and promote the public morals, safety,
228 health, welfare and good order;

229 (45) To adopt rules for the transaction of business and the
230 government and regulation of its governing body;

231 (46) Except as otherwise provided, to require and take such
232 bonds from such officers, when deemed necessary, payable to
233 the municipality, in its corporate name, with such sureties and
234 in such penalty as the governing body may see fit, conditioned
235 upon the faithful discharge of their duties;

236 (47) To require and take from such employees and contrac-
237 tors such bonds in such penalty, with such sureties and with
238 such conditions, as the governing body may see fit;

239 (48) To investigate and inquire into all matters of concern
240 to the municipality or its inhabitants;

241 (49) To establish, construct, require, maintain and operate
242 such instrumentalities, other than free public schools, for the
243 instruction, enlightenment, improvement, entertainment,

244 recreation and welfare of the municipality's inhabitants as the
245 governing body may deem necessary or appropriate for the
246 public interest;

247 (50) To create, maintain and operate a system for the
248 enumeration, identification and registration, or either, of the
249 inhabitants of the municipality and visitors thereto, or such
250 classes thereof as may be deemed advisable;

251 (51) To appropriate and expend not exceeding twenty-five
252 cents per capita per annum for advertising the municipality and
253 the entertainment of visitors;

254 (52) To conduct programs to improve community relations
255 and public relations generally and to expend municipal revenue
256 for such purposes;

257 (53) To reimburse applicants for employment by the
258 municipality for travel and other reasonable and necessary
259 expenses actually incurred by such applicants in traveling to
260 and from such municipality to be interviewed;

261 (54) To provide revenue for the municipality and appropri-
262 ate the same to its expenses;

263 (55) To create and maintain an employee benefits fund,
264 which shall not exceed one tenth of one percent of the annual
265 payroll budget for general employee benefits and which shall be
266 set up for the purpose of stimulating and encouraging employ-
267 ees to develop and implement cost-saving ideas and programs,
268 and to expend moneys from such fund for such purposes;

269 (56) To enter into reciprocal agreements with governmental
270 subdivisions or agencies of any state sharing a common border
271 for the protection of people and property from fire and for
272 emergency medical services and for the reciprocal use of
273 equipment and personnel for such purposes; and

274 (57) To provide penalties for the offenses and violations of
275 law mentioned in this section, subject to the provisions of
276 section one, article eleven of this chapter, and such penalties
277 shall not exceed any penalties provided in this chapter and
278 chapter sixty-one of this code for like offenses and violations.

CHAPTER 202

(S. B. 241 — By Senators Wooton, Ball, Dittmar, Kessler, McCabe,
Mitchell, Oliverio, Redd, Schoonover, Snyder and Deem)

[Passed March 10, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two, article eighteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal authority to compel sewer connections outside corporate limits.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. ASSESSMENTS TO IMPROVE STREETS, SIDEWALKS AND SEWERS; SEWER CONNECTIONS AND BOARD OF HEALTH; ENFORCEMENT OF DUTY TO PAY FOR SERVICE.

**PART XII. CONNECTION TO SEWERS;
BOARD OF HEALTH;**

ENFORCEMENT OF DUTY TO PAY FOR SERVICE.

§8-18-22. Connection to sewers; board of health; penalty.

1 The owner or owners of any lot or parcel of land abutting
2 on any street, alley, public way or easement on which a
3 municipal sewer is now located or may hereafter be constructed
4 and laid (whether constructed and laid under the provisions of
5 this article or any other provisions of law) upon which lot or
6 parcel of land any business or residence building is now located
7 or may hereafter be erected, not connected with a public sewer,
8 may be required and compelled by the municipality or by the
9 board of health to connect any such building with such sewer.
10 Notice so to connect shall be given by the municipality or by
11 the board of health to the owner and to the lessee or occupant

12 of such building. Each day's failure to comply with such notice
 13 and connect with such sewer by such owner or owners, after
 14 thirty days from the receipt of such notice, shall be a misde-
 15 meanor and a separate and new offense under this section, and
 16 each such offense shall be punishable by a fine of not less than
 17 five nor more than twenty-five dollars. Jurisdiction to hear, try,
 18 determine and sentence for any violation of this section is
 19 hereby vested in the police or municipal court thereof when the
 20 lot or parcel of land is within the municipality, or, where no
 21 police court or municipal court exists, in the mayor thereof:
 22 *Provided*, That if said lot or parcel is located outside of the
 23 municipality, then jurisdiction shall be vested in the circuit
 24 court of the county wherein the lot or parcel is situated.

CHAPTER 203

(S. B. 188 — By Senators Helmick, Plymale, Kessler, Ross, Bowman,
 Chafin, Fanning, Sharpe, Unger and Minear)

[Passed February 25, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article twenty-five, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the inclusion of members of the banking industry as regional council members; and providing for conflicts of interest.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 25. INTERGOVERNMENTAL RELATIONS — REGIONAL PLANNING AND DEVELOPMENT.

§8-25-6. Membership, organization, etc., of regional council; executive committee; officers and personnel.

1 (a) All municipalities and all counties within the region
2 shall be represented on the regional council. The county
3 representative shall be the president of the county commission
4 or a member of the county commission designated by him or
5 her. The municipal representative shall be the mayor or a
6 member of the governing body designated by him or her. The
7 number of members of the regional council by virtue of this
8 subsection shall comprise not less than fifty-one percent of the
9 total number of members.

10 (b) Regional council members serving by virtue of subsec-
11 tion (a) of this section shall select additional members to serve
12 on the council to represent principal community or regional
13 interests, including, but not limited to, commerce, banking,
14 industry, labor, agriculture, education, health and any such
15 interests as may be required by federal law or regulations. The
16 selection of such members shall also provide for reasonable
17 representation of geographic, economic and ethnic groups
18 without exclusion of significant minority groups. Subsequent
19 changes in the designation of representatives shall be deter-
20 mined by the regional council. The number of members serving
21 by virtue of this subsection shall not exceed forty-nine percent
22 of the total number of members.

23 (c) Each regional council shall select from its membership
24 a chairman, who shall preside at each council meeting, and an
25 executive committee which shall be comprised of one represen-
26 tative from each county commission and one representative
27 from the largest municipality within each county in the region
28 and such other members as the aforesaid representatives may
29 select, but such other members so selected shall not constitute
30 more than forty-nine percent of the total membership of the
31 executive committee. The executive committee shall perform
32 such administrative duties as are prescribed by the regional
33 council in its bylaws and shall exercise the review function
34 provided for in section nine of this article. Each regional
35 council may further provide for such other officers as it shall
36 deem necessary and may establish other committees which may
37 include citizens who are not regional council members.

38 (d) Each regional council shall establish personnel rules and
39 shall appoint a director who shall be qualified by reason of
40 training and experience. The director shall be empowered to
41 appoint and remove other employees in accordance with the
42 regional council's personnel rules. He or she may, with the
43 approval of the executive committee, enter into agreements
44 with governmental agencies within the region for the use of
45 personnel, equipment and facilities.

46 (e) Whenever a person associated with a public utility or
47 bank has a conflict of interest between the council and that
48 public utility or bank, or any other member of the council has
49 a direct pecuniary interest in a question before the council, then
50 he or she must recuse himself or herself from any vote, discus-
51 sion or other activity associated with the council or its members
52 that creates the conflict of interest.

CHAPTER 204

(Com. Sub. for S. B. 356 — By Senator Dittmar)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the division of natural resources; organizations and administration; legislative findings; empowering the director to authorize the construction and acquisition of buildings in certain circumstances; and requiring that new structures have sloped roofs.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.**§20-1-20. Limitations on acquisition of land for state recreational facilities; limitations on construction of state recreational facilities; legislative findings and purpose; exceptions to limitations.**

1 (a) The Legislature finds that the acquisition of land to
2 construct new or to expand existing state recreational facilities
3 is becoming more costly. Also, the Legislature finds that the
4 construction of new or the expansion of existing state recre-
5 ational facilities is becoming more costly. After such facilities
6 are constructed, they must be maintained indefinitely and, in
7 many instances, personnel must be employed to operate the
8 facilities. This necessitates and places a continuing burden on
9 state revenues. Furthermore, these costs are also increasing
10 continually. The Legislature hereby declares that there is an
11 ultimate limit to how many recreational facilities this state, with
12 its size, population and financial resources can or should
13 support. Further, the Legislature hereby declares that it must
14 establish, provide for, and maintain, limits on state recreational
15 facilities. The Legislature hereby declares that the purpose of
16 this section is to establish, provide for and maintain limits on
17 state recreational facilities.

18 After the first day of July, one thousand nine hundred
19 seventy-seven, neither the director, nor any other officer, or
20 employee, or agent of the division of natural resources may,
21 without the express authorization of the Legislature:

22 (1) Acquire, or authorize the acquisition of, land for any
23 new state park, forest, public fishing and hunting area, or other
24 recreational facility; or

25 (2) Construct, or authorize the construction of, any new
26 facility or building in any state park, forest, public hunting and
27 fishing area, or other recreational facility.

28 Nothing in this section shall prohibit the director from
29 expending any appropriations made at any time which are
30 designated to complete land acquisitions for state parks, forests,
31 public hunting and fishing areas, or other recreational areas,
which are in existence on the first day of July, one thousand

32 nine hundred seventy-seven. Nothing in this section shall
33 prohibit the director from expending any appropriation made at
34 any time which is designated to complete the construction of
35 facilities and buildings, including electric, water and sewage
36 systems for state parks, forests, public hunting and fishing
37 areas, or other recreational areas, which are in existence on the
38 first day of July, one thousand nine hundred seventy-seven.

39 (b) The Legislature further finds that certain acquisitions
40 and constructions, either due to the relatively minimal size of
41 the project, due to the need for a timely decision to assure
42 receipt to the state of the benefits of gratuitous transfers from
43 public and non-public entities supportive of recreational
44 facilities in the control of the division, or due to the existence
45 of the high opportunity costs inherent in certain policy deci-
46 sions, must necessarily be handled in a timely manner. Many
47 of such acquisitions or constructions actually serve to lessen the
48 total cost to the state for the maintenance and management of
49 existing recreational facilities. The Legislature, therefore,
50 hereby declares that the concepts of reasonableness and
51 materiality require the following exceptions to the general
52 requirement contained in subsection (a) of this section for
53 legislative approval of acquisitions and constructions:

54 (1) The director may authorize the construction of any new
55 facility or building which is constructed with donated funds or
56 materials and labor in an existing state park, state forest,
57 wildlife management area, or other recreational facility; and

58 (2) The director may construct or authorize the construction
59 of any new facility or building when the total cost of materials
60 does not exceed twenty-five thousand dollars by regular full-
61 time employees of the division.

62 In any construction permitted by this subsection, the
63 director must require that the new building, which includes a
64 roof, designed, constructed and maintained with public funds of
65 the state, a county or a municipality shall have a roof of
66 sufficient slope so that water will not accumulate into a pool on
67 any area of the roof, in accordance with the current state
68 building code as it relates to roofs and roof structures.

CHAPTER 205

(S. B. 525 — By Senators Dittmar, Schoonover, Helmick,
Anderson, Love, Ross, Ball, Hunter and Sharpe)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to making it illegal to sell the organs and feet of a legally killed bear.

Be it enacted by the Legislature of West Virginia:

That section eleven, 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.

§20-2-11. Sale of wildlife; transportation of same.

1 No person, except those legally licensed to operate private
2 game preserves for the purpose of propagating game for
3 commercial purposes and those legally licensed to propagate or
4 sell fish, amphibians and other forms of aquatic life, shall
5 purchase or offer to purchase, sell or offer to sell, expose for
6 sale, or have in his or her possession for the purpose of sale any
7 wildlife, or part thereof, which has been designated as game
8 animals, fur-bearing animals, game birds, game fish or amphib-
9 ians, or any of the song or insectivorous birds of the state, or
10 any other species of wildlife which the director may designate:
11 *Provided*, That pelts of game or fur-bearing animals taken
12 during the legal season may be sold and live red and gray foxes
13 and raccoon taken by legal methods during legal and estab-
14 lished trapping seasons may be sold within the state: *Provided*,
15 *however*, That hide, head, antlers and feet of a legally killed
16 deer and the hide, head and skull of a legally killed black bear
17 may be sold.

18 No person, including a common carrier, shall transport,
19 carry or convey, or receive for such purposes any wildlife, the
20 sale of which is prohibited, if such person knows or has reason
21 to believe that such wildlife has been or is to be sold in viola-
22 tion of this section.

23 The selling or exposing for sale, having in possession for
24 sale, transporting or carrying in violation of this section shall
25 each constitute a separate misdemeanor offense. Notwithstand-
26 ing the provisions of this or any other section of this chapter,
27 any game birds or game bird meats sold by licensed retailers
28 may be served at any hotel, restaurant or other licensed eating
29 place in this state.

30 The director shall have authority to promulgate rules in
31 accordance with chapter twenty-nine-a of this code, dealing
32 with the sale of wildlife and the skins thereof.

CHAPTER 206

(S. B. 79 — By Senator Dittmar)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-three, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to issuance of hunting, trapping and fishing licenses; providing that certain hunting, trapping and fishing licenses may be purchased and issued electronically; director of natural resources may prescribe fee for electronic purchase and issuance; removal of one thousand dollar bonding requirement for agents issuing licenses; and promulgation of rules.

Be it enacted by the Legislature of West Virginia:

That section thirty-three, 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.

§20-2-33. Authority of director to designate agents to issue licenses; bonds; fees.

1 (a) The director may appoint, in addition to the clerk of the
2 county commission, agents to issue licenses under the provi-
3 sions of this article to serve the convenience of the public. Each
4 person appointed shall, before issuing any license, file with the
5 director a bond payable to the state of West Virginia, in the
6 amount to be fixed by the director, conditioned upon the
7 faithful performance of his or her obligation to issue licenses
8 only in conformity with the provisions of this article and to
9 account for all license fees received by him or her. The form of
10 the bond shall be prescribed by the attorney general. No person,
11 other than those designated as issuing agents by the director,
12 shall sell licenses or buy the licenses for the purposes of resale.

13 (b) Except when a license is purchased from a state official,
14 every person making application for a license shall pay, in
15 addition to the license fee prescribed for it in this article, an
16 additional fee of seventy-five cents to any county official
17 issuing the license and all fees collected by county officials
18 shall be paid by them into the general fund of the county
19 treasury or, in the case of an agent issuing the license, an
20 additional fee of one dollar as compensation: *Provided*, That
21 only one fee of seventy-five cents or one dollar shall be
22 collected by county officials or authorized agents, respectively,
23 for issuing two or more licenses at the same time for use by the
24 same person or for issuing combination resident statewide
25 hunting, trapping and fishing licenses: *Provided, however*, That
26 licenses may be issued electronically in a manner prescribed by
27 the director, and persons purchasing electronically issued
28 licenses may be assessed, in addition to the license fee pre-
29 scribed in this article, an electronic issuance fee to be pre-
30 scribed by the director.

31 (c) In lieu of the license issuance fee prescribed in subsec-
32 tion (b) of this section, the director shall propose rules for
33 legislative approval in accordance with the provisions of article
34 three, chapter twenty-nine-a of this code, governing the
35 application for and issuance of licenses by telephone and other
36 electronic methods.

CHAPTER 207

(Com. Sub. for S. B. 74 — By Senator Dittmar)

[Passed March 13, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article two-b, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the director to issue lifetime hunting, fishing and trapping licenses; providing that full-time nonresident students are ineligible for licenses; requiring director to promulgate legislative rules setting the fees; and authorizing the director to promulgate emergency rules.

Be it enacted by the Legislature of West Virginia:

That section seven, article two-b, 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 2B. WILDLIFE ENDOWMENT FUND.

§20-2B-7. Lifetime hunting, fishing and trapping licenses created.

1 (a) Pursuant to section three of this article, the director may
2 issue the following lifetime hunting, fishing and trapping
3 licenses and for the lifetime of the licensee, the lifetime licenses
4 serve in lieu of the equivalent annual license: Lifetime resident
5 statewide hunting and trapping license; lifetime resident
6 combination statewide hunting, fishing and trapping license;
7 lifetime statewide fishing license; and lifetime resident trout
8 fishing license: *Provided*, That a full-time nonresident student
9 who attends an in-state college or university is not eligible to
10 purchase any of these lifetime licenses.

11 (b) The director shall propose a legislative rule for promul-
12 gation in accordance with article three, chapter twenty-nine-a
13 of this code, setting the fees for the lifetime licenses. The rule
14 shall provide that the fee for any resident who has not reached

15 his or her second birthday shall be one half of the adult fee set
16 under the rule: *Provided*, That the rule first proposed for
17 promulgation under this section may be promulgated as an
18 emergency rule under the provisions of section fifteen, article
19 three, chapter twenty-nine of this code.

CHAPTER 208

(H. B. 2005 — By Delegates Amores, Mahan, Linch, Faircloth and Trump)

[Passed March 21, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, five, six and seven, article nine-a, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto five new sections, designated sections eight, nine, ten, eleven and twelve; to amend and reenact section two, article five-g, chapter sixteen of said code; and to further amend said article by adding thereto five new sections, designated sections three, four, five, six and seven, all relating generally to open governmental and nonprofit hospital meetings; declaring legislative policy; providing definitions; providing that proceedings be open; requiring public notice of meetings; providing for exceptions; establishing requirements for minutes and providing for exceptions; providing for enforcement by injunction; providing that actions taken in violation of this article are voidable; providing for voidability of bond issues; establishing criminal penalties; providing for payment of attorney fees and expenses; prohibiting action by reference, secret or written ballot; providing for broadcasting or recording of meetings; creating an open governmental meetings committee within the West Virginia ethics commission; providing for advisory opinions; establishing for immunity; establishing duty of attorney general, secretary of state, clerks of county commissions, city clerks and recorders to provide information; providing definitions for open hospital proceedings; requiring proceedings to be open; requiring public

notice of meetings; providing exceptions; establishing requirements for minutes; providing for enforcement by injunctions; providing that actions in violation are voidable; providing for violations; and penalties.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, six and seven, article nine-a, chapter six 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 five new sections, designated sections eight, nine, ten, eleven and twelve; that section two, article five-g, chapter sixteen of said code be amended and reenacted; and that said article be further amended by adding thereto five new sections, designated sections three, four, five, six and seven, all to read as follows:

Chapter

6. General Provisions Respecting Officers.

16. Public Health.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 9A. OPEN GOVERNMENTAL PROCEEDINGS.

- §6-9A-1. Declaration of legislative policy.
- §6-9A-2. Definitions.
- §6-9A-3. Proceedings to be open; public notice of meetings.
- §6-9A-4. Exceptions.
- §6-9A-5. Minutes.
- §6-9A-6. Enforcement by injunctions; actions in violation of article voidable; voidability of bond issues.
- §6-9A-7. Violation of article; criminal penalties; attorney fees and expenses in civil actions.
- §6-9A-8. Acting by reference; written ballots.
- §6-9A-9. Broadcasting or recording meetings.
- §6-9A-10. Open governmental meetings committee.
- §6-9A-11. Request for advisory opinion; maintaining confidentiality.
- §6-9A-12. Duty of attorney general, secretary of state, clerks of the county commissions and city clerks or recorders.

§6-9A-1. Declaration of legislative policy.

- 1 The Legislature hereby finds and declares that public
- 2 agencies in this state exist for the singular purpose of represent-

3 ing citizens of this state in governmental affairs, and it is,
4 therefore, in the best interests of the people of this state for the
5 proceedings of public agencies be conducted openly, with only
6 a few clearly defined exceptions. The Legislature hereby further
7 finds and declares that the citizens of this state do not yield
8 their sovereignty to the governmental agencies that serve them.
9 The people in delegating authority do not give their public
10 servants the right to decide what is good for them to know and
11 what is not good for them to know. The people insist on
12 remaining informed so that they may retain control over the
13 instruments of government created by them.

14 Open government allows the public to educate itself about
15 government decision making through individuals' attendance
16 and participation at government functions, distribution of
17 government information by the press or interested citizens, and
18 public debate on issues deliberated within the government.

19 Public access to information promotes attendance at
20 meetings, improves planning of meetings, and encourages more
21 thorough preparation and complete discussion of issues by
22 participating officials. The government also benefits from
23 openness because better preparation and public input allow
24 government agencies to gauge public preferences accurately
25 and thereby tailor their actions and policies more closely to
26 public needs. Public confidence and understanding ease
27 potential resistance to government programs.

28 Accordingly, the benefits of openness inure to both the
29 public affected by governmental decision making and the
30 decisionmakers themselves. The Legislature finds, however,
31 that openness, public access to information and a desire to
32 improve the operation of government do not require nor permit
33 every meeting to be a public meeting. The Legislature finds that
34 it would be unrealistic, if not impossible, to carry on the
35 business of government should every meeting, every contact
36 and every discussion seeking advice and counsel in order to
37 acquire the necessary information, data or intelligence needed
38 by a governing body were required to be a public meeting. It is
39 the intent of the Legislature to balance these interests in order

40 to allow government to function and the public to participate in
41 a meaningful manner in public agency decisionmaking.

§6-9A-2. Definitions.

1 As used in this article:

2 (1) "Decision" means any determination, action, vote or
3 final disposition of a motion, proposal, resolution, order,
4 ordinance or measure on which a vote of the governing body is
5 required at any meeting at which a quorum is present.

6 (2) "Executive session" means any meeting or part of a
7 meeting of a governing body which is closed to the public.

8 (3) "Governing body" means the members of any public
9 agency having the authority to make decisions for or recom-
10 mendations to a public agency on policy or administration, the
11 membership of a governing body consists of two or more
12 members; for the purposes of this article, a governing body of
13 the Legislature is any standing, select or special committee,
14 except the commission on special investigations, as determined
15 by the rules of the respective houses of the Legislature.

16 (4) "Meeting" means the convening of a governing body of
17 a public agency for which a quorum is required in order to
18 make a decision or to deliberate toward a decision on any
19 matter which results in an official action. Meetings may be held
20 by telephone conference or other electronic means. The term
21 meeting does not include:

22 (A) Any meeting for the purpose of making an adjudicatory
23 decision in any quasi-judicial, administrative or court of claims
24 proceeding;

25 (B) Any on-site inspection of any project or program;

26 (C) Any political party caucus;

27 (D) General discussions among members of a governing
28 body on issues of interest to the public when held in a planned
29 or unplanned social, educational, training, informal, ceremonial
30 or similar setting, without intent to conduct public business
31 even if a quorum is present and public business is discussed but

32 there is no intention for the discussion to lead to an official
33 action; or

34 (E) Discussions by members of a governing body on
35 logistical and procedural methods to schedule and regulate a
36 meeting.

37 (5) "Official action" means action which is taken by virtue
38 of power granted by law, ordinance, policy, rule, or by virtue of
39 the office held.

40 (6) "Public agency" means any administrative or legislative
41 unit of state, county or municipal government, including any
42 department, division, bureau, office, commission, authority,
43 board, public corporation, section, committee, subcommittee or
44 any other agency or subunit of the foregoing, authorized by law
45 to exercise some portion of executive or legislative power. The
46 term "public agency" does not include courts created by article
47 eight of the West Virginia constitution or the system of family
48 law masters created by article four, chapter forty-eight-a of this
49 code.

50 (7) "Quorum" means the gathering of a simple majority of
51 the constituent membership of a governing body, unless
52 applicable law provides for varying the required ratio.

§6-9A-3. Proceedings to be open; public notice of meetings.

1 Except as expressly and specifically otherwise provided by
2 law, whether heretofore or hereinafter enacted, and except as
3 provided in section four of this article, all meetings of any
4 governing body shall be open to the public. Any governing
5 body may make and enforce reasonable rules for attendance and
6 presentation at any meeting where there is not room enough for
7 all members of the public who wish to attend. This article does
8 not prohibit the removal from a meeting of any member of the
9 public who is disrupting the meeting to the extent that orderly
10 conduct of the meeting is compromised: *Provided*, That persons
11 who desire to address the governing body may not be required
12 to register to address the body more than fifteen minutes prior
13 to time the scheduled meeting is to commence.

14 Each governing body shall promulgate rules by which the
15 date, time, place and agenda of all regularly scheduled meetings
16 and the date, time, place and purpose of all special meetings are
17 made available, in advance, to the public and news media,
18 except in the event of an emergency requiring immediate
19 official action.

20 Each governing body of the executive branch of the state
21 shall file a notice of any meeting with the secretary of state for
22 publication in the state register. Each notice shall state the date,
23 time, place and purpose of the meeting. Each notice shall be
24 filed in a manner to allow each notice to appear in the state
25 register at least five days prior to the date of the meeting.

26 In the event of an emergency requiring immediate official
27 action, any governing body of the executive branch of the state
28 may file an emergency meeting notice at any time prior to the
29 meeting. The emergency meeting notice shall state the date,
30 time, place and purpose of the meeting and the facts and
31 circumstances of the emergency.

32 Upon petition by any adversely affected party any court of
33 competent jurisdiction may invalidate any action taken at any
34 meeting for which notice did not comply with the requirements
35 of this section.

§6-9A-4. Exceptions.

1 (a) The governing body of a public agency may hold an
2 executive session during a regular, special or emergency
3 meeting, in accordance with the provisions of this section.
4 During the open portion of the meeting, prior to convening an
5 executive session, the presiding officer of the governing body
6 shall identify the authorization under this section for holding
7 the executive session and present it to the governing body and
8 to the general public, but no decision may be made in the
9 executive session.

10 (b) An executive session may be held only upon a majority
11 affirmative vote of the members present of the governing body
12 of a public agency. A public agency may hold an executive
13 session and exclude the public only when a closed session is

14 required for any of the following actions:

15 (1) To consider acts of war, threatened attack from a
16 foreign power, civil insurrection or riot;

17 (2) To consider:

18 (A) Matters arising from the appointment, employment,
19 retirement, promotion, transfer, demotion, disciplining,
20 resignation, discharge, dismissal or compensation of a public
21 officer or employee, or prospective public officer or employee
22 unless the public officer or employee or prospective public
23 officer or employee requests an open meeting; or

24 (B) For the purpose of conducting a hearing on a complaint,
25 charge or grievance against a public officer or employee, unless
26 the public officer or employee requests an open meeting.
27 General personnel policy issues may not be discussed or
28 considered in a closed meeting. Final action by a public agency
29 having authority for the appointment, employment, retirement,
30 promotion, transfer, demotion, disciplining, resignation,
31 discharge, dismissal or compensation of an individual shall be
32 taken in an open meeting;

33 (3) To decide upon disciplining, suspension or expulsion of
34 any student in any public school or public college or university,
35 unless the student requests an open meeting;

36 (4) To issue, effect, deny, suspend or revoke a license,
37 certificate or registration under the laws of this state or any
38 political subdivision, unless the person seeking the license,
39 certificate or registration or whose license, certificate or
40 registration was denied, suspended or revoked requests an open
41 meeting;

42 (5) To consider the physical or mental health of any person,
43 unless the person requests an open meeting;

44 (6) To discuss any material the disclosure of which would
45 constitute an unwarranted invasion of an individual's privacy
46 such as any records, data, reports, recommendations or other
47 personal material of any educational, training, social service,
48 rehabilitation, welfare, housing, relocation, insurance and

49 similar program or institution operated by a public agency
50 pertaining to any specific individual admitted to or served by
51 the institution or program, the individual's personal and family
52 circumstances;

53 (7) To plan or consider an official investigation or matter
54 relating to crime prevention or law enforcement;

55 (8) To develop security personnel or devices;

56 (9) To consider matters involving or affecting the purchase,
57 sale or lease of property, advance construction planning, the
58 investment of public funds or other matters involving commer-
59 cial competition, which if made public, might adversely affect
60 the financial or other interest of the state or any political
61 subdivision: *Provided*, That information relied on during the
62 course of deliberations on matters involving commercial
63 competition are exempt from disclosure under the open
64 meetings requirements of this article only until the commercial
65 competition has been finalized and completed: *Provided*,
66 *however*, That information not subject to release pursuant to the
67 West Virginia freedom of information act does not become
68 subject to disclosure as a result of executive session;

69 (10) To avoid the premature disclosure of an honorary
70 degree, scholarship, prize or similar award;

71 (11) Nothing in this article permits a public agency to close
72 a meeting that otherwise would be open, merely because an
73 agency attorney is a participant. If the public agency has
74 approved or considered a settlement in closed session, and the
75 terms of the settlement allow disclosure, the terms of that
76 settlement shall be reported by the public agency and entered
77 into its minutes within a reasonable time after the settlement is
78 concluded;

79 (12) To discuss any matter which, by express provision of
80 federal law or state statute or rule of court is rendered confiden-
81 tial, or which is not considered a public record within the
82 meaning of the freedom of information act as set forth in article
83 one, chapter twenty-nine-b of this code.

§6-9A-5. Minutes.

1 Each governing body shall provide for the preparation of
2 written minutes of all of its meetings. Subject to the exceptions
3 set forth in section four of this article, minutes of all meetings
4 except minutes of executive sessions, if any are taken, shall be
5 available to the public within a reasonable time after the
6 meeting and shall include, at least, the following information:

7 (1) The date, time and place of the meeting;

8 (2) The name of each member of the governing body
9 present and absent;

10 (3) All motions, proposals, resolutions, orders, ordinances
11 and measures proposed, the name of the person proposing the
12 same and their disposition; and

13 (4) The results of all votes and, upon the request of a
14 member, pursuant to the rules, policies or procedures of the
15 governing board for recording roll call votes, the vote of each
16 member, by name.

§6-9A-6. Enforcement by injunctions; actions in violation of article voidable; voidability of bond issues.

1 The circuit court in the county where the public agency
2 regularly meets has jurisdiction to enforce this article upon civil
3 action commenced by any citizen of this state within one
4 hundred twenty days after the action complained of was taken
5 or the decision complained of was made. Where the action
6 seeks injunctive relief, no bond may be required unless the
7 petition appears to be without merit or made with the sole intent
8 of harassing or delaying or avoiding return by the governing
9 body.

10 The court is empowered to compel compliance or enjoin
11 noncompliance with the provisions of this article and to annul
12 a decision made in violation of this article. An injunction may
13 also order that subsequent actions be taken or decisions be
14 made in conformity with the provisions of this article: *Pro-*
15 *vided*, That no bond issue that has been passed or approved by
16 any governing body in this state may be annulled under this

17 section if notice of the meeting at which the bond issue was
18 finally considered was given at least ten days prior to the
19 meeting by a Class I legal advertisement published in accor-
20 dance with the provisions of article three, chapter fifty-nine of
21 this code in a qualified newspaper having a general circulation
22 in the geographic area represented by that governing body.

23 In addition to or in conjunction with any other acts or
24 omissions which may be determined to be in violation of this
25 act, it is a violation of this act for a governing body to hold a
26 private meeting with the intention of transacting public busi-
27 ness, thwarting public scrutiny and making decisions that
28 eventually become official action.

29 Any order which compels compliance or enjoins noncom-
30 pliance with the provisions of this article, or which annuls a
31 decision made in violation of this article shall include findings
32 of fact and conclusions of law and shall be recorded in the
33 minutes of the governing body.

**§6-9A-7. Violation of article; criminal penalties; attorney fees and
expenses in civil actions.**

1 (a) Any person who is a member of a public or governmen-
2 tal body required to conduct open meetings in compliance with
3 the provisions of this article and who willfully and knowingly
4 violates the provisions of this article is guilty of a misdemeanor
5 and, upon conviction thereof, shall be fined not more than five
6 hundred dollars: *Provided*, That a person who is convicted of a
7 second or subsequent offense under this subsection is guilty of
8 a misdemeanor and, upon conviction thereof, shall be fined not
9 less than one hundred dollars nor more than one thousand
10 dollars.

11 (b) A public agency whose governing body is adjudged in
12 a civil action to have conducted a meeting in violation of the
13 provisions of this article may be liable to a prevailing party for
14 fees and other expenses incurred by that party in connection
15 with litigating the issue of whether the governing body acted in
16 violation of this article, unless the court finds that the position
17 of the public agency was substantially justified or that special

18 circumstances make an award of fees and other expenses unjust.

19 (c) Where the court, upon denying the relief sought by the
20 complaining person in the action, finds that the action was
21 frivolous or commenced with the primary intent of harassing
22 the governing body or any member thereof or, in the absence of
23 good faith, of delaying any meetings or decisions of the
24 governing body, the court may require the complaining person
25 to pay the governing body's necessary attorney fees and
26 expenses.

§6-9A-8. Acting by reference; written ballots.

1 (a) Except as otherwise expressly provided by law, the
2 members of a public agency may not deliberate, vote, or
3 otherwise take official action upon any matter by reference to
4 a letter, number or other designation or other secret device or
5 method, which may render it difficult for persons attending a
6 meeting of the public agency to understand what is being
7 deliberated, voted or acted upon. However, this subsection does
8 not prohibit a public agency from deliberating, voting or
9 otherwise taking action by reference to an agenda, if copies of
10 the agenda, sufficiently worded to enable the public to under-
11 stand what is being deliberated, voted or acted upon, are
12 available for public inspection at the meeting.

13 (b) A public agency may not vote by secret or written
14 ballot.

§6-9A-9. Broadcasting or recording meetings.

1 (a) Except as otherwise provided in this section, any radio
2 or television station is entitled to broadcast all or any part of a
3 meeting required to be open.

4 (b) A public agency may regulate the placement and use of
5 equipment necessary for broadcasting, photographing, filming
6 or recording a meeting, so as to prevent undue interference with
7 the meeting. The public agency shall allow the equipment to be
8 placed within the meeting room in such a way as to permit its
9 intended use, and the ordinary use of the equipment may not be
10 declared to constitute undue interference: *Provided*, That if the

11 public agency, in good faith, determines that the size of the
12 meeting room is such that all the members of the public present
13 and the equipment and personnel necessary for broadcasting,
14 photographing, filming and tape-recording the meeting cannot
15 be accommodated in the meeting room without unduly interfer-
16 ing with the meeting and an adequate alternative meeting room
17 is not readily available, then the public agency, acting in good
18 faith and consistent with the purposes of this article, may
19 require the pooling of the equipment and the personnel operat-
20 ing it.

§6-9A-10. Open governmental meetings committee.

1 The West Virginia ethics commission, pursuant to subsec-
2 tion (j), section one, article two, chapter six-b of this code, shall
3 appoint from the membership of the commission a subcommit-
4 tee of three persons designated as the West Virginia ethics
5 commission committee on open governmental meetings. The
6 chairman shall designate one of the persons to chair the
7 committee. In addition to the three members of the committee,
8 two additional members of the commission shall be designated
9 to serve as alternate members of the committee.

10 The chairman of the committee or the executive director
11 shall call meetings of the committee to act on requests for
12 advisory opinions interpreting the West Virginia open govern-
13 ment meetings act. Advisory opinions shall be issued in a
14 timely manner, not to exceed thirty days.

§6-9A-11. Request for advisory opinion; maintaining confidentiality.

1 (a) Any governing body or member thereof subject to the
2 provisions of this article may seek advice and information from
3 the executive director of the West Virginia ethics commission
4 or request in writing an advisory opinion from the West
5 Virginia ethics commission committee on open governmental
6 meetings as to whether an action or proposed action violates the
7 provisions of this article. The executive director may render
8 oral advice and information upon request. The committee shall
9 respond in writing and in an expeditious manner to a request for

10 an advisory opinion. The opinion shall be binding on the parties
11 requesting the opinion.

12 (b) Any governing body or member thereof that seeks an
13 advisory opinion and acts in good faith reliance on the opinion
14 has an absolute defense to any civil suit or criminal prosecution
15 for any action taken in good faith reliance on the opinion unless
16 the committee was willfully and intentionally misinformed as
17 to the facts by the body or its representative.

18 (c) The committee and commission may take appropriate
19 action to protect from disclosure information which is properly
20 shielded by an exception provided for in section four of this
21 article.

**§6-9A-12. Duty of attorney general, secretary of state, clerks of
the county commissions and city clerks or recorders.**

1 It is the duty of the attorney general to compile the statutory
2 and case law pertaining to this article and to prepare appropriate
3 summaries and interpretations for the purpose of informing all
4 public officials subject to this article of the requirements of this
5 article. It is the duty of the secretary of state, the clerks of the
6 county commissions, joint clerks of the county commissions
7 and circuit courts, if any, and the city clerks or recorders of the
8 municipalities of the state to provide a copy of the material
9 compiled by the attorney general to all elected public officials
10 within their respective jurisdictions. The clerks or recorders
11 will make the material available to appointed public officials.
12 Likewise, it is their respective duties to provide a copy or
13 summary to any newly appointed or elected person within thirty
14 days of the elected or appointed official taking the oath of
15 office or an appointed person's start of term.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5G. OPEN HOSPITAL PROCEEDINGS.

§16-5G-2. Definitions.

§16-5G-3. Proceedings to be open; public notice of meetings.

§16-5G-4. Exceptions.

§16-5G-5. Minutes.

§16-5G-6. Enforcement by injunctions; actions in violation of article voidable.

§16-5G-7. Violation of article; penalties.

§16-5G-2. Definitions.

1 As used in this article:

2 (1) "Decision" means any determination, action, vote or
3 final disposition of a motion, proposal, resolution, order or
4 measure on which a vote of the governing body is required at
5 any meeting at which a quorum is present;

6 (2) "Executive session" means any meeting or part of a
7 meeting of a governing body of a hospital that is closed to the
8 public;

9 (3) "Governing body" means the board of directors or other
10 group of persons having the authority to make decisions for or
11 recommendations on policy or administration to a hospital
12 owned or operated by a nonprofit corporation, nonprofit
13 association or local governmental unit, the membership of
14 which governing body consists of two or more members;

15 (4) "Hospital" means any hospital owned or operated by a
16 nonprofit corporation, nonprofit association or local govern-
17 mental unit;

18 (5) "Meeting" means the convening of a governing body of
19 a hospital for which a quorum is required in order to make a
20 decision or to deliberate toward a decision on any matter:
21 *Provided*, That a medical staff conference is not a meeting; and

22 (6) "Quorum" means, unless otherwise defined by applica-
23 ble law, a simple majority of the constituent membership of a
24 governing body.

§16-5G-3. Proceedings to be open; public notice of meetings.

1 Except as expressly and specifically otherwise provided by
2 law, and except as provided in section four of this article, all
3 meetings of a governing body of a hospital shall be open to the
4 public. Any governing body may make and enforce reasonable
5 rules and regulations for attendance and presentation at any
6 meeting where there is not room enough for all members of the

7 public who wish to attend. This article does not prohibit the
8 removal from a meeting of any member of the public who is
9 disrupting the meeting to the extent that orderly conduct of the
10 meeting is compromised: *Provided*, That persons who desire to
11 address the governing body may not be required to register to
12 address the body more than fifteen minutes prior to time the
13 scheduled meeting is to commence.

14 Each governing body shall promulgate rules by which the
15 date, time and place of all regularly scheduled meetings and the
16 date, time, place and purpose of all special meetings are made
17 available, in advance, to the public and news media, except in
18 the event of an emergency requiring immediate official action.

19 Each governing body shall file a notice of any meeting by
20 causing a notice of the meeting to be printed in a local newspa-
21 per: *Provided*, That the governing body may otherwise provide
22 by rule or regulation an alternative procedure that will reason-
23 ably provide the public with notice. Each notice shall state the
24 date, time, place and purpose of the meeting.

25 In the event of an emergency requiring immediate official
26 action, any governing body may provide an emergency meeting
27 notice at any time prior to the meeting. The emergency meeting
28 notice shall state the date, time, place and purpose of the
29 meeting and the facts and circumstances of the emergency.

30 Upon petition by any adversely affected party, any court of
31 competent jurisdiction may invalidate any action taken at any
32 meeting for which notice did not comply with the requirements
33 of this section.

§16-5G-4. Exceptions.

1 (a) This article does not prevent the governing body of a
2 hospital from holding an executive session during a regular,
3 special or emergency meeting, after the presiding officer has
4 identified the authorization under this article for the holding of
5 such executive session and has presented it to the governing
6 body and to the general public, but no official action shall be
7 made in such executive session.

8 (b) An executive session may be held only upon a majority
9 affirmative vote of the members present of the governing body
10 of a hospital as defined in this article for the following:

11 (1) The appointment, employment, retirement, promotion,
12 demotion, disciplining, resignation, discharge, dismissal or
13 compensation of any officer or employee, or other personnel
14 matters, or for the purpose of conducting a hearing on a
15 complaint against an officer or employee, unless the officer or
16 employee requests an open meeting;

17 (2) The disciplining, suspension or expulsion of any student
18 or trainee enrolled in a program conducted by the hospital,
19 unless the student or trainee requests an open meeting;

20 (3) Investigations and proceeding involving the issuance,
21 denial, suspension or revocation of the authority or privilege of
22 a medical practitioner to use the hospital and to engage in
23 particular kinds of practice or to perform particular kinds of
24 operations, unless the person seeking the authority or privilege
25 or whose authority or privilege was denied, suspended or
26 revoked requests an open meeting;

27 (4) Matters concerning the failure or refusal of a medical
28 practitioner to comply with reasonable regulations of a hospital
29 with respect to the conditions under which operations are
30 performed and other medical services are delivered;

31 (5) To consider the work product of the hospital's attorney
32 or the hospital administration;

33 (6) The physical or mental health of any person, unless the
34 person requests an open meeting;

35 (7) Matters which, if discussed in public, would be likely to
36 affect adversely the reputation of any person;

37 (8) Any official investigation or matters relating to crime
38 prevention or law enforcement;

39 (9) The development of security personnel or devices; or

40 (10) Matters involving or affecting the purchase, sale or
41 lease of property, advance construction planning, the invest-

42 ment of public funds or other matters involving competition
43 which, if made public, might adversely affect the financial or
44 other interest of the state or any political subdivision or the
45 hospital.

§16-5G-5. Minutes.

1 Each governing body shall provide for the preparation of
2 written minutes of all of its meetings. Subject to the exceptions
3 set forth in section four of this article, minutes of all meetings
4 except minutes of executive sessions, if any are taken, shall be
5 available to the public within a reasonable time after the
6 meeting and shall include, at least, the following information:

7 (1) The date, time and place of the meeting;

8 (2) The name of each member of the governing body
9 present and absent;

10 (3) All motions, proposals, resolutions, orders, ordinances
11 and measures proposed, the name of the person proposing the
12 same and their disposition; and

13 (4) The results of all votes and, upon the request of a
14 member, pursuant to the rules, policies or procedures of the
15 governing board for recording roll call votes, the vote of each
16 member, by name.

**§16-5G-6. Enforcement by injunctions; actions in violation of
article voidable.**

1 The circuit court in the county where a hospital is located
2 has jurisdiction to enforce this article upon civil action com-
3 menced by any citizen of this state within one hundred twenty
4 days after the action complained of was taken or the decision
5 complained of was made. Where the action seeks injunctive
6 relief, no bond may be required unless the petition appears to be
7 without merit or made with the sole intent of harassing or
8 delaying or avoiding return by the governing body.

9 The court is empowered to compel compliance or enjoin
10 noncompliance with the provisions of this article and to annul
11 a decision made in violation of this article. An injunction may

12 also order that subsequent actions be taken or decisions be
13 made in conformity with the provisions of this article.

14 Any order which compels compliance or enjoins noncom-
15 pliance with the provisions of this article, or which annuls a
16 decision made in violation of this article shall include findings
17 of fact and conclusions of law and shall be recorded in the
18 minutes of the governing body.

19 Upon entry of an order, the court may, where the court
20 finds that the governing body intentionally violated the provi-
21 sions of this article, order the governing body to pay the
22 complaining person's necessary attorney fees and expenses.
23 Where the court, upon denying the relief sought by the com-
24 plaining person in the action, finds that the action was frivolous
25 or commenced with the primary intent of harassing the govern-
26 ing body or any member thereof or, in the absence of good
27 faith, of delaying any meetings or decisions of the governing
28 body, the court may require the complaining person to pay the
29 governing body's necessary attorney fees and expenses.

30 Any person who intentionally violates the provisions of this
31 article is liable in an action for compensatory and punitive
32 damages not to exceed a total of five hundred dollars.

§16-5G-7. Violation of article; penalties.

1 (a) In addition to or in conjunction with any other acts or
2 omissions which may be determined to violate this act, it is a
3 violation of this act for a governing body to hold a private
4 meeting with the intention of transacting public business,
5 thwarting public scrutiny and making decisions that eventually
6 become official action.

7 (b) Any person who is a member of a governing body of a
8 hospital required to conduct open meetings in compliance with
9 the provisions of this article and who willfully and knowingly
10 violates the provisions of this article is guilty of a misdemeanor
11 and, upon conviction thereof, shall be fined not less than one
12 hundred dollars nor more than five hundred dollars, or confined
13 in jail not more than ten days, or both fined and confined.

CHAPTER 209

(H. B. 3006 — By Delegates Douglas, Collins, Varner,
Stalnaker, Willison, Marshall and Angotti)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-a, relating to requiring the auditor to provide orientation sessions; requiring attendance of certain members of newly created state boards or commissions; reimbursement of expenses; reports by auditor; and authorizing charging of registration fees.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE
BOARDS OF EXAMINATION OR REGISTRATION
REFERRED TO IN CHAPTER.**

§30-1-2a. Required orientation session.

1 (a) After the first day of April and not later than the thirty-
2 first day of July 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) Topics for the orientation session may include, but are
17 not limited to: The official conduct of members, state budgeting
18 and financial procedures, purchasing requirements, open
19 meetings requirements, ethics, rule-making procedures, records
20 management, annual reports and any other topics the auditor
21 determines to be essential in the fulfillment of the duties of the
22 members of state boards and commissions.

23 (d) The orientation session shall be open to any member of
24 new or existing boards and commissions and each board or
25 commission may approve expense reimbursement for the
26 attendance of one or more of its members. The chair or chief
27 financial officer of each existing board or commission shall
28 attend an orientation session within two years following the
29 effective date of this section.

30 (e) No later than the tenth day of August of each year, the
31 auditor shall provide to the chairs of the joint standing commit-
32 tee on government operations a list of the names of board or
33 commission members attending, together with the names of the
34 boards and commissions represented, the orientation session or
35 sessions offered by the auditor since the previous April first.

36 (f) The auditor may charge a registration fee for the
37 orientation session to cover the cost of providing the orientation
38 session. The fee may be paid from funds available to a board or
39 commission.

40 (g) Notwithstanding the member's normal rate of compen-
41 sation for serving on a board, a member attending the orienta-
42 tion session may be reimbursed for necessary and actual
43 expenses, as long as the member attends the complete orienta-
44 tion session.

45 (h) Ex officio members who are elected or appointed state
46 officers or employees, and members of boards or commissions
47 that have purely advisory functions with respect to a department
48 or agency of the state, are exempt from the requirements of this
49 section.

CHAPTER 210

(H. B. 2082 — By Mr. Speaker, Mr. Kiss)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, ten, thirteen, fourteen and fifteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eighteen, all relating to the West Virginia medical practice act; expanding the purposes of the article creating the board of medicine; authorizing the board to enter into reciprocity agreements with other jurisdictions; providing an exemption for eligible graduates of certain foreign medical schools from meeting additional requirements for licensure; defining the term "telemedicine"; requiring licensure for persons engaged in the practice of telemedicine, and providing exceptions; expanding the basis for board investigations; eliminating certain mandatory reporting; providing additional due process protections for physicians subject to disciplinary proceedings; stating the evidentiary standard for board action; permitting assessment of cost against complainant in certain cases; providing for remand in cases of after-discovered evidence; mediation; authorizing the formation of medical corporations with licensed osteopathic physicians; and continuing the board pursuant to the West Virginia sunset law.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-2. Purpose.

§30-3-10. Licenses to practice medicine and surgery or podiatry.

§30-3-13. Unauthorized practice of medicine and surgery or podiatry; criminal penalties; limitations.

§30-3-14. Professional discipline of physicians and podiatrists; reporting of information to board pertaining to professional malpractice and professional incompetence required; penalties; grounds for license denial and discipline of physicians and podiatrists; investigations; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the board; reapplication; civil and criminal immunity; voluntary limitation of license; probable cause determinations.

§30-3-15. Medical corporations; podiatry corporations; application for registration; fees; notice to secretary of state of issuance of certificate; action by secretary of state; rights and limitations generally; biennial registration; when practice to cease; admissibility and effect of certificate signed by secretary of board; criminal penalty; severability.

§30-3-18. Continuation of board.

§30-3-2. Purpose.

1 The purpose of this article is to provide for the licensure
2 and professional discipline of physicians and podiatrists and for
3 the certification and discipline of physician assistants and to
4 provide a professional environment that encourages the delivery
5 of quality medical services within this state.

§30-3-10. Licenses to practice medicine and surgery or podiatry.

1 (a) The board shall issue a license to practice medicine and
2 surgery or to practice podiatry to any individual who is quali-
3 fied to do so in accordance with the provisions of this article.

4 (b) For an individual to be licensed to practice medicine
5 and surgery in this state, he or she must meet the following
6 requirements:

7 (1) He or she shall submit an application to the board on a
8 form provided by the board and remit to the board a reasonable
9 examination fee, the amount of the reasonable fee to be set by
10 the board. The application must, as a minimum, require a sworn
11 and notarized statement that the applicant is of good moral
12 character and that he or she is physically and mentally capable
13 of engaging in the practice of medicine and surgery;

14 (2) He or she must provide evidence of graduation and
15 receipt of the degree of doctor of medicine or its equivalent
16 from a school of medicine, which is approved by the liaison
17 committee on medical education or by the board;

18 (3) He or she must submit evidence to the board of having
19 successfully completed a minimum of one year of graduate
20 clinical training in a program approved by the accreditation
21 council for graduate medical education; and

22 (4) He or she must pass an examination approved by the
23 board, which examination can be related to a national standard.
24 The examination shall be in the English language and be
25 designed to ascertain an applicant's fitness to practice medicine
26 and surgery. The board shall before the date of examination
27 determine what will constitute a passing score: *Provided*, That
28 the board, or a majority of them, may accept in lieu of an
29 examination of applicants, the certificate of the national board
30 of medical examiners: *Provided, however*, That the board is
31 authorized to enter into reciprocity agreements with medical
32 licensing authorities in other states, the District of Columbia,
33 Canada or the Commonwealth of Puerto Rico, and, for an
34 applicant who: (i) Is currently fully licensed, excluding any
35 temporary, conditional or restricted license or permit, under the
36 laws of another state or jurisdiction having reciprocity; (ii) has
37 been engaged on a full-time professional basis in the practice of
38 medicine within that state or jurisdiction for a period of at least
39 five years; and (iii) is not the subject of any pending disciplin-
40 ary action by a medical licensing board and has not been the
41 subject of professional discipline by a medical licensing board
42 in any jurisdiction, the board may permit licensure in this state
43 by reciprocity. If an applicant fails to pass the examination on
44 two occasions, he or she shall successfully complete a course of
45 study or training, as approved by the board, designed to
46 improve his or her ability to engage in the practice of medicine
47 and surgery, before being eligible for reexamination.

48 (c) In addition to the requirements of subsection (b) hereof,
49 any individual who has received the degree of doctor of
50 medicine or its equivalent from a school of medicine located

51 outside of the United States, the Commonwealth of Puerto Rico
52 and Canada, to be licensed to practice medicine in this state,
53 must also meet the following additional requirements and
54 limitations:

55 (1) He or she must be able to demonstrate to the satisfaction
56 of the board his or her ability to communicate in the English
57 language;

58 (2) Before taking a licensure examination, he or she must
59 have fulfilled the requirements of the educational commission
60 for foreign medical graduates for certification, or he or she must
61 provide evidence of receipt of a passing score on the examina-
62 tion of the educational commission for foreign medical gradu-
63 ates: *Provided*, That an applicant who: (i) Is currently fully
64 licensed, excluding any temporary, conditional or restricted
65 license or permit, under the laws of another state, the District of
66 Columbia, Canada or the Commonwealth of Puerto Rico; (ii)
67 has been engaged on a full-time professional basis in the
68 practice of medicine within the state or jurisdiction where the
69 applicant is fully licensed for a period of at least five years; and
70 (iii) is not the subject of any pending disciplinary action by a
71 medical licensing board and has not been the subject of
72 professional discipline by a medical licensing board in any
73 jurisdiction, is not required to have a certificate from the
74 educational commission for foreign medical graduates;

75 (3) He or she must submit evidence to the board of either:
76 (i) Having successfully completed a minimum of two years of
77 graduate clinical training in a program approved by the accredi-
78 tation council for graduate medical education; or (ii) current
79 certification by a member board of the American board of
80 medical specialties.

81 (d) For an individual to be licensed to practice podiatry in
82 this state, he or she must meet the following requirements:

83 (1) He or she shall submit an application to the board on a
84 form provided by the board and remit to the board a reasonable
85 examination fee, the amount of the reasonable fee to be set by
86 the board. The application must, as a minimum, require a sworn

87 and notarized statement that the applicant is of good moral
88 character and that he or she is physically and mentally capable
89 of engaging in the practice of podiatric medicine;

90 (2) He or she must provide evidence of graduation and
91 receipt of the degree of doctor of podiatric medicine and its
92 equivalent from a school of podiatric medicine which is
93 approved by the council of podiatry education or by the board;

94 (3) He or she must pass an examination approved by the
95 board, which examination can be related to a national standard.
96 The examination shall be in the English language and be
97 designed to ascertain an applicant's fitness to practice podiatric
98 medicine. The board shall before the date of examination
99 determine what will constitute a passing score. If an applicant
100 fails to pass the examination on two occasions, he or she shall
101 successfully complete a course of study or training, as approved
102 by the board, designed to improve his or her ability to engage
103 in the practice of podiatric medicine, before being eligible for
104 reexamination; and

105 (4) He or she must submit evidence to the board of having
106 successfully completed a minimum of one year of graduate
107 clinical training in a program approved by the council on
108 podiatric medical education, or the colleges of podiatric
109 medicine. The board may consider a minimum of two years of
110 graduate podiatric clinical training in the U. S. armed forces or
111 three years private podiatric clinical experience in lieu of this
112 requirement.

113 (e) All licenses to practice medicine and surgery granted
114 prior to the first day of July, one thousand nine hundred
115 ninety-one, and valid on that date, shall continue in full effect
116 for the term and under the conditions provided by law at the
117 time of the granting of the license: *Provided*, That the provi-
118 sions of subsection (d) of this section shall not apply to any
119 person legally entitled to practice chiropody or podiatry in this
120 state prior to the eleventh day of June, one thousand nine
121 hundred sixty-five: *Provided, however*, That all persons
122 licensed to practice chiropody prior to the eleventh day of June,
123 one thousand nine hundred sixty-five, shall be permitted to use

124 the term “chiropractic” and shall have the rights,
125 privileges and responsibilities of a podiatrist set out in this
126 article.

**§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
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 or registered technician
98 certified by the American board for certification of orthotics
99 and prosthetics in either prosthetics or orthotics: *Provided*, That
100 the sale of any prosthetic or orthotic device by a partnership,
101 proprietorship or corporation which employs such a practitioner
102 or registered technician who fitted the prosthetic or orthotic
103 device shall not constitute the unauthorized practice of medi-
104 cine: *Provided, however*, That the practitioner or registered
105 technician may, without a prescription, make recommendation
106 solely to a physician or osteopathic physician or to a chiroprac-

107 tor or podiatrist otherwise authorized by law to prescribe a
108 particular prosthetic or orthotic device, regarding any prosthetic
109 or orthotic device to be used for a patient upon a request for
110 such recommendation.

111 (c) This section shall not be construed as being in any way
112 a limitation upon the services of a physician's assistant per-
113 formed in accordance with the provisions of this article.

114 (d) Persons covered under this article may be permitted to
115 utilize electronic signature or unique electronic identification to
116 effectively sign materials, transmitted by computer or other
117 electronic means, upon which signature is required for the
118 purpose of authorized medical practice. Such signatures are
119 deemed legal and valid for purposes related to the provision of
120 medical services. This subsection does not confer any new
121 practice privilege or right on any persons covered under this
122 article.

§30-3-14. Professional discipline of physicians and podiatrists; reporting of information to board pertaining to professional malpractice and professional incompetence required; penalties; grounds for license denial and discipline of physicians and podiatrists; investigations; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the board; reapplication; civil and criminal immunity; voluntary limitation of license; probable cause determinations.

1 (a) The board may independently initiate disciplinary
2 proceedings as well as initiate disciplinary proceedings based
3 on information received from medical peer review committees,
4 physicians, podiatrists, hospital administrators, professional
5 societies and others.

6 The board may initiate investigations as to professional
7 incompetence or other reasons for which a licensed physician
8 or podiatrist may be adjudged unqualified based upon criminal
9 convictions; complaints by citizens, pharmacists, physicians,
10 podiatrists, peer review committees, hospital administrators,

11 professional societies or others; or if there are five judgments
12 or settlements within the most recent five-year period in excess
13 of fifty thousand dollars each. The board may not consider any
14 judgments or settlements as conclusive evidence of professional
15 incompetence or conclusive lack of qualification to practice.

16 (b) Upon request of the board, any medical peer review
17 committee in this state shall report any information that may
18 relate to the practice or performance of any physician or
19 podiatrist known to that medical peer review committee. Copies
20 of the requests for information from a medical peer review
21 committee may be provided to the subject physician or podia-
22 trist if, in the discretion of the board, the provision of such
23 copies will not jeopardize the board's investigation. In the event
24 that copies are so provided, the subject physician or podiatrist
25 is allowed fifteen days to comment on the requested informa-
26 tion and such comments must be considered by the board.

27 After the completion of the hospital's formal disciplinary
28 procedure and after any resulting legal action, the chief execu-
29 tive officer of the hospital shall report in writing to the board
30 within sixty days the name of any member of the medical staff
31 or any other physician or podiatrist practicing in the hospital
32 whose hospital privileges have been revoked, restricted,
33 reduced or terminated for any cause, including resignation,
34 together with all pertinent information relating to such action.
35 The chief executive officer shall also report any other formal
36 disciplinary action taken against any physician or podiatrist by
37 the hospital upon the recommendation of its medical staff
38 relating to professional ethics, medical incompetence, medical
39 malpractice, moral turpitude or drug or alcohol abuse. Tempo-
40 rary suspension for failure to maintain records on a timely basis
41 or failure to attend staff or section meetings need not be
42 reported. Voluntary cessation of hospital privileges for reasons
43 unrelated to professional competence or ethics need not be
44 reported.

45 Any professional society in this state comprised primarily
46 of physicians or podiatrists which takes formal disciplinary
47 action against a member relating to professional ethics, profes-

48 sional incompetence, professional malpractice, moral turpitude
49 or drug or alcohol abuse, shall report in writing to the board
50 within sixty days of a final decision the name of the member,
51 together with all pertinent information relating to the action.

52 Every person, partnership, corporation, association, insur-
53 ance company, professional society or other organization
54 providing professional liability insurance to a physician or
55 podiatrist in this state shall submit to the board the following
56 information within thirty days from any judgment, or settlement
57 of a civil or medical malpractice action excepting product
58 liability actions: The date of any judgment or settlement;
59 whether any appeal has been taken on the judgment, and, if so,
60 by which party; the amount of any settlement or judgment
61 against the insured; and other information as the board may
62 require.

63 Within thirty days after a person known to be a physician
64 or podiatrist licensed or otherwise lawfully practicing medicine
65 and surgery or podiatry in this state or applying to be so
66 licensed is convicted of a felony under the laws of this state, or
67 of any crime under the laws of this state involving alcohol or
68 drugs in any way, including any controlled substance under
69 state or federal law, the clerk of the court of record in which the
70 conviction was entered shall forward to the board a certified
71 true and correct abstract of record of the convicting court. The
72 abstract shall include the name and address of the physician or
73 podiatrist or applicant, the nature of the offense committed and
74 the final judgment and sentence of the court.

75 Upon a determination of the board that there is probable
76 cause to believe that any person, partnership, corporation,
77 association, insurance company, professional society or other
78 organization has failed or refused to make a report required by
79 this subsection, the board shall provide written notice to the
80 alleged violator stating the nature of the alleged violation and
81 the time and place at which the alleged violator shall appear to
82 show good cause why a civil penalty should not be imposed.
83 The hearing shall be conducted in accordance with the provi-
84 sions of article five, chapter twenty-nine-a of this code. After

85 reviewing the record of the hearing, if the board determines that
86 a violation of this subsection has occurred, the board shall
87 assess a civil penalty of not less than one thousand dollars nor
88 more than ten thousand dollars against the violator. Anyone so
89 assessed shall be notified of the assessment in writing and the
90 notice shall specify the reasons for the assessment. If the
91 violator fails to pay the amount of the assessment to the board
92 within thirty days, the attorney general may institute a civil
93 action in the circuit court of Kanawha County to recover the
94 amount of the assessment. In any such civil action, the court's
95 review of the board's action shall be conducted in accordance
96 with the provisions of section four, article five, chapter twenty-
97 nine-a of this code. Notwithstanding any other provision of this
98 article to the contrary, when there are conflicting views by
99 recognized experts as to whether any alleged conduct breaches
100 an applicable standard of care, the evidence must be clear and
101 convincing before the board may find that the physician has
102 demonstrated a lack of professional competence to practice with
103 a reasonable degree of skill and safety for patients.

104 Any person may report to the board relevant facts about the
105 conduct of any physician or podiatrist in this state which in the
106 opinion of that person amounts to professional malpractice or
107 professional incompetence.

108 The board shall provide forms for filing reports pursuant to
109 this section. Reports submitted in other forms shall be accepted
110 by the board.

111 The filing of a report with the board pursuant to any
112 provision of this article, any investigation by the board or any
113 disposition of a case by the board does not preclude any action
114 by a hospital, other health care facility or professional society
115 comprised primarily of physicians or podiatrists to suspend,
116 restrict or revoke the privileges or membership of the physician
117 or podiatrist.

118 (c) The board may deny an application for license or other
119 authorization to practice medicine and surgery or podiatry in
120 this state and may discipline a physician or podiatrist licensed
121 or otherwise lawfully practicing in this state who, after a

122 hearing, has been adjudged by the board as unqualified due to
123 any of the following reasons:

124 (1) Attempting to obtain, obtaining, renewing or attempting
125 to renew a license to practice medicine and surgery or podiatry
126 by bribery, fraudulent misrepresentation or through known error
127 of the board;

128 (2) Being found guilty of a crime in any jurisdiction, which
129 offense is a felony, involves moral turpitude or directly relates
130 to the practice of medicine. Any plea of nolo contendere is a
131 conviction for the purposes of this subdivision;

132 (3) False or deceptive advertising;

133 (4) Aiding, assisting, procuring or advising any unautho-
134 rized person to practice medicine and surgery or podiatry
135 contrary to law;

136 (5) Making or filing a report that the person knows to be
137 false; intentionally or negligently failing to file a report or
138 record required by state or federal law; willfully impeding or
139 obstructing the filing of a report or record required by state or
140 federal law; or inducing another person to do any of the
141 foregoing. The reports and records as are herein covered mean
142 only those that are signed in the capacity as a licensed physician
143 or podiatrist;

144 (6) Requesting, receiving or paying directly or indirectly a
145 payment, rebate, refund, commission, credit or other form of
146 profit or valuable consideration for the referral of patients to
147 any person or entity in connection with providing medical or
148 other health care services or clinical laboratory services,
149 supplies of any kind, drugs, medication or any other medical
150 goods, services or devices used in connection with medical or
151 other health care services;

152 (7) Unprofessional conduct by any physician or podiatrist
153 in referring a patient to any clinical laboratory or pharmacy in
154 which the physician or podiatrist has a proprietary interest
155 unless the physician or podiatrist discloses in writing such
156 interest to the patient. The written disclosure shall indicate that

157 the patient may choose any clinical laboratory for purposes of
158 having any laboratory work or assignment performed or any
159 pharmacy for purposes of purchasing any prescribed drug or
160 any other medical goods or devices used in connection with
161 medical or other health care services;

162 As used herein, "proprietary interest" does not include an
163 ownership interest in a building in which space is leased to a
164 clinical laboratory or pharmacy at the prevailing rate under a
165 lease arrangement that is not conditional upon the income or
166 gross receipts of the clinical laboratory or pharmacy;

167 (8) Exercising influence within a patient-physician relation-
168 ship for the purpose of engaging a patient in sexual activity;

169 (9) Making a deceptive, untrue or fraudulent representation
170 in the practice of medicine and surgery or podiatry;

171 (10) Soliciting patients, either personally or by an agent,
172 through the use of fraud, intimidation or undue influence;

173 (11) Failing to keep written records justifying the course of
174 treatment of a patient, the records to include, but not be limited
175 to, patient histories, examination and test results and treatment
176 rendered, if any;

177 (12) Exercising influence on a patient in such a way as to
178 exploit the patient for financial gain of the physician or podia-
179 trist or of a third party. Any influence includes, but is not
180 limited to, the promotion or sale of services, goods, appliances
181 or drugs;

182 (13) Prescribing, dispensing, administering, mixing or
183 otherwise preparing a prescription drug, including any con-
184 trolled substance under state or federal law, other than in good
185 faith and in a therapeutic manner in accordance with accepted
186 medical standards and in the course of the physician's or
187 podiatrist's professional practice: *Provided*, That a physician
188 who discharges his or her professional obligation to relieve the
189 pain and suffering and promote the dignity and autonomy of
190 dying patients in his or her care, and in so doing, exceeds the
191 average dosage of a pain relieving controlled substance, in

192 Schedule II and III of the Uniform Control Substance Act, does
193 not violate this article;

194 (14) Performing any procedure or prescribing any therapy
195 that, by the accepted standards of medical practice in the
196 community, would constitute experimentation on human
197 subjects without first obtaining full, informed and written
198 consent;

199 (15) Practicing or offering to practice beyond the scope
200 permitted by law or accepting and performing professional
201 responsibilities that the person knows or has reason to know he
202 or she is not competent to perform;

203 (16) Delegating professional responsibilities to a person
204 when the physician or podiatrist delegating the responsibilities
205 knows or has reason to know that the person is not qualified by
206 training, experience or licensure to perform them;

207 (17) Violating any provision of this article or a rule or order
208 of the board, or failing to comply with a subpoena or subpoena
209 duces tecum issued by the board;

210 (18) Conspiring with any other person to commit an act or
211 committing an act that would tend to coerce, intimidate or
212 preclude another physician or podiatrist from lawfully advertis-
213 ing his or her services;

214 (19) Gross negligence in the use and control of prescription
215 forms;

216 (20) Professional incompetence;

217 (21) The inability to practice medicine and surgery or
218 podiatry with reasonable skill and safety due to physical or
219 mental disability, including deterioration through the aging
220 process or loss of motor skill or abuse of drugs or alcohol. A
221 physician or podiatrist adversely affected under this subdivision
222 shall be afforded an opportunity at reasonable intervals to
223 demonstrate that he or she can resume the competent practice
224 of medicine and surgery or podiatry with reasonable skill and
225 safety to patients. In any proceeding under this subdivision,
226 neither the record of proceedings nor any orders entered by the

227 board shall be used against the physician or podiatrist in any
228 other proceeding.

229 (d) The board shall deny any application for a license or
230 other authorization to practice medicine and surgery or podiatry
231 in this state to any applicant who, and shall revoke the license
232 of any physician or podiatrist licensed or otherwise lawfully
233 practicing within this state who, is found guilty by any court of
234 competent jurisdiction of any felony involving prescribing,
235 selling, administering, dispensing, mixing or otherwise prepar-
236 ing any prescription drug, including any controlled substance
237 under state or federal law, for other than generally accepted
238 therapeutic purposes. Presentation to the board of a certified
239 copy of the guilty verdict or plea rendered in the court is
240 sufficient proof thereof for the purposes of this article. A plea
241 of nolo contendere has the same effect as a verdict or plea of
242 guilt.

243 (e) The board may refer any cases coming to its attention to
244 an appropriate committee of an appropriate professional
245 organization for investigation and report. Except for complaints
246 related to obtaining initial licensure to practice medicine and
247 surgery or podiatry in this state by bribery or fraudulent
248 misrepresentation, any complaint filed more than two years
249 after the complainant knew, or in the exercise of reasonable
250 diligence should have known, of the existence of grounds for
251 the complaint, shall be dismissed: *Provided*, That in cases of
252 conduct alleged to be part of a pattern of similar misconduct or
253 professional incapacity that, if continued, would pose risks of
254 a serious or substantial nature to the physician or podiatrist's
255 current patients, the investigating body may conduct a limited
256 investigation related to the physician or podiatrist's current
257 capacity and qualification to practice, and may recommend
258 conditions, restrictions or limitations on the physician or
259 podiatrist's license to practice that it considers necessary for the
260 protection of the public. Any report shall contain recommenda-
261 tions for any necessary disciplinary measures and shall be filed
262 with the board within ninety days of any referral. The recom-
263 mendations shall be considered by the board and the case may
264 be further investigated by the board. The board after full

265 investigation shall take whatever action it deems appropriate, as
266 provided herein.

267 (f) The investigating body, as provided for in subsection (e)
268 of this section, may request and the board under any circum-
269 stances may require a physician or podiatrist or person applying
270 for licensure or other authorization to practice medicine and
271 surgery or podiatry in this state to submit to a physical or
272 mental examination by a physician or physicians approved by
273 the board. A physician or podiatrist submitting to any such
274 examination has the right, at his or her expense, to designate
275 another physician to be present at the examination and make an
276 independent report to the investigating body or the board. The
277 expense of the examination shall be paid by the board. Any
278 individual who applies for or accepts the privilege of practicing
279 medicine and surgery or podiatry in this state is deemed to have
280 given his or her consent to submit to all examinations when
281 requested to do so in writing by the board and to have waived
282 all objections to the admissibility of the testimony or examina-
283 tion report of any examining physician on the ground that the
284 testimony or report is privileged communication. If a person
285 fails or refuses to submit to any such examination under
286 circumstances which the board finds are not beyond his or her
287 control, failure or refusal is prima facie evidence of his or her
288 inability to practice medicine and surgery or podiatry compe-
289 tently and in compliance with the standards of acceptable and
290 prevailing medical practice.

291 (g) In addition to any other investigators it employs, the
292 board may appoint one or more licensed physicians to act for it
293 in investigating the conduct or competence of a physician.

294 (h) In every disciplinary or licensure denial action, the
295 board shall furnish the physician or podiatrist or applicant with
296 written notice setting out with particularity the reasons for its
297 action. Disciplinary and licensure denial hearings shall be
298 conducted in accordance with the provisions of article five,
299 chapter twenty-nine-a of this code. However, hearings shall be
300 heard upon sworn testimony and the rules of evidence for trial
301 courts of record in this state shall apply to all hearings. A

302 transcript of all hearings under this section shall be made, and
303 the respondent may obtain a copy of the transcript at his or her
304 expense. The physician or podiatrist has the right to defend
305 against any charge by the introduction of evidence, the right to
306 be represented by counsel, the right to present and cross-
307 examine witnesses and the right to have subpoenas and subpoe-
308 nas duces tecum issued on his or her behalf for the attendance
309 of witnesses and the production of documents. The board shall
310 make all its final actions public. The order shall contain the
311 terms of all action taken by the board.

312 (i) In disciplinary actions in which probable cause has been
313 found by the board, the board shall, within twenty days of the
314 date of service of the written notice of charges or sixty days
315 prior to the date of the scheduled hearing, whichever is sooner,
316 provide the respondent with the complete identity, address, and
317 telephone number of any person known to the board with
318 knowledge about the facts of any of the charges; provide a copy
319 of any statements in the possession of or under the control of
320 the board; provide a list of proposed witnesses with addresses
321 and telephone numbers, with a brief summary of his or her
322 anticipated testimony; provide disclosure of any trial expert
323 pursuant to the requirements of Rule 26(b)(4) of the West
324 Virginia Rules of Civil Procedure; provide inspection and
325 copying of the results of any reports of physical and mental
326 examinations or scientific tests or experiments; and provide a
327 list and copy of any proposed exhibit to be used at the hearing:
328 *Provided*, That the board shall not be required to furnish or
329 produce any materials which contain opinion work product
330 information or would be violative of the attorney-client
331 privilege. Within twenty days of the date of service of the
332 written notice of charges, the board shall be required to disclose
333 any exculpatory evidence with a continuing duty to do so
334 throughout the disciplinary process. Within thirty days of
335 receipt of the board's mandatory discovery, the respondent shall
336 provide the board with the complete identity, address, and
337 telephone number of any person known to the respondent with
338 knowledge about the facts of any of the charges; provide a list
339 of proposed witnesses with addresses and telephone numbers,

340 to be called at hearing, with a brief summary of his or her
341 anticipated testimony; provide disclosure of any trial expert
342 pursuant to the requirements of Rule 26(b)(4) of the West
343 Virginia Rules of Civil Procedure; provide inspection and
344 copying of the results of any reports of physical and mental
345 examinations or scientific tests or experiments; and provide a
346 list and copy of any proposed exhibit to be used at the hearing.

347 (j) Whenever it finds any person unqualified because of any
348 of the grounds set forth in subsection (c) of this section, the
349 board may enter an order imposing one or more of the follow-
350 ing:

351 (1) Deny his or her application for a license or other
352 authorization to practice medicine and surgery or podiatry;

353 (2) Administer a public reprimand;

354 (3) Suspend, limit or restrict his or her license or other
355 authorization to practice medicine and surgery or podiatry for
356 not more than five years, including limiting the practice of that
357 person to, or by the exclusion of, one or more areas of practice,
358 including limitations on practice privileges;

359 (4) Revoke his or her license or other authorization to
360 practice medicine and surgery or podiatry or to prescribe or
361 dispense controlled substances;

362 (5) Require him or her to submit to care, counseling or
363 treatment designated by the board as a condition for initial or
364 continued licensure or renewal of licensure or other authoriza-
365 tion to practice medicine and surgery or podiatry;

366 (6) Require him or her to participate in a program of
367 education prescribed by the board;

368 (7) Require him or her to practice under the direction of a
369 physician or podiatrist designated by the board for a specified
370 period of time; and

371 (8) Assess a civil fine of not less than one thousand dollars
372 nor more than ten thousand dollars.

373 (k) Notwithstanding the provisions of section eight, article
374 one, chapter thirty of this code, if the board determines the
375 evidence in its possession indicates that a physician's or
376 podiatrist's continuation in practice or unrestricted practice
377 constitutes an immediate danger to the public, the board may
378 take any of the actions provided for in subsection (i) of this
379 section on a temporary basis and without a hearing, if institu-
380 tion of proceedings for a hearing before the board are initiated
381 simultaneously with the temporary action and begin within
382 fifteen days of the action. The board shall render its decision
383 within five days of the conclusion of a hearing under this
384 subsection.

385 (l) Any person against whom disciplinary action is taken
386 pursuant to the provisions of this article has the right to judicial
387 review as provided in articles five and six, chapter twenty-nine-
388 a of this code: *Provided*, That a circuit judge may also remand
389 the matter to the board if it appears from competent evidence
390 presented to it in support of a motion for remand that there is
391 newly discovered evidence of such a character as ought to
392 produce an opposite result at a second hearing on the merits
393 before the board and:

394 (1) The evidence appears to have been discovered since the
395 board hearing; and

396 (2) The physician or podiatrist exercised due diligence in
397 asserting his or her evidence and that due diligence would not
398 have secured the newly discovered evidence prior to the appeal.
399 Except with regard to an order of temporary suspension of a
400 license for six months or less, a person may not practice
401 medicine and surgery or podiatry or deliver health care services
402 in violation of any disciplinary order revoking or limiting his or
403 her license while any such review is pending. Within sixty days,
404 the board shall report its final action regarding restriction,
405 limitation, suspension or revocation of the license of a physi-
406 cian or podiatrist, limitation on practice privileges or other
407 disciplinary action against any physician or podiatrist to all
408 appropriate state agencies, appropriate licensed health facilities
409 and hospitals, insurance companies or associations writing

410 medical malpractice insurance in this state, the American
411 medical association, the American podiatry association,
412 professional societies of physicians or podiatrists in the state
413 and any entity responsible for the fiscal administration of
414 medicare and medicaid.

415 (m) Any person against whom disciplinary action has been
416 taken under the provisions of this article shall at reasonable
417 intervals be afforded an opportunity to demonstrate that he or
418 she can resume the practice of medicine and surgery or podiatry
419 on a general or limited basis. At the conclusion of a suspension,
420 limitation or restriction period, the physician or podiatrist has
421 the right to resume practice pursuant to the orders of the board:
422 *Provided*, That for a revocation pursuant to subsection (d) of
423 this section a reapplication may not be accepted for a period of
424 at least five years.

425 (n) Any entity, organization or person, including the board,
426 any member of the board, its agents or employees and any
427 entity or organization or its members referred to in this article;
428 any insurer, its agents or employees, a medical peer review
429 committee and a hospital governing board, its members or any
430 committee appointed by it acting without malice and without
431 gross negligence in making any report or other information
432 available to the board or a medical peer review committee
433 pursuant to law and any person acting without malice and
434 without gross negligence who assists in the organization,
435 investigation or preparation of any such report or information
436 or assists the board or a hospital governing body or any
437 committee in carrying out any of its duties or functions pro-
438 vided by law, is immune from civil or criminal liability, except
439 that the unlawful disclosure of confidential information
440 possessed by the board is a misdemeanor as provided for in this
441 article.

442 (o) A physician or podiatrist may request in writing to the
443 board a limitation on or the surrendering of his or her license to
444 practice medicine and surgery or podiatry or other appropriate
445 sanction as provided herein. The board may grant the request
446 and, if it considers it appropriate, may waive the commence-

447 ment or continuation of other proceedings under this section. A
448 physician or podiatrist whose license is limited or surrendered
449 or against whom other action is taken under this subsection has
450 a right at reasonable intervals to petition for removal of any
451 restriction or limitation on or for reinstatement of his or her
452 license to practice medicine and surgery or podiatry.

453 (p) In every case considered by the board under this article
454 regarding discipline or licensure, whether initiated by the board
455 or upon complaint or information from any person or organiza-
456 tion, the board shall make a preliminary determination as to
457 whether probable cause exists to substantiate charges of
458 disqualification due to any reason set forth in subsection (c) of
459 this section. If probable cause is found to exist, all proceedings
460 on the charges shall be open to the public who shall be entitled
461 to all reports, records, and nondeliberative materials introduced
462 at the hearing, including the record of the final action taken:
463 *Provided*, That any medical records, which were introduced at
464 the hearing and which pertain to a person who has not expressly
465 waived his or her right to the confidentiality of the records, may
466 not be open to the public nor is the public entitled to the
467 records.

468 (q) Notwithstanding any other provisions of this article, the
469 board may at any time, on its own motion, or upon motion by
470 the complainant, or upon motion by the physician or podiatrist,
471 or by stipulation of the parties, refer the matter to mediation.
472 The board shall obtain a list from the West Virginia state bar's
473 mediator referral service of certified mediators with expertise
474 in professional disciplinary matters. The board and the physi-
475 cian or podiatrist may choose a mediator from this list. If the
476 board and the physician or podiatrist are unable to agree on a
477 mediator, the board shall designate a mediator from this listing
478 by neutral rotation. The mediation shall not be considered a
479 proceeding open to the public and any reports and records
480 introduced at the mediation shall not become part of the public
481 record. The mediator and all participants in the mediation shall
482 maintain and preserve the confidentiality of all mediation
483 proceedings and records. The mediator may not be subpoenaed
484 or called to testify or otherwise be subject to process requiring

485 disclosure of confidential information in any proceeding
486 relating to or arising out of the disciplinary or licensure matter
487 mediated: *Provided*, That any confidentiality agreement and
488 any written agreement made and signed by the parties as a
489 result of mediation may be used in any proceedings subse-
490 quently instituted to enforce the written agreement. The
491 agreements may be used in other proceedings if the parties
492 agree in writing to do this.

**§30-3-15. Medical corporations; podiatry corporations; applica-
tion for registration; fees; notice to secretary of
state of issuance of certificate; action by secretary
of state; rights and limitations generally; biennial
registration; when practice to cease; admissibility
and effect of certificate signed by secretary of
board; criminal penalty; severability.**

1 (a) When one or more physicians duly licensed to practice
2 medicine and surgery in this state under this article, or one or
3 more physicians duly licensed under this article and one or
4 more physicians duly licensed under article fourteen of this
5 chapter, or one or more podiatrists duly licensed to practice
6 podiatry in this state wish to form a medical or podiatry
7 corporation, respectively, such physician or physicians or
8 podiatrist or podiatrists shall file a written application therefor
9 with the board on a form prescribed by it and shall furnish proof
10 satisfactory to the board that each applicant is a duly licensed
11 physician or podiatrist. A fee, not to exceed five hundred
12 dollars, the amount of such fee to be set by the board, shall
13 accompany each application. Upon its determination that each
14 applicant is duly licensed, the board shall notify the secretary of
15 state that a certificate of authorization has been issued to the
16 person or persons making the application. When the secretary
17 of state receives such notification from the board, he or she
18 shall attach such authorization to the corporation application
19 and, upon compliance by the corporation with the pertinent
20 provisions of chapter thirty-one of this code, shall notify the
21 incorporators that such corporation, through duly licensed
22 physicians or through duly licensed podiatrists, may engage in
23 the practice of medicine and surgery or the practice of podiatry.

24 (b) A medical corporation may practice medicine and
25 surgery only through individual physicians duly licensed to
26 practice medicine and surgery in this state and a podiatrist may
27 practice podiatry only through individual podiatrists duly
28 licensed to practice podiatry in this state, but such physicians or
29 podiatrists may be employees rather than shareholders of such
30 corporation, and nothing herein contained shall be construed to
31 require a license for or other legal authorization of any individ-
32 ual employed by such corporation to perform services for which
33 no license or other legal authorization is otherwise required.
34 Nothing contained in this article is meant or intended to change
35 in any way the rights, duties, privileges, responsibilities and
36 liabilities incident to the physician-patient or podiatrist-patient
37 relationship nor is it meant or intended to change in any way the
38 personal character of the physician-patient or podiatrist-patient
39 relationship. A corporation holding such certificate of authori-
40 zation shall register biennially, on or before the thirtieth day of
41 June, on a form prescribed by the board, and shall pay an
42 annual registration fee not to exceed three hundred dollars, the
43 amount of such fee to be set by the board.

44 (c) A medical or podiatry corporation holding a certificate
45 of authorization shall cease to engage in the practice of medi-
46 cine and surgery or the practice of podiatry upon being notified
47 by the board that any of its shareholders is no longer a duly
48 licensed physician or podiatrist, or when any shares of such
49 corporation have been sold or disposed of to a person who is
50 not a duly licensed physician or podiatrist: *Provided*, That the
51 personal representative of a deceased shareholder shall have a
52 period, not to exceed twelve months from the date of such
53 shareholder's death, to dispose of such shares; but nothing
54 contained herein shall be construed as affecting the existence of
55 such corporation or its right to continue to operate for all lawful
56 purposes other than the practice of medicine and surgery or the
57 practice of podiatry.

58 (d) No corporation shall practice medicine and surgery or
59 any of its branches, or hold itself out as being capable of
60 practicing medicine and surgery, or practice podiatry or hold
61 itself out as being capable of practicing podiatry, without a

62 certificate from the board; nor shall any corporation practice
63 medicine and surgery or any of its branches or hold itself out as
64 being capable of practicing medicine and surgery, or practice
65 podiatry or hold itself out as being capable of practicing
66 podiatry, after its certificate has been revoked, or if suspended,
67 during the term of such suspension. A certificate signed by the
68 secretary of the board to which is affixed the official seal of the
69 board to the effect that it appears from the records of the board
70 that no such certificate to practice medicine and surgery or any
71 of its branches, or to practice podiatry, in the state has been
72 issued to any such corporation specified therein or that such
73 certificate has been revoked or suspended shall be admissible
74 in evidence in all courts of this state and shall be prima facie
75 evidence of the facts stated therein.

76 (e) Any officer, shareholder or employee of such corpora-
77 tion who participates in a violation of any provision of this
78 section shall be guilty of a misdemeanor and, upon conviction
79 thereof, shall be fined not exceeding one thousand dollars.

§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 preliminary performance review by the joint committee on
5 government operations.

CHAPTER 211

(Com. Sub. for H. B. 2961 — By Delegates Amores,
Ashley, Azinger, Beane and Martin)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-a; and to

amend article fourteen of said chapter by adding thereto a new section, designated section twelve-b, all relating to establishing a special volunteer medical license for retired or retiring physicians treating indigents and the needy without compensation; providing for issuance without payment of fees; specifying requirements of license; providing for civil immunity for voluntary medical services rendered to indigents; limitations thereon; and required insurance coverage.

Be it enacted by the Legislature of West Virginia:

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

Article

- 3. West Virginia Medical Practice Act.
- 14. Osteopathic Physicians and Surgeons.

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-10a. Special volunteer medical license; civil immunity for voluntary services rendered to indigents.

1 (a) There is hereby established a special volunteer medical
 2 license for physicians retired or retiring from the active practice
 3 of medicine who wish to donate their expertise for the medical
 4 care and treatment of indigent and needy patients in the clinic
 5 setting of clinics organized, in whole or in part, for the delivery
 6 of health care services without charge. The special volunteer
 7 medical license shall be issued by the West Virginia board of
 8 medicine to physicians licensed or otherwise eligible for
 9 licensure under this article and the rules promulgated hereunder
 10 without the payment of any application fee, license fee or
 11 renewal fee, shall be issued for a fiscal year or part thereof, and
 12 shall be renewable annually. The board shall develop applica-
 13 tion forms for the special license provided for in this subsection
 14 which shall contain the physician's acknowledgment that: (1)
 15 The physician's practice under the special volunteer medical
 16 license will be exclusively and totally devoted to providing
 17 medical care to needy and indigent persons in West Virginia;

18 (2) the physician will not receive any payment or compensation,
19 either direct or indirect, or have the expectation of any payment
20 or compensation, for any medical services rendered under the
21 special volunteer medical license; (3) the physician will supply
22 any supporting documentation that the board may reasonably
23 require; and (4) the physician agrees to continue to participate
24 in continuing medical education as required of physicians in
25 active practice.

26 (b) Any physician who renders any medical service to
27 indigent and needy patients of a clinic organized, in whole or in
28 part, for the delivery of health care services without charge
29 under a special volunteer medical license authorized under
30 subsection (a) of this section without payment or compensation
31 or the expectation or promise of payment or compensation is
32 immune from liability for any civil action arising out of any act
33 or omission resulting from the rendering of the medical service
34 at the clinic unless the act or omission was the result of the
35 physician's gross negligence or willful misconduct. In order for
36 the immunity under this subsection to apply, there must be a
37 written agreement between the physician and the clinic pursuant
38 to which the physician will provide voluntary noncompensated
39 medical services under the control of the clinic to patients of the
40 clinic before the rendering of any services by the physician at
41 the clinic: *Provided*, That any clinic entering into such written
42 agreement shall be required to maintain liability coverage of not
43 less than one million dollars per occurrence.

44 (c) Notwithstanding the provisions of subsection (a) of this
45 section, a clinic organized, in whole or in part, for the delivery
46 of health care services without charge shall not be relieved from
47 imputed liability for the negligent acts of a physician rendering
48 voluntary medical services at or for the clinic under a special
49 volunteer medical license authorized under subsection (a) of
50 this section.

51 (d) For purposes of this section, "otherwise eligible for
52 licensure" means the satisfaction of all the requirements for
53 licensure as listed in section ten of this article and in the
54 legislative rules promulgated hereunder, except the fee require-

55 ments of subsections (b) and (d) of said section and of the
56 legislative rule promulgated by the board relating to fees.

57 (e) Nothing in this section may be construed as requiring
58 the board to issue a special volunteer medical license to any
59 physician whose medical license is or has been subject to any
60 disciplinary action or to any physician who has surrendered a
61 medical license or caused such license to lapse, expire and
62 become invalid in lieu of having a complaint initiated or other
63 action taken against his or her medical license, or who has
64 elected to place a medical license in inactive status in lieu of
65 having a complaint initiated or other action taken against his or
66 her medical license, or who have been denied a medical license.

67 (f) Any policy or contract of liability insurance providing
68 coverage for liability sold, issued or delivered in this state to
69 any physician covered under the provisions of this article shall
70 be read so as to contain a provision or endorsement whereby the
71 company issuing such policy waives or agrees not to assert as
72 a defense on behalf of the policyholder or any beneficiary
73 thereof, to any claim covered by the terms of such policy within
74 the policy limits, the immunity from liability of the insured by
75 reason of the care and treatment of needy and indigent patients
76 by a physician who holds a special volunteer medical license.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-12b. Special volunteer medical license; civil immunity for voluntary services rendered to indigents.

1 (a) There is hereby established a special volunteer medical
2 license for physicians retired or retiring from the active practice
3 of osteopathy who wish to donate their expertise for the medical
4 care and treatment of indigent and needy patients in the clinic
5 settings of the clinics organized, in whole or in part, for the
6 delivery of health care services without charge. The special
7 volunteer medical license shall be issued by the West Virginia
8 board of osteopathy to physicians licensed or otherwise eligible
9 for licensure under this article and the rules promulgated
10 hereunder without the payment of any application fee, license
11 fee or renewal fee, shall be issued for a fiscal year or part
12 thereof, and shall be renewable annually. The board shall

13 develop application forms for the special license provided for
14 in this subsection which shall contain the physician's acknowl-
15 edgment that: (1) The physician's practice under the special
16 volunteer medical license will be exclusively and totally
17 devoted to providing medical care to needy and indigent
18 persons in West Virginia; (2) the physician will not receive any
19 payment or compensation, either direct or indirect, or have the
20 expectation of any payment or compensation, for any medical
21 services rendered under the special volunteer medical license;
22 (3) the physician will supply any supporting documentation that
23 the board may reasonably require; and (4) the physician agrees
24 to continue to participate in continuing medical education as
25 required of physicians in active practice.

26 (b) Any physician who renders any medical service to
27 indigent and needy patients of clinics organized, in whole or in
28 part, for the delivery of health care services without charge
29 under a special volunteer medical license authorized under
30 subsection (a) of this section without payment or compensation
31 or the expectation or promise of payment or compensation is
32 immune from liability for any civil action arising out of any act
33 or omission resulting from the rendering of the medical service
34 at the clinic unless the act or omission was the result of the
35 physician's gross negligence or willful misconduct. In order for
36 the immunity under this subsection to apply, there must be a
37 written agreement between the physician and the clinic pursuant
38 to which the physician will provide voluntary noncompensated
39 medical services under the control of the clinic to patients of the
40 clinic before the rendering of any services by the physician at
41 the clinic: *Provided*, That any clinic entering into such written
42 agreement shall be required to maintain liability coverage of not
43 less than one million dollars per occurrence.

44 (c) Notwithstanding the provisions of subsection (a) of this
45 section, a clinic organized, in whole or in part, for the delivery
46 of health care services without charge shall not be relieved from
47 imputed liability for the negligent acts of a physician rendering
48 voluntary medical services at or for the clinic under a special
49 volunteer medical license authorized under subsection (a) of
50 this section.

51 (d) For purposes of this section, "otherwise eligible for
52 licensure" means the satisfaction of all the requirements for
53 licensure as listed in section ten of this article and in the
54 legislative rules promulgated hereunder, except the fee require-
55 ments of subsections (b) and (d) of said section and of the
56 legislative rule promulgated by the board relating to fees.

57 (e) Nothing in this section may be construed as requiring
58 the board to issue a special volunteer medical license to any
59 physician whose medical license is or has been subject to any
60 disciplinary action or to any physician who has surrendered a
61 medical license or caused such license to lapse, expire and
62 become invalid in lieu of having a complaint initiated or other
63 action taken against his or her medical license, or who has
64 elected to place a medical license in inactive status in lieu of
65 having a complaint initiated or other action taken against his or
66 her medical license, or who have been denied a medical license.

67 (f) Any policy or contract of liability insurance providing
68 coverage for liability sold, issued or delivered in this state to
69 any physician covered under the provisions of this article shall
70 be read so as to contain a provision or endorsement whereby the
71 company issuing such policy waives or agrees not to assert as
72 a defense on behalf of the policyholder or any beneficiary
73 thereof, to any claim covered by the terms of such policy within
74 the policy limits, the immunity from liability of the insured by
75 reason of the care and treatment of needy and indigent patients
76 by a physician who holds a special volunteer medical license.

CHAPTER 212

(H. B. 2796 — By Delegates Border, Leach and Perdue (By Request))

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections six-a, nine and fourteen,
article five, chapter thirty 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 nine-a; and to amend and reenact section seven, article eight, chapter sixty-a of said code, all relating to fees for licensing and permits to operate for pharmacists, pharmacies, drugstores and wholesale drug distributors payable to the West Virginia Board of Pharmacy; establishing an initial fee and a renewal fee for an application for a permit for mail-order pharmacies and drugstores; increasing the renewal fees for licensing and operation permits for pharmacists; increasing the licensing fee for wholesale drug distributors; and authorizing future fee modifications to be made by legislative rule.

Be it enacted by the Legislature of West Virginia:

That sections six-a, nine and fourteen, article five, chapter thirty 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 nine-a; and that section seven, article eight, chapter sixty-a of said code be amended and reenacted, all to read as follows:

Chapter

30. Professions and Occupations.

60a. Uniform Controlled Substances Act.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§30-5-6a. Permits for mail-order houses.

§30-5-9. Fees.

§30-5-9a. Authorization for future fee modifications to be made by rule.

§30-5-14. Pharmacies to be registered; permit to operate; fees;
pharmacist to conduct business.

§30-5-6a. Permits for mail-order houses.

- 1 (a) Every mail-order house which dispenses drugs or
- 2 medicines through the United States mail or otherwise from any
- 3 point in the state of West Virginia to any point outside of the
- 4 state of West Virginia shall be registered as a pharmacy or
- 5 drugstore pursuant to the provisions of section fourteen of this

6 article: *Provided*, That the provisions of this subsection do not
7 apply to any mail-order house which operates solely as a
8 wholesale distributor. Every initial application for a permit shall
9 be accompanied by a fee of five hundred dollars. The fee for
10 renewal of the permit or license shall be five hundred dollars
11 annually.

12 (b) Every mail-order house which dispenses drugs or
13 medicines through the United States mail or otherwise from any
14 point outside of the state of West Virginia to any point within
15 the state of West Virginia shall, as a condition precedent to
16 being qualified and authorized to transact business in the state
17 of West Virginia, annually register with the board of pharmacy
18 to conduct such business in this state. Every initial application
19 for a permit shall be accompanied by a fee of five hundred
20 dollars. The fee for renewal of the permit or license shall be
21 five hundred dollars annually. Every business shall be required
22 to provide to the board of pharmacy satisfactory evidence that
23 it qualifies as a pharmacy or drugstore and that the business is
24 licensed or registered as a pharmacy or drugstore in the state
25 where the business dispenses prescriptions by mail order to
26 residents of this state. The board of pharmacy shall promulgate
27 rules, in accordance with the provisions of article three, chapter
28 twenty-nine-a of this code, for the procedures of registration
29 pursuant to this subsection: *Provided*, That the provisions of
30 this subsection do not apply to any mail-order house which
31 operates solely as a wholesale distributor.

§30-5-9. Fees.

1 The board of pharmacy shall charge and collect the
2 following fees, in addition to those provided in article one of
3 this chapter and in sections five, fourteen and sixteen of this
4 article: For renewing the licensure of a pharmacist, fifty dollars;
5 to license an intern pharmacist, ten dollars plus five dollars for
6 each of the remaining periods of his or her internship; to
7 register a consultant pharmacist, twenty dollars for the initial
8 application and ten dollars for each additional application; and
9 to register a pharmacy technician, twenty-five dollars and ten
10 dollars for each renewal.

§30-5-9a. Authorization for future fee modifications to be made by rule.

1 Notwithstanding any other provision of this code to the
2 contrary, beginning on the first day of July, one thousand nine
3 hundred ninety-nine, the board may set any fee authorized
4 under this article by legislative rule, in accordance with article
5 three, chapter twenty-nine-a of this code.

§30-5-14. Pharmacies to be registered; permit to operate; fees; pharmacist to conduct business.

1 (a) The board of pharmacy shall require and provide for the
2 annual registration of every pharmacy doing business in this
3 state. Any person, firm, corporation or partnership desiring to
4 operate, maintain, open or establish a pharmacy in this state
5 shall apply to the board of pharmacy for a permit to do so. The
6 application for such permit shall be made on a form prescribed
7 and furnished by the board of pharmacy, which, when properly
8 executed, shall indicate the owner, manager, trustee, lessee,
9 receiver, or other person or persons desiring such permit, as
10 well as the location of such pharmacy, including street and
11 number, and any other information as the board of pharmacy
12 may require. If it is desired to operate, maintain, open or
13 establish more than one pharmacy, separate application shall be
14 made and separate permits or licenses shall be issued for each.

15 (b) Every initial application for a permit shall be accompa-
16 nied by the required fee of one hundred fifty dollars. The fee for
17 renewal of such permit or license shall be one hundred dollars
18 annually.

19 (c) If an application is approved, the secretary of the board
20 of pharmacy shall issue to the applicant a permit or license for
21 each pharmacy for which application is made. Permits or
22 licenses issued under this section shall not be transferable and
23 shall expire on the thirtieth day of June of each calendar year,
24 and if application for renewal of permit or license is not made
25 on or before that date, or a new one granted on or before the
26 first day of August, following, the old permit or license shall
27 lapse and become null and void and shall require an inspection

28 of the pharmacy and a fee of one hundred fifty dollars plus one
29 hundred fifty dollars for the inspection.

30 (d) Every place of business so registered shall employ a
31 pharmacist in charge and operate in compliance with the
32 general provisions governing the practice of pharmacy and the
33 operation of a pharmacy.

34 (e) The provisions of this section shall have no application
35 to the sale of nonprescription drugs which are not required to be
36 dispensed pursuant to a practitioner's prescription.

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.

ARTICLE 8. WHOLESALE DRUG DISTRIBUTION LICENSING ACT OF 1991.

§60A-8-7. Wholesale drug distributor licensing requirements.

1 All wholesale distributors and pharmacy distributors shall
2 be subject to the following requirements:

3 (a) No person or distribution outlet may act as a wholesale
4 drug distributor without first obtaining a license to do so from
5 the board of pharmacy and paying any reasonable fee required
6 by the board of pharmacy, such fee not to exceed four hundred
7 dollars per year.

8 (b) The board of pharmacy may grant a temporary license
9 when a wholesale drug distributor first applies for a license to
10 operate within this state and the temporary license shall remain
11 valid until the board of pharmacy finds that the applicant meets
12 or fails to meet the requirements for regular licensure, except
13 that no temporary license shall be valid for more than ninety
14 days from the date of issuance. Any temporary license issued
15 pursuant to this subdivision shall be renewable for a similar
16 period of time not to exceed ninety days pursuant to policies
17 and procedures to be prescribed by the board of pharmacy.

18 (c) No license may be issued or renewed for a wholesale
19 drug distributor to operate unless the distributor operates in a
20 manner prescribed by law and according to the rules promul-
21 gated by the board of pharmacy with respect thereto.

22 (d) The board of pharmacy may require a separate license
23 for each facility directly or indirectly owned or operated by the
24 same business entity within this state, or for a parent entity with
25 divisions, subsidiaries, or affiliate companies within this state
26 when operations are conducted at more than one location and
27 there exists joint ownership and control among all the entities.

28 (e) (1) As a condition for receiving and retaining any
29 wholesale drug distributor license issued pursuant to this article,
30 each applicant shall satisfy the board of pharmacy that it has
31 and will continuously maintain:

32 (A) Acceptable storage and handling conditions plus
33 facilities standards;

34 (B) Minimum liability and other insurance as may be
35 required under any applicable federal or state law;

36 (C) A security system which includes after hours central
37 alarm or comparable entry detection capability, restricted
38 premises access, adequate outside perimeter lighting, compre-
39 hensive employment applicant screening and safeguards against
40 employee theft;

41 (D) An electronic, manual or any other reasonable system
42 of records describing all wholesale distributor activities
43 governed by this article for the two-year period following
44 disposition of each product and being reasonably accessible as
45 defined by board of pharmacy regulations during any inspection
46 authorized by the board of pharmacy;

47 (E) Officers, directors, managers and other persons in
48 charge of wholesale drug distribution, storage and handling,
49 who must at all times demonstrate and maintain their capability
50 of conducting business according to sound financial practices
51 as well as state and federal law;

52 (F) Complete, updated information to be provided the board
53 of pharmacy as a condition for obtaining and retaining a license
54 about each wholesale distributor to be licensed under this article
55 including all pertinent licensee ownership and other key
56 personnel and facilities information determined necessary for

57 enforcement of this article, with any changes in the information
58 to be submitted at the time of license renewal or within twelve
59 months from the date of the change, whichever occurs first;

60 (G) Written policies and procedures which assure reason-
61 able wholesale distributor preparation for protection against and
62 handling of any facility security or operation problems,
63 including, but not limited to, those caused by natural disaster or
64 government emergency, inventory inaccuracies or product
65 shipping and receiving, outdated product or other unauthorized
66 product control, appropriate disposition of returned goods and
67 product recalls;

68 (H) Sufficient inspection procedures for all incoming and
69 outgoing product shipments; and

70 (I) Operations in compliance with all federal legal require-
71 ments applicable to wholesale drug distribution.

72 (2) The board of pharmacy shall consider, at a minimum,
73 the following factors in reviewing the qualifications of persons
74 who engage in wholesale distribution of prescription drugs with
75 this state:

76 (A) Any conviction of the applicant under any federal, state
77 or local laws relating to drug samples, wholesale or retail drug
78 distribution or distribution of controlled substances;

79 (B) Any felony convictions of the applicant under federal,
80 state or local laws;

81 (C) The applicant's past experience in the manufacture or
82 distribution of prescription drugs, including controlled sub-
83 stances;

84 (D) The furnishing by the applicant of false or fraudulent
85 material in any application made in connection with drug
86 manufacturing or distribution;

87 (E) Suspension or revocation by federal, state or local
88 government of any license currently or previously held by the
89 applicant for the manufacture or distribution of any drug,
90 including controlled substances;

91 (F) Compliance with licensing requirements under previ-
92 ously granted licenses, if any;

93 (G) Compliance with requirements to maintain and make
94 available to the board of pharmacy or to federal, state or local
95 law-enforcement officials those records required by this article;
96 and

97 (H) Any other factors or qualifications the board of
98 pharmacy considers relevant to and consistent with the public
99 health and safety, including whether the granting of the license
100 would not be in the public interest.

101 (3) All requirements set forth in this subsection shall
102 conform to wholesale drug distributor licensing guidelines
103 formally adopted by the United States food and drug adminis-
104 tration (FDA); and in case of conflict between any wholesale
105 drug distributor licensing requirement imposed by the board of
106 pharmacy pursuant to this subsection and any food and drug
107 administration wholesale drug distributor licensing guideline,
108 the latter shall control.

109 (f) An agent or employee of any licensed wholesale drug
110 distributor need not seek licensure under this section and may
111 lawfully possess pharmaceutical drugs when the agent or
112 employee is acting in the usual course of business or employ-
113 ment.

114 (g) The issuance of a license pursuant to this article does
115 not change or affect tax liability imposed by this state's
116 department of tax and revenue on any wholesale drug distribu-
117 tor.

118 (h) The board of pharmacy may adopt rules pursuant to
119 section nine of this article which permit out-of-state wholesale
120 drug distributors to obtain any license required by this article on
121 the basis of reciprocity to the extent that: (i) An out-of-state
122 wholesale drug distributor possesses a valid license granted by
123 another state pursuant to legal standards comparable to those
124 which must be met by a wholesale drug distributor of this state
125 as prerequisites for obtaining a license under the laws of this
126 state; and (ii) such other state would extend reciprocal treatment
127 under its own laws to a wholesale drug distributor of this state.

CHAPTER 213

(Com. Sub. for S. B. 36 — By Senators Fanning, Helmick, Jackson, Anderson, Edgell, Ross, Minard, Ball, Kessler, Oliverio, Hunter and Mitchell)

[Passed March 9, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen, relating to funeral directors and embalmers; providing for a special emeritus license for licensees sixty-five or older with at least ten years experience; and exempting licensee from continuing education requirements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. EMBALMERS AND FUNERAL DIRECTORS.

§30-6-17. Special emeritus license for embalmers and funeral directors.

1 Notwithstanding any other provision of this article, the
2 board shall establish a special emeritus license for any licensed
3 embalmer or funeral director sixty-five or older. After becom-
4 ing sixty-five years of age with at least ten years experience as
5 a licensed embalmer or licensed funeral director, a licensed
6 embalmer or funeral director is entitled to be issued a license as
7 an embalmer emeritus or funeral director emeritus. The
8 emeritus license shall entitle the holder to all the rights and
9 privileges of the license previously held by the licensee, except
10 that a licensee emeritus shall be exempt from all continuing
11 education requirements set forth in section three of this article.

- 12 The annual license fee for an embalmer emeritus or funeral
13 director emeritus shall be no more than that required of a
14 licensed embalmer or licensed funeral director.

CHAPTER 214

(Com. Sub. for H. B. 2867 — By Delegates Boggs, Martin,
Varner, Douglas, Cann and Facemyer)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article nineteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to general requirements and categories for licensing and registration of foresters; requiring rules; authorizing rules relating to a code of ethics.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 19. FORESTERS.

§30-19-6. General requirements and categories of licensure.

- 1 (a) The following is the minimum evidence required to
2 satisfy the board that the applicant is qualified for licensure and
3 entitled to use the title of "registered professional forester,"
4 "professional forester," "forester" or other title connoting to the
5 general public that the applicant is a registered forester quali-
6 fied to perform professional forestry services:
- 7 (1) Graduation from a four-year degree program in profes-
8 sional forestry from an accredited college or university plus two
9 years related experience in the field of forestry as defined by
10 rule of the board; or
- 11 (2) Graduation from a two-year technical forestry program
12 in a program recognized by the society of American foresters,

13 plus a bachelor's degree from an accredited college or univer-
14 sity and four years related experience in the field of forestry as
15 defined by rule of the board.

16 (b) The following is the minimum evidence required to
17 satisfy the board that the applicant is qualified for licensure and
18 entitled to use the title of "registered forestry technician" or
19 "forestry technician": Graduation from a two-year technical
20 forestry program recognized by the society of American
21 foresters and four years related experience in the field of
22 forestry as defined by rule of the board.

23 (c) Evidence of graduation and completion of required
24 courses shall be presented by means of an official transcript
25 which shall be filed permanently with the board. Upon the
26 effective date of this section, the board may adopt an interpre-
27 tive rule pursuant to the provisions of article three, chapter
28 twenty-nine-a of this code, for the limited purpose of providing
29 information and guidance to prospective applicants and the
30 public related to the qualifying experience considered accept-
31 able to the board pursuant to this section and to the job titles
32 acceptable for use by persons obtaining qualifying experience,
33 until such time as a legislative rule is made effective. On or
34 before the first day of July, one thousand nine hundred ninety-
35 nine, the board shall propose for legislative approval pursuant
36 to the provisions of article three, chapter twenty-nine-a of this
37 code, rules authorized by this article and article one of this
38 chapter, which rules must include provisions relating to a code
39 of ethics for registered professional foresters and registered
40 forestry technicians.

CHAPTER 215

(Com. Sub. for H. B. 2802 — By Delegates Douglas,
Varner, Faircloth, Azinger and Marshall)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, five, six, seven, eight, nine, ten and eleven, article twenty, 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 fifteen, all relating to the practice of physical therapy; revising definitions; requiring rules; removing requirement of direct supervision of physical therapy assistants; removing language on physician referral; allowing board to contract for administration of examinations; removing requirement of providing free list of licensees; clarifying that fines be paid into the general revenue fund; revising educational and licensure requirements; empowering the board to set fees by rule; providing for biennial licensure renewal; requiring meetings; powers of board with respect to suspension, revocation or nonrenewal of license; limitations on temporary permits; and providing for a termination date.

Be it enacted by the Legislature of West Virginia:

That sections two, four, five, six, seven, eight, nine, ten and eleven, article twenty, 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 fifteen, all to read as follows:

ARTICLE 20. PHYSICAL THERAPISTS.

§30-20-2. Definitions.

§30-20-4. West Virginia board of physical therapy continued; members, terms, meetings, officers, oath, compensation and expenses; general provisions.

§30-20-5. Powers and duties of board; funds of board.

§30-20-6. Qualifications of applicants for license; application fee.

§30-20-7. Examination of applicants.

§30-20-8. Issuance of license; renewal of license; renewal fee; display of license.

§30-20-9. Temporary permits.

§30-20-10. Suspension or revocation of license or temporary permit.

§30-20-11. Procedures for hearing.

§30-20-15. Termination date.

§30-20-2. Definitions.

1 Unless the context in which used clearly requires a different
2 meaning, as used in this article:

3 (a) "Applicant" means any person making application for
4 an original or renewal license or a temporary permit under the
5 provisions of this article.

6 (b) "Board" means the West Virginia board of physical
7 therapy.

8 (c) "Licensed physical therapist" means any physical
9 therapist holding a license or temporary permit issued under the
10 provisions of this article or under the former provisions of this
11 article.

12 (d) "Licensed physical therapy assistant" means any
13 physical therapy assistant holding a license or temporary permit
14 issued under the provisions of this article.

15 (e) "Licensee" means any person holding a license or
16 temporary permit issued under the provisions of this article or
17 under the former provisions of this article.

18 (f) "Physical therapy" means the therapeutic treatment of
19 any person by the use of massage, mechanical stimulation, heat,
20 cold, light, air, water, electricity, sound and exercise, including
21 mobilization of the joints and training in functional activities,
22 for the purpose of correcting or alleviating any physical or
23 mental condition or preventing the development of any physical
24 or mental disability, and the performance of neuro-muscular-
25 skeletal tests and measurements as an aid in diagnosis, evalua-
26 tion or determination of the existence of and the extent of any
27 body malfunction: *Provided*, That electromyography examina-
28 tion and electrodiagnostic studies other than the determination
29 of chronaxia and strength duration curves shall not be per-
30 formed except under the supervision of a physician
31 electromyographer and electrodiagnostician. Physical therapy
32 does not include the use of radiology and radium for diagnostic
33 and therapeutic purposes, or the use of electricity for surgical
34 purposes, including cauterization.

35 (g) "Physical therapist" means a person who engages in the
36 practice of physical therapy.

37 (h) "Physical therapy aide" means a person, other than a
38 physical therapy assistant, who assists a licensed physical
39 therapist in the practice of physical therapy under the direct
40 supervision of such licensed physical therapist and who also

41 performs activities supportive of but not involving assistance in
42 the practice of physical therapy.

43 (1) As contained in this section, the term "direct supervi-
44 sion" means the actual physical presence of the physical
45 therapist in the immediate treatment area where the treatment
46 is being rendered.

47 (i) "Physical therapy assistant" means a person who assists
48 in the practice of physical therapy by performing patient-related
49 activities delegated to him or her by a licensed physical
50 therapist and performed under the supervision of a licensed
51 physical therapist, with the scope of such supervision to be
52 defined by the board by legislative rule, and which patient-
53 related activities are commensurate with his or her education
54 and training, including physical therapy procedures, but not the
55 performance of evaluation procedures or determination and
56 modification of patient programs: *Provided*, That the board
57 shall, on or before the first day of July, one thousand nine
58 hundred ninety-nine, propose rules for legislative approval in
59 accordance with article three, chapter twenty-nine-a of this
60 code, which rules shall govern the scope of supervision of
61 physical therapy assistants.

62 (j) "Practice of physical therapy" means the rendering or
63 offering to render for a fee, salary or other compensation,
64 monetary or otherwise, any service involving physical therapy.
65 However, for the purpose of section three of this article, the
66 term "practice of physical therapy" shall not include:

67 (1) Teaching physical therapy as part of employment at an
68 institution of higher learning;

69 (2) The activities of a student of physical therapy, physical
70 therapy extern or physical therapy intern, which activities are
71 a part of and are engaged in pursuant to a course of study at an
72 institution of higher learning, including, but not limited to,
73 activities conducted at the institution of higher learning and
74 activities conducted outside the institution if under the direct
75 supervision of a licensed physical therapist;

76 (3) The activities of a physical therapy aide if all activities
77 of such physical therapy aide involving assistance in the

78 practice of physical therapy are performed under the direct
79 supervision of a licensed physical therapist; or

80 (4) The administration of simple massages and the opera-
81 tion of health clubs so long as not intended to constitute or
82 represent the practice of physical therapy.

**§30-20-4. West Virginia board of physical therapy continued;
members, terms, meetings, officers, oath, compen-
sation and expenses; general provisions.**

1 (a) The West Virginia state board of examiners and
2 registration of physical therapists heretofore created shall
3 continue in existence but on and after the effective date of this
4 article shall be known and designated as “the West Virginia
5 board of physical therapy”, and shall consist of five members
6 appointed by the governor by and with the advice and consent
7 of the Senate. The three members of the board in office on the
8 effective date of this article shall, unless sooner removed,
9 continue to serve until their terms expire and until their
10 successors have been appointed and have qualified. Members
11 shall be appointed for overlapping terms of five years, so that
12 one term expires each year, or until their successors have been
13 appointed and have qualified. Any vacancy shall be filled by
14 appointment by the governor for the unexpired term of the
15 member whose office shall be vacant and any such appointment
16 shall be made within sixty days of the occurrence of such
17 vacancy. The governor may remove any member of the board
18 in case of incompetency, neglect of duty, gross immorality or
19 malfeasance in office.

20 (b) Each member of the board must be licensed under the
21 provisions of this article or under the former provisions of this
22 article, have at least three years’ experience as a physical
23 therapist and be actively engaged in the practice of physical
24 therapy. Members may be reappointed for any number of terms.
25 Before entering upon the performance of this duty, each
26 member shall take and subscribe to the oath prescribed by
27 section five, article IV of the constitution of this state.

28 (c) The board shall elect from its membership a chairman
29 and secretary who shall serve at the will and pleasure of the

30 board. A majority of the members of the board shall constitute
31 a quorum and meetings shall be held at the call of the chairman
32 or upon the written request of three members at such time and
33 place as designated in such call or request, and, in any event,
34 the board shall meet at least once annually to transact business
35 as may come before it. Members may be paid such reasonable
36 compensation as the board may from time to time determine,
37 and in addition may be reimbursed for all reasonable and
38 necessary expenses actually incurred in the performance of their
39 duties, which compensation and expenses shall be paid in
40 accordance with the provisions of subsection (b), section five
41 of this article.

§30-20-5. Powers and duties of board; funds of board.

1 (a) The board shall:

2 (1) Examine applicants and determine their eligibility for a
3 license or temporary permit to engage in the practice of
4 physical therapy or to act as a physical therapy assistant, as the
5 case may be;

6 (2) Provide for the administration of an examination of
7 applicants for a license to engage in the practice of physical
8 therapy and a separate examination of applicants for a license
9 to act as a physical therapy assistant;

10 (3) Determine the time and place for any such examinations
11 and the passing score for each such separate examination;

12 (4) Propose rules for legislative approval in accordance
13 with article three, chapter twenty-nine-a of this code imple-
14 menting the provisions of this article and the powers and duties
15 conferred upon the board hereby, including, but not limited to:

16 (A) Reasonable rules establishing standards to ensure that
17 the activities of a licensed physical therapy assistant are
18 performed in accordance with the definitional requirements of
19 a physical therapy assistant as specified in subsection (i),
20 section two of this article, which reasonable rules shall require
21 that there be no more than two physical therapy assistants
22 licensed to practice in this state for every physical therapist so

23 licensed and shall require that no more than two physical
24 therapy assistants be performing under the supervision of a
25 licensed physical therapist at any one time;

26 (B) Reasonable rules establishing standards to ensure that
27 those activities of a physical therapy aide are performed in
28 accordance with the definitional requirements specified in
29 subsection (h), section two of this article; and

30 (C) Rules establishing reasonable licensing and examina-
31 tion fees as provided in this article and in accordance with
32 section six, article one, chapter thirty of this code;

33 (5) Issue, renew, deny, suspend or revoke licenses and
34 temporary permits to engage in the practice of physical therapy
35 or licenses and temporary permits to act as physical therapy
36 assistants in accordance with the provisions of this article and,
37 in accordance with the administrative procedures hereinafter
38 provided, may renew, affirm, reverse, vacate or modify its order
39 with respect to any such denial, suspension or revocation;

40 (6) Investigate alleged violations of any provision of this
41 article, any reasonable rule promulgated hereunder and any
42 order or final decision of the board and take appropriate
43 disciplinary action against any licensee for the violation thereof
44 or institute appropriate legal action for the enforcement of any
45 provision of this article, any reasonable rule promulgated
46 hereunder and any order or final decision of the board or take
47 such disciplinary action and institute such legal action;

48 (7) Purchase or rent necessary office space, equipment and
49 supplies and employ, direct, discharge and define the duties of
50 an executive secretary and other full-time or part-time profes-
51 sional, clerical or other personnel necessary to effectuate the
52 provisions of this article;

53 (8) Maintain a register listing the name of every licensed
54 physical therapist and licensed physical therapy assistant, his or
55 her last known place of business or employment and last known
56 residence, and the date and certificate number of his or her
57 license; prepare annually from such register a list of every such
58 licensed physical therapist and licensed physical therapy

59 assistant; furnish the list to any hospital, physician or other
60 interested person who makes application therefor and who pays
61 to the board the reasonable cost of the copy of such list;

62 (9) Keep accurate and complete records of its proceedings,
63 certify the same as may be appropriate and submit to the
64 governor a report on the transactions of the board including an
65 accounting of all money received and disbursed;

66 (10) Whenever it deems it appropriate, confer with the
67 attorney general or his or her assistants in connection with all
68 legal matters and questions, whose responsibility it shall be to
69 render all legal assistance required; and

70 (11) Take such other action as may be reasonably necessary
71 and appropriate to effectuate the provisions of this article.

72 (b) All moneys paid to the board shall be accepted by a
73 person designated by the board and deposited by him or her
74 with the treasurer of the state and credited to an account to be
75 known as the "West Virginia Board of Physical Therapy":
76 *Provided*, That all moneys collected as fines shall be paid into
77 the general revenue fund. The compensation of and the reim-
78 bursement of all reasonable and necessary expenses actually
79 incurred by the members of the board and all other costs and
80 expenses incurred by the board in the administration of this
81 article shall be paid from the board's fund, and no part of the
82 state's general revenue fund shall be expended for such
83 purpose.

§30-20-6. Qualifications of applicants for license; application fee.

1 (a) To be eligible for a license to engage in the practice of
2 physical therapy, the applicant must:

3 (1) Be at least eighteen years of age;

4 (2) Be of good moral character;

5 (3) Not be addicted to the intemperate use of alcohol or
6 narcotic drugs or other controlled substances;

7 (4) Not have been convicted of a felony in any state or
8 federal court in this or any other state within ten years preced-

9 ing the date of application for license, which conviction remains
10 unreversed; and not have been convicted of a felony in any state
11 or federal court in this or any other state at any time if the
12 offense for which he or she was convicted related to the
13 practice of physical therapy, which conviction remains unre-
14 versed;

15 (5) Present evidence that the applicant is a graduate of an
16 accredited school of physical therapy approved by the commis-
17 sion on accreditation in physical therapy education and the
18 board: *Provided*, That any person who received his or her
19 education in physical therapy outside of the United States may
20 qualify for a license by fulfilling the requirements specified by
21 the commission on accreditation in physical therapy education
22 and the board, including successful completion of a period of
23 supervised clinical experience; and

24 (6) Either have passed the examination prescribed by the
25 board for a license to engage in the practice of physical therapy,
26 or be entitled to be licensed without examination as provided in
27 subsection (d) of this section.

28 (b) To be eligible for a license to act as a physical therapy
29 assistant, the applicant must:

30 (1) Satisfy the requirements of subdivisions (1) through (4),
31 subsection (a) of this section;

32 (2) Present evidence that he or she is a graduate of a two-
33 year college level education program for physical therapy
34 assistants which meets the standards established by the com-
35 mission on accreditation in physical therapy education and the
36 board; and

37 (3) Either have passed the examination prescribed by the
38 board for a license to act as a physical therapy assistant, or be
39 entitled to be licensed without examination as provided in
40 subsection (d) of this section.

41 (c) Although an applicant does not meet the educational
42 requirement specified in subdivision (2), subsection (b) of this
43 section, the board may, nevertheless, issue a license to act as a

44 physical therapy assistant to such applicant if such applicant: (i)
45 Presents evidence that he or she has a high school diploma or its
46 equivalent; (ii) meets the requirements of subdivision (1),
47 subsection (b) of this section; (iii) presents sufficient and
48 satisfactory written evidence to the board on or before the first
49 day of July, one thousand nine hundred seventy-nine, that such
50 applicant has been employed as a physical therapy aide under
51 the supervision of a licensed physical therapist in this state on
52 a full-time basis for a continuous period of at least two years, or
53 for cumulative periods of time either full-time or part-time
54 which equal two years full-time employment, between the first
55 day of January, one thousand nine hundred seventy-one, and the
56 first day of July, one thousand nine hundred seventy-nine; and
57 (iv) successfully passes the examination required for a license
58 to act as a physical therapy assistant: *Provided*, That such
59 applicant shall be afforded only two opportunities to pass such
60 examination.

61 (d) The board may issue a license to practice physical
62 therapy or a license to act as a physical therapy assistant,
63 without examination, to any applicant who holds a valid license
64 or is registered to engage in the practice of physical therapy or
65 to act as a physical therapy assistant, as the case may be, issued
66 to him or her under the laws of another state or territory or
67 possession of the United States: *Provided*, That the applicant's
68 qualifications are in the opinion of the board equal to or greater
69 than the requirements of this article and the rules promulgated
70 by the board.

71 (e) Any applicant for a license under the provisions of
72 subsection (a), (b), (c) or (d) of this section shall submit an
73 application therefor at such time, in such manner, on such forms
74 and containing such information as the board shall from time to
75 time by reasonable rule prescribe, and pay to the board a
76 nonrefundable application fee which shall be established by the
77 board by legislative rule.

§30-20-7. Examination of applicants.

1 The board shall offer the prescribed examination to
2 applicants for a license to engage in the practice of physical

3 therapy and the prescribed examination to applicants for a
4 license to act as a physical therapy assistant, who meet the
5 appropriate other requirements of section six of this article.
6 Examinations shall be offered within this state, at least once
7 each year, at such time and place as the board shall determine.

**§30-20-8. Issuance of license; renewal of license; renewal fee;
display of license.**

1 (a) Whenever the board finds that an applicant meets all of
2 the requirements of this article for a license to engage in the
3 practice of physical therapy or to act as a physical therapy
4 assistant, as the case may be, it shall forthwith issue to him or
5 her such license; and otherwise the board shall deny the same.

6 (b) Every licensee shall renew his or her license every two
7 years at such time and upon such forms as prescribed by the
8 board, and upon the payment of a license fee established by the
9 board by legislative rule. Any license which is not so renewed
10 shall automatically lapse. A license which has lapsed may be
11 renewed within five years of its expiration date by payment to
12 the board of the appropriate renewal fee for each year or part
13 thereof during which the license was not renewed. After the
14 expiration of a five-year period, a license may be renewed only
15 by complying with the provisions herein relating to the issuance
16 of an original license.

17 (c) A licensee desiring to cease engaging in the practice of
18 physical therapy temporarily or to cease acting temporarily as
19 a physical therapy assistant shall send a written notice to the
20 board. Upon receipt of the notice, the board shall place the
21 name of the person upon the inactive list. While his or her name
22 remains on this list, the person shall not be subject to the
23 payment of any fee and shall not engage in the practice of
24 physical therapy or act as a physical therapy assistant, as the
25 case may be, in this state. When the person again desires to
26 engage in the practice of physical therapy or to act as a physical
27 therapy assistant, application for renewal of the license and the
28 payment of a renewal fee for the then current year shall be
29 made to the board.

30 (d) The board may deny any application for renewal of a
31 license for any reason which would justify the denial of an
32 original application for a license.

33 (e) The board shall prescribe the form of licenses and each
34 license shall be conspicuously displayed by the licensee at his
35 or her principal place of practice.

36 (f) Any license issued under the former provisions of this
37 article, which license remains unsuspended and unrevoked,
38 shall be valid and considered for all purposes as having been
39 issued under the provisions of this article and may be renewed,
40 suspended or revoked as licenses issued under the provisions of
41 this article, and any license issued under the former provisions
42 of this article which has lapsed or shall hereafter lapse is subject
43 to the provisions of subsection (b) of this section pertaining to
44 the lapse of a license issued under the provisions of this article
45 and the renewal thereof.

§30-20-9. Temporary permits.

1 (a) Upon proper application and the payment of a
2 nonrefundable fee which shall be established by the board by
3 legislative rule, the board may issue, without examination, a
4 temporary permit to engage in the practice of physical therapy
5 in this state:

6 (1) To any applicant who meets the requirements of
7 subdivisions (1) through (5), subsection (a), section six of this
8 article and who has applied to take the examination. A tempo-
9 rary permit so issued shall expire thirty days after the permittee
10 receives notice of the results of the examination, if the
11 permittee receives a passing score on the examination. The
12 temporary permit shall expire immediately if the permittee
13 receives a failing score on the examination. An applicant under
14 this subsection may be issued only one temporary permit, and
15 upon the expiration of that permit, may not practice as a
16 physical therapist until fully licensed under the provisions of
17 this article. In no event may a permittee practice on a temporary
18 permit beyond a period of ninety consecutive days. A tempo-
19 rary permittee under this subsection shall work under the

20 supervision of a licensed physical therapist, with the scope of
21 such supervision to be defined by the board by legislative rule;
22 and

23 (2) To an applicant who is licensed outside of this state and
24 who meets the requirements of subdivisions (1) through (5),
25 subsection (a), section six of this article, which temporary
26 permit shall be valid only for a period of ninety consecutive
27 days.

28 (b) Upon proper application and the payment of a
29 nonrefundable fee which shall be established by the board by
30 legislative rule, the board may issue, without examination, a
31 temporary permit to act as a physical therapy assistant in this
32 state:

33 (1) To an applicant who meets the requirements of subdivi-
34 sions (1) and (2), subsection (b), section six of this article. A
35 temporary permit so issued shall expire thirty days after the
36 permittee receives notice of the results of the examination, if
37 the permittee receives a passing score on the examination. The
38 temporary permit shall expire immediately if the permittee
39 receives a failing score on the examination. An applicant under
40 this subsection may be issued only one temporary permit, and
41 upon the expiration of that permit, may not practice as a
42 physical therapy assistant until fully licensed under the provi-
43 sions of this article. In no event may a permittee practice on a
44 temporary permit beyond a period of ninety consecutive days.
45 A temporary permittee under this subsection shall work under
46 the supervision of a licensed physical therapist, with the scope
47 of such supervision to be defined by the board by legislative
48 rule; and

49 (2) To an applicant who is licensed outside of this state and
50 who meets the requirements of subdivisions (1) and (2),
51 subsection (b), section six of this article, which temporary
52 permit shall be valid only for a period of ninety consecutive
53 days.

**§30-20-10. Suspension or revocation of license or temporary
permit.**

1 (a) The board may at any time upon its own motion, and
2 shall upon the written complaint of any person, conduct an
3 investigation to determine whether there are any grounds for the
4 suspension or revocation of a license or temporary permit
5 issued under the provisions of this article.

6 (b) The board shall have the authority to reprimand, enter
7 into consent decrees, enter into probation orders, levy fines not
8 to exceed one thousand dollars per day per violation, assess
9 administration fees, suspend or revoke the license or temporary
10 permit of any licensee who the board determines has:

11 (1) Used narcotic drugs, other controlled substances or
12 alcohol to the extent that it affects his or her professional
13 competency; or

14 (2) Been convicted of violating any state or federal law
15 relating to controlled substances, which conviction remains
16 unreversed;

17 (3) Been, in the judgment of the board, guilty of immoral or
18 unprofessional conduct;

19 (4) Been convicted of a felony or a crime involving moral
20 turpitude;

21 (5) Been declared mentally incompetent by a court of
22 competent jurisdiction;

23 (6) Obtained or attempted to obtain a license issued under
24 the provisions of this article by fraud or willful misrepresenta-
25 tion;

26 (7) Been grossly negligent in the practice of physical
27 therapy or in acting as a physical therapy assistant, as the case
28 may be;

29 (8) Treated or undertaken to treat a human being otherwise
30 than by physical therapy and as authorized by this article;

31 (9) Failed or refused to comply with the provisions of this
32 article or any reasonable rule promulgated by the board
33 hereunder or any order or final decision of the board;

34 (10) In the case of a physical therapist, employed a physical
35 therapy assistant who is not a licensed physical therapy
36 assistant; or employed or utilized a licensed physical therapy
37 assistant or physical therapy aide without complying with the
38 provisions of this article or the rules of the board; or

39 (11) In the case of a physical therapy assistant, practiced
40 physical therapy other than in accordance with the definitional
41 requirements of a physical therapy assistant as specified in
42 subdivision (i), section two of this article.

§30-20-11. Procedures for hearing.

1 (a) Whenever the board shall deny an application for any
2 original or renewal license or any application for a temporary
3 permit or shall suspend or revoke any license or temporary
4 permit it shall make and enter an order to that effect and serve
5 a copy thereof on the applicant or licensee, by certified mail,
6 return receipt requested. The order shall state the grounds for
7 the action taken. Before the board may take any disciplinary
8 action against a licensee, the licensee shall be provided with a
9 written statement of the charges against him or her and notice
10 of the right of the licensee to demand a hearing.

11 (b) Any applicant or licensee shall be entitled to a hearing
12 thereon (as to all issues not excluded from the definition of a
13 "contested case" as set forth in article one, chapter twenty-nine-
14 a of this code) if, within twenty days after receipt of a copy
15 thereof, he or she files with the board a written demand for a
16 hearing. The board may require the applicant or licensee to give
17 reasonable security for the costs thereof, and, if the applicant or
18 licensee does not substantially prevail at the hearing, costs shall
19 be assessed against him or her and may be collected by a civil
20 action or other proper remedy.

21 (c) Upon request of a hearing to be conducted in accordance
22 with this section, the board shall set a time and place within
23 thirty days thereafter. Any scheduled hearing may be continued
24 by the board upon its own motion or for good cause shown by
25 the applicant or licensee.

26 (d) All of the pertinent provisions of article five, chapter
27 twenty-nine-a of this code shall apply to and govern the hearing
28 and the administrative procedures in connection with and
29 following the hearing, with like effect as if the provisions of
30 said article were set forth in this subsection.

31 (e) Any hearing shall be conducted by a quorum of the
32 board or by a hearing examiner designated by the board. For the
33 purpose of conducting any hearing any member of the board or
34 its designee shall have the power and authority to issue subpoe-
35 nas and subpoenas duces tecum which shall be issued and
36 served within the time and for the fees and shall be enforced, as
37 specified in section one, article five of chapter twenty-nine-a,
38 and all of the said section one provisions dealing with subpoe-
39 nas and subpoenas duces tecum shall apply to subpoenas and
40 subpoenas duces tecum issued for the purpose of a hearing
41 hereunder.

42 (f) At any hearing the applicant or licensee may represent
43 himself or herself or be represented by an attorney at law
44 admitted to practice before any circuit court of this state. Upon
45 request by the board, it shall be represented at any hearing by
46 the attorney general or his or her assistants.

47 (g) After any hearing and consideration of all of the
48 testimony, evidence and record in the case, the board shall
49 render its decision in writing. The written decision of the board
50 shall be accompanied by findings of fact and conclusions of law
51 as specified in section three, article five, chapter twenty-nine-a
52 of this code, and a copy of the decision and accompanying
53 findings and conclusions shall be served by certified mail,
54 return receipt requested, upon the applicant or licensee and his
55 or her attorney of record, if any.

56 (h) The decision of the board shall be final unless reversed,
57 vacated or modified upon judicial review thereof in accordance
58 with the provisions of section twelve of this article.

§30-20-15. Termination date.

1 The West Virginia board of physical therapy 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.

CHAPTER 216

(H. B. 2672 — By Mr. Speaker, Mr. Kiss, and Delegates Compton,
Leach, Douglas, Mezzatesta, Staton and Martin)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and six, article twenty-three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to exempting certified densitometry technologists from obtaining radiologic technologist licenses; and eliminating obsolete "grandfather" provisions for licensure.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. RADIOLOGIC TECHNOLOGISTS.

§30-23-3. License required.

§30-23-6. Qualifications of applicants; exceptions; applications; fee.

§30-23-3. License required.

1 (a) No person may engage in, offer to engage in, or hold
2 himself or herself out to the public as being engaged in, the
3 practice of radiologic technology in this state, nor may any
4 person use in connection with any trade, business, profession or
5 occupation, except in those instances specifically provided in
6 subdivisions (1), (2), (3), (4) and (5), subsection (c), section six
7 of this article, the word radiologic technologist or any other
8 title, word or abbreviation which induces or tends to induce the
9 belief that such person is qualified to engage or is engaged in
10 the practice of radiologic technology, unless and until the
11 person first obtains a license or temporary permit to engage in
12 the practice of radiologic technology in accordance with the
13 provisions of this article, which license or temporary permit

14 remains unexpired, unsuspended and unrevoked: *Provided*,
15 That no such license or temporary permit may be required for
16 a radiologic technologist who is not a resident of this state, who
17 is the holder of a license or certificate to engage in the practice
18 of radiologic technology issued by a state with licensing or
19 certification requirements determined by the board to be at least
20 equal to those provided in this article, who has no regular place
21 of practice in this state and who engages in the practice of
22 radiologic technology in this state for a period of not more than
23 ten days in any calendar year.

24 (b) No firm, association or corporation may, except through
25 a licensee or licensees, render any service or engage in any
26 activity which if rendered or engaged in by any individual
27 would constitute the practice of radiologic technology.

**§30-23-6. Qualifications of applicants; exceptions; applications;
fee.**

1 (a) To be eligible for a license to practice radiologic
2 technology the applicant must:

3 (1) Be of good moral character;

4 (2) Have completed four years of high school education or
5 its equivalent;

6 (3) Have successfully completed a minimum twenty-four-
7 month course in radiologic study in a school of radiologic
8 technology approved by the board;

9 (4) Have passed the examination prescribed by the board,
10 which examination shall cover the basic subject matter of
11 radiologic technology, skills and techniques; and

12 (5) Not have been convicted of a felony in any court in this
13 state or any federal court in this or any other state within ten
14 years preceding the date of application for registration, which
15 conviction remains unreversed; and not have been convicted of
16 a felony in any court in this state or any federal court in this or
17 any other state at any time if the offense for which the applicant
18 was convicted related to the practice of radiologic technology,
19 which conviction remains unreversed.

20 (b) Any person who holds a license or certificate, including
21 the American registry of radiologic technologists, to practice
22 radiologic technology issued by any other state, the require-
23 ments for which license or certificate are found by the board to
24 be at least equal to those provided in this article, shall be
25 eligible for a license to practice radiologic technology in this
26 state without examination.

27 (c) The following persons are not required to obtain a
28 license in accordance with the provisions of this article:

29 (1) A technology student enrolled in or attending an
30 approved school of technology who as part of his or her course
31 of study applies ionizing radiation to a human being under the
32 supervision of a licensed practitioner;

33 (2) A person acting as a dental assistant who under the
34 supervision of a licensed dentist operates only radiographic
35 dental equipment for the sole purpose of dental radiography;

36 (3) A person engaged in performing the duties of a technol-
37 ogist in the person's employment by an agency, bureau or
38 division of the government of the United States;

39 (4) Any licensed practitioner, radiologist or radiology
40 resident; and

41 (5) Any person who demonstrates to the board that as of the
42 first day of July, one thousand nine hundred ninety-nine, he or
43 she:

44 (A) Has engaged in the practice of radiologic technology
45 for the limited purpose of performing bone densitometry in this
46 state for five or more years;

47 (B) Practices under the supervision of a licensed practitio-
48 ner; and

49 (C) Has received a densitometry technologist degree
50 certified by the international society for clinical densitometry.

51 (d) Any applicant for any such license shall submit an
52 application therefor at such time (subject to the time limitation
53 set forth in subsection (d) of this section), in such manner, on

54 such forms and containing such information as the board may
55 from time to time by reasonable rule and regulation prescribe,
56 and pay to the board a license fee of thirty dollars, which fee
57 shall be returned to the applicant if the license application is
58 denied.

CHAPTER 217

(Com. Sub. for H. B. 2726 — By Delegates Staton, Leach,
Compton, Douglas, Hatfield, Beane and L. White)

[Passed March 1, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, eight, twelve and fifteen, article thirty-four, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to changing the definitions used with regard to respiratory therapists to bring the code into compliance with the references used by the national board of respiratory care.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 34. BOARD OF RESPIRATORY CARE PRACTITIONERS.

§30-34-1. License required to practice.

§30-34-2. Definitions.

§30-34-8. Criteria for licensure.

§30-34-12. Professional identification.

§30-34-15. Exceptions.

§30-34-1. License required to practice.

- 1 In order to protect the life, health and safety of the public,
- 2 any person practicing or offering to practice as a licensed,
- 3 certified or registered respiratory therapist is required to submit
- 4 evidence that he or she is qualified to practice, and is licensed

5 as provided in this article. It is unlawful for any person not
6 licensed under the provisions of this article to practice as a
7 respiratory therapist in this state, to deliver any portion of the
8 description of services or scope of practice, or to use any title,
9 sign, card or device to indicate that he or she is a respiratory
10 therapist. The provisions of this article are not intended to limit,
11 preclude or otherwise interfere with the practice of other health
12 care providers including those health care providers working in
13 any setting and licensed by appropriate agencies or boards of
14 the state of West Virginia whose practices and training may
15 include elements of the same nature as the practice of a
16 licensed, certified or registered respiratory therapist.

§30-34-2. Definitions.

- 1 (a) "Board" means the West Virginia board for respiratory
2 care;
- 3 (b) "Formal training" means a supervised, structured
4 educational activity that includes preclinical didactic and
5 laboratory activities and clinical activities. The training must be
6 approved by an accrediting agency recognized by the board. It
7 shall include an evaluation of competence through standardized
8 testing mechanisms that the board determines to be both valid
9 and reliable;
- 10 (c) "Graduate respiratory care therapist" means an individ-
11 ual who has graduated from a respiratory therapist educational
12 program and is scheduled to take the next available examination
13 administered by the state or a national organization approved by
14 the board;
- 15 (d) "Practice of respiratory care" means the practice of
16 respiratory care, and any part of respiratory care, by persons
17 licensed under the provisions of this article and is limited to that
18 which has been learned through formal or special training
19 including performance evaluation to evaluate competence. The
20 practice of respiratory care may be performed in any clinic,
21 hospital, skilled nursing facility, private dwelling or other place
22 considered appropriate or necessary by the board in accordance
23 with the prescription or verbal orders of a licensed physician or
24 other legally authorized person with prescriptive authority, or

25 under the direction of a qualified medical director. Practice of
26 respiratory care includes, but is not limited to:

27 (1) The administration of pharmacological, diagnostic and
28 therapeutic agents related to respiratory care procedures
29 necessary to implement a treatment, disease prevention,
30 pulmonary rehabilitative or diagnostic regimen prescribed by a
31 physician;

32 (2) Transcription and implementation of written or verbal
33 orders of a physician or other legally authorized person with
34 prescriptive authority, pertaining to the practice of respiratory
35 care;

36 (3) Observing and monitoring signs and symptoms, general
37 behavior, general physical response to respiratory care treat-
38 ment and diagnostic testing, including determination of whether
39 such signs, symptoms, reactions, behavior or general response
40 exhibit abnormal characteristics;

41 (4) Based on observed abnormalities, appropriate reporting,
42 referral or implementation of respiratory care protocols or
43 changes in treatment pursuant to the written or verbal orders of
44 a person with prescriptive authority under the laws of the state
45 of West Virginia; or

46 (5) The initiation of emergency procedures under the rules
47 of the board or as otherwise permitted in this article;

48 (e) "Qualified medical director" means the medical director
49 of any inpatient or outpatient respiratory care service, depart-
50 ment or home care agency. The medical director shall be a
51 licensed physician who is knowledgeable in the diagnosis and
52 treatment of respiratory problems. This physician shall be
53 responsible for the quality, safety and appropriateness of the
54 respiratory services provided and require that respiratory care
55 be ordered by a physician, or other legally authorized person
56 with prescriptive authority, who has medical responsibility for
57 the patient. The medical director shall be readily accessible to
58 the respiratory care practitioners and assure their competency;

59 (f) "Respiratory care" means the allied health profession
60 responsible for the direct and indirect services in the treatment,

61 management, diagnostic testing and care of patients with
62 deficiencies and abnormalities associated with the cardio-
63 pulmonary system, under a qualified medical director. Respira-
64 tory care includes inhalation therapy and respiratory therapy;

65 (g) "Respiratory care education program" means a course
66 of study leading to eligibility for licensure, registry or certifica-
67 tion in respiratory care and the program is approved by the
68 board;

69 (h) "Respiratory therapist" means an individual who has
70 successfully completed an accredited training program, and
71 who has successfully completed a certification or registry
72 examination for respiratory therapists administered by the state
73 or a national organization approved by the board and who is
74 licensed by the board as a licensed respiratory therapist;

75 (i) "Student respiratory care therapist" means an individual
76 enrolled in a respiratory educational program and whose
77 sponsoring educational institution assumes responsibility for
78 the supervision of, and the services rendered by, the student
79 respiratory care practitioner while he or she is functioning in a
80 clinical training capacity.

§30-34-8. Criteria for licensure.

1 (a) Upon payment of the proper fees, an applicant for a
2 license to practice respiratory care shall submit to the board
3 written evidence, verified by oath, that the applicant:

4 (1) Has completed an approved respiratory care educational
5 program; and

6 (2) Passed a certification or registration examination,
7 except where otherwise provided in this article. This examina-
8 tion may be administered by the state or by a national agency
9 approved by the board. The board shall set the passing score for
10 the examination.

11 (b) The board may also issue a license to practice respira-
12 tory care by endorsement to an applicant who is currently
13 licensed to practice respiratory care under the laws of another
14 state, territory or country if the qualifications of the applicant

15 are considered by the board to be equivalent to, or greater than,
16 those required in this state.

17 (c) The board may also issue a license to practice respira-
18 tory care by endorsement to respiratory therapists holding
19 credentials conferred by the National Board for Respiratory
20 Care, Inc., or its successor organizations, if the credentials have
21 not been suspended or revoked. Applicants applying under the
22 conditions of this section shall be required to certify under oath
23 that their credentials have not been suspended or revoked.

24 (d) If an applicant fails to complete the requirements for
25 licensure within ninety days from the date of filing, the applica-
26 tion is considered to be abandoned.

§30-34-12. Professional identification.

1 (a) A person holding a license to practice respiratory care
2 as a respiratory therapist in this state who has successfully
3 completed the entry level examination of the national board of
4 respiratory care or any successor organization may use the title
5 "licensed respiratory therapist certified" and the abbreviation
6 "LRTC."

7 (b) A person holding a license to practice as a respiratory
8 therapist in this state who has successfully completed the
9 registry examination of the national board of respiratory care or
10 any successor organization may use the title "licensed respira-
11 tory therapist registered" and the abbreviation "LRTR."

12 (c) The board may change the professional identification
13 for its profession should the accepted reference to the providers
14 of respiratory care be changed by the national board of respira-
15 tory care or its successor organization.

16 (d) A licensee shall either show his or her license or provide
17 a copy thereof within twenty-four hours of a request from an
18 employer or the board.

§30-34-15. Exceptions.

1 (a) A person may not practice respiratory care or represent
2 himself or herself to be a respiratory care practitioner unless he

3 or she is licensed under this article except as otherwise provided
4 by this article.

5 (b) This article does not prohibit:

6 (1) The practice of respiratory care which is an integral part
7 of the program of study by students enrolled in respiratory care
8 education programs accredited by organizations approved by
9 the board. Students enrolled in respiratory care education
10 programs shall be identified as "student RCP" and may only
11 provide respiratory care under clinical supervision;

12 (2) Self-care by a patient, or gratuitous care by a friend or
13 family member who does not represent or hold himself or
14 herself out to be a respiratory care practitioner;

15 (3) Respiratory care services rendered in the course of an
16 emergency;

17 (4) Persons in the military services or working in federal
18 facilities providing respiratory care services when functioning
19 in the course of their assigned duties; or

20 (5) The respiratory care practitioner from performing
21 advances in the art and techniques of respiratory care learned
22 through formalized or specialized training approved by the
23 board.

24 (c) Nothing in this article is intended to limit, preclude or
25 otherwise interfere with the practices of other persons and
26 health care providers licensed by appropriate agencies of the
27 state.

28 (d) Nothing in this article prohibits home medical equip-
29 ment dealers from delivering and instructing persons in the
30 operation of home medical respiratory equipment, or from
31 receiving requests for changes in equipment and settings from
32 physicians or other authorized individuals.

33 (e) An individual who passes an examination or success-
34 fully completes training that includes content in one or more of
35 the functions included in this article is not prohibited from
36 performing those procedures for which he or she was tested, so
37 long as the testing body offering the examination or training is
38 approved by the board.

CHAPTER 218

(Com. Sub. for S. B. 601 —By Senators Kessler, Mitchell and Chafin)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article four, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia prosecuting attorneys institute generally; increasing the salary of the executive director of the West Virginia prosecuting attorneys institute; and permitting the deposit of moneys from grants, reimbursements or other funding sources into the West Virginia prosecuting attorneys institute fund.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL
ADVICE.**

§7-4-6. West Virginia prosecuting attorneys institute.

1 (a) There is hereby created the West Virginia prosecuting
2 attorneys institute, a public body whose membership shall
3 consist of the fifty-five elected county prosecuting attorneys in
4 the state. The institute shall meet at least once each calendar
5 year and the presence of twenty-eight of the fifty-five prosecu-
6 tors at any meeting constitutes a quorum for the conduct of the
7 institute's business.

8 (b) There is hereby created the executive council of the
9 West Virginia prosecuting attorneys institute which shall
10 consist of five prosecuting attorneys elected by the membership
11 of the West Virginia prosecuting attorneys institute at its annual
12 meeting and two persons appointed annually by the county

13 commissioner's association of West Virginia. The executive
14 council shall elect one member of the council to serve as
15 chairman of the institute for a term of one year without com-
16 pensation. The executive council shall serve as the regular
17 executive body of the institute.

18 (c) There is hereby created the position of executive
19 director of the West Virginia prosecuting attorneys institute to
20 be employed by the executive council of the institute. The
21 executive director of the West Virginia prosecuting attorneys
22 institute shall serve at the will and pleasure of the executive
23 council of the institute at an annual salary of fifty thousand
24 dollars per year: Beginning the first day of July, one thousand
25 nine hundred ninety-nine, the executive director shall receive an
26 annual salary of fifty-five thousand dollars. The executive
27 director shall be licensed to practice law in the state of West
28 Virginia and shall devote full time to his or her official duties
29 and may not engage in the private practice of law.

30 (d) The duties and responsibilities of the institute, as
31 implemented by and through its executive council and its
32 executive director, shall include the following:

33 (1) To provide for special prosecuting attorneys to pursue
34 a criminal matter in any county upon the request of a circuit
35 court judge of that county and upon the approval of the execu-
36 tive council;

37 (2) To establish and to implement general and specialized
38 training programs for prosecuting attorneys and their profes-
39 sional staffs;

40 (3) To provide materials for prosecuting attorneys and their
41 professional staffs, including legal research, technical assis-
42 tance and technical and professional publications;

43 (4) To compile and disseminate information on behalf of
44 prosecuting attorneys and their professional staffs on current
45 developments and changes in the law and the administration of
46 criminal justice;

47 (5) To establish and to implement uniform reporting
48 procedures for prosecuting attorneys and their professional

49 staffs in order to maintain and to provide accurate and timely
50 data and information relative to criminal prosecutorial matters;

51 (6) To accept and expend funds, grants and gifts and accept
52 services from any public or private source;

53 (7) To enter into agreements and contracts with public or
54 private agencies or educational institutions;

55 (8) To identify experts and other resources for use by
56 prosecutors in criminal matters;

57 (9) To make recommendations to the Legislature or the
58 supreme court of appeals of the state of West Virginia on
59 measures required, or procedural rules to be promulgated, to
60 make uniform the processing of juvenile cases in the fifty-five
61 counties of the state; and

62 (10) To develop a written handbook for prosecutors and
63 their assistants to use which delineates relevant information
64 concerning the elements of various crimes in West Virginia and
65 other information as the institute deems appropriate.

66 (e) Each prosecuting attorney is subject to appointment by
67 the institute to serve as a special prosecuting attorney in any
68 county where the prosecutor for that county or his or her office
69 has been disqualified from participating in a particular criminal
70 case. The circuit judge of any county of this state, who disquali-
71 fies the prosecutor or his or her office from participating in a
72 particular criminal case in that county, shall seek the appoint-
73 ment by the institute of a special prosecuting attorney to
74 substitute for the disqualified prosecutor. The executive director
75 of the institute shall, upon written request to the institute by any
76 circuit judge as a result of disqualification of the prosecutor or
77 for other good cause shown, and upon approval of the executive
78 council, appoint a prosecuting attorney to serve as a special
79 prosecuting attorney. The special prosecuting attorney ap-
80 pointed shall serve without any further compensation other than
81 that paid to him or her by his or her county, except that he or
82 she is entitled to be reimbursed for his or her legitimate
83 expenses associated with travel, mileage and room and board
84 from the county to which he or she is appointed as a prosecutor.

85 The county commission in which county he or she is special
 86 prosecutor is responsible for all expenses associated with the
 87 prosecution of the criminal action.

88 (f) The executive director of the institute shall maintain an
 89 appointment list that shall include the names of all fifty-five
 90 prosecuting attorneys and that shall also include the names of
 91 any assistant prosecuting attorney who wishes to serve as a
 92 special prosecuting attorney upon the same terms and condi-
 93 tions as set forth in this section. The executive director of the
 94 institute, with the approval of the executive council, shall
 95 appoint special prosecuting attorneys from the appointment list
 96 for any particular matter giving due consideration to the
 97 proximity of the proposed special prosecuting attorney's home
 98 county to the county requesting a special prosecutor and giving
 99 due consideration to the expertise of the special prosecuting
 100 attorney.

01 (g) Commencing on the first day of July, one thousand nine
 02 hundred ninety-six, each county commission shall pay, on a
 03 monthly basis, a special prosecution premium to the treasurer
 04 of the state for the funding of the West Virginia prosecuting
 105 attorneys institute. The monthly premiums shall be paid
 106 according to the following schedule:

107 **MONTHLY PREMIUMS**

108 **Assessed Valuation of Property**

109 **of All Classes in the County**

110	Category	Minimum	Maximum	Premium
111	A	\$1,500,000,000	Unlimited	\$400
112	B	\$1,000,000,000	\$1,499,999,000	\$375
113	C	\$ 800,000,000	\$ 999,999,000	\$350
114	D	\$ 700,000,000	\$ 799,999,000	\$325
115	E	\$ 600,000,000	\$ 699,999,000	\$300
116	F	\$ 500,000,000	\$ 599,999,000	\$250
117	G	\$ 400,000,000	\$ 499,999,000	\$200
118	H	\$ 300,000,000	\$ 399,999,000	\$150
119	I	\$ 200,000,000	\$ 299,999,000	\$100
120	J	-0-	\$ 199,999,000	\$ 50

121 Upon receipt of a premium, grant, reimbursement or other
122 funding source, excluding federal funds as provided in article
123 two, chapter four of this code, the treasurer shall deposit the
124 funds into a special revenue fund to be known as the “West
125 Virginia prosecuting attorneys institute fund”. All costs of
126 operating the West Virginia prosecuting attorneys institute shall
127 be paid from the West Virginia prosecuting attorneys institute
128 fund upon proper authorization by the executive council or by
129 the executive director of the institute and subject to annual
130 appropriation by the Legislature of the amounts contained
131 within the fund.

132 (h) The West Virginia prosecuting attorneys institute shall
133 continue to exist until the first day of July, two thousand one,
134 unless continued by an act of the Legislature. The institute shall
135 annually by the first day of the regular legislative session
136 provide the joint committee on government and finance with a
137 report setting forth the activities of the institute and suggestions
138 for legislative action.

139 (i) Neither the institute nor its employees acting in their
140 employment capacity shall engage in activities before govern-
141 mental bodies which advocate positions on issues other than
142 those issues consistent with the duties of the institute set forth
143 in subsection (d) of this section.

CHAPTER 219

(S. B. 643 — By Senator Kessler)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article eight-b, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing greater discretion to the West Virginia prosecuting attorneys institute in the processing of forensic medical examinations and the payment of costs from the forensic medical examination fund.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article eight-b, 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 8B. SEXUAL OFFENSES.

§61-8B-16. Payment for costs of forensic medical examination.

1 (a) When any person alleges that he or she has been the
2 victim of an offense proscribed by this article, the West
3 Virginia prosecuting attorneys institute shall pay to a licensed
4 medical facility from the forensic medical examination fund the
5 cost of the forensic medical examination for this person on the
6 following conditions and in the following manner:

7 (1) The payment shall cover all reasonable, customary and
8 usual costs of the forensic medical examination;

9 (2) The costs of additional nonforensic procedures per-
10 formed by the licensed medical facility, including, but not
11 limited to, prophylactic treatment, treatment of injuries, testing
12 for pregnancy and testing for sexually transmitted diseases, may
13 not be paid from the fund;

14 (3) The forensic medical examination must have been
15 conducted within a reasonable time of the alleged violation;

16 (4) The licensed medical facility must apply for payment of
17 the costs of a forensic medical examination from the fund
18 within a reasonable time of the examination;

19 (5) The licensed medical facility shall submit a statement
20 of charges to the prosecuting attorney in the county in which
21 the alleged offense occurred and the prosecuting attorney shall
22 certify, if proper, that the forensic medical examination was
23 conducted as a part of a criminal investigation; and

24 (6) The prosecuting attorney shall, within sixty days of
25 receipt of a statement of charges from the licensed medical
26 facility, forward the statement of charges and the certification
27 to the West Virginia prosecuting attorneys institute for payment
28 from the fund and for the reimbursement of the institute from

29 the fund for the reasonable costs of processing and recording
30 the payment.

31 (b) No licensed medical facility may collect the costs of a
32 forensic medical examination from the victim of an alleged
33 violation of this article if the reasonable, customary and usual
34 costs of the forensic medical examination qualifies for payment
35 from the forensic medical examination fund as set forth in
36 subsection (a) of this section.

CHAPTER 220

(S. B. 702 — Originating in the Committee on Finance)

[Passed March 13, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, five, nine, twelve and twenty-four, article sixteen, 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 two new sections, designated sections twelve-a and twelve-b, all relating to the West Virginia public employees insurance act; defining terms; increasing the membership of the finance board; providing for appointment of the new members; revising requirements regarding preparation of annual financial plans and long-range plans; realigning duties of the finance board and the actuary; changing time of submission for revenue estimates; requiring submission of prospective financial plan; removing requirement that types and levels of costs to employers, employees and retired employees in effect remain in effect; providing criminal penalties for knowingly obtaining benefits, payments or anything of value to which the person is not entitled or greater than those to which the person is entitled; upon a finding of probable cause, authorizing the director to refer alleged violations fraud and abuse to the insurance commissioner for investigation and, where appropriate, prosecution; providing penalties for violations not otherwise specifically provided; authorizing the director to negotiate and

contract directly with health care providers; providing immunity for reporting fraudulent activities; and requiring that the retirees last employer be a participating employer to be eligible for public employees insurance agency programs upon retirement.

Be it enacted by the Legislature of West Virginia:

That sections two, four, five, nine, twelve and twenty-four, article sixteen, 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 two new sections, designated sections twelve-a and twelve-b, all to read as follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

- §5-16-2. Definitions.
- §5-16-4. Public employees insurance agency finance board created; qualifications, terms and removal of members; quorum; compensation and expenses; termination date.
- §5-16-5. Purpose, powers and duties of the finance board; initial financial plan; financial plan for following year; and annual financial plans.
- §5-16-9. Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance and other accidental death insurance; mandated benefits; limitations; awarding of contracts; reinsurance; certificates for covered employees; discontinuance of contracts.
- §5-16-12. Misrepresentation by employer, employee or provider; penalty.
- §5-16-12a. Inspections; violations and penalties.
- §5-16-12b. Privileges and immunity.
- §5-16-24. Rules for administration of article; eligibility of certain retired employees and dependents of deceased members for coverage; employees on medical leave of absence entitled to coverage; life insurance.

§5-16-2. Definitions.

1 The following words and phrases as used in this article,
 2 unless a different meaning is clearly indicated by the context,
 3 have the following meanings:

4 (1) "Agency" means the public employees insurance
 5 agency created by this article.

6 (2) "Director" means the director of the public employees
 7 insurance agency created by this article.

8 (3) "Employee" means any person, including elected
9 officers, who works regularly full time in the service of the
10 state of West Virginia and, for the purpose of this article only,
11 the term "employee" also means any person, including elected
12 officers, who works regularly full time in the service of a
13 county board of education; a county, city or town in the state;
14 any separate corporation or instrumentality established by one
15 or more counties, cities or towns, as permitted by law; any
16 corporation or instrumentality supported in most part by
17 counties, cities or towns; any public corporation charged by law
18 with the performance of a governmental function and whose
19 jurisdiction is coextensive with one or more counties, cities or
20 towns; any comprehensive community mental health center or
21 comprehensive mental retardation facility established, operated
22 or licensed by the secretary of health and human resources
23 pursuant to section one, article two-a, chapter twenty-seven of
24 this code, and which is supported in part by state, county or
25 municipal funds; any person who works regularly full time in
26 the service of the university of West Virginia board of trustees
27 or the board of directors of the state college system; and any
28 person who works regularly full time in the service of a
29 combined city-county health department created pursuant to
30 article two, chapter sixteen of this code. On and after the first
31 day of January, one thousand nine hundred ninety-four, and
32 upon election by a county board of education to allow elected
33 board members to participate in the public employees insurance
34 program pursuant to this article, any person elected to a county
35 board of education shall be deemed to be an "employee" during
36 the term of office of the elected member: *Provided*, That the
37 elected member shall pay the entire cost of the premium if he
38 or she elects to be covered under this article. Any matters of
39 doubt as to who is an employee within the meaning of this
40 article shall be decided by the director.

41 On or after the first day of July, one thousand nine hundred
42 ninety-seven, a person shall be considered an "employee" if that
43 person meets the following criteria:

44 (i) Participates in a job-sharing arrangement as defined in
45 section one, article one, chapter eighteen-a of this code;

46 (ii) Has been designated, in writing, by all other participants
47 in that job-sharing arrangement as the “employee” for purposes
48 of this section; and

49 (iii) Works at least one third of the time required for a full-
50 time employee.

51 (4) “Employer” means the state of West Virginia, its
52 boards, agencies, commissions, departments, institutions or
53 spending units; a county board of education; a county, city or
54 town in the state; any separate corporation or instrumentality
55 established by one or more counties, cities or towns, as permit-
56 ted by law; any corporation or instrumentality supported in
57 most part by counties, cities or towns; any public corporation
58 charged by law with the performance of a governmental
59 function and whose jurisdiction is coextensive with one or more
60 counties, cities or towns; any comprehensive community mental
61 health center or comprehensive mental retardation facility
62 established, operated or licensed by the secretary of health and
63 human resources pursuant to section one, article two-a, chapter
64 twenty-seven of this code, and which is supported in part by
65 state, county or municipal funds; and a combined city-county
66 health department created pursuant to article two, chapter
67 sixteen of this code. Any matters of doubt as to who is an
68 “employer” within the meaning of this article shall be decided
69 by the director. The term “employer” does not include within its
70 meaning the national guard.

71 (5) “Finance board” means the public employees insurance
72 agency finance board created by this article.

73 (6) “Person” means any individual, company, association,
74 organization, corporation or other legal entity, including, but
75 not limited to, hospital, medical, or dental service corporations;
76 health maintenance organizations or similar organization
77 providing prepaid health benefits; or individuals entitled to
78 benefits under the provisions of this article.

79 (7) “Plan” means the medical indemnity plan or a managed
80 care plan option offered by the agency.

81 (8) "Retired employee" means an employee of the state
82 who retired after the twenty-ninth day of April, one thousand
83 nine hundred seventy-one, and an employee of the university of
84 West Virginia board of trustees or the board of directors of the
85 state college system or a county board of education who retires
86 on or after the twenty-first day of April, one thousand nine
87 hundred seventy-two, and all additional eligible employees who
88 retire on or after the effective date of this article, meet the
89 minimum eligibility requirements for their respective state
90 retirement system and whose last employer immediately prior
91 to retirement under the state retirement system is a participating
92 employer: *Provided*, That for the purposes of this article, the
93 employees who are not covered by a state retirement system
94 shall, in the case of education employees, meet the minimum
95 eligibility requirements of the state teachers retirement system,
96 and in all other cases, meet the minimum eligibility require-
97 ments of the public employees retirement system.

**§5-16-4. Public Employees insurance agency finance board
continued; qualifications, terms and removal of
members; quorum; compensation and expenses;
termination date.**

1 (a) There is hereby continued the public employees
2 insurance agency finance board, which consists of the director
3 and six members appointed by the governor with the advice and
4 consent of the Senate for terms of four years and until the
5 appointment of their successors: *Provided*, That of the two
6 members added to the board by the amendment of this section,
7 enacted during the regular legislative session, one thousand
8 nine hundred ninety-nine, the at-large member shall be ap-
9 pointed for an initial term of two years and the member
10 representing organized labor shall be appointed for a term of
11 four years. Members may be reappointed for successive terms.
12 No more than four members (including the director) may be of
13 the same political party.

14 (b) Of the six members appointed by the governor, one
15 member shall represent the interests of education employees,
16 one shall represent the interests of public employees, one shall

17 represent the interests of organized labor and three shall be
18 selected from the public at large. The governor shall appoint the
19 member representing the interests of education employees from
20 a list of three names submitted by the largest organization of
21 education employees in this state. The governor shall appoint
22 the member representing the interests of organized labor from
23 a list of three names submitted by the state's largest organiza-
24 tion representing labor affiliates. The three members appointed
25 from the public shall each have experience in the financing,
26 development or management of employee benefit programs. All
27 new appointments made after the first day of July, one thousand
28 nine hundred ninety-four, shall be selected to represent the
29 different geographical areas within the state and all members
30 shall be residents of West Virginia. No member may be
31 removed from office by the governor except for official
32 misconduct, incompetence, neglect of duty, neglect of fiduciary
33 duty or other specific responsibility imposed by this article, or
34 gross immorality.

35 (c) The director shall serve as chairperson of the finance
36 board, which shall meet at times and places specified by the call
37 of the director or upon the written request to the director of at
38 least two members. Notice of each meeting shall be given in
39 writing to each member by the director at least three days in
40 advance of the meeting. Four members constitutes a quorum.
41 The board shall pay each member the same compensation and
42 expense reimbursement as is paid to members of the Legislature
43 for their interim duties, as recommended by the citizens
44 legislative compensation commission and authorized by law for
45 each day or portion of a day engaged in the discharge of official
46 duties.

47 (d) Pursuant to the provisions of article ten, chapter four of
48 this code, the finance board shall terminate on the first day of
49 July, two thousand one, unless extended by legislation enacted
50 before the termination date.

51 (e) Upon termination of the board and notwithstanding any
52 provisions in this article to the contrary, the director is autho-
53 rized to assess monthly employee premium contributions and

54 to change the types and levels of costs to employees only in
55 accordance with this subsection. Any assessments or changes
56 in costs imposed pursuant to this subsection shall be imple-
57 mented by legislative rule proposed by the director for promul-
58 gation pursuant to the provisions of article three, chapter
59 twenty-nine-a of this code; any employee assessments or costs
60 previously authorized by the finance board shall then remain in
61 effect until amended by rule of the director promulgated
62 pursuant to this subsection.

§5-16-5. Purpose, powers and duties of the finance board; initial financial plan; financial plan for following year; and annual financial plans.

1 (a) The purpose of the finance board created by this article
2 is to bring fiscal stability to the public employees insurance
3 agency through development of annual financial plans and
4 long-range plans designed to meet the agency's estimated total
5 financial requirements, taking into account all revenues
6 projected to be made available to the agency, and apportioning
7 necessary costs equitably among participating employers,
8 employees and retired employees and providers of health care
9 services.

10 (b) The finance board shall retain the services of an
11 impartial, professional actuary, with demonstrated experience
12 in analysis of large group health insurance plans, to estimate the
13 total financial requirements of the public employees insurance
14 agency for each fiscal year and to review and render written
15 professional opinions as to financial plans proposed by the
16 finance board. The actuary shall also assist in the development
17 of alternative financing options and perform any other services
18 requested by the finance board or the director. All reasonable
19 fees and expenses for actuarial services shall be paid by the
20 public employees insurance agency. Any financial plan or
21 modifications to a financial plan approved or proposed by the
22 finance board pursuant to this section shall be submitted to and
23 reviewed by the actuary, and may not be finally approved and
24 submitted to the governor and to the Legislature without the
25 actuary's written professional opinion that the plan may be

26 reasonably expected to generate sufficient revenues to meet all
27 estimated program and administrative costs of the agency,
28 including incurred but unreported claims, for the fiscal year for
29 which the plan is proposed. The actuary's opinion on the
30 financial plan for each fiscal year shall allow for no more than
31 thirty days of accounts payable to be carried over into the next
32 fiscal year. The actuary's opinion for any fiscal year shall not
33 include a requirement for establishment of a reserve fund.

34 (c) All financial plans required by this section shall
35 establish:

36 (1) Maximum levels of reimbursement which the public
37 employees insurance agency makes to categories of health care
38 providers;

39 (2) Any necessary cost containment measures for imple-
40 mentation by the director;

41 (3) The levels of premium costs to participating employers;
42 and

43 (4) The types and levels of cost to participating employees
44 and retired employees.

45 The financial plans may provide for different levels of costs
46 based on the insureds' ability to pay. The finance board may
47 establish different levels of costs to retired employees based
48 upon length of employment with a participating employer,
49 ability to pay, or other relevant factors. The financial plans may
50 also include optional alternative benefit plans with alternative
51 types and levels of cost. The finance board may develop
52 policies which encourage the use of West Virginia health care
53 providers.

54 In addition, the finance board may allocate a portion of the
55 premium costs charged to participating employers to subsidize
56 the cost of coverage for participating retired employees, on such
57 terms as the finance board determines are equitable and
58 financially responsible.

59 (d) (1) The finance board shall prepare an annual financial
60 plan for each fiscal year during which the finance board

61 remains in existence. The finance board chairman shall request
62 the actuary to estimate the total financial requirements of the
63 public employees insurance agency for the fiscal year.

64 (2) The finance board shall prepare a proposed financial
65 plan designed to generate revenues sufficient to meet all
66 estimated program and administrative costs of the public
67 employees insurance agency for the fiscal year. The proposed
68 financial plan shall allow for no more than thirty days of
69 accounts payable to be carried over into the next fiscal year.
70 Before final adoption of the proposed financial plan, the finance
71 board shall request the actuary to review the plan and to render
72 a written professional opinion stating whether the plan will
73 generate sufficient revenues to meet all estimated program and
74 administrative costs of the public employees insurance agency
75 for the fiscal year. The actuary's report shall explain the basis
76 of its opinion. If the actuary concludes that the proposed
77 financial plan will not generate sufficient revenues to meet all
78 anticipated costs, then the finance board shall make necessary
79 modifications to the proposed plan to ensure that all actuarially-
80 determined financial requirements of the agency will be met.

81 (3) Upon obtaining the actuary's opinion, the finance board
82 shall conduct one or more public hearings in each congressional
83 district to receive public comment on the proposed financial
84 plan, shall review such comments, and shall finalize and
85 approve the financial plan.

86 (4) Any financial plan shall be designed to allow thirty days
87 or less of accounts payable to be carried over into the next fiscal
88 year. For each fiscal year, the governor shall provide his or her
89 estimate of total revenues to the finance board no later than the
90 fifteenth day of October of the preceding fiscal year: *Provided,*
91 That for the prospective financial plans required by this section,
92 the governor shall estimate the revenues available for each
93 fiscal year of the plans, based on the estimated percentage of
94 growth in general fund revenues. The finance board shall
95 submit its final, approved financial plan, after obtaining the
96 necessary actuary's opinion and conducting one or more public
97 hearings in each congressional district, to the governor and to

98 the Legislature no later than the first day of January preceding
99 the fiscal year. The financial plan for a fiscal year becomes
100 effective and shall be implemented by the director on the first
101 day of July of the fiscal year. In addition to each final, ap-
102 proved financial plan required under this section, the finance
103 board shall also simultaneously submit financial statements
104 based on generally accepted accounting practices (GAAP) and
105 the final, approved plan restated on an accrual basis of account-
106 ing, which shall include allowances for incurred but not
107 reported claims: *Provided, however,* That the financial state-
108 ments and the accrual-based financial plan restatement shall not
109 affect the approved financial plan.

110 (e) The provisions of chapter twenty-nine-a of this code
111 shall not apply to the preparation, approval and implementation
112 of the financial plans required by this section.

113 (f) Beginning on the first day of January, two thousand, and
114 every year thereafter, the finance board shall submit to the
115 governor and the Legislature, a prospective financial plan, for
116 a period not to exceed five years, for the programs provided for
117 in this article. Factors that the board shall consider include, but
118 shall not be limited to, the trends for the program and the
119 industry; the medical rate of inflation; utilization patterns; cost
120 of services; and, state specific information such as average age
121 of employee population, active to retiree ratios, the service
122 delivery system and health status of the population.

123 (g) The prospective financial plans shall be based on the
124 estimated revenues submitted in accordance with subdivision
125 (4), subsection (d) of this section, and shall include an average
126 of the projected cost-sharing percentages of premiums and an
127 average of the projected deductibles and co-pays for the various
128 programs. After the submission of the initial prospective plan,
129 the board may not increase costs to the participating employers
130 or change the average of the premiums, deductibles and co-pays
131 for employees, except in the event of a true emergency as
132 provided for in this section: *Provided,* That if the board invokes
133 the emergency provisions, the cost shall be borne between the
134 employers and employees in proportion to the cost-sharing ratio
135 for that plan year: *Provided, however,* That for purposes of this

136 section, "emergency" means that the most recent projections
137 demonstrate that plan expenses will exceed plan revenues by
138 more than one percent in any plan year.

139 (h) The finance board shall meet on at least a quarterly basis
140 to review implementation of its current financial plan in light of
141 the actual experience of the public employees insurance agency.
142 The board shall review actual costs incurred, any revised cost
143 estimates provided by the actuary, expenditures, and any other
144 factors affecting the fiscal stability of the plan, and may make
145 any additional modifications to the plan necessary to ensure that
146 the total financial requirements of the agency for the current
147 fiscal year are met. The financial board may not increase the
148 types and levels of cost to employees during its quarterly review
149 except in the event of a true emergency.

150 (i) For any fiscal year in which legislative appropriations
151 differ from the governor's estimate of general and special
152 revenues available to the agency, the finance board shall, within
153 thirty days after passage of the budget bill, make any modifica-
154 tions to the plan necessary to ensure that the total financial
155 requirements of the agency for the current fiscal year are met.

§5-16-9. Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance and other accidental death insurance; mandated benefits; limitations; awarding of contracts; reinsurance; certificates for covered employees; discontinuance of contracts.

1 (a) The director is hereby given exclusive authorization to
2 execute such contract or contracts as are necessary to carry out
3 the provisions of this article and to provide the plan or plans of
4 group hospital and surgical insurance coverage, group major
5 medical insurance coverage, group prescription drug insurance
6 coverage and group life and accidental death insurance cover-
7 age selected in accordance with the provisions of this article,
8 such contract or contracts to be executed with one or more
9 agencies, corporations, insurance companies or service organi-
10 zations licensed to sell group hospital and surgical insurance,

11 group major medical insurance, group prescription drug
12 insurance and group life and accidental death insurance in this
13 state.

14 (b) The group hospital or surgical insurance coverage and
15 group major medical insurance coverage herein provided for
16 shall include coverages and benefits for X-ray and laboratory
17 services in connection with mammogram and pap smears when
18 performed for cancer screening or diagnostic services and
19 annual checkups for prostate cancer in men age fifty and over.
20 Such benefits shall include, but not be limited to, the following:

21 (1) Baseline or other recommended mammograms for
22 women age thirty-five to thirty-nine, inclusive;

23 (2) Mammograms recommended or required for women age
24 forty to forty-nine, inclusive, every two years or as needed;

25 (3) A mammogram every year for women age fifty and
26 over;

27 (4) A pap smear annually or more frequently based on the
28 woman's physician's recommendation for women age eighteen
29 and over; and

30 (5) A checkup for prostate cancer annually for men age fifty
31 or over.

32 (c) The group life and accidental death insurance herein
33 provided for shall be in the amount of ten thousand dollars for
34 every employee. The amount of the group life and accidental
35 death insurance to which an employee would otherwise be
36 entitled shall be reduced to five thousand dollars upon such
37 employee attaining age sixty-five.

38 (d) All of the insurance coverage to be provided for under
39 this article may be included in one or more similar contracts
40 issued by the same or different carriers.

41 (e) The provisions of article three, chapter five-a of this
42 code, relating to the division of purchases of the department of
43 finance and administration, shall not apply to any contracts for
44 any insurance coverage or professional services authorized to

45 be executed under the provisions of this article. Before entering
46 into any contract for any insurance coverage, as authorized in
47 this article, the director shall invite competent bids from all
48 qualified and licensed insurance companies or carriers, who
49 may wish to offer plans for the insurance coverage desired:
50 *Provided*, That the director shall negotiate and contract directly
51 with health care providers and other entities, organizations and
52 vendors in order to secure competitive premiums, prices and
53 other financial advantages. The director shall deal directly with
54 insurers or health care providers and other entities, organiza-
55 tions and vendors in presenting specifications and receiving
56 quotations for bid purposes. No commission or finder's fee, or
57 any combination thereof, shall be paid to any individual or
58 agent; but this shall not preclude an underwriting insurance
59 company or companies, at their own expense, from appointing
60 a licensed resident agent, within this state, to service the
61 companies' contracts awarded under the provisions of this
62 article. Commissions reasonably related to actual service
63 rendered for the agent or agents may be paid by the underwrit-
64 ing company or companies: *Provided, however*, That in no
65 event shall payment be made to any agent or agents when no
66 actual services are rendered or performed. The director shall
67 award the contract or contracts on a competitive basis. In
68 awarding the contract or contracts the director shall take into
69 account the experience of the offering agency, corporation,
70 insurance company or service organization in the group hospital
71 and surgical insurance field, group major medical insurance
72 field, group prescription drug field and group life and accidental
73 death insurance field, and its facilities for the handling of
74 claims. In evaluating these factors, the director may employ the
75 services of impartial, professional insurance analysts or
76 actuaries or both. Any contract executed by the director with a
77 selected carrier shall be a contract to govern all eligible
78 employees subject to the provisions of this article. Nothing
79 contained in this article shall prohibit any insurance carrier
80 from soliciting employees covered hereunder to purchase
81 additional hospital and surgical, major medical or life and
82 accidental death insurance coverage.

83 (f) The director may authorize the carrier with whom a
84 primary contract is executed to reinsure portions of the contract
85 with other carriers which elect to be a reinsurer and who are
86 legally qualified to enter into a reinsurance agreement under the
87 laws of this state.

88 (g) Each employee who is covered under any contract or
89 contracts shall receive a statement of benefits to which the
90 employee, his or her spouse and his or her dependents are
91 entitled under the contract, setting forth the information as to
92 whom the benefits are payable, to whom claims shall be
93 submitted, and a summary of the provisions of the contract or
94 contracts as they affect the employee, his or her spouse and his
95 or her dependents.

96 (h) The director may at the end of any contract period
97 discontinue any contract or contracts it has executed with any
98 carrier and replace the same with a contract or contracts with
99 any other carrier or carriers meeting the requirements of this
100 article.

101 (i) The director shall provide by contract or contracts
102 entered into under the provisions of this article the cost for
103 coverage of children's immunization services from birth
104 through age sixteen years to provide immunization against the
105 following illnesses: Diphtheria, polio, mumps, measles, rubella,
106 tetanus, hepatitis-b, haemophilus influenzae-b and whooping
107 cough. Additional immunizations may be required by the
108 commissioner of the bureau of public health for public health
109 purposes. Any contract entered into to cover these services shall
110 require that all costs associated with immunization, including
111 the cost of the vaccine, if incurred by the health care provider,
112 and all costs of vaccine administration, be exempt from any
113 deductible, per visit charge and/or copayment provisions which
114 may be in force in these policies or contracts. This section does
115 not require that other health care services provided at the time
116 of immunization be exempt from any deductible and/or
117 copayment provisions.

**§5-16-12. Misrepresentation by employer, employee or provider;
penalty.**

1 (a) Any person who knowingly secures or attempts to
2 secure benefits payable under this article or anything of value
3 to which the person is not entitled, or who knowingly secures
4 or attempts to secure greater benefits than those to which the
5 person is entitled, by willfully misrepresenting the presence or
6 extent of benefits to which the person is entitled under a
7 collateral insurance source, or by willfully misrepresenting any
8 material fact relating to any other information requested by the
9 director or by willfully overcharging for services provided, or
10 by willfully misrepresenting the diagnosis or nature of the
11 service provided, may be found to be overpaid and shall be
12 civilly liable for any overpayment. In addition to the civil
13 remedy provided herein, the director shall withhold payment of
14 any benefits or other payment due to that person until any
15 overpayment has been recovered or may directly set off, after
16 holding internal administrative proceedings to assure due
17 process, any such overcharges or improperly derived payment
18 against benefits or other payment due such person hereunder.
19 Nothing in this section shall be construed to limit any other
20 remedy or civil or criminal penalty provided by law.

21 (b) Any person who knowingly secures or attempts to
22 secure benefits payable under this article or any other thing of
23 value to which the person is not entitled, or knowingly attempts
24 to secure greater benefits than those to which the person is
25 entitled, by willfully misrepresenting, or aiding in the misrepresen-
26 tation of, any material fact relating to employment, diagno-
27 sis or services rendered is guilty of a felony and, upon convic-
28 tion thereof, shall be fined not more than five thousand dollars,
29 imprisoned for not longer than two years, or both. Errors in
30 coding for purposes of billing shall not be presumed to be
31 evidence of criminal conduct in the absence of other competent
32 evidence to the contrary.

§5-16-12a. Inspections; violations and penalties.

1 (a) Upon a determination of the director or his or her
2 designated representative that there is probable cause to believe
3 that fraud, abuse or other illegal activities involving transac-
4 tions with the agency has occurred, the director or his or her

5 designated representative is authorized to refer the alleged
6 violations to the insurance commissioner for investigation and,
7 if appropriate, prosecution, pursuant to article forty-one,
8 chapter thirty-three of this code. For purposes of this section,
9 "transactions with the agency" includes, but is not limited to,
10 application by any insured or dependent, any employer, or any
11 type of health care provider for payment to be made to that
12 person or any third party by the agency.

13 (b) Any person who violates any provision of this article for
14 which no other penalty is specifically provided is guilty of a
15 misdemeanor and, upon conviction thereof, is subject to a fine
16 of not less than one hundred dollars but not more than five
17 hundred dollars, or imprisonment for a period of not less than
18 twenty-four hours but not more than fifteen days, or both.

§5-16-12b. Privileges and immunity.

1 (a) Any person who makes a report or furnishes informa-
2 tion, written or oral, concerning suspected, anticipated or
3 fraudulent activity to secure benefits payable under this article,
4 or to secure greater benefits than those to which the person or
5 provider is entitled, is entitled to those privileges and immuni-
6 ties existing under common or statutory law, as well as the
7 immunity established in this section.

8 (b) In the absence of fraud, malice or bad faith, no person
9 or agent, employee or designee of that person shall be subject
10 to civil liability of any nature arising out of that person's
11 provision of information related to suspected, anticipated or
12 fraudulent activity in the securing of benefits payable or
13 securing greater benefits than those to which the person or
14 provider is entitled.

15 (c) Nothing in this section shall be construed to limit,
16 abrogate or modify existing statutes or case law applicable to
17 the duties or liabilities of persons acting in a manner that is
18 itself fraudulent, with malice or in bad faith.

**§5-16-24. Rules for administration of article; eligibility of certain
retired employees and dependents of deceased
members for coverage; employees on medical**

leave of absence entitled to coverage; life insurance.

1 The director shall promulgate any necessary rules for the
2 effective administration of the provisions of this article. Except
3 as specifically provided in subsection (e), section four of this
4 article, all rules of the public employees insurance agency and
5 all hearings held by the public employees insurance agency are
6 exempt from the provisions of chapter twenty-nine-a of this
7 code. Any rules promulgated by the public employees insurance
8 board or director shall remain in full force and effect until they
9 are amended or replaced by the director.

10 The rules shall provide that any employee of the state who
11 has been compelled or required by law to retire before reaching
12 the age of sixty-five years is eligible to participate in the public
13 employees' health insurance program at the premium contribu-
14 tion established by the finance board after any extended
15 coverage to which he or she, his or her spouse and dependents
16 may be entitled by virtue of his or her accrued annual leave or
17 sick leave, pursuant to the provisions of section thirteen of this
18 article, has expired. Any employee who voluntarily retires, as
19 provided by law, is eligible to participate in the public employ-
20 ees' health insurance program at the premium contribution
21 established by the finance board after any extended coverage to
22 which he or she, his or her spouse and dependents may be
23 entitled by virtue of his or her accrued annual leave or sick
24 leave, pursuant to the provisions of section thirteen of this
25 article, has expired: *Provided*, That the employee's last em-
26 ployer is a participating employer. The dependents of any
27 deceased retired employee are entitled to continue their
28 participation and coverage upon payment of the premium
29 contribution established by the finance board. In establishing
30 the cost of health insurance coverage for retired employees and
31 their spouses and dependents, the finance board, in its discre-
32 tion, may cause the claims experience of the retired employees
33 and their spouses and dependents to be rated separately from
34 that of active employees and their spouses and dependents, or
35 may cause the claims experience of retired and active employ-
36 ees, and their spouses and dependents, to be rated together.

37 Any employee who is on a medical leave of absence,
38 approved by his or her employer, is subject to the following
39 provisions of this paragraph, is entitled to continue his or her
40 coverage until he or she returns to his or her employment, and
41 the employee and employer shall continue to pay their propor-
42 tionate share of premium costs as provided by this article:
43 *Provided*, That the employer is obligated to pay its proportion-
44 ate share of the premium cost only for a period of one year:
45 *Provided, however*, That during the period of the leave of
46 absence, the employee shall, at least once each month, submit
47 to the employer the statement of a qualified physician certifying
48 that the employee is unable to return to work.

49 Any retiree is eligible to participate in the public employ-
50 ees' life insurance program, including the optional life insur-
51 ance coverage as already available to active employees under
52 this article, at his or her own expense for the cost of coverage,
53 based upon actuarial experience; and the director shall prepare,
54 by rule, for that participation and coverages under declining
55 term insurance and optional additional coverage for the retirees.

CHAPTER 221

(H. B. 3032 — By Delegates Campbell, Kominar, Jenkins,
Kelley, Pettit, Facemyer and Border)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen-a, relating to creating a reserve fund for the support of the public employees insurance agency programs; providing for appropriation of the fund by the Legislature; requiring state agencies to transfer a percentage of annualized expenditures of state funds to the fund; providing for exemptions; and requiring an annual report to the governor and the Legislature.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. FINANCE DIVISION.

§5A-2-14a. Reserves for the public employees insurance programs.

1 (a) There is hereby created a special revenue account in the
2 state treasury, designated the "Public Employees Insurance
3 Reserve Fund", which shall be an interest bearing account and
4 may be invested in accordance with the provisions of article six,
5 chapter twelve of this code, with the interest income a proper
6 credit to the fund.

7 (b) The fund shall consist of moneys appropriated by the
8 Legislature and moneys transferred annually pursuant to the
9 provisions of subsection (c) of this section. These moneys shall
10 be held in reserve and appropriated by the Legislature only for
11 the support of the programs provided by the public employees
12 insurance agency.

13 (c) Beginning on the thirty-first day of May, two thousand,
14 and annually thereafter, each state agency except for the higher
15 education central office created in article four, chapter eighteen-
16 b; the higher education governing boards as defined in articles
17 two and three, chapter eighteen-b; and the state institutions of
18 higher education as defined in section two, article one, chapter
19 eighteen-b all of this code shall transfer one percent of its
20 annualized expenditures from state funds, excluding federal
21 funds based on filled full time equivalents as determined by the
22 state budget office as of the first day of April for that fiscal
23 year, to the public employees insurance reserve fund. The
24 secretary may exempt that transfer only upon a showing by the
25 requesting agency that the continued operation of that agency
26 is dependent upon receipt of the exemption: *Provided*, That for
27 the fiscal year beginning on the first day of July, one thousand
28 nine hundred ninety-nine, the higher education central office
29 created in article four, chapter eighteen-b of this code; the

30 higher education governing boards as defined in articles two
 31 and three, chapter eighteen-b of this code; and the state institu-
 32 tions of higher education as defined in section two, article one,
 33 chapter eighteen-b of this code are exempt from the provisions
 34 of this subsection.

35 (d) On the first day of January, two thousand one, and
 36 annually thereafter, the secretary shall provide a report to the
 37 governor and the Legislature on the amount of reserves estab-
 38 lished pursuant to the provisions of this section, the number of
 39 exemptions granted and the agencies receiving those exemp-
 40 tions.

CHAPTER 222

(S. B. 516 — By Senators Plymale, Jackson, Edgell and Sprouse)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-one, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the public employees retirement system; and specifying that interest on certain funds shall be credited on a calendar year basis instead of a fiscal year basis.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-41. Allowance of regular interest on balances in funds.

1 The board of trustees shall, at the end of each calendar year,
 2 allow and credit regular interest on the balance at the beginning
 3 of that calendar year in each member's individual account in the
 4 members deposit fund and on the mean balances in the employ-
 5 ers accumulation fund and the retirement reserve fund. The
 6 interest so allowed and credited shall be charged to the income
 7 fund.

CHAPTER 223

**(Com. Sub. for S. B. 137 — By Senators Tomblin, Mr. President and Sprouse)
[By Request of the Executive]**

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, one-a and one-b, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said chapter by adding thereto a new article, designated article three-a; and to amend and reenact section twelve-b, article eight, chapter thirty-one-a, all relating to receipting and disbursing of funds from the state treasury; authorizing information regarding uncashed state checks to only be disclosed to the state agency or payee; clarifying procedures for electronic warrants and direct deposits; facilitating electronic commerce involving state agencies; stating legislative purpose of financial electronic commerce for state agencies; providing definitions; requiring state auditor and state treasurer to implement electronic commerce capabilities to facilitate performance of their duties; requiring auditor and treasurer to competitively bid necessary banking, investment and related services for their offices; ensuring records and authentications of the auditor and treasurer are not denied legal effect solely on ground they are in electronic form; requiring heads of spending units to be responsible for security procedures when using electronic commerce; authorizing auditor to establish a state debit card known as the West Virginia check card for recipients of payroll or of benefits or entitlement programs without bank accounts; authorizing treasurer to contract with banking and other institutions to establish point of sale terminals for acceptance of the "West Virginia Check Card" and electronic benefit funds cards issued by state spending units and ensuring the state does not use the equipment to compete with private sector providers or for profit; authorizing the treasurer to establish a system for acceptance of credit cards and other

payment methods for electronic commerce purchases and requiring spending units to utilize the treasurer's system; establishing a special revenue account for receipt of fees related to the POS transactions; ensuring that cash withdrawals for these programs in excess of fifty dollars is not banking; and limiting fees for use of a West Virginia check card or an electronic benefits transfer card to the higher of one dollar or one percent of the amount of cash withdrawn.

Be it enacted by the Legislature of West Virginia:

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

Chapter

12. Public Moneys and Securities.

31A. Banks and Banking.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

Article

3. Appropriations, Expenditures and Deductions.

3A. Financial Electronic Commerce.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-1. Manner of payment from treasury; form of checks.

§12-3-1a. Payment by deposit in bank account.

§12-3-1b. Voluntary direct deposits by auditor of salaries of employees to banks or other financial institutions

***§12-3-1. Manner of payment from treasury; form of checks.**

1 Every person claiming to receive money from the treasury
 2 of the state shall apply to the auditor for a warrant for same.
 3 The auditor shall thereupon examine the claim, and the vouch-
 4 ers, certificates and evidence, if any, offered in support thereof,
 5 and for so much thereof as he or she finds to be justly due from
 6 the state, if payment thereof is authorized by law, and if there
 7 is an appropriation not exhausted or expired out of which it is
 8 properly payable, the auditor shall issue his or her warrant on

* Clerk's Note: This section was also amended by SB 428 (Chapter 286), which passed prior to this act.

9 the treasurer, specifying to whom and on what account the
10 money mentioned therein is to be paid, and to what appropria-
11 tion it is to be charged. The auditor shall present to the treasurer
12 daily reports on the number of warrants issued, the amounts of
13 the warrants and the dates on the warrants for the purpose of
14 effectuating the investment policy of the investment manage-
15 ment board. On the presentation of the warrant to the treasurer,
16 the treasurer shall ascertain whether there are sufficient funds
17 in the treasury to pay that warrant, and if he or she finds it to be
18 so, he or she shall in that case, but not otherwise, endorse his or
19 her check upon the warrant, directed to some depository, which
20 check shall be payable to the order of the person who is to
21 receive the money therein specified. If the check is not pre-
22 sented for payment within six months after it is drawn, it shall
23 then be the duty of the treasurer to credit it to the depository on
24 which it was drawn, to credit the unclaimed property fund
25 pursuant to the provisions of article eight, chapter thirty-six of
26 this code, and immediately notify the auditor to make corre-
27 sponding entries on the auditor's books. No state depository
28 may pay a check unless it is presented within six months after
29 it is drawn and every check shall bear upon its face the words,
30 "Void, unless presented for payment within six months." Any
31 information or records maintained by the treasurer concerning
32 any check which has not been presented for payment within six
33 months of the date of issuance may only be disclosed to the
34 state agency specified on the check, or to the payee, his or her
35 personal representative, next of kin or attorney-at-law and is
36 otherwise confidential and exempt from disclosure under the
37 provisions of article one, chapter twenty-nine-b of this code. All
38 claims required by law to be allowed by any court, and payable
39 out of the state treasury, shall have the seal of the court allow-
40 ing or authorizing the payment of the claim affixed by the clerk
41 of the court to his or her certificate of its allowance. No claim
42 may be audited and paid by the auditor unless the seal of the
43 court is thereto attached as aforesaid. No tax or fee may be
44 charged by the clerk for affixing his or her seal to the certifi-
45 cate, referred to in this section. The treasurer shall propose rules
46 in accordance with the provisions of article three, chapter
47 twenty-nine-a of this code governing the procedure for such
48 payments from the treasury.

§12-3-1a. Payment by deposit in bank account.

1 The auditor may issue his warrant on the treasurer to pay
2 any person claiming to receive money from the treasury by
3 deposit to the person's account in any bank or other financial
4 institution by electronic funds transfer, if the person furnishes
5 authorization of the method of payment. The auditor shall
6 prescribe the form of the authorization. If the authorization is
7 in written form, it shall be sent to the auditor for review and
8 approval and then forwarded in electronic form to the treasurer.
9 If the authorization is in electronic form, it shall be sent to both
10 the auditor and the treasurer. The auditor must review and
11 approve the authorization. This section shall not be construed
12 to require the auditor to utilize the method of payment autho-
13 rized by this section. An authorization furnished pursuant to this
14 section may be revoked by written notice furnished to the
15 auditor and then forwarded by the auditor in electronic form to
16 the treasurer or by electronic notice furnished to both the
17 auditor and the treasurer. Upon execution of the authorization
18 and its receipt by the office of the auditor, the warrant shall be
19 created in the manner specified on the authorization and
20 forwarded to the treasurer for further disposition to the desig-
21 nated bank or other financial institution specified on the
22 electronic warrant: *Provided*, That after the first day of July,
23 two thousand two, the state auditor shall cease issuing paper
24 warrants except for income tax refunds. After that date all
25 warrants, except for income tax refunds, shall be issued by
26 electronic funds transfer: *Provided, however*, That the auditor,
27 in his or her discretion, may issue paper warrants on an emer-
28 gency basis: *Provided further*, That the treasurer and the auditor
29 may contract with any bank or financial institution for the
30 processing of electronic authorizations.

§12-3-1b. Voluntary direct deposits by auditor of salaries of employees to banks or other financial institutions.

1 Any officer or employee of the state of West Virginia may
2 authorize the direct deposit of his or her net wages to his or her
3 account in any bank or other financial institution by electronic
4 funds transfer. Direct deposit authorizations shall comply with

5 the requirements of section one-a of this article. Upon approval
6 of an authorization, the auditor shall issue the warrant in the
7 manner specified on the authorization and forward the warrant
8 to the treasurer for further disposition to the designated bank or
9 other financial institution on or before the day or days the
10 officer or employee is due his or her net wages. Direct deposit
11 authorizations may be revoked at any time thirty days prior to
12 the date on which the direct deposit is regularly made and on a
13 form to be provided by the auditor: *Provided*, That on and after
14 the first day of July, two thousand two, at the option of the
15 auditor, all wages shall be deposited directly into the employ-
16 ees' account at any bank or financial institution designated by
17 the employee via electronic funds transfer or, if the employee
18 does not have a bank account, through the West Virginia check
19 card program in accordance with section four, article three-a of
20 this chapter.

ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.

§12-3A-1. Legislative purpose and findings.

§12-3A-2. Definitions.

§12-3A-3. Financial electronic commerce.

§12-3A-4. Payment by the West Virginia Check Card.

§12-3A-5. Limited establishment and use of point of sale terminals, etc., for special purposes and circumstances relating to certain public assistance payments.

§12-3A-6. Receipting of electronic commerce purchases.

§12-3A-1. Legislative purpose and findings.

1 The Legislature finds that state government should facilitate
2 and promote electronic commerce, particularly in the electronic
3 receipting and disbursing of state funds. As many individuals
4 receiving recurring state funds do not have bank accounts for
5 the purpose of receiving direct deposits, and as the state desires
6 that all payments be made electronically by the year two
7 thousand two, it is the intent of the Legislature to provide a
8 mechanism for all payees to receive payments by electronic
9 funds transfers through direct deposit or through state issued
10 debit cards. Further, as usage of electronic commerce grows,
11 state spending units need the ability to accept payments
12 electronically. To meet these goals, the Legislature seeks to

13 ensure proper management oversight and accountability are
14 maintained.

§12-3A-2. Definitions.

1 (a) "Electronic" means electrical, digital, magnetic,
2 wireless, optical, electromagnetic, biometric, or any other
3 technology that is similar to these technologies.

4 (b) "Electronic commerce" means using electronic tech-
5 niques for accomplishing business transactions, including
6 electronic mail or messaging, electronic bulletin board, internet
7 technology, electronic funds transfers, electronic data inter-
8 change (EDI) techniques, and any other related electronic
9 technologies.

10 (c) "Security procedure" means a methodology or proce-
11 dure for the purpose of:

12 (1) Preventing access by unauthorized parties;

13 (2) Verifying that an electronic record or electronic
14 signature is that of a specific party or created by a specific
15 electronic point of origin; or

16 (3) Detecting error or alteration in the communication,
17 content, or storage of an electronic record since a specific point
18 in time.

19 (d) "WEB commerce" means electronic commerce on the
20 internet.

§12-3A-3. Financial electronic commerce.

1 The state auditor and the treasurer shall implement elec-
2 tronic commerce capabilities for each of their offices to
3 facilitate the performance of their duties under this code. The
4 state auditor and the state treasurer shall competitively bid the
5 selection of vendors needed to provide the necessary banking,
6 investment and related services for their offices, and the
7 provisions of article one-b, chapter five, and articles three and
8 seven, chapter five-a of this code shall not apply, unless
9 requested by the state auditor or state treasurer.

10 A record or an authentication used by the auditor or the
11 treasurer may not be denied legal effect solely on the ground
12 that it is in electronic form.

13 The head of each spending unit is responsible for adopting
14 and implementing security procedures to ensure adequate
15 integrity, security, confidentiality, and auditability of the
16 business transactions of his or her spending unit when utilizing
17 electronic commerce.

§12-3A-4. Payment by the West Virginia Check Card.

1 The state auditor may establish a state debit card known as
2 the "West Virginia Check Card" for recipients of employee
3 payroll or of benefits or entitlement programs processed by the
4 auditor who are considered unbanked and who do not possess
5 a federally insured depository institution account. The state
6 auditor shall use every reasonable effort to make a federally
7 insured depository account available to a recipient, and to
8 encourage all recipients to obtain a federally insured depository
9 account. Prior to issuing the West Virginia check card, the state
10 auditor shall first make a determination that a recipient has
11 shown good cause that an alternative method to direct deposit
12 is necessary. The state auditor and the state treasurer shall
13 jointly issue a request for proposals in accordance with section
14 three of this article to aid the auditor in the administration of the
15 program and to aid the treasurer in the establishment of state
16 owned bank accounts and accommodate accessible locations for
17 use of the West Virginia check card. In carrying out the
18 purposes of this article, the state auditor and state treasurer shall
19 not compete with banks or other federally insured financial
20 institutions, or for profit.

§12-3A-5. Limited establishment and use of point of sale terminals, etc., for special purposes and circumstances relating to certain public assistance payments.

1 (a) The state treasurer shall have authority to contract with
2 banking institutions and other entities to establish point of sale
3 terminals ("POS terminals"), as defined in section twelve-b,
4 article eight, chapter thirty-one-a of this code, that accept the

5 West Virginia check card and the cards issued by state spending
6 units to recipients of state or federal funds, food or other
7 benefits. If other entities decline to provide the POS terminals
8 in a manner that meets the requirements of this section, the
9 treasurer is authorized to establish, own and operate POS
10 terminals. The treasurer may place the POS terminals and
11 associated equipment at any location within this state where he
12 or she or the department of health and human resources
13 determines the equipment is needed to provide reasonable
14 access to users of the cards. The POS terminals authorized
15 pursuant to this section may be used to provide any amount of
16 cash payment or allowable purchase of retail items or other
17 benefits as determined by the state treasurer, pursuant to state
18 law and rules and, where necessary, in cooperation with any
19 appropriate federal agencies.

20 (b) POS terminals established pursuant to this section may
21 be jointly owned and operated with private sector financial
22 institutions and may be established for the sole purpose of
23 providing access to electronically transmitted government
24 benefits or payments. However, if the state treasurer establishes
25 POS terminals, they shall be made available for use by the
26 general public and the retailer shall reimburse the state for each
27 transaction as per an agreement entered into at the time the POS
28 terminals are established.

29 (c) Any retailer, agency or other person providing cash
30 withdrawal services for state administered electronic cards from
31 its own funds through POS terminals established pursuant to
32 this section are limited to charging a fee for the service in the
33 amount of the higher of one dollar or one percent of the amount
34 of cash withdrawn.

35 (d) There is hereby created in the state treasury a separate
36 special revenue account, which shall be an interest bearing
37 account, to be known as the "Point of Sale Terminals Collection
38 Account". The account shall contain any funds received from
39 transactions on POS terminals installed by the state treasurer
40 and any other funds authorized by the Legislature. Moneys in
41 the account shall be used by the treasurer to pay the fees and

42 costs associated with the POS terminals and related equipment,
43 and for such other purposes as determined by the Legislature.

44 (e) In carrying out the purposes of this article, the treasurer
45 shall not compete with private sector providers of POS termi-
46 nals, banks or other financial institutions, or for profit. If a
47 private sector provider, bank or other financial institution
48 certifies to the treasurer that it can provide POS terminals to
49 meet the requirements contained within this article, the trea-
50 surer shall not establish or maintain equipment in the locations
51 identified in the certification. Nothing in this article shall
52 authorize the treasurer to establish or operate automatic teller
53 machines.

§12-3A-6. Receipting of electronic commerce purchases.

1 The treasurer may establish a system for acceptance of
2 credit card and other payment methods for electronic commerce
3 purchases from spending units. Each spending unit utilizing
4 WEB commerce, electronic commerce or other method that
5 offers products or services for sale shall utilize the treasurer's
6 system for acceptance of payments.

CHAPTER 31A. BANKS AND BANKING.

**ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL
REVIEW; UNLAWFUL ACTS; PENALTIES.**

**§31A-8-12b. Installation and operation of customer bank commu-
nication terminals permitted.**

1 (a) Any banking institution as defined in section two, article
2 one of this chapter, individually or jointly with one or more
3 other banking institutions or other federally insured financial
4 institutions having their principal offices in this state, or any
5 combination thereof, may upon ten days prior written notice
6 filed with the commissioner, install, operate and engage in
7 banking business by means of one or more customer bank
8 communication terminals. Any banking institution which
9 installs and operates a customer bank communication terminal:

10 (1) Shall make such customer bank communication
11 terminal available for use by other banking institutions; and

12 (2) May make such customer bank communication terminal
13 available for use by other federally insured financial institu-
14 tions, all in accordance with regulations promulgated by the
15 commissioner. Such customer bank communication terminals
16 shall not be considered to be branch banks or branch offices,
17 agencies or places of business or off-premises walk-in or drive-
18 in banking facilities; nor shall the operation of such customer
19 bank communication terminals to communicate with and permit
20 financial transactions to be carried out through a nonexclusive
21 access interchange system be considered to make any banking
22 institution which is part of such a nonexclusive access inter-
23 change system to have illegal branch banks or branch offices,
24 agencies or places of business or off-premises walk-in or drive-
25 in banking facilities.

26 (b) Notwithstanding the provisions of subdivision (1),
27 subsection (a) of this section, a customer bank communication
28 terminal located on the premises of the principal office or
29 branch bank of a banking institution or on the premises of an
30 authorized off-premises facility need not be made available for
31 use by any other banking institution or its customers.

32 (c) For purposes of this section, "customer bank communi-
33 cation terminal" means any electronic device or machine
34 owned, leased, or operated by a bank, together with all associ-
35 ated equipment, structures and systems, including, without
36 limitation, point of sale terminals, through or by means of
37 which a customer and a banking institution may engage in any
38 banking transactions, whether transmitted to the banking
39 institution instantaneously or otherwise, including, without
40 limitation, the receipt of deposits of every kind, the receipt and
41 dispensing of cash, requests to withdraw money from an
42 account or pursuant to a previously authorized line of credit,
43 receiving payments payable at the bank or otherwise transmit-
44 ting instructions to receive, transfer or pay funds for a cus-
45 tomer's benefit. Personal computers, telephones and associated
46 equipment which enable a bank customer to conduct banking
47 transactions at their home or office through links to their bank's
48 computer or telephone network, do not constitute a "customer
49 bank communication terminal" under this section. All transac-

50 tions initiated through a customer bank communication terminal
51 shall be subject to verification by the banking institution.

52 (d) No person, other than: (1) A banking institution
53 authorized to engage in the banking business in this state; or (2)
54 a credit union authorized to conduct business in this state, may
55 operate any automatic teller machine ("ATM") or automatic
56 loan machine ("ALM") located in this state: *Provided*, That
57 ATM terminals of out-of-state banks not having branches in
58 this state shall be allowed to operate to the same extent as a
59 West Virginia bank if a national bank from that state not having
60 branches in West Virginia could do so through a federal
61 preemption of state law.

62 (e) For the purposes of this section, "point of sale terminal"
63 means a customer bank communication terminal used for the
64 primary purpose of either transferring funds to or from one or
65 more deposit accounts in a banking institution or segregating
66 funds in one or more deposit accounts in a banking institution
67 for future transfer, or both, in order to execute transactions
68 between a person and his or her customers incident to sales,
69 including, without limitation, devices and machines which may
70 be used to implement and facilitate check guaranty and check
71 authorization programs.

72 (f) Nothing in this section prevents point of sale terminals
73 and associated equipment from being owned, leased or operated
74 by nonbanking entities: *Provided*, That such persons may not
75 engage in the business of banking by using point of sale
76 devices. The use of a point of sale terminal to enable a customer
77 or other person to withdraw and obtain cash of more than fifty
78 dollars in excess of the sales transaction purchase amount, will
79 be presumed to constitute engaging in the business of banking:
80 *Provided, however*, That cash withdrawals through a point of
81 sale terminal in excess of fifty dollars shall not constitute
82 engaging in the business of banking if the sales transaction is
83 made with the use of a West Virginia check card, as provided
84 in article three-a, chapter twelve of this code, or with an
85 electronic benefits transfer or other card issued by state
86 spending units to transmit payments of food benefits, temporary

87 assistance to needy families, or other assistance, benefit or
88 entitlement programs mandated or offered by federal or state
89 government: *Provided further*, That any retailer, agency or
90 person providing cash withdrawals with a West Virginia check
91 card or an electronic benefits transfer card through a POS
92 terminal is limited to charging a fee for the services in the
93 amount of the higher of one dollar or one percent of the amount
94 of cash withdrawn.

95 (g) Except for customer bank communication terminals
96 located on the premises of the principal office or a branch bank
97 of the banking institution or on the premises of an authorized
98 off-premises walk-in or drive-in banking facility, a customer
99 bank communication terminal shall be unattended or attended
100 by persons not employed by any banking institution utilizing
101 the terminal: *Provided*, That:

102 (1) Employees of the banking institution may be present at
103 such terminal not located on the premises of an authorized off-
104 premises facility solely for the purposes of installing, maintain-
105 ing, repairing and servicing same; and

106 (2) A banking institution may provide an employee to
107 instruct and assist customers in the operation thereof: *Provided*,
108 That such employee shall not engage in any other banking
109 activity.

110 (h) The commissioner shall prescribe by regulation the
111 procedures and standards regarding the installation and opera-
112 tion of customer bank communication terminals, including,
113 without limitation, the procedure for the sharing thereof.

CHAPTER 224

(Com. Sub. for H. B. 2453 — By Mr. Speaker, Mr. Kias, and Delegate Trump)
[By Request of the Executive]

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal articles eighteen and eighteen-a, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three, article one, chapter twenty-four of said code; and to amend said code by adding thereto a new chapter, designated chapter twenty-four-d, all relating to the public service commission; continuing the public service commission; delegating to the public service commission the responsibilities formerly held by the West Virginia cable television advisory board and the regulation of cable television thereby; repealing and substantially enacting the provisions of the cable television systems act and tenant's right to cable service act; requiring cable franchises; establishing duties of the public service commission; describing the application process; establishing standards for cable service; establishing penalties; restricting franchise transfer; requiring rate filings; establishing certain requirements for operation; establishing a complaint process; giving the public service commission the authority to establish rules and regulations; preserving the current method of taxation; establishing tenants rights to cable service; establishing a right of entry by a cable operator; requiring a notice of installation of cable service by a cable operator; and establishing procedures for determining just compensation for a landlord.

Be it enacted by the Legislature of West Virginia:

That articles eighteen and eighteen-a, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, are hereby repealed; that section three, article one, chapter twenty-four of said code be amended and reenacted; and that said code is amended by adding thereto a new chapter, designated chapter twenty-four-d, all to read as follows:

Chapter

24. Public Service Commission.

24D. Cable Television.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 1. GENERAL PROVISIONS.

***§24-1-3. Commission continued; membership; chairman; compensation.**

* **Clerk's Note:** This section was also amended by SB 359 (Chapter 258), which passed prior to this act.

1 (a) The public service commission of West Virginia,
2 heretofore established, is continued and directed as provided by
3 this chapter, chapter twenty-four-a, chapter twenty-four-b and
4 chapter twenty-four-d of this code. After having conducted a
5 performance audit through its joint committee on government
6 operations, pursuant to section nine, article ten, chapter four of
7 this code, the Legislature hereby finds and declares that the
8 public service commission should be continued and reestab-
9 lished. Accordingly, notwithstanding the provisions of section
10 five, article ten, chapter four of this code, the public service
11 commission shall continue to exist until the first day of July,
12 two thousand one. The public service commission may sue and
13 be sued by that name. The public service commission shall
14 consist of three members who shall be appointed by the
15 governor with the advice and consent of the Senate. The
16 commissioners shall be citizens and residents of this state and
17 at least one of them shall be duly licensed to practice law in
18 West Virginia, with not less than ten years' actual work
19 experience in the legal profession as a member of a state bar.
20 No more than two of the commissioners shall be members of
21 the same political party. Each commissioner shall, before
22 entering upon the duties of his or her office, take and subscribe
23 to the oath provided by section five, article IV of the constitu-
24 tion of this state. The oath shall be filed in the office of the
25 secretary of state. The governor shall designate one of the
26 commissioners to serve as chairman at the governor's will and
27 pleasure. The chairman shall be the chief administrative officer
28 of the commission. The governor may remove any commis-
29 sioner only for incompetency, neglect of duty, gross immoral-
30 ity, malfeasance in office or violation of subsection (c) of this
31 section.

32 (b) The unexpired terms of members of the public service
33 commission at the time this subsection becomes effective are
34 continued. Upon expiration of the terms, appointments are for
35 terms of six years, except that an appointment to fill a vacancy
36 is for the unexpired term only. The commissioners whose terms
37 are terminated by the provisions of this subsection are eligible
38 for reappointment.

39 (c) No person while in the employ of, or holding any
40 official relation to, any public utility subject to the provisions
41 of this chapter, or holding any stocks or bonds of a public utility
42 subject to the provisions of this chapter, or who is pecuniarily
43 interested in a public utility subject to the provisions of this
44 chapter, may serve as a member of the commission or as an
45 employee of the commission. Nor may any commissioner be a
46 candidate for or hold public office, or be a member of any
47 political committee, while acting as a commissioner; nor may
48 any commissioner or employee of the commission receive any
49 pass, free transportation or other thing of value, either directly
50 or indirectly, from any public utility or motor carrier subject to
51 the provisions of this chapter. In case any of the commissioners
52 becomes a candidate for any public office or a member of any
53 political committee, the governor shall remove him or her from
54 office and shall appoint a new commissioner to fill the vacancy
55 created.

56 (d) The salaries of members of the public service commis-
57 sion and the manner in which they are paid established by the
58 prior enactment of this section are continued. Effective the first
59 day of July, one thousand nine hundred ninety-six, and in light
60 of the assignment of new, substantial additional duties embrac-
61 ing new areas and fields of activity under certain legislative
62 enactments, each commissioner shall receive an annual salary
63 of sixty-five thousand dollars to be paid in monthly installments
64 from the special funds in the amounts that follow:

65 (1) From the public service commission fund collected
66 under the provisions of section six, article three of this chapter,
67 fifty-two thousand dollars;

68 (2) From the public service commission motor carrier fund
69 collected under the provisions of section six, article six, chapter
70 twenty-four-a of this code, ten thousand eight hundred fifty
71 dollars; and

72 (3) From the public service commission gas pipeline safety
73 fund collected under the provisions of section three, article five,
74 chapter twenty-four-b of this code, two thousand one hundred
75 fifty dollars.

76 In addition to this salary provided for all commissioners,
77 the chairman of the commission shall receive five thousand
78 dollars per annum to be paid in monthly installments from the
79 public service commission fund collected under the provisions
80 of section six, article three of this chapter on and after the first
81 day of July, one thousand nine hundred ninety-six.

CHAPTER 24D. CABLE TELEVISION.

Article

1. Cable Television Systems Act.
2. Tenants' Rights to Cable Services.

ARTICLE 1. CABLE TELEVISION SYSTEMS ACT.

- §24D-1-1. Legislative findings.
- §24D-1-2. Definitions.
- §24D-1-3. Cable franchise required; franchising authority.
- §24D-1-4. Existing cable franchises.
- §24D-1-5. Duties of the public service commission.
- §24D-1-6. Application or proposal for cable franchise; fee; certain requirements.
- §24D-1-7. Cable franchise application or proposal procedure; public hearing; notice.
- §24D-1-8. Issuance of cable franchise authority; criteria; content.
- §24D-1-9. Cable system installation, construction, operation, removal, general provisions.
- §24D-1-10. Revocation, alteration, or suspension of cable franchise; penalties.
- §24D-1-11. Renewal of cable franchise.
- §24D-1-12. Transfer of cable franchise.
- §24D-1-13. Rates; filing with public service commission; approval.
- §24D-1-14. Requirement for adequate service; terms and conditions of service.
- §24D-1-15. Procedures for restoring interrupted service and improving substandard service.
- §24D-1-16. Credit or refund for interrupted service.
- §24D-1-17. Office operating requirements; office hours.
- §24D-1-18. Notice to subscribers regarding quality of service.
- §24D-1-19. Recording of subscriber complaints.
- §24D-1-20. Franchise document clearinghouse.
- §24D-1-21. Rights of individuals.
- §24D-1-22. Complaints; violations; penalties.
- §24D-1-23. Other duties of commission; suit to enforce chapter.
- §24D-1-24. Annual reports.
- §24D-1-25. Annual fees; effect of application and filing fees on franchise fees.
- §24D-1-26. Cable television industry not regulated as a utility.
- §24D-1-27. Current method of taxation preserved.

§24D-1-1. Legislative findings.

1 The Legislature finds that television is an important source
2 of information and entertainment affecting the welfare and
3 economy of the state, and that cable television services have
4 become widespread, often providing the only access to quality
5 television signals in many areas of the state. The Legislature
6 finds that it is in the public interest to establish uniform
7 standards within the state of West Virginia for the issuance,
8 renewal and transfer of cable television franchises; to establish
9 uniform standards for the provision of cable service; to estab-
10 lish uniform procedures for the investigation and resolution of
11 complaints concerning cable service; and to establish just,
12 reasonable and nondiscriminatory rates and charges for the
13 provision of cable service to the extent that the service is not
14 subject to effective competition. The purpose of the article is to
15 promote such goals by all available means not in conflict with
16 federal law, rules or regulations.

§24D-1-2. Definitions.

1 As used in this chapter:

2 (1) "Applicant" means a person who initiates an application
3 or proposal.

4 (2) "Application" means an unsolicited filing for a cable
5 franchise.

6 (3) "Basic cable service" means any service tier which
7 includes the retransmission of local television broadcast signals.

8 (4) "Cable franchise" or "franchise" means a nonexclusive
9 initial authorization or renewal thereof issued pursuant to this
10 chapter, whether the authorization is designated as a franchise,
11 permit, order, contract, agreement or otherwise, which autho-
12 rizes the construction or operation of a cable system.

13 (5) "Cable operator" means any person or group of persons
14 (A) who provides cable service over a cable system and directly
15 or through one or more affiliates owns a significant interest in
16 the cable system or (B) who otherwise controls or is responsible
17 for, through any arrangement, the management and operation of
18 a cable system.

19 (6) "Cable service" means (A) the one-way transmission to
20 subscribers of video programming or other programming
21 service and (B) subscriber interaction, if any, which is required
22 for the selection of video programming or other programming
23 service.

24 (7) "Cable system" means any facility within this state
25 consisting of a set of closed transmission paths and associated
26 signal generation, reception and control equipment that is
27 designed to provide cable service which includes video pro-
28 gramming and which is provided to multiple subscribers within
29 a community, but does not include: (A) A facility that serves
30 only to retransmit the television signals of one or more televi-
31 sion broadcast stations; (B) a facility that serves only subscri-
32 bers in one or more multiple unit dwellings under common
33 ownership, control or management, unless that facility or
34 facilities uses any public right-of-way; or (C) a facility of a
35 public utility subject, in whole or in part, to the provisions of
36 chapter twenty-four of this code, except to the extent that those
37 facilities provide video programming directly to subscribers.

38 (8) "Commission" or "Public Service Commission" means
39 the public service commission of West Virginia.

40 (9) "County commission" means the commissioners
41 composing the county commission in pursuance of section nine,
42 article IX of the constitution of this state within whose jurisdic-
43 tion there exists a cable system or where such cable system is
44 hereafter constructed, operated, acquired or extended.

45 (10) "Facility" includes all real property, antennas, poles,
46 supporting structures, wires, cables, conduits, amplifiers,
47 instruments, appliances, fixtures and other personal property
48 used by a cable operator in providing service to its subscribers.

49 (11) "Franchising authority" means a municipality, a
50 county commission or the public service commission empow-
51 ered by federal, state or local law to grant a cable franchise.

52 (12) "Institution of higher education" means an academic
53 college or university accredited by the north central association
54 of colleges and schools.

55 (13) "Municipality" means any municipal corporation duly
56 chartered in the state of West Virginia within whose jurisdiction
57 there exists a cable system or where such cable system is
58 hereafter constructed, operated, acquired or extended.

59 (14) "Other programming service" means information that
60 a cable operator makes available to all subscribers generally.

61 (15) "Person" means an individual, partnership, associa-
62 tion, joint stock company, trust, corporation or governmental
63 agency.

64 (16) "Proposal" means a filing solicited by the franchising
65 authority for a cable franchise.

66 (17) "Public, educational or governmental access facilities"
67 means (A) channel capacity designated for public, educational
68 or governmental uses and (B) facilities and equipment for the
69 use of that channel capacity.

70 (18) "Public place" includes any property, building,
71 structure or water to which the public has a right of access and
72 use.

73 (19) "School" means an academic and noncollege type
74 regular or special education institution of learning established
75 and maintained by the department of education and the arts or
76 licensed and supervised by that department.

77 (20) "Service area" means that geographic area for which
78 a cable operator has been issued a cable franchise.

79 (21) "Video programming" means programming provided
80 by, or generally considered comparable to programming
81 provided by, a television broadcast station.

§24D-1-3. Cable franchise required; franchising authority.

1 (a) No person may construct, operate or acquire a cable
2 system, or extend an existing cable system outside its desig-
3 nated service area, without first obtaining a cable franchise
4 from a franchising authority as provided in this chapter.

5 (b) Any person operating a cable system on the effective

6 date of this chapter without a franchise shall, within sixty days
7 of the effective date of this chapter, notify the commission in
8 writing setting forth: (1) The name, business address and
9 telephone number of the cable operator; (2) the principals and
10 ultimate beneficial owners of the cable system or systems; (3)
11 the geographic location and service area of any cable system
12 operated by such person; (4) the number of subscribers within
13 the cable system or systems; and (5) if applicable, the date on
14 which and the franchising authority with which, a formal
15 application for a franchise was filed.

16 (c) The commission shall, upon receipt of such information,
17 determine the appropriate franchising authority or authorities
18 for the purposes of the consideration of the issuance of a
19 franchise to such cable operator or operators and shall notify the
20 appropriate franchising authority or authorities and any such
21 cable system operator of the franchise application procedures
22 to be followed by the respective parties. Any such cable
23 operator, that has not previously applied for a franchise with the
24 appropriate franchising authority, shall, within sixty days of
25 receipt of such notice from the commission, make formal
26 application to the appropriate franchising authority or authori-
27 ties for a franchise in accordance with the provisions of this
28 article.

29 (d) The franchising authority shall be the municipality in
30 which a cable system is to be constructed, operated, acquired or
31 extended, or if there be no such municipality or if the munici-
32 pality so elects not to act as a franchising authority, then the
33 franchising authority shall be the county commission of the
34 county in which such cable system is to be constructed,
35 operated, acquired or extended: *Provided*, That nothing herein
36 shall prohibit any county commission of a county in which a
37 municipality acting as a franchising authority is located from
38 also acting as a franchising authority for any cable system to be
39 constructed, operated, acquired or extended within the jurisdic-
40 tion of such county commission, nor prohibit any county
41 commission of a county acquiring the franchise authority from
42 a municipality from electing to transfer such authority to the
43 commission.

44 (e) If a county commission elects not to act as the franchise
45 authority, the commission shall become the franchising
46 authority. A county commission acting as a franchising
47 authority for unincorporated areas of the county may elect
48 separately to transfer to the commission any franchise authority
49 acquired from a municipality. If any municipality or county
50 commission so elects not to be the franchising authority, the
51 mayor or president of the county commission shall certify such
52 delegation in writing to the commission. Such election shall be
53 promptly made upon written request of the commission or the
54 cable operator.

§24D-1-4. Existing cable franchises.

1 (a) The provisions of any cable franchise in effect on the
2 effective date of this chapter shall remain in effect, subject to
3 the express provisions of this article, and for no longer than the
4 then current remaining term of the franchise as such franchise
5 existed on the effective date.

6 (b) For purposes of subsection (a) of this section and other
7 provisions of this article, a cable franchise shall be considered
8 in effect on the effective date of this article if such franchise
9 was granted on or before such effective date.

§24D-1-5. Duties of the public service commission.

1 In addition to its other duties, the public service commis-
2 sion shall:

3 (a) To the extent permitted by, and not contrary to applica-
4 ble federal law, rules and regulations:

5 (1) Prescribe standards for procedures and practices which
6 franchising authorities shall follow in considering the issuance
7 of cable franchises, which standards shall provide for the forms
8 of applications and proposals, the filing of all franchise applica-
9 tions, proposals and related documents as public records, with
10 reasonable notice to the public that such records are open to
11 inspection and examination during reasonable business hours;
12 the holding of a public hearing, upon reasonable notice to the
13 public, at which the applications or proposals shall be examined

14 and members of the public and interested parties are afforded
15 a reasonable opportunity to express their views thereon; the
16 rendition of a written report by the franchising authority made
17 to the public, setting forth the reasons for its decision in
18 awarding or not awarding the franchise; and such other proce-
19 dural standards governing the issuance of cable franchises
20 mandated by the provisions of this article or as the commission
21 may otherwise deem necessary or appropriate to assure maxi-
22 mum public participation and competition and to protect the
23 public interest;

24 (2) Prescribe minimum standards for inclusion in fran-
25 chises, including maximum initial and renewal terms; minimum
26 channel capacity; provisions regarding public, educational or
27 governmental access facilities; a requirement that no such
28 franchise may be exclusive; standards necessary or appropriate
29 to protect the interests of viewers of free broadcast television
30 and the public generally, which prohibit or limit cable operators
31 from prohibiting or entering into agreements prohibiting the
32 sale or other transfer of rights for the simultaneous or subse-
33 quent transmission over free broadcast television; and such
34 other standards for inclusion in franchises as the commission
35 shall deem necessary or appropriate to protect the public
36 interest, including any provision regulating the rates for cable
37 services to the extent that the same is not in conflict with
38 federal law, rules or regulations;

39 (3) Prescribe standards by which a franchising authority
40 shall determine whether an applicant possesses (i) the technical
41 ability, (ii) the financial ability, (iii) the good character, and (iv)
42 other qualifications necessary to operate a cable system in the
43 public interest;

44 (4) Prescribe standards for the construction and operation
45 of cable systems, which standards shall be designed to promote
46 (i) safe, adequate and reliable service to subscribers, (ii) the
47 construction and operation of systems consistent with the most
48 advanced state of the art, (iii) a construction schedule providing
49 for maximum penetration as rapidly as possible within the
50 limitations of economic feasibility, (iv) the construction of

51 systems with the maximum practicable channel capacity,
52 facilities for local program origination, facilities to provide
53 service in areas conforming to various community interests,
54 facilities with the technical capacity for interconnection with
55 other systems within regions as established in the commission's
56 statewide plan and facilities capable of transmitting signals
57 from subscribers to the cable system or to other points, and (v)
58 the prompt handling of inquiries, complaints and requests for
59 repairs;

60 (5) Prescribe such standards for the prohibition or limitation
61 of concentration of control over mass media and communica-
62 tion companies and facilities and methods of enforcing such
63 standards, as the commission may determine to be necessary or
64 appropriate to protect the public interest: *Provided*, That
65 nothing contained herein shall be construed to authorize the
66 impairment of any existing rights of any mass media and
67 communication company or any subsidiary thereof;

68 (b) Provide advice and technical assistance to other
69 franchising authorities and community organizations in matters
70 relating to cable franchises and services;

71 (c) Establish minimum specifications for equipment,
72 service and safety of cable;

73 (d) Represent the interests of citizens of this state before the
74 federal communications commission and make available
75 information to the public on communications developments at
76 the federal level;

77 (e) Stimulate and encourage cooperative arrangements
78 among organizations, institutions, counties and municipalities
79 in the development of public, educational or governmental
80 access facilities;

81 (f) Maintain liaison with the communications industry and
82 other parties, both public and private, having an interest therein,
83 other states and political subdivisions of this state to promote
84 the rapid and harmonious development of cable services as set
85 forth in the legislative findings and intent of this article;

86 (g) Undertake such studies as may be necessary to meet the
87 responsibilities and objectives of this article; and

88 (h) Implement the provisions of this article in a manner
89 which is cognizant of the differing financial and administrative
90 capabilities of cable systems of different sizes.

**§24D-1-6. Application or proposal for cable franchise; fee; cer-
tain requirements.**

1 (a) No cable franchise shall be issued except upon written
2 application or proposal therefor to the franchising authority,
3 accompanied by a fee of two hundred fifty dollars.

4 (b) An application for issuance of a cable franchise shall be
5 made on a form prescribed by the commission. The application
6 shall set forth the facts as required by the commission to
7 determine whether a cable franchise should be issued, including
8 facts as to:

9 (1) The citizenship and character of the applicant;

10 (2) The financial, technical and other qualifications of the
11 applicant;

12 (3) The principals and ultimate beneficial owners of the
13 applicant;

14 (4) The public interest to be served by the requested
15 issuance of a cable franchise; and

16 (5) Any other matters deemed appropriate and necessary by
17 the commission including the proposed plans and schedule of
18 expenditures for or in support of the use of public, educational
19 and governmental access facilities.

20 (c) A proposal for issuance of a cable franchise shall be
21 accepted for filing only when made in response to the written
22 request of the franchising authority for the submission of
23 proposals.

**§24D-1-7. Cable franchise application or proposal procedure;
public hearing; notice.**

1 An application or proposal for a cable franchise shall be
2 processed as follows:

3 (1) After the application or proposal and required fee are
4 received by the franchising authority within a time frame
5 established by rule promulgated by the commission, the
6 franchising authority shall notify an applicant in writing of the
7 acceptance or nonacceptance for filing of an application or
8 proposal for issuance of a cable franchise required by this
9 chapter.

10 (2) After the issuance of a notice of acceptance for filing
11 and within a time frame established by rule promulgated by the
12 commission, the franchising authority shall hold a public
13 hearing on the application or proposal to afford interested
14 persons the opportunity to submit data, views or arguments,
15 orally or in writing. If the franchising authority is the commis-
16 sion, notice thereof shall be given to the city council and mayor
17 of any municipalities affected, the county commission of any
18 counties affected and to any telephone or other utility and cable
19 company in the county or counties in which the proposed
20 service area is located, and a representative of the governing
21 body of a municipality or county commission may appear at the
22 public hearing to represent the interests of the public which will
23 be served by the issuance of a cable franchise. The franchising
24 authority shall also cause notice of the application and hearing
25 to be published at least once in each of two successive weeks in
26 a newspaper of general circulation in the county or counties in
27 which the proposed service area is located. The last published
28 notice shall appear at least fifteen days prior to the date of the
29 hearing.

30 (3) After holding a public hearing, the franchising authority
31 shall approve the application or proposal, in whole or in part,
32 with or without conditions or modifications, or shall deny the
33 application or proposal, with reasons for denial sent in writing
34 to the applicant. Upon denial of the application or proposal, the
35 applicant may appeal such denial to the circuit court of the
36 county in which the franchise is to be located, which appeal
37 shall be filed and considered in accordance with the provisions
38 of section four, article five, chapter twenty-nine-a of this code.

39 (4) The provisions of this article supersede and replace all
40 other state requirements regarding the issuance, notification and
41 terms and conditions of a cable franchise.

§24D-1-8. Issuance of cable franchise authority; criteria; content.

1 (a) A franchising authority is exclusively empowered to
2 issue a cable franchise to construct or operate facilities for a
3 cable system upon the terms and conditions provided in this
4 article.

5 (b) The franchising authority, after a public hearing as
6 provided in this article, shall issue a cable franchise to the
7 applicant when the franchising authority is convinced that it is
8 in the public interest to do so. In determining whether a cable
9 franchise shall be issued, the franchising authority shall take
10 into consideration, among other things, any objections arising
11 from the public hearing, the content of the application or
12 proposal, the public need for the proposed service, the ability of
13 the applicant to offer safe, adequate and reliable service at a
14 reasonable cost to the subscribers, the suitability of the appli-
15 cant, the financial responsibility of the applicant, the technical
16 and operational ability of the applicant to perform efficiently
17 the service for which authority is requested, and any other
18 matters as the franchising authority considers appropriate in the
19 circumstances.

20 (c) In determining the area which is to be serviced by the
21 applicant, the franchising authority shall take into account the
22 geography and topography of the proposed service area, and the
23 present, planned and potential expansion in facilities or cable
24 services of the applicant's proposed cable system and any of the
25 applicant's existing cable systems.

26 (d) In issuing a cable franchise under this article, the
27 franchising authority is not restricted to approving or disap-
28 proving the application or proposal, but may issue it for only
29 partial exercise of the privilege sought or may attach to the
30 exercise of the right granted by the cable franchise terms,
31 limitations which the franchising authority considers the public
32 interest may require. The cable franchise shall be nonexclusive,

33 shall include a description of the service area in which the cable
34 system is to be constructed, extended or operated and the
35 approximate date on which the service is to commence and
36 shall authorize the cable operator to provide service for a term
37 of fifteen years.

**§24D-1-9. Cable system installation, construction, operation,
removal, general provisions.**

1 (a) A cable franchise shall be construed to authorize the
2 construction or operation of a cable system (i) over public
3 rights-of-way, and (ii) through easements, which are within the
4 area to be served by the cable system and which have been
5 dedicated for compatible uses.

6 (b) The technical specifications, general routes of the
7 distribution system and the schedule for construction of the
8 cable system are subject to the approval of the franchising
9 authority.

10 (c) In installing, operating and maintaining facilities, the
11 cable operator shall avoid all unnecessary damage and injury to
12 any trees, structures and improvements in and along the routes
13 authorized by the franchising authority.

14 (d) The cable operator shall indemnify and hold the state,
15 county and municipality harmless at all times from any and all
16 claims for injury and damage to persons or property, both real
17 and personal, caused by the installation, operation or mainte-
18 nance of its cable system, notwithstanding any negligence on
19 the part of the state, county and/or municipality, their employ-
20 ees or agents. Upon receipt of notice in writing from the state,
21 county and/or municipality, the cable operator shall, at its own
22 expense, defend any action or proceeding against the state,
23 county and/or municipality in which it is claimed that personal
24 injury or property damage was caused by activities of the cable
25 operator in the installation, operation or maintenance of its
26 cable system.

27 (e) The cable operator shall provide a cable drop and basic
28 cable service at no cost to any school or institution of higher
29 education within its service area if service is actually being

30 delivered within a reasonable distance from the school or
31 institution of higher education which may request service.

32 (f) The cable operator shall be required to designate at least
33 ten percent but not more than three of all of its channels for
34 public, educational or governmental use.

35 (g) Upon termination of the period of the cable permit or of
36 any renewal thereof, by passage of time or otherwise, the cable
37 operator shall remove its facilities from the highways and other
38 public places in, on, over, under or along which they are
39 installed if so ordered by the franchising authority and shall
40 restore the areas to their original or other acceptable condition
41 or otherwise dispose of its facilities. If removal is not com-
42 pleted within six months of the termination, any property not
43 removed shall be deemed to have been abandoned and the cable
44 operator shall be liable for the cost of its removal.

45 (h) The use of public highways and other public places shall
46 be subject to:

47 (1) All applicable state statutes, municipal ordinances and
48 all applicable rules and orders of the commission governing the
49 construction, maintenance and removal of overhead and
50 underground facilities of public utilities;

51 (2) For county highways, all applicable rules adopted by the
52 governing body of the county in which the county highways are
53 situated; and

54 (3) For state or federal-aid highways, all public welfare
55 rules adopted by the secretary of the department of transporta-
56 tion.

57 (i) In the use of easements dedicated for compatible uses,
58 the cable operator shall ensure:

59 (1) That the safety, functioning and appearance of the
60 property and the convenience and safety of other persons is not
61 adversely affected by the installation or construction of facili-
62 ties necessary for a cable system;

63 (2) That the cost of the installation, construction, operation
64 or removal of facilities is borne by the cable operator or
65 subscribers, or a combination of both; and

66 (3) That the owner of the property is justly compensated by
67 the cable operator for any damages caused by the installation,
68 construction, operation or removal of facilities by the cable
69 operator.

70 (4) An "easement dedicated for compatible uses" is a public
71 or private easement for electric, gas, telephone or other utility
72 transmission.

§24D-1-10. Revocation, alteration, or suspension of cable franchise; penalties.

1 (a) Any cable franchise issued in accordance with the
2 provisions of this chapter may be revoked, altered or suspended
3 by the franchising authority upon the recommendation of the
4 commission to a municipality or county acting as a franchising
5 authority or after a hearing before the franchising authority, for
6 the following reasons:

7 (1) For making material false or misleading statements in,
8 or for material omissions from, any application or proposal or
9 other filing made with the franchising authority;

10 (2) For repeated failure to maintain signal quality under the
11 standards prescribed by the commission;

12 (3) For any sale, lease, assignment or other transfer of its
13 cable franchise without consent of the franchising authority;

14 (4) Except when commercially impracticable, for unreason-
15 able delay in construction or operation or for unreasonable
16 withholding of the extension of cable service to any person in
17 a service area;

18 (5) For material violation of the terms of its cable franchise;

19 (6) For failure to substantially comply with this chapter or
20 any rules, regulations or orders prescribed by the commission;

21 (7) For substantial violation of its filed schedule of terms
22 and conditions of service; and

23 (8) For engaging in any unfair or deceptive act or practice.

24 (b) In lieu of, or in addition to, the relief provided by
25 subsection (a) hereof, the franchising authority may fine a cable
26 operator, for each violation under the provisions of this section,
27 in an amount not less than fifty dollars nor more than five
28 thousand dollars for each violation. Each day's continuance of
29 a violation may be treated as a separate violation pursuant to
30 rules and regulations adopted by the commission. Any penalty
31 assessed under this section shall be in addition to any other
32 costs, expenses or payments for which the cable operator is
33 responsible under other provisions of this chapter.

§24D-1-11. Renewal of cable franchise.

1 (a) Any cable franchise issued pursuant to this chapter may
2 be renewed by the franchising authority upon approval of a
3 cable operator's application or proposal therefor and in accor-
4 dance with the provisions of 47 U.S.C. §546 as the same is in
5 effect on the effective date of this chapter. The form of the
6 application or proposal shall be prescribed by the commission.
7 The application or proposal fee shall be the same fee prescribed
8 for franchise applications. The periods of renewal shall be not
9 less than five nor more than twenty years each. The commission
10 shall require of the applicant full disclosure, including the
11 proposed plans and schedule of expenditures for or in support
12 of the use of public, educational or governmental access
13 facilities. Except as otherwise provided in this section, the
14 franchising authority shall have exclusive authority regarding
15 the renewal of a cable franchise.

16 (b) For cable franchises for which a proposal or application
17 for renewal has been submitted by the cable operator to the
18 franchising authority prior to expiration of the cable franchise
19 and which application or proposal the franchising authority has
20 neither approved nor denied, the cable franchise, at the cable
21 operator's election, shall continue upon the same terms and
22 conditions until such time as the franchising authority either
23 approves or denies the application or proposal for renewal.

§24D-1-12. Transfer of cable franchise.

1 (a) No cable system and no cable franchise, including any
2 system without a franchise and any franchise in existence on the
3 effective date of this chapter, may be assigned, sold, or trans-
4 ferred, including a transfer of control of any cable system,
5 whether by change in ownership or otherwise, except upon
6 written application to and approval of the appropriate franchis-
7 ing authority or authorities. For purposes of this section
8 "transfer of control" means a transfer of the majority interest,
9 either directly or indirectly, in the entity holding the cable
10 franchise. The form of the application for transfer shall be
11 prescribed by the commission.

12 (b) Notice provisions may be prescribed by the commission
13 for encumbrances creating potential transfers.

14 (c) The procedure for consideration of any transfer under
15 the provisions of this section shall conform, as nearly as
16 possible, to the procedures prescribed in sections six and seven
17 of this article for the consideration of issuing cable franchises,
18 including the application fee therefor.

19 (d) Except as otherwise provided in this section, the
20 franchising authority shall have exclusive authority regarding
21 the approval of transfers of cable franchises.

**§24D-1-13. Rates; filing with public service commission; ap-
approval.**

1 (a) The commission shall require each cable operator to file
2 a schedule of its rates of service on a form and with the notice
3 that the commission may prescribe. The schedule shall be filed
4 with the annual report referenced in section twenty-four of this
5 article.

6 (b) To the extent permitted by federal law, the commission
7 shall regulate rates to ensure that they are just and reasonable
8 both to the public and to the cable operator and are not unduly
9 discriminatory.

10 (c) To the extent permitted by federal law, the commission
11 shall regulate charges other than those related to rates for the

- 12 provision of basic cable service to ensure that they are just and
13 reasonable and not unduly discriminatory.

§24D-1-14. Requirement for adequate service; terms and conditions of service.

1 (a) Every cable operator shall provide safe, adequate and
2 reliable service in accordance with applicable laws, rules,
3 franchise requirements and its filed schedule of terms and
4 conditions of service.

5 (b) The commission shall require each cable operator to
6 submit a schedule of all terms and conditions of service in the
7 form and with the notice that the commission may prescribe.
8 The schedule shall be submitted with the annual report refer-
9 enced in section twenty-four of this article.

10 (c) The commission shall ensure that the terms and condi-
11 tions upon which cable service is provided are fair both to the
12 public and to the cable operator, taking into account the
13 geographic, topographic and economic characteristics of the
14 service area and the economics of providing cable service to
15 subscribers in the service area.

§24D-1-15. Procedures for restoring interrupted service and improving substandard service.

1 (a) Each cable operator, for the purpose of restoring
2 interrupted service and improving substandard service, shall be
3 able to receive calls twenty-four hours a day, seven days a
4 week, and shall have one or more qualified persons as may be
5 necessary to repair the cable system, facilities and equipment
6 owned by the cable operator and located on a subscriber's
7 premises, including, but not limited to, cable receiving equip-
8 ment and directly associated equipment.

9 (b) Each cable operator shall restore interrupted service not
10 later than twenty-four hours after being notified by a subscriber
11 that service has been interrupted, unless (1) service cannot be
12 restored until another company repairs facilities owned by such
13 company and leased to, or required for the operation of, the
14 cable service, (2) the interruption was caused by an act of

15 nature, or (3) the cable operator is unable to restore service
16 within twenty-four hours due to extenuating circumstances. In
17 the event of such extenuating circumstances, the company shall
18 restore service as soon as feasible and then submit a written
19 notice to the commission indicating that service has been
20 restored and explaining the nature of the extenuating circum-
21 stances.

§24D-1-16. Credit or refund for interrupted service.

1 (a) If cable service to a subscriber is interrupted for more
2 than twenty-four continuous hours, such subscriber shall, upon
3 request, receive a credit or refund from the cable operator in an
4 amount that represents the proportionate share of such service
5 not received in a billing period, provided such interruption is
6 not caused by the subscriber.

7 (b) The commission may promulgate rules establishing a
8 viewing time reliability standard for cable operators and
9 requiring such companies to file with the commission informa-
10 tion on service interruptions not caused by subscribers.

§24D-1-17. Office operating requirements; office hours.

1 Each cable operator shall operate a business office in or
2 near its area of operation as approved by the franchise authority
3 or the commission that shall be open during normal business
4 hours, and each cable operator shall operate sufficient telephone
5 lines, including a toll-free number or any other free calling
6 option, as approved by the commission, staffed by a company
7 customer service representative during normal business hours.

§24D-1-18. Notice to subscribers regarding quality of service.

1 (a) Annually, every cable operator shall mail to each of its
2 subscribers a notice which:

3 (1) Informs subscribers how to communicate their views
4 and complaints to the cable operator and to the commission;

5 (2) States the responsibility of the commission to receive
6 and act on consumer complaints concerning matters other than
7 channel selection, programming and rates; and

8 (3) States the policy regarding the method by which
9 subscribers may request rebates or pro rata credit as described
10 in section sixteen of this article.

11 (b) The notice shall be in nontechnical language, under-
12 standable by the general public, and in a convenient format. On
13 or before the thirtieth day of January each year, the operator
14 shall certify to the franchising authority and the commission
15 that it has distributed the notice as provided in this section
16 during the previous calendar year as required by this section.

§24D-1-19. Recording of subscriber complaints.

1 (a) Every cable operator shall keep a record or log of all
2 complaints received regarding quality of service, rates, pro-
3 gramming, equipment malfunctions, billing procedure, em-
4 ployee relations with customers and similar matters as may be
5 prescribed by the commission. The records shall be maintained
6 for a period of two years.

7 (b) The record or log shall contain the following informa-
8 tion for each complaint received:

- 9 (1) Date, time, nature of complaint;
- 10 (2) Name, address, telephone number of complainant;
- 11 (3) Investigation of complaint; and
- 12 (4) Manner and time of resolution of complaint.

13 (c) Consistent with the subscriber privacy provisions
14 contained in 47 U.S.C. §551 as the same is in effect on the
15 effective date of this chapter, every cable operator shall make
16 the logs or records, or both, of such complaints available to any
17 authorized agent of the commission and the franchising
18 authority, upon request during normal business hours for on-site
19 review.

§24D-1-20. Franchise document clearinghouse.

1 (a) All cable operators holding an existing franchise on the
2 effective date of this article shall file a copy of the franchise
3 and any federal communications commission rulings or other

4 rulings affecting such franchises with the commission with the
5 annual report filed in one thousand nine hundred ninety-nine as
6 referenced in section twenty-four of this article.

7 (b) Within sixty days of the granting of an initial franchise,
8 a renewal franchise or a transferred franchise, the franchisee
9 shall file a copy of the franchise and any federal communica-
10 tions commission rulings or other rulings affecting such
11 franchise with the commission and the franchising authority.
12 The commission and franchising authority shall maintain a file
13 of all franchise documents so recorded and make copies
14 available upon request for the cost of reproduction and mailing,
15 plus a reasonable administrative fee. The filing fee for initial,
16 renewal or transfer franchise documents is fifty dollars per
17 franchise, renewal or transfer of such franchise. In years in
18 which the filing of initial, renewal or transfer franchise docu-
19 ments is not required, the franchisee shall pay a fee of twenty-
20 five dollars for each franchise it holds.

21 (c) All such fees paid by any cable operator are franchise
22 fees with the intent and meaning of 47 U.S.C. §542 as the same
23 is in effect on the effective date of this chapter.

§24D-1-21. Rights of individuals.

1 A cable television system operator may not deny service,
2 deny access, or otherwise discriminate against subscribers,
3 channel users, or any other citizens on the basis of age, race,
4 religion, sex, physical handicap or country of natural origin.

§24D-1-22. Complaints; violations; penalties.

1 (a) Complaints of affected parties regarding the operation
2 of a cable system must be made in writing and filed with the
3 commission. The commission shall take up such complaints
4 with the cable operator complained against in an endeavor to
5 bring about satisfaction of the complaint without formal
6 hearing. The commission shall not consider any complaint
7 involving programming or any other issue that is preempted by
8 federal law.

9 (b) The commission shall resolve all complaints, if possible
10 informally. No form of informal complaint is prescribed, but

11 the writing must contain the essential elements of a complaint,
12 including the name and address and the complainant, the correct
13 name of the cable operator against which the complaint is
14 made, a clear and concise statement of the facts involved and a
15 request for affirmative relief.

16 (c) In the event that the commission cannot resolve the
17 complaint to the satisfaction of all parties, the complainant may
18 file a formal request to the commission and the complainant
19 and cable operator shall be afforded all rights including the
20 right of appeal as set forth in chapter twenty-four of this code.

21 (d) A cable operator may be subject to a fine or civil
22 penalty in accordance with subsection (e) hereof, upon a
23 determination by the commission or court that the cable
24 operator has violated any of the following:

25 (1) The material terms of its cable franchise; or

26 (2) Substantial compliance with this article or rules or
27 orders prescribed by the commission.

28 (e) The commission may fine or obtain civil penalties
29 against a cable operator for each violation of subsection (d) of
30 this section in an amount not less than one hundred dollars nor
31 more than one thousand dollars for each violation. Any penalty
32 assessed under this section is in addition to any other costs,
33 expenses or payments for which the cable operator is responsi-
34 ble under other provisions of this section.

35 (f) In addition to fines and civil penalties, the commission
36 may determine and declare and by order require for violation of
37 subsection (d) of this section the cable operator to comply with
38 the terms of its franchise or the requirements of this article or
39 orders prescribed by the commission.

40 (g) No cable operator may raise rates or retier and charge
41 subscribers without providing to his or her subscribers suffi-
42 cient advance written notice and opportunity to discontinue
43 service.

§24D-1-23. Other duties of commission; suit to enforce chapter.

1 (a) The commission has the power and jurisdiction to
2 supervise every cable operator within this state so far as may be
3 necessary to carry out the purposes of this chapter and to do all
4 things which are necessary or convenient in the exercise of this
5 power and jurisdiction.

6 (b) The commission may adopt rules and regulations as are
7 necessary to implement the provisions of this article. The rules
8 and regulations promulgated by the cable advisory board
9 pursuant to repealed article eighteen, chapter five, and in force
10 and in effect on the thirty-first day of December, one thousand
11 nine hundred ninety-seven, shall remain in effect and hereby
12 become the rules and regulations of the commission.

13 (c) The commission or the commission's designated
14 representatives may, from time to time, visit the places of
15 business and other premises and examine the records and
16 facilities of all cable operators to ascertain if all laws, rules,
17 regulations and cable franchise provisions have been complied
18 with, and may examine all officers, agents and employees of
19 cable operators and all other persons, under oath, and compel
20 the production of papers and the attendance of witnesses to
21 obtain the information necessary for administering this article.

22 (d) The commission may appoint or contract for assistants
23 and clerical, stenographic and other staff as may be necessary
24 for the proper administration and enforcement of this article.

25 (e) The commission or other aggrieved party may institute,
26 or intervene as a party in, any action in any court of law seeking
27 a mandamus, or injunctive or other relief to compel compliance
28 with this chapter, or any rule, regulation, or order adopted
29 hereunder, or to restrain or otherwise prevent or prohibit any
30 illegal or unauthorized conduct in connection with this article.

§24D-1-24. Annual reports.

1 Each cable operator shall file annually with the commission
2 reports of its financial, technical and operational condition and
3 its ownership. The reports shall be made in a form and on the
4 time schedule prescribed by the commission and shall be kept
5 on file open to the public.

§24D-1-25. Annual fees; effect of application and filing fees on franchise fees.

1 (a) Each cable operator shall pay to the commission an
2 annual fee in an amount of twelve cents per subscriber. Such
3 funds and all other funds to be paid to the commission under the
4 provisions of this chapter shall be deposited into a special fund
5 designated the "cable fund." Such fund shall be used for
6 purposes of administering the provisions of this article. To the
7 extent permitted by federal law, the commission may prohibit
8 cable operators from assessing subscribers for any contribution
9 toward the annual fee to be paid hereunder.

10 (b) Any filing fee required under the provisions of this
11 chapter and the annual fee to be paid to the commission under
12 the provisions of this section, together with any franchise fee
13 paid to any franchising authority, may not exceed the maximum
14 amount for any franchise fee as set forth in 47 U.S.C. §542 as
15 the same is in effect on the effective date of this article.

16 (c) The commission shall not impose on or collect from any
17 cable operator franchise fees when acting in the capacity as a
18 franchising authority, other than fees set out in subsection(a) of
19 this section and any filing fee required by this article.

§24D-1-26. Cable television industry not regulated as a utility.

1 No provision of this article may be construed to grant the
2 commission the power to regulate the cable television industry
3 as a utility.

§24D-1-27. Current method of taxation preserved.

1 Enactment of the amendments to section three, article one,
2 chapter twenty-four of this code and this article in the year one
3 thousand nine hundred ninety-nine shall in no way change how
4 cable television providers, cable television property and cable
5 television services are taxed by this state or its political
6 subdivisions after the effective date of this enactment. For tax
7 purposes, providers of cable television services who do not
8 provide telephone services over the same system are not
9 engaged in providing a public service and are neither a public

10 service business nor a public utility as those terms were used in
11 the tax laws of this state and its political subdivisions on the
12 thirty-first day of December, one thousand nine hundred ninety-
13 eight, and the cable television service furnished by them is not
14 a service subject to regulation by the public service commission
15 for purposes of exemption from tax under section eight, article
16 fifteen, chapter eleven of this code. This method of taxing
17 providers of cable television services, their property and
18 services shall remain in effect until affirmatively changed by
19 the Legislature.

ARTICLE 2. TENANTS' RIGHTS TO CABLE SERVICES.

§24D-2-1. Legislative findings.

§24D-2-2. Definitions.

§24D-2-3. Landlord-tenant relationship.

§24D-2-4. Prohibition.

§24D-2-5. Just compensation.

§24D-2-6. Right of entry.

§24D-2-7. Notice of installation.

§24D-2-8. Application for just compensation.

§24D-2-9. Existing cable services protected.

§24D-2-10. Exception.

§24D-2-1. Legislative findings.

1 The Legislature finds and declares as follows:

2 (a) Cable television has become an important medium of
3 public communication and entertainment.

4 (b) It is in the public interest to assure apartment residents
5 and other tenants of leased residential dwellings access to cable
6 television service of a quality and cost comparable to service
7 available to residents living in personally owned dwellings.

8 (c) It is in the public interest to afford apartment residents
9 and other tenants of leased residential dwellings the opportunity
10 to obtain cable television service of their choice and to prevent
11 landlords from treating such residents and tenants as a captive
12 market for the sale of television reception services selected or
13 provided by the landlord.

§24D-2-2. Definitions.

1 As used in this article:

2 (a) "Cable operator" means any person or group of persons:
3 (1) Who provides cable service over a cable system and directly
4 or through one or more affiliates owns a significant interest in
5 the cable system; or (2) who otherwise controls or is responsi-
6 ble for, through any arrangement, the management and opera-
7 tion of a cable system.

8 (b) "Cable service" or "cable television service" means: (1)
9 The one-way transmission to subscribers of video programming
10 or other programming service; and (2) subscriber interaction, if
11 any, which is required for the selection of video programming
12 or other programming service.

13 (c) "Cable system" means any facility within this state
14 consisting of a set of closed transmission paths and associated
15 signal generation, reception and control equipment that is
16 designed to provide cable service which includes video pro-
17 gramming and which is provided to multiple subscribers within
18 a community, but does not include: (1) A facility that serves
19 only to retransmit the television signals of one or more televi-
20 sion broadcast stations; (2) a facility that serves only subscrib-
21 ers in one or more multiple unit dwellings under common
22 ownership, control or management, unless that facility or
23 facilities uses any public right-of-way; or (3) a facility of a
24 public utility subject, in whole or in part, to the provisions of
25 chapter twenty-four of this code, except to the extent that those
26 facilities provide video programming directly to subscribers.

27 (d) "Cable television facilities" includes all antennas, poles,
28 supporting structures, wires, cables, conduits, amplifiers,
29 instruments, appliances, fixtures and other personal property
30 used by a cable operator in providing service to its subscribers.

31 (e) "Commission" or "Public Service Commission" shall
32 mean the public service commission of West Virginia.

33 (f) "Landlord" means a person owning, controlling, leasing,
34 operating or managing the multiple dwelling premises.

35 (g) "Multiple dwelling premises" means any area occupied
36 by dwelling units, appurtenances thereto, grounds and facilities,
37 which dwelling units are intended or designed to be occupied or
38 leased for occupation, or actually occupied, as individual homes
39 or residences for three or more households. The term includes
40 mobile home parks.

41 (h) "Person" means an individual, partnership, associate,
42 joint stock company, trust, corporation or governmental agency.

43 (i) "Tenant" means a person occupying single or multiple
44 dwelling premises owned or controlled by a landlord but does
45 not include an inmate or any person incarcerated or housed
46 within any state institution.

§24D-2-3. Landlord-tenant relationship.

1 (a) A landlord may not:

2 (1) Interfere with the installation, maintenance, operation
3 or removal of cable television facilities upon his property or
4 multiple dwelling premises, except that a landlord may require:

5 (A) That the installation of cable television facilities
6 conform to such reasonable conditions as are necessary to
7 protect the safety, functioning and appearance of the multiple
8 dwelling premises and the convenience and well-being of other
9 tenants;

10 (B) That the cable operator or the tenant or a combination
11 thereof bear the entire cost of the installation or removal of such
12 facilities; and

13 (C) That the cable operator agrees to indemnify the landlord
14 for any damage caused by the installation, operation or removal
15 of such facilities;

16 (2) Demand or accept any payment from any tenant, in any
17 form, in exchange for permitting cable television service on or
18 within his property or multiple dwelling premises, or from any
19 cable operator in exchange therefor except as may be deter-
20 mined to be just compensation in accordance with this article;

21 (3) Discriminate in rental charges, or otherwise, between
22 tenants who receive cable television service and those who do
23 not.

24 (b) Provisions relating to cable television service or satellite
25 master antenna systems contained in rental agreements and
26 leases executed prior to the effective date of this article may be
27 enforced notwithstanding this section.

28 (c) A cable operator may not enter into any agreement with
29 the owners, lessees or persons controlling or managing the
30 multiple dwelling premises served by a cable television, or do
31 or permit any act, that would have the effect, directly or
32 indirectly, of diminishing or interfering with existing rights of
33 any tenant or other occupant of such building to use or avail
34 himself of master or individual antenna equipment.

35 (d) The cable operator shall retain ownership of all wiring
36 and equipment used in any installation or upgrade of a cable
37 system within any multiple dwelling premises.

§24D-2-4. Prohibition.

1 Except as provided in this article, no landlord may demand
2 or accept any payment from any cable operator in exchange for
3 permitting cable television service or facilities on or within the
4 landlord's property or multiple dwelling premises.

§24D-2-5. Just compensation.

1 Every landlord is entitled to a single payment of just
2 compensation for property taken by a cable operator for the
3 installation of cable television service or facilities. The amount
4 of just compensation, if not agreed between the landlord and
5 cable operator, shall be determined by the commission in
6 accordance with this article upon application by the landlord
7 pursuant to section eight of this article. A landlord is not
8 entitled to just compensation in the event of a rebuild, upgrade
9 or rewiring of cable television service or facilities by a cable
10 operator.

§24D-2-6. Right of entry.

1 A cable operator, upon receiving a request for service by a
2 tenant or landlord, has the right to enter property of the landlord
3 for the purpose of making surveys or other investigations
4 preparatory to the installation. Before such entry, the cable
5 operator shall serve notice upon the landlord and tenant, which
6 notice shall contain the date of the entry, the name and address
7 of the cable operator, the name and address of the landlord,
8 from whom the request for service was received, and a citation
9 to this act. The cable operator is liable to the landlord for any
10 damages caused by such entry but such damages shall not
11 duplicate damages paid by the cable operator pursuant to
12 section eight of this article.

§24D-2-7. Notice of installation.

1 (a) Every cable operator proposing to install cable televi-
2 sion service or facilities upon the property of a landlord shall
3 serve upon said landlord and tenant, or an authorized agent,
4 written notice of intent thereof at least fifteen days prior to the
5 commencement of such installation. Verbal notice to the tenant
6 shall be legally sufficient if the date and time of entry is
7 communicated to the tenant by either the landlord or cable
8 operator at least twenty-four hours prior to entry.

9 (b) The commission shall prescribe the procedure for
10 service of such notice, and the form and content of such notice,
11 which shall include, but need not be limited to:

- 12 (1) The name and address of the cable operator;
- 13 (2) The name and address of the landlord;
- 14 (3) The approximate date of the installation; and
- 15 (4) A citation to this act.

16 (c) Where the installation of cable service or facilities is not
17 effected pursuant to a notice served in accordance with this
18 section, for whatever reason including denial of entry by the
19 landlord, the cable operator may file with the board a petition,
20 verified by an authorized person from the cable operator, setting
21 forth:

- 22 (1) Proof of service of a notice of intent to install cable
23 television service upon the landlord;
- 24 (2) The specific location of the real property;
- 25 (3) The resident address of the landlord, if known;
- 26 (4) A description of the facilities and equipment to be
27 installed upon the property, including the type and method of
28 installation and the anticipated costs thereof;
- 29 (5) The name of the individual or officer responsible for the
30 actual installation;
- 31 (6) A statement that the cable operator shall indemnify the
32 landlord for any damage caused in connection with the installa-
33 tion, including proof of insurance or other evidence of ability to
34 indemnify the landlord;
- 35 (7) A statement that the installation shall be conducted
36 without prejudice to the rights of the landlord to just compensa-
37 tion in accordance with section eight of this article;
- 38 (8) A summary of efforts by the cable operator to effect
39 entry of the property for the installation; and
- 40 (9) A statement that the landlord is afforded the opportunity
41 to answer the petition within ten days from the receipt thereof,
42 which answer must be responsive to the petition and may set
43 forth any additional matter not contained in the petition.

44 If no answer is filed within the time permitted, the commis-
45 sion shall grant the petitioning cable operator an order of entry
46 and installation, which order constitutes a ruling that the
47 petitioning cable operator has complied with the requirements
48 of this article. If the landlord files a written answer to the
49 petition, the cable operator shall have ten days within which to
50 reply to the answer. The commission may grant or deny the
51 petition, schedule an administrative hearing on any factual
52 issues presented thereby or direct such other procedures as may
53 be consistent with the installation of cable television service or
54 facilities in accordance with this article. The only basis upon
55 which the commission may deny a petition by the cable

56 operator is that the cable operator has not complied with the
57 requirements of this article.

58 Within thirty days of the date of grant or denial of the
59 petition, or issuance of any other order by the commission
60 following a hearing or other procedure, the cable operator or
61 landlord may appeal such grant or denial or order of the
62 commission to the circuit court of Kanawha County. Any order
63 issued by the commission pursuant to this section may be
64 enforced by an action seeking injunctive or mandamus relief in
65 circuit court where the property is located.

§24D-2-8. Application for just compensation.

1 (a) If the landlord and cable operator have not reached
2 agreement on the amount of just compensation, a landlord may
3 file with the commission an application for just compensation
4 within four months following the service by the cable operator
5 of the notice described in section eight of this article, or within
6 four months following the completion of the installation of the
7 cable television facilities, whichever is later.

8 (b) An application for just compensation shall set forth
9 specific facts relevant to the determination of just compensa-
10 tion. Such facts should include, but need not be limited to, a
11 showing of:

12 (1) The location and amount of space occupied by the
13 installation;

14 (2) The previous use of such space;

15 (3) The value of the applicant's property before the
16 installation of cable television facilities and the value of the
17 applicant's property subsequent to the installation of cable
18 television facilities; and

19 (4) The method or methods used to determine such values.
20 The commission may, upon good cause shown, permit the filing
21 of supplemental information at any time prior to final determi-
22 nation by the commission.

23 (c) A copy of the application filed by the landlord for just
24 compensation shall be served upon the cable operator making
25 the installation and upon either the mayor or county commis-
26 sion of the municipality or county, respectively, in which the
27 real property is located when the municipality or county is the
28 franchise authority.

29 (d) Responses to the application, if any, shall be served on
30 all parties and on the commission within twenty days from the
31 service of the application.

32 (e)(1) The commission shall within sixty days of the receipt
33 of the application, make a preliminary finding of the amount of
34 just compensation for the installation of cable television
35 facilities.

36 (2) Either party may, within twenty days from the release
37 date of the preliminary finding by the commission setting the
38 amount of just compensation, file a written request for a
39 hearing. Upon timely receipt of such request, the commission
40 shall conduct a hearing on the issue of compensation.

41 (3) In determining just compensation, the commission may
42 consider evidence introduced including, but not limited to, the
43 following:

44 (A) Evidence that a landlord has a specific alternative use
45 for the space occupied or to be occupied by cable television
46 facilities, the loss of which will result in a monetary loss to the
47 owner;

48 (B) Evidence that installation of cable facilities upon such
49 multiple dwelling premises will otherwise substantially
50 interfere with the use and occupancy of such premises to the
51 extent which causes a decrease in the resale or rental value; or

52 (C) Evidence of increase in the value of the property
53 occurring by reason of the installation of the cable television
54 facilities.

55 (4) For purposes of this article, the commission shall
56 presume that a landlord has received just compensation from a
57 cable operator for the installation within a multiple dwelling

58 premises if the landlord receives compensation in the amount
59 of one dollar for each dwelling unit within the multiple dwell-
60 ing premises or one hundred dollars for the entire multiple
61 dwelling premises, whichever amount is more.

62 (5) If, after the filing of an application, the cable operator
63 and the applicant agree upon the amount of just compensation,
64 a hearing shall not be held on the issue.

65 (6) Within thirty days of the date of the notice of the
66 decision of the commission, either party may appeal the
67 decision of the commission in the circuit court of Kanawha
68 County regarding the amount awarded as compensation.

§24D-2-9. Existing cable services protected.

1 Cable services being provided to tenants on the effective
2 date of this article may not be prohibited or otherwise prevented
3 so long as the tenant continues to request such services.

§24D-2-10. Exception.

1 Notwithstanding any provision in this article to the con-
2 trary, a landlord and cable operator may by mutual agreement
3 establish the terms and conditions upon which cable television
4 facilities are to be installed within a multiple dwelling premises
5 without having to comply with the provisions of this article.

CHAPTER 225

(H. B. 2251 — By Delegate Warner)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four-b, article two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to scholarships for training division of highways personnel; providing for other training programs; increasing the number of scholarships and

amounts that may be awarded; eliminating the state treasurer from the process; and changing the credit received for service time with the division of highways.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-4b. Scholarships for training highway personnel; other training programs; notes for money advanced; payment or cancellation of notes.

1 The Legislature hereby declares that there is a wide and
2 continuing need for trained personnel in the division of high-
3 ways of this state and that the scholarships herein provided will
4 aid the division of highways in attracting and holding compe-
5 tent employees.

6 The commissioner of highways is empowered to enter into
7 contracts for training programs with state colleges, universities
8 and other training sources and to award scholarships to compe-
9 tent persons, whether presently employed by the division of
10 highways or not, for the purpose of enabling and encouraging
11 such persons to attend a college or university to pursue the
12 course of study as may be approved by the commissioner of
13 highways, but the number of persons holding such scholarships
14 at any one time shall not exceed fifteen. Each scholarship shall
15 carry a stipend in an amount fixed by the commissioner of
16 highways not in excess of twelve thousand dollars in the
17 aggregate. The necessary expenditures for the scholarships shall
18 be made from the funds available to the division of highways.
19 The recipient of a scholarship shall execute notes and shall
20 deliver said notes to the commissioner of highways. Each note
21 shall be in the amount of the sum received from the state road
22 fund and shall be payable on demand to the division of high-
23 ways. The commissioner of highways shall hold said notes and
24 if, for any reason, except death or physical or mental disability,
25 or being drafted into the armed services, the recipient of a

26 scholarship fails successfully to complete the course of study
27 for which the scholarship was granted or if after the completion
28 of the prescribed course of study does not continue or become
29 an employee of the division of highways, or ceases to be an
30 employee before all the notes have been paid or canceled, the
31 commissioner of highways shall make demand for payment of
32 all of the unpaid and uncanceled notes and shall promptly
33 enforce collection thereon and shall deposit the sums so
34 collected thereon in the state road fund. The commissioner of
35 highways is authorized to credit the oldest outstanding notes in
36 the sum of one thousand five hundred dollars every six months
37 that the recipient of the scholarship is employed by the division
38 of highways after completing the course of study for which the
39 scholarship was granted. The commissioner of highways shall
40 have the power and authority to make all necessary rules to
41 carry this section into effect.

CHAPTER 226

(Com. Sub. for H. B. 2254 — By Delegate Warner)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section five, article seventeen-a of said chapter; and to further amend said article by adding thereto two new sections, designated sections five-a and five-b, all relating to authorizing the commissioner of highways to fix and collect tolls for transit over authorized highway projects; pledging tolls as security for special obligation notes; uses and control of tolls; roads upon which tolls may be charged; and report to joint committee on government and finance.

Be it enacted by the Legislature of West Virginia:

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

Article

2A. West Virginia Commissioner of Highways.

17A. Construction Financing for Surface Transportation Improvements.

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-8. Powers, duties and responsibilities of commissioner.

1 In addition to all other duties, powers and responsibilities
2 given and assigned to the commissioner in this chapter, the
3 commissioner may:

4 (1) Exercise general supervision over the state road
5 program and the construction, reconstruction, repair and
6 maintenance of state roads and highways;

7 (2) Determine the various methods of road construction
8 best adapted to the various sections and areas of the state and
9 establish standards for the construction and maintenance of
10 roads and highways therein;

11 (3) Conduct investigations and experiments, hold hearings
12 and public meetings and attend and participate in meetings and
13 conferences within and without the state for purposes of
14 acquiring information, making findings and determining
15 courses of action and procedure relative to advancement and
16 improvement of the state road and highway system;

17 (4) Enter private lands to make inspections and surveys for
18 road and highway purposes;

19 (5) Acquire, in name of the department, by lease, grant,
20 right of eminent domain or other lawful means, all lands and
21 interests and rights in lands necessary and required for roads,
22 rights-of-way, cuts, fills, drains, storage for equipment and
23 materials, and road construction and maintenance in general;

24 (6) Procure photostatic copies of any or all public records
25 on file at the state capitol of Virginia which may be deemed
26 necessary or proper in ascertaining the location and legal status
27 of public road rights-of-way located or established in what is
28 now the state of West Virginia, which photostatic copies, when
29 certified by the commissioner, may be admitted in evidence, in
30 lieu of the original, in any of the courts of this state;

31 (7) Plan for and hold annually a school of good roads, of
32 not less than three or more than six days' duration, for instruc-
33 tion of his or her employees, which school shall be held in
34 conjunction with West Virginia University and may be held at
35 the university or at any other suitable place in the state;

36 (8) Negotiate and enter in reciprocal contracts and agree-
37 ments with proper authorities of other states and of the United
38 States relating to and regulating the use of roads and highways
39 with reference to weights and types of vehicles, registration of
40 vehicles and licensing of operators, military and emergency
41 movements of personnel and supplies and all other matters of
42 interstate or national interest;

43 (9) Classify and reclassify, locate and relocate, expressway,
44 trunkline, feeder and state local service roads, and designate by
45 number the routes within the state road system;

46 (10) Create, extend or establish, upon petition of any
47 interested party or parties or on the commissioner's own
48 initiative, any new road or highway as may be found necessary
49 and proper;

50 (11) Exercise jurisdiction, control, supervision and author-
51 ity over local roads, outside the state road system, to the extent
52 determined by him or her to be expedient and practicable;

53 (12) Discontinue, vacate and close any road or highway, or
54 any part thereof, the continuance and maintenance of which are
55 found unnecessary and improper, upon petition and hearing, or
56 upon investigation initiated by the commissioner;

57 (13) Close any state road while under construction or repair
58 and provide a temporary road during the time of such construc-
59 tion or repair;

- 60 (14) Adjust damages occasioned by construction, recon-
61 struction or repair of any state road or the establishment of any
62 temporary road;
- 63 (15) Establish and maintain a uniform system of road signs
64 and markers;
- 65 (16) Fix standard widths for road rights-of-way, bridges and
66 approaches thereto and fix and determine grades and elevations
67 therefor;
- 68 (17) Test and standardize materials used in road construc-
69 tion and maintenance, either by governmental testing and
70 standardization activities or through contract by private
71 agencies;
- 72 (18) Allocate the cost of retaining walls and drainage
73 projects, for the protection of a state road or its right-of-way, to
74 the cost of construction, reconstruction, improvement or
75 maintenance;
- 76 (19) Acquire, establish, construct, maintain and operate, in
77 the name of the department, roadside recreational areas along
78 and adjacent to state roads and highways;
- 79 (20) Exercise general supervision over the construction and
80 maintenance of airports and landing fields under the jurisdiction
81 of the West Virginia state aeronautics commission, of which the
82 commissioner is a member, and make a study and general plan
83 of a statewide system of airports and landing fields;
- 84 (21) Provide traffic engineering services to municipalities
85 of the state upon request of the governing body of any such
86 municipality and upon such terms as may be agreeably ar-
87 ranged;
- 88 (22) Institute complaints before the public service commis-
89 sion or any other appropriate governmental agency relating to
90 freight rates, car service and movement of road materials and
91 equipment;
- 92 (23) Invoke any appropriate legal or equitable remedies to
93 enforce his or her orders, to compel compliance with require-

94 ments of law and to protect and preserve the state road and
95 highway system or any part thereof;

96 (24) Make and promulgate rules and regulations for the
97 government and conduct of personnel, for the orderly and
98 efficient administration and supervision of the state road
99 program and for the effective and expeditious performance and
100 discharge of the duties and responsibilities placed upon him or
101 her by law;

102 (25) Delegate powers and duties to his or her appointees
103 and employees who shall act by and under his or her direction
104 and be responsible to him or her for their acts;

105 (26) Designate and define such construction and mainte-
106 nance districts within the state road system as may be found
107 expedient and practicable;

108 (27) Contract for the construction, improvement and
109 maintenance of the roads;

110 (28) Have authority to comply with provisions of present
111 and future federal aid statutes and regulations, including
112 execution of contracts or agreements with and cooperation in
113 programs of the United States government and any proper
114 department, bureau or agency thereof relating to plans, surveys,
115 construction, reconstruction, improvement and maintenance of
116 state roads and highways;

117 (29) Prepare budget estimates and requests;

118 (30) Establish a system of accounting covering and includ-
119 ing all fiscal and financial matters of the department;

120 (31) Have authority to establish and advance a right-of-way
121 acquisition revolving fund, a materials revolving fund and an
122 equipment revolving fund;

123 (32) Enter into contracts and agreements with and cooperate
124 in programs of counties, municipalities and other governmental
125 agencies and subdivisions of the state relating to plans, surveys,
126 construction, reconstruction, improvement, maintenance and
127 supervision of highways, roads, streets, and other travel ways

128 when and to the extent determined by the department to be
129 expedient and practical;

130 (33) Report, as provided by law, to the governor and the
131 Legislature;

132 (34) Purchase materials, supplies and equipment required
133 for the state road program and system;

134 (35) Dispose of all obsolete and unusable and surplus
135 supplies and materials, which cannot be used advantageously
136 and beneficially by the department in the state road program, by
137 transfer thereof to other governmental agencies and institutions
138 by exchange, trade or sale thereof;

139 (36) Investigate road conditions, official conduct of
140 department personnel and fiscal and financial affairs of the
141 department and hold hearings and make findings thereon or on
142 any other matters within the jurisdiction of the department;

143 (37) Establish road policies and administrative practices;

144 (38) Fix and revise from time to time tolls for transit over
145 highway projects constructed by the division of highways after
146 the first day of May, one thousand nine hundred ninety-nine,
147 that have been authorized by the provisions of section five-b,
148 article seventeen-a of this chapter; and

149 (39) Take actions necessary to alleviate such conditions as
150 the governor may declare to constitute an emergency, whether
151 or not the emergency condition affects areas normally under the
152 jurisdiction of the department of highways.

ARTICLE 17A. CONSTRUCTION FINANCING FOR SURFACE TRANSPORTATION IMPROVEMENTS.

§17-17A-5. Security for notes; trust agreements.

§17-17A-5a. Use of tolls for construction, maintenance, repair and operating costs; use of tolls to pay special obligation notes.

§17-17A-5b. Designation of class of toll roads.

§17-17A-5. Security for notes; trust agreements.

1 In connection with any issue of notes hereunder, the
2 commissioner may pledge or assign, as security for the payment

3 of the principal of or interest on such notes, any of the follow-
4 ing:

5 (a) Any amounts to be received from the United States of
6 America, or any agency or instrumentality thereof, as reim-
7 bursements of the costs incurred in connection with the surface
8 transportation improvements to be financed by such notes,
9 together with the rights and interests of the state with respect to
10 such reimbursement;

11 (b) Any amounts in the state road fund which may properly
12 be applied to the reimbursements of any such costs pursuant to
13 article three of this chapter;

14 (c) The proceeds of any such notes pending their use or of
15 notes which may be issued to renew or refund such notes;

16 (d) The proceeds of any insurance or letters of credit or
17 similar arrangements undertaken in connection with the
18 acquisition, construction or financing of such surface transpor-
19 tation improvements;

20 (e) The proceeds of any tolls, or portions of tolls, charged
21 and collected pursuant to the provisions of sections five-a and
22 five-b of this article that are designated by the commissioner as
23 security for the payment of the principal of or interest on notes
24 issued for the purposes described in section five-a of this
25 article; and

26 (f) Any other amounts specifically designated for the
27 purpose of paying any such costs, but only to the extent
28 appropriated by the Legislature and paid from general revenues
29 prior to such pledge or dedicated for such purpose by the
30 Legislature from proprietary revenues of the state.

31 Any such pledge or assignment shall be valid and binding
32 from the time it is made, and the lien of such pledge or assign-
33 ment shall be enforceable and need not be perfected by delivery
34 or any filing or further act. Such lien shall be valid against all
35 parties having claims of any kind in tort, contract or otherwise,
36 irrespective of whether such parties have notice of the lien of
37 such pledge or assignment.

38 The commissioner may enter into an agreement or agree-
39 ments with any trust company or with any bank having the
40 power of a trust company, either within or outside of the state,
41 as trustee for the holders of notes issued hereunder, setting forth
42 therein such duties of the state and of the commissioner in
43 respect of the acquisition and construction of surface transpor-
44 tation improvements, the conservation and application of all
45 moneys, the insurance of moneys on hand or on deposit, and the
46 rights and remedies of the trustee and the holders of the notes,
47 as may be agreed upon with the original purchasers of such
48 notes, and including therein provisions restricting the individual
49 right of action of holders as is customary in such trust agree-
50 ments to protect and enforce the rights and remedies of the
51 trustee and the holders. All expenses incurred in carrying out
52 such agreement may be treated as a part of the cost of construc-
53 tion of the surface transportation improvements affected by the
54 agreement.

**§17-17A-5a. Use of tolls for construction, maintenance, repair
and operating costs; use of tolls to pay special
obligation notes.**

1 For highway projects described in section five-b of this
2 article that are constructed after the first day of May, one
3 thousand nine hundred ninety-nine, the commissioner of
4 highways is hereby authorized to fix, revise, charge and collect
5 tolls for transit over the highway projects and the different parts
6 or sections thereof. The tolls shall be fixed and adjusted so that
7 the aggregate of tolls from the project or projects provide a fund
8 sufficient with other revenues, if any, to pay: (1) The cost of
9 constructing, maintaining, repairing and operating such project
10 or projects; and (2) the principal of and the interest on any notes
11 issued to finance the project or projects as the same shall
12 become due and payable, and to create reserves for such
13 purposes. The tolls shall not be subject to supervision or
14 regulation by any other commission, board, bureau, department
15 or agency of the state. The tolls, except such part thereof as may
16 be necessary to pay such cost of construction, maintenance,
17 repair and operation and to provide such reserves therefor as
18 may be provided for in the notes or in the trust agreement

19 securing the same, shall be set aside at such regular intervals as
20 may be provided in the notes or the trust agreement in a sinking
21 fund which is hereby pledged to, and charged with the payment
22 of: (1) The interest upon such notes as such interest shall fall
23 due; (2) the principal of such notes as the same shall fall due;
24 (3) the necessary charges of paying agents for paying principal
25 and interest; and (4) the redemption price or the purchase price
26 of notes retired by accelerated payment or purchase as therein
27 provided. The use and disposition of moneys to the credit of
28 such sinking fund shall be subject to the provisions of the notes
29 or of the trust agreement. The moneys in the sinking fund, less
30 such reserve as may be provided for in the notes or trust
31 agreement, if not used within a reasonable time for the purchase
32 of notes for cancellation as above provided, shall be applied to
33 the redemption of the notes at the redemption price then
34 applicable.

§17-17A-5b. Designation of class of toll roads.

1 (a) The commissioner may fix and charge tolls on any road
2 which meets the following criteria:

3 (1) The road is a fully controlled access, four lane highway;
4 and

5 (2) The road extends from the border of West Virginia and
6 is a continuation of a fully controlled access four lane highway
7 in the adjacent state; and

8 (3) The adjacent state charges tolls on its portion of the
9 highway immediately adjacent to West Virginia; and

10 (4) The West Virginia portion of the highway connects to
11 another fully controlled access four lane highway in West
12 Virginia.

13 (b) Not less than one hundred eighty days prior to the final
14 decision of the commissioner to charge tolls on any road
15 described in subsection (a) of this section, the commissioner
16 shall provide a report to the joint committee on government and
17 finance setting forth:

18 (1) The location and a description of the road;

19 (2) The provisions of any special obligation notes intended
20 by the commissioner to be secured, in whole or in part, by tolls
21 charged on the road and any related trust agreements;

22 (3) The anticipated amount of tolls to be charged and the
23 duration of time the commissioner expects tolls to be charged
24 on the road; and

25 (4) Such other information that may be required by the joint
26 committee on government and finance.

CHAPTER 227

(H. B. 2257 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the sale, exchange or lease of property by the division of highways; and clarifying that only property that was acquired for use, or used, as a highway is required to be offered to abutting landowners prior to sale.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-19. Sale, exchange, or lease of real property.

1 (a) The division of highways, subject to the provisions of
2 this section, may sell, exchange or lease real property, or any
3 interest or right in the property, held by the division of high-
4 ways. When the real property, or any interest or right in the
5 property, is being held for future road purposes, it may be
6 leased.

7 (b) This subsection applies to property held by the division,
8 including a right-of-way, that was not acquired for use, or used,
9 as a highway. When the real property, or any part of the
10 property, or any interest or right in the property, is considered
11 by the commissioner not necessary, or desirable for present or
12 presently foreseeable future division of highways purposes, it
13 may be exchanged for other real property, or any interest or
14 right in the property, considered by the commissioner to be
15 necessary or desirable for present or presently foreseeable
16 future division of highways purposes, or it may be sold. In
17 addition the division may exchange real property, or any part of
18 the property, or any interest or right in the property, even
19 though it may be necessary or desirable for present or presently
20 foreseeable future division of highways purposes, if the
21 exchange is made for other real property, or any interest or right
22 in the property, in close proximity to the property which the
23 commissioner considers of equal or superior useful value for
24 present or presently foreseeable future division of highways
25 purposes. In making exchanges the division may make allow-
26 ances for differences in the value of the properties being
27 exchanged and may move or pay the cost of moving buildings,
28 structures or appurtenances in connection with the exchange.

29 Every sale of real property, or any interest or right in the
30 property or structure on the property, shall be at public auction
31 in the county in which the real property, or the greater part of
32 the property, is located, and the division shall advertise, by
33 publication or otherwise, the time, place, and terms of the sale
34 at least twenty days prior to the sale. The property shall be sold
35 in the manner which will bring the highest and best price. The
36 division may reject any or all bids received at the sale. The
37 commissioner shall keep a record, open to public inspection,
38 indicating the manner in which the real property, or any interest
39 or right in the property or structure on the property, was
40 publicly advertised for sale, the highest bid received and from
41 whom, the person to whom sold, and payment received. The
42 record shall be kept for a period of five years and may be
43 destroyed after five years.

44 (c)(1) This subsection applies to property held by the

45 division, including a right-of-way, that was acquired for use, or
46 used, as a highway. The commissioner may transfer, sell or
47 otherwise dispose of any right-of-way properties or any interest
48 or right in the property, owned by or to be acquired by the
49 division of highways which the commissioner in his or her sole
50 discretion determines are not necessary or desirable for present
51 or presently foreseeable future highway purpose by first
52 offering the property to the principal abutting landowners
53 without following the procedure for public auction provided in
54 subsection (b) of this section.

55 (2) The commissioner shall propose rules for legislative
56 approval in accordance with the provisions of article three,
57 chapter twenty-nine-a of this code governing and controlling
58 the making of any leases or sales pursuant to the provisions of
59 this subsection. The rules may provide for the giving of
60 preferential treatment in making leases to the persons from
61 whom the properties or rights or interests in the property were
62 acquired, or their heirs or assigns and shall also provide for
63 granting a right of first refusal to abutting landowners at fair
64 market value in the sale of any real estate or any interest or
65 right in the property, owned by the division of highways.

66 (3)(A) With respect to real property acquired subsequent to
67 the year one thousand nine hundred seventy-three for use as a
68 highway through voluntary real estate acquisition or exercise of
69 the right of eminent domain, which real estate the commis-
70 sioner has determined should be sold as not necessary for
71 highways purposes, the commissioner shall give preferential
72 treatment to an abutting landowner if it appears that:

73 (i) A principal abutting landowner is an individual from
74 whom the real estate was acquired or his or her surviving
75 spouse or descendant. In order to qualify for preferential
76 treatment, the surviving spouse or descendant need not be a
77 beneficiary of the individual. The terms used in this subdivision
78 are as defined in section one, article one, chapter forty-two of
79 this code; and

80 (ii) The primary use of the abutting property has not
81 substantially changed since the time of the acquisition.

82 (B) When the provisions of paragraph (A) of this subdivi-
83 sion are met, the commissioner shall offer the property for sale
84 to the principal abutting landowner at a cost equal to the
85 amount paid by the division of highways in acquiring the real
86 estate. If improvements on the property have been removed
87 since the time of the acquisition, the cost shall be reduced by an
88 amount attributable to the value of the improvements removed.
89 The cost may be adjusted to reflect interest at a rate equal to the
90 increase in the consumer price index for all urban consumers as
91 reported by the United States department of labor since the time
92 of disbursement of the funds.

93 (d) The commissioner may insert in any deed or convey-
94 ance, whether it involves an exchange, lease or sale, the
95 conditions as are in the public interest and have been approved
96 in advance by the governor.

97 (e) All moneys received from the exchange, sale, or lease
98 of real property, or any right or interest in the property, shall be
99 paid into the state treasury and credited to the state road fund.

100 (f) Notwithstanding the provisions of this section, property
101 may not be transferred, sold or otherwise disposed of unless the
102 commissioner finds that the right-of-way or other property has
103 no significant value to the state as a hiking trail and does not
104 serve as a link between two or more state owned properties.
105 This subsection does not apply to property that lies within six
106 hundred feet of any dwelling house.

CHAPTER 228

(H. B. 2359 — By Delegate Warner)

[Passed March 9, 1999; in effect July 1, 1999. Approved by the Governor.]

AN ACT to amend and reenact sections one and four, article three-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the type of funding

approved for constructing industrial road sites; providing for an increase in the amount of funding which may be allocated per county per fiscal year; and providing for surety in estimated amount to be expended by the division of highways.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3A. INDUSTRIAL ACCESS ROAD FUND.

§17-3A-1. Industrial access road fund created; construction guarantees by municipalities and counties.

§17-3A-4. Restrictions on use of fund.

§17-3A-1. Industrial access road fund created; construction guarantees by municipalities and counties.

1 (a) Any other provision of this code notwithstanding, there
2 is hereby continued in the state treasury the "industrial access
3 road fund", referred to in this article as "the fund". There shall
4 be deposited into the fund three fourths of one percent of all
5 state tax collections which are otherwise specifically dedicated
6 by the provisions of this code to the state road fund or the
7 percentage of those tax collections that will produce three
8 million dollars for each fiscal year. At the end of each fiscal
9 year, all unused moneys in the fund revert to the state road
10 fund.

11 (b) The moneys in the fund shall be expended by the
12 division of highways for constructing and maintaining indus-
13 trial access roads within counties and municipalities to indus-
14 trial sites on which manufacturing, distribution, processing or
15 other economic development activities, including publicly
16 owned airports, are already constructed or are under firm
17 contract to be constructed. In the event there is no industrial site
18 already constructed or for which the construction is under firm
19 contract, a county or municipality may guarantee to the division
20 of highways an acceptable surety or a device in an amount
21 equal to the estimated cost of the access road or that portion
22 provided by the division of highways, that an industrial site will

23 be constructed and if no industrial site acceptable to the
24 division of highways is constructed within the time limits of the
25 surety or device, the surety or device shall be forfeited.

§17-3A-4. Restrictions on use of fund.

1 (a) The fund may not be used for the adjustment of utilities
2 or for the construction of industrial access roads to schools,
3 hospitals, libraries, armories, shopping centers, apartment
4 buildings, government installations or similar facilities, whether
5 public or private. The fund may not be used to construct
6 industrial access roads on private property.

7 (b) Moneys from the fund may not be expended until the
8 governing body of the county or municipality certifies to the
9 division of highways that the industrial site is constructed and
10 operating or is under firm contract to be constructed or oper-
11 ated, or upon the presentation of an acceptable surety or device
12 in an amount equal to the estimated cost of the access road or
13 that portion provided by the division of highways in accordance
14 with section one of this article.

15 (c) Not more than four hundred thousand dollars of
16 unmatched moneys from the fund may be allocated for use in
17 any one county in any fiscal year. The maximum amount of
18 unmatched moneys which may be allocated from the fund is ten
19 percent of the fair market value of the designated industrial
20 establishment. The amount of unmatched funds allocated may
21 be supplemented with additional matched moneys from the
22 fund, in which case the matched moneys allocated from the
23 fund may not exceed one hundred fifty thousand dollars, to be
24 matched equally from sources other than the fund. The amount
25 of matched moneys which may be allocated from the fund over
26 and above the unmatched funds may not exceed five percent of
27 the fair market value of the designated industrial site.

28 (d) Funds may only be allocated to those items of construc-
29 tion and engineering which are essential to providing an
30 adequate facility to serve the anticipated traffic. Funds may not
31 be allocated for items such as storm sewers, curbs, gutters and
32 extra pavement width unless necessary to extend or connect an
33 existing access road.

CHAPTER 229

(H. B. 2140 — By Delegate Michael)

[Passed March 4, 1999; in effect ninety days from passage. Approved by the Governor]

AN ACT to amend and reenact section nineteen, article four, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to abolishing the requirement that when the commissioner is about to construct or improve any highway, he or she shall file a copy of the plans and notice of the work to be performed.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. STATE ROAD SYSTEM.

§17-4-19. Contracts for construction, materials, etc.; work by prison labor, etc.; bidding procedure.

1 All work of construction and reconstruction of state roads
2 and bridges, and the furnishing of all materials and supplies
3 therefor, and for the repair thereof shall be done and furnished
4 pursuant to contract except that the commissioner may not be
5 required to award any contract for work, which can be done
6 advantageously, economically and practicably by commission
7 forces or prison labor and by use of state road equipment, or for
8 materials and supplies, which are manufactured, processed or
9 assembled by the commissioner: *Provided*, That the commis-
10 sioner may not be required to award any contract for work,
11 materials or supplies for an amount less than three thousand
12 dollars. In all the work, the commissioner shall utilize state road
13 forces or prison labor and state road equipment and shall
14 manufacture, process and assemble all the materials and

15 supplies for the work whenever and wherever the commis-
16 sioner, in his or her discretion, finds work and services advanta-
17 geous, economical and practicable in the state road program.

18 If the work is to be done, or the materials therefor are to be
19 furnished by contract, the commissioner shall thereupon publish
20 the following described advertisement as a Class II legal
21 advertisement in compliance with the provisions of article
22 three, chapter fifty-nine of this code, and the publication area
23 for the publication shall be the county or municipality in which
24 the road lies. The advertisement shall also be published at least
25 once in at least one daily newspaper published in the city of
26 Charleston and in other journals or magazines as may to the
27 commissioner seem advisable. The advertisement shall solicit
28 sealed proposals for the construction or other improvement of
29 the road, and for the furnishing of materials therefor, accurately
30 describing the same, and stating the time and place for opening
31 the proposals and reserving the right to reject any and all
32 proposals: *Provided*, That whenever the estimated amount of
33 any contract for work or for materials or supplies is less than
34 three thousand dollars, the commissioner may not be required
35 to advertise the letting of the contract in newspapers as above
36 required, but may award the contract to the lowest responsible
37 bidder, when two or more sealed proposals or bids have been
38 received by him or her without the advertisement, but the
39 contract may not be so awarded unless the bid of the successful
40 bidder is three thousand dollars or less. The commissioner shall
41 have the power to prescribe proper prequalifications of contrac-
42 tors bidding on state road construction work. To all sealed
43 proposals there shall be attached the certified check of the
44 bidder or bidder's bond acceptable to the commissioner, in the
45 amount as the commissioner shall specify in the advertisement,
46 but not to exceed five percent of the aggregate amount of the
47 bid; but the amount shall never be less than five hundred
48 dollars. The proposals shall be publicly opened and read at the
49 time and place specified in the advertisement, and the contract
50 for the work, or for the supplies or materials required therefor
51 shall, if let, be awarded by the commissioner to the lowest
52 responsible bidder for the type of construction selected. In case

53 all bids be rejected, the commissioner may thereafter do the
54 work with commission forces or with prison labor, or may
55 readvertise in the same manner as before and let a contract for
56 the work pursuant thereto.

CHAPTER 230

(Com. Sub. for S. B. 420 — By Senators Snyder,
Unger, Anderson, Edgell, Kessler and Ball)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article four, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the duties of drivers involved in accidents; clarifying duty to remain at scene of accident and to render aid to an injured person; and increasing the criminal penalties for leaving the scene of an accident resulting in a person's death.

Be it enacted by the Legislature of West Virginia:

That section one, article four, 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 4. ACCIDENTS.

§17C-4-1. Accidents involving death or personal injuries.

1 (a) The driver of any vehicle involved in an accident
2 resulting in injury to or death of any person shall immediately
3 stop the vehicle at the scene of the accident or as close thereto
4 as possible but shall then forthwith return to and shall remain at
5 the scene of the accident until he or she has complied with the
6 requirements of section three of this article: *Provided*, That the
7 driver may leave the scene of the accident as may reasonably be
8 necessary for the purpose of rendering assistance to an injured
9 person as required by said section three. Every such stop shall
10 be made without obstructing traffic more than is necessary.

11 (b) Any person violating the provisions of subsection (a) of
12 this section after being involved in an accident resulting in the
13 death of any person is guilty of a felony and, upon conviction
14 thereof, shall be punished by confinement in a correctional
15 facility for not more than three years or fined not more than five
16 thousand dollars, or both.

17 (c) Any person violating the provisions of subsection (a) of
18 this section after being involved in an accident resulting in
19 physical injury to any person is guilty of a misdemeanor and,
20 upon conviction thereof, shall be punished by confinement in a
21 county or regional jail for not more than one year, or fined not
22 more than one thousand dollars, or both.

23 (d) The commissioner shall revoke the license or permit to
24 drive and any nonresident operating privilege of any person
25 convicted pursuant to the provisions of this section for a period
26 of one year.

CHAPTER 231

(Com. Sub. for S. B. 412 — By Senators Love, Schoonover and Fanning)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-three, relating to traffic regulations and laws of the road; providing for right-of-way for funeral processions; defining terms; establishing equipment requirements; and liability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. FUNERAL PROCESSIONS.

§17C-23-1. Definitions.

§17C-23-2. Funeral procession right-of-way; funeral escort vehicles; funeral lead vehicles.

§17C-23-3. Driving in procession.

§17C-23-4. Liability.

§17C-23-5. Equipment.

§17C-23-1. Definitions.

1 (a) "Funeral director" and "funeral establishment" have the
2 same meaning as set forth in section four, article six, chapter
3 thirty of this code.

4 (b) "Funeral procession" means two or more vehicles
5 accompanying the body of a deceased person, or traveling to the
6 church, chapel, cemetery or other location at which the funeral
7 service or final disposition is to be held, including a funeral
8 lead vehicle or a funeral escort vehicle.

9 (c) "Funeral lead vehicle" means any authorized law
10 enforcement or nonlaw-enforcement motor vehicle or a funeral
11 escort vehicle being used to lead and facilitate the movement of
12 a funeral procession. A funeral hearse may serve as a funeral
13 lead vehicle.

14 (d) "Funeral escort" means a person or entity that provides
15 escort services for funeral processions, including law-enforce-
16 ment personnel and agencies.

17 (e) "Funeral escort vehicle" means any motor vehicle that
18 escorts a funeral procession.

§17C-23-2. Funeral procession right-of-way; funeral escort vehicles; funeral lead vehicles.

1 (a) Regardless of any traffic control device or right-of-way
2 provisions prescribed by state or local ordinance, pedestrians
3 and operators of all vehicles, except as stated in subsection (c)
4 of this section, shall yield the right-of-way to any vehicle which
5 is part of a funeral procession being led by a funeral escort
6 vehicle or a funeral lead vehicle.

7 (b) When the funeral lead vehicle lawfully enters an
8 intersection, either by reason of a traffic control device or at the
9 direction of law-enforcement personnel, the remaining vehicles
10 in the funeral procession may follow through the intersection
11 regardless of any traffic control devices or right-of-way
12 provisions prescribed by state or local law.

13 (c) Funeral processions have the right-of-way at intersec-
14 tions regardless of traffic control devices subject to the follow-
15 ing conditions and exceptions:

16 (1) Operators of vehicles in a funeral procession shall yield
17 the right-of-way to an approaching emergency vehicle giving an
18 audible or visible signal;

19 (2) Operators of vehicles in a funeral procession shall yield
20 the right-of-way when directed to do so by a police officer; and

21 (3) Operators of vehicles in a funeral procession must
22 exercise due care when participating in a funeral procession.

§17C-23-3. Driving in procession.

1 (a) All vehicles comprising a funeral procession shall
2 follow the preceding vehicle in the funeral procession as closely
3 as is practical and safe.

4 (b) Any ordinance, law or rule stating that motor vehicles
5 shall be operated to allow sufficient space enabling any other
6 vehicle to enter and occupy such space without danger is not
7 applicable to vehicles in a funeral procession.

§17C-23-4. Liability.

1 Liability for any death, personal injury or property damage
2 suffered on or after the first day of July, one thousand nine
3 hundred ninety-nine, by any person in a funeral procession may
4 not be imposed upon a funeral director or funeral establishment
5 or their employees or agents unless the death, personal injury or
6 property damage is proximately caused by the negligent or
7 intentional act of a funeral director or funeral establishment or
8 their employees or agents.

§17C-23-5. Equipment.

- 1 All nonlaw-enforcement funeral escort vehicles and funeral
- 2 lead vehicles may be equipped with at least one lighted circula-
- 3 tion flashing lamp exhibiting an amber or purple light or lens.
- 4 Flashing amber or purple lights may be used when such
- 5 vehicles are used in a funeral procession.

CHAPTER 232

(Com. Sub. for H. B. 2871 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article eight-f, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend chapter fifteen of said code by adding thereto a new article, designated article twelve; to amend and reenact section seven, article five, chapter forty-eight; and to amend and reenact section two, article twelve, chapter sixty-two of said code, all relating to the registration of sex offenders; stating the intent and findings; applying the act retroactively and prospectively; requiring persons to register; requiring notification; providing a central registry; providing definitions; establishing a judicial process; providing information to the state police; establishing advisory board; requiring registration within ten days of change in address; providing duration of registration; distributing registration information; exempting freedom of information act disclosure; providing governmental immunity; providing duties of officials; establishing procedure for registrants moving out of state; establishing offense and penalties for failing to provide information and register; registering out-of-state offenders; establishing a verification process; providing eligibility for probation; and prohibiting name change.

Be it enacted by the Legislature of West Virginia:

That article eight-f, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that chapter fifteen of said code be amended by adding thereto a new article, designated article twelve; that section seven, article five, chapter forty-eight of said code be amended and reenacted; and that section two, article twelve, chapter sixty-two of said code be amended and reenacted, all to read as follows:

Chapter

15. Public Safety.

48. Public Safety.

62. Criminal Procedure.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 12. SEX OFFENDER REGISTRATION ACT.

§15-12-1. Short title.

§15-12-1a. Intent and findings.

§15-12-2. Registration.

§15-12-2a. Court determination of sexually violent predator.

§15-12-2b. Creation of sex offender registration advisory board.

§15-12-3. Change of address.

§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.

§15-12-6. Duties of institution officials.

§15-12-7. Information shall be released when person moves out of state.

§15-12-8. Failure to register; penalty.

§15-12-9. Registration of out-of-state offenders.

§15-12-10. Address verification.

§15-12-1. Short title.

- 1 This article may be cited as the "Sex Offender Registration
- 2 Act."

§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
14 pursuant to this chapter to allow members of the public to
15 adequately protect themselves and their children from these
16 persons.

§15-12-2. Registration.

1 (a) The provisions of this act apply both retroactively and
2 prospectively.

3 (b) Any person who has been convicted of a violation of the
4 following provisions of chapter sixty-one of this code shall
5 register as set forth in subsections (c) and (d) of this article, and
6 according to the internal management rules and regulations
7 promulgated by the superintendent under authority of section
8 twenty-five, article two, chapter fifteen of this code:

9 (1) Article eight-b;

10 (2) Article eight-c;

11 (3) Sections five and six, article eight-d;

12 (4) Section fourteen, article two;

13 (5) Sections six, seven, twelve and thirteen, article eight;

14 (6) A similar provision in another state, federal or military
15 jurisdiction for offenses listed above.

16 (i) Any person who has been convicted of an attempt to
17 commit any of the offenses set forth in this section shall also
18 register as set forth in this article.

19 (ii) Any person who has been convicted of a criminal
20 offense, which at the time of sentencing, was found by the
21 sentencing judge to have been sexually motivated, shall also
22 register as set forth in this article.

23 (c) Persons required to register under the provisions of this
24 act shall provide or cooperate in providing, at a minimum, the

25 following information when registering:

26 (1) The full name of the registrant;

27 (2) The address where the registrant shall reside;

28 (3) The registrant's social security number;

29 (4) A full face photograph of the registrant at the time of
30 registration;

31 (5) A brief description of the crime(s) for which the
32 registrant was convicted; and

33 (6) Fingerprints.

34 (d) On the date that any person convicted of any of the
35 crimes listed herein, including those persons continuing under
36 some post conviction supervisory status for crimes committed
37 prior to the date of this law, is released, is granted probation, is
38 granted a suspended sentence, is released on parole, probation,
39 home detention, work release or any other release from incar-
40 ceration, the commissioner of corrections, regional jail adminis-
41 trator or city or sheriff operating a jail which releases such
42 person, and any parole or probation officer who releases such
43 person or supervises such person following the release, shall
44 obtain all information required by this subsection prior to the
45 release of the person, inform the person of his or her duty to
46 register, and shall send written notice of the release of the
47 person to the state police within three days of receiving the
48 information. The notice shall include:

49 (1) The full name of the person;

50 (2) The address where the person shall reside;

51 (3) The person's social security number;

52 (4) A recent photograph of the person;

53 (5) A brief description of the crime for which the person
54 was convicted;

55 (6) Fingerprints; and

56 (7) For any person determined to be a sexually violent
57 predator, the notice shall also include:

58 (i) Identifying factors, including physical characteristics;

59 (ii) History of the offense; and

60 (iii) Documentation of any treatment received for the
61 mental abnormality or personality disorder.

62 (e) At the time the person is convicted of the crimes set
63 forth in subsection (a) of this section, the person shall sign in
64 open court, a statement acknowledging that he or she under-
65 stands the requirements imposed by this article. The court shall
66 inform the person so convicted of the requirements to register
67 imposed by this article and shall further satisfy itself by
68 interrogation of the defendant or his or her counsel that the
69 defendant has received notice of the provisions of this article
70 and that the defendant understands such provisions. Such
71 statement, when signed and witnessed, shall constitute prima
72 facie evidence that the person had knowledge of the require-
73 ments of this article.

74 (f) When a person required to register under this article is
75 released following incarceration, the commissioner of correc-
76 tions, the regional jail supervisor or the city or sheriff or any
77 other person supervising the operation of the place of confine-
78 ment shall, within three days, inform the state police of such
79 release and provide such further information as is required by
80 this article.

81 (g) The state police shall maintain a central registry of all
82 persons who register under this article and shall release
83 information only as provided in this article. The information
84 required to be made public by the state police by subdivision
85 (2), subsection (b), section five of this article shall be accessible
86 through the Internet.

87 (h) For the purpose of this article, "sexually violent
88 offense" means:

89 (1) Sexual assault in the first degree as set forth in section

90 three, article eight-b, chapter sixty-one of this code, or of a
91 similar provision in another state, federal or military jurisdic-
92 tion;

93 (2) Sexual assault in the second degree as set forth in
94 section four, article eight-b, chapter sixty-one of this code, or of
95 a similar provision in another state, federal or military jurisdic-
96 tion;

97 (3) Sexual assault of a spouse as set forth in section six,
98 article eight-b, chapter sixty-one of this code, or of a similar
99 provision in another state, federal or military jurisdiction;

100 (4) Sexual abuse in the first degree as set forth in section
101 seven, article eight-b, chapter sixty-one of this code, or of a
102 similar provision in another state, federal or military jurisdic-
103 tion.

104 (i) The term "sexually motivated" means that one of the
105 purposes for which a person committed the crime was for the
106 purpose of any person's sexual gratification.

107 (j) The term "sexually violent predator" means a person
108 who has been convicted of a sexually violent offense and who
109 suffers from a mental abnormality or personality disorder that
110 makes the person likely to engage in predatory sexually violent
111 offenses.

112 (k) The term "mental abnormality" means a congenital or
113 acquired condition of a person that affects the emotional or
114 volitional capacity of the person in a manner that predisposes
115 that person to the commission of criminal sexual acts to a
116 degree that makes the person a menace to the health and safety
117 of other persons.

118 (l) The term "predatory act" means an act directed at a
119 stranger or at a person with whom a relationship has been
120 established or promoted for the primary purpose of victimiza-
121 tion.

§15-12-2a. Court determination of sexually violent predator.

1 (a) The circuit court that has sentenced a person for having

2 committed a sexually violent offense shall make a determina-
3 tion whether:

4 (1) A person is a sexually violent predator; or

5 (2) A person is no longer a sexually violent predator.

6 (b) A hearing to make a determination as provided for in
7 subsection (a) of this section is a summary proceeding, triable
8 before the court without a jury.

9 (c) A proceeding seeking to establish that a person is a
10 sexually violent predator is initiated by the filing of a written
11 information by the prosecuting attorney. The information shall
12 describe the record of the judgment of the court on the person's
13 conviction of a sexually violent offense, and shall set forth a
14 short and plain statement of the prosecutor's claim that the
15 person suffers from a mental abnormality or personality
16 disorder that makes the person likely to engage in predatory
17 sexually violent offenses.

18 (d) A proceeding seeking to establish that a person is no
19 longer a sexually violent predator is initiated by the filing of a
20 petition by the person who has been determined to be a sexually
21 violent predator.

22 (e) Prior to making a determination pursuant to the provi-
23 sions of this section, the sentencing court may order a psychiat-
24 ric or other clinical examination and, after such examination,
25 may further order a period of observation in an appropriate
26 facility within this state designated by the court after consulta-
27 tion with the director of the division of health.

28 (f) Prior to making a determination pursuant to the provi-
29 sions of this section, the sentencing court shall request and
30 receive a report by the board established pursuant to section
31 two-b of this article. The report shall set forth the findings and
32 recommendation of the board on the issue of whether the person
33 is a sexually violent predator.

34 (g) At a hearing to determine whether a person is a sexually
35 violent predator, the person shall be present and shall have the

36 right to be represented by counsel and introduce evidence and
37 cross-examine witnesses. The offender shall have access to a
38 summary of the medical evidence to be presented by the state.
39 The offender shall have the right to an examination by an
40 independent expert of his choice and testimony from such
41 expert as a medical witness on his behalf. At the termination of
42 such hearing the court shall make a finding of fact upon a
43 preponderance of the evidence as to whether the person is a
44 sexually violent predator.

45 (h) If a person is determined by the circuit court to be a
46 sexually violent predator, the clerk of the court shall forward a
47 copy of the order to the state police in the manner promulgated
48 in accordance with the provisions of article three, chapter
49 twenty-nine-a of this code.

§15-12-2b. Creation of sex offender registration advisory board.

1 (a) There is hereby created within the department of
2 military affairs and public safety a sex offender registration
3 advisory board consisting of a minimum of five members
4 appointed by the secretary of the department of military affairs
5 and public safety. At least two of the members shall be experts
6 in the field of the behavior and treatment of sexual offenders,
7 and each shall be a physician, psychologist or social worker in
8 the employ of this state appointed by the secretary in consulta-
9 tion with the director of the division of health. The remaining
10 members shall be victims rights advocates and representatives
11 of law-enforcement agencies. Members of the board shall be
12 reimbursed their reasonable expenses pursuant to the rules
13 promulgated by the department of administration for the
14 reimbursement of expenses of state officials and employees and
15 shall receive no other compensation for their services. The
16 board shall utilize the staff of the division or office within the
17 department of military affairs and public safety designated by
18 the secretary thereof in carrying out its duties and responsibili-
19 ties as set forth in this article.

20 (b) The board shall assist the circuit courts of this state in
21 determining whether persons convicted of sexually violent

22 offenses are sexually violent predators.

§15-12-3. Change of address.

1 When any person required to register under this article
2 changes his or her residence or address, he or she shall, within
3 ten days, inform the West Virginia state police of his or her new
4 address in the manner prescribed by the superintendent of state
5 police in procedural rules promulgated in accordance with the
6 provisions of article 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, until:

4 (1) Ten years have elapsed since the person was released
5 from prison or jail, or ten years have elapsed since the person
6 was placed on probation, parole or supervised release. The ten
7 year registration period shall not be reduced by the sex of-
8 fender's release from probation, parole or supervised release; or

9 (2) For the life of that person if that person: (A) Has one or
10 more prior convictions for any qualifying offense referred to in
11 this article; or (B) has been convicted of a qualifying offense as
12 referred to in this article, and upon motion of the prosecuting
13 attorney, the court finds by clear and convincing evidence, that
14 the qualifying offense involved multiple victims or multiple
15 violations of the qualifying offense; or (C) has been convicted
16 of a sexually violent offense; or (D) has been determined to be
17 a sexually violent predator as defined above; or (E) has been
18 convicted of a qualifying offense as referred to in this article,
19 involving a minor.

20 (b) A person whose conviction is overturned for the offense
21 which required them to register under this article shall, upon
22 petition to the court, have their name removed from the
23 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 law-
5 enforcement office in the city and county where the person will
6 reside;

7 (2) The county superintendent of schools where the person
8 will reside;

9 (3) The child protective services office charged with
10 investigating allegations of child abuse or neglect in the county
11 where the person will reside;

12 (4) All community organizations or religious organizations
13 which regularly provide services to youths in the county where
14 the person will reside;

15 (5) Individuals and organizations which provide day care
16 services for youths or day care, residential or respite care, or
17 other supportive services for incapacitated infirm or mentally
18 incapacitated or infirm persons in the county where the regis-
19 tered person will reside; and

20 (6) The federal bureau of investigation (FBI).

21 (b) Information concerning persons whose names are
22 contained on the list of the sexual offender registry, and are not
23 required to register for life, shall be disseminated only in the
24 following manner, and not be subject to the requirements of the
25 West Virginia freedom of information act of this code:

26 (1) When a person has been determined to be a sexually
27 violent predator under the terms of section two-a of this article,
28 the state police shall notify the prosecuting attorney of the
29 county in which the person intends to reside. The prosecuting
30 attorney shall in cooperation with the state police conduct a
31 community notification program which shall include publica-
32 tion of the offender's name, photograph, and place of residence,
33 and information concerning the legal rights and obligations of

34 both the offender and the community. The prosecuting attorney
35 and state police may conduct a community notification program
36 in the county of residence of any person who is required to
37 register for life under the terms of subdivision (2), subsection
38 (a), section four of this article. Community notification may be
39 repeated when determined appropriate by the prosecuting
40 attorney;

41 (2) The state police shall maintain and make available to
42 the public at least quarterly the list of all persons who are
43 required to register for life according to the terms of subdivi-
44 sion (2), subsection (a), section four of this article. The method
45 of publication and access to this list shall be determined by the
46 superintendent; and

47 (3) A resident of a county may petition the circuit court for
48 an order requiring the state police to release information about
49 persons residing in that county who are required to register
50 under section two of this article. The court shall determine
51 whether information contained on the list and relevant to public
52 safety outweighs the importance of confidentiality, and if the
53 court orders information to be released, it may further order
54 limitations upon secondary dissemination by the resident
55 seeking the information. In no event shall information concern-
56 ing the identity of a victim of an offense requiring registration
57 be released.

58 (c) The state police may furnish information and documen-
59 tation required in connection with the registration to authorized
60 law-enforcement and governmental agencies of the United
61 States and its territories, of foreign countries duly authorized to
62 receive the same, of other states within the United States and of
63 the state of West Virginia upon proper request stating that the
64 records will be used solely for law-enforcement related pur-
65 poses. The state police may disclose information collected
66 under this article to federal, state and local governmental
67 agencies responsible for conducting pre-employment checks.

68 (d) An elected public official, public employee or public
69 agency is immune from civil liability for damages arising out

70 of any action relating to the provisions of this section except
71 when the official, employee or agency acted with gross negli-
72 gence or in bad faith.

§15-12-6. Duties of institution officials.

1 In addition to the duties imposed by sections two and four
2 of this article, any person required to register under this article,
3 before parole or release, shall be informed of their duty to
4 register by the official in charge of the place of confinement.
5 Further, the official shall obtain a statement signed by the
6 person acknowledging that the person has been informed of
7 their duty to register.

§15-12-7. Information shall be released when person moves out of state.

1 A person who is required to register pursuant to the
2 provisions of this article, who intends to move to another state
3 or country shall at least ten days prior to such move notify the
4 state police of his or intent to move and of the location to which
5 he or she intends to move, or if that person is incarcerated he or
6 she shall notify correctional officials of his or her intent to
7 reside in some other state or country upon his or her release,
8 and of the location to which he or she intends to move. Upon
9 such notification, the state police shall notify law-enforcement
10 officials of the jurisdiction where the person indicates he or she
11 intends to reside of the information provided by the person
12 under the provisions of this article.

§15-12-8. Failure to register; penalty.

1 (a) Except as outlined below, any person required to
2 register under this article who knowingly provides false identity
3 or address information or who refuses to provide such accurate
4 information when so required by terms of this article, or who
5 knowingly fails to register or knowingly fails to provide a
6 change of address as required by this article, is guilty of a
7 misdemeanor and, upon conviction thereof, shall be fined not
8 less than two hundred fifty dollars nor more than ten thousand
9 dollars, or imprisoned in the county jail not more than one year,

10 or both fined and imprisoned: *Provided*, That each time such
11 person changes residence and fails to register, such failure shall
12 constitute a separate offense.

13 (b) Any person required to register under this article who is
14 convicted of a second or subsequent offense of failing to
15 register or provide a change of address as required, or any
16 person who has one or more prior convictions for any conviction
17 for a sexually violent offense, and who fails to register is
18 guilty of a felony and, upon conviction thereof, shall be
19 imprisoned in a state penal facility for not less than one year
20 nor more than five years.

21 (c) Any person required to register as a sexual predator as
22 defined by section two of this article, who fails to register or
23 provide a change of address as required by this article is guilty
24 of a felony and, upon conviction thereof, shall, for a first
25 offense, be imprisoned in a state correctional facility not less
26 than two years nor more than ten years, and for a second or
27 subsequent offense, be imprisoned in a state correctional
28 facility not less than five years nor more than twenty years.

29 (d) In addition to any other penalty specified for failure to
30 register under this article, any person under the supervision of
31 a probation officer, parole officer or any other sanction short of
32 confinement in jail or prison, who knowingly refuses to
33 register, or who knowingly fails to provide a change of address
34 as required by this article, shall be subject to immediate
35 revocation of probation or parole and returned to confinement
36 for the remainder of any suspended or unserved portion of his
37 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, such 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 identical information required of persons
11 convicted in this state under subsection (b), section two of this
12 article.

13 (b) Any person:

14 (1) Who resides in another state;

15 (2) Who is employed, carries on a vocation or is a student
16 in this state; and

17 (3) Who is required by the state in which he or she resides
18 to register in that state under provisions of the law of that state
19 that are similar to the provisions of this article, shall register in
20 this state and otherwise comply with the provisions of this
21 article.

§15-12-10. Address verification.

1 The state police shall verify addresses of those persons
2 registered as sexually violent predators every ninety days and
3 all other registered persons once a year. The state police may
4 require registrants to periodically submit to new fingerprints
5 and photographs as part of the verification process. The method
6 of verification shall be in accordance with internal management
7 rules pertaining thereto promulgated by the superintendent
8 under authority of section twenty-five, article two, chapter
9 fifteen of this code.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 5. CHANGE OF NAME.

§48-5-7. Unlawful change of name by certain felons and registrants.

1 (a) It is unlawful for any person convicted of first degree
2 murder in violation of section one, article two, chapter sixty-
3 one of this code, and for any person convicted of violating any
4 provision of section fourteen-a, article two, chapter sixty-one of
5 this code, for which a sentence of life imprisonment is imposed,

6 to apply for a change of name for a period of ten years after the
7 person is discharged from imprisonment or is discharged from
8 parole, whichever occurs later.

9 (b) It is unlawful for any person required to register with
10 the state police pursuant to the provisions of article twelve,
11 chapter fifteen of this code to apply for a change of name
12 during the period that the person is required to register.

13 (c) It is unlawful for any person convicted of a felony to
14 apply for a change of name during the period that such person
15 is incarcerated.

16 (d) A person who violates the provisions of subsections (a),
17 (b) or (c) of this section is guilty of a misdemeanor and, upon
18 conviction thereof, shall be fined not less than two hundred fifty
19 dollars nor more than ten thousand dollars or imprisoned in the
20 county or regional jail for not more than one year, or both fined
21 and incarcerated.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-2. Eligibility for probation.

1 (a) All persons who are found guilty of or plead guilty to
2 any felony, the maximum penalty for which is less than life
3 imprisonment, and all persons who are found guilty of or plead
4 guilty to any misdemeanor, shall be eligible for probation,
5 notwithstanding the provisions of sections eighteen and
6 nineteen, article eleven, chapter sixty-one of this code.

7 (b) The provisions of subsection (a) of this section to the
8 contrary notwithstanding, any person who commits or attempts
9 to commit a felony with the use, presentment or brandishing of
10 a firearm shall be ineligible for probation. Nothing in this
11 section shall apply to an accessory before the fact or a principal
12 in the second degree who has been convicted as if he or she
13 were a principal in the first degree if, in the commission of or
14 in the attempted commission of the felony, only the principal in
15 the first degree used, presented or brandished a firearm.

16 (c) (1) The existence of any fact which would make any
17 person ineligible for probation under subsection (b) of this
18 section because of the commission or attempted commission of
19 a felony with the use, presentment or brandishing of a firearm
20 shall not be applicable unless such fact is clearly stated and
21 included in the indictment or presentment by which such person
22 is charged and is either: (i) Found by the court upon a plea of
23 guilty or nolo contendere; or (ii) found by the jury, if the matter
24 be tried before a jury, upon submitting to such jury a special
25 interrogatory for such purpose; or (iii) found by the court, if the
26 matter be tried by the court, without a jury.

27 (2) The amendments to this subsection adopted in the year
28 one thousand nine hundred eighty-one:

29 (A) Shall apply to all applicable offenses occurring on or
30 after the first day of August of that year;

31 (B) Shall apply with respect to the contents of any indict-
32 ment or presentment returned on or after the first day of August
33 of that year irrespective of when the offense occurred;

34 (C) Shall apply with respect to the submission of a special
35 interrogatory to the jury and the finding to be made thereon in
36 any case submitted to such jury on or after the first day of
37 August of that year or to the requisite findings of the court upon
38 a plea of guilty or in any case tried without a jury: *Provided*,
39 That the state shall give notice in writing of its intent to seek
40 such finding by the jury or court, as the case may be, which
41 notice shall state with particularity the grounds upon which
42 such finding shall be sought as fully as such grounds are
43 otherwise required to be stated in an indictment, unless the
44 grounds therefor are alleged in the indictment or presentment
45 upon which the matter is being tried;

46 (D) Shall not apply with respect to cases not affected by
47 such amendment and in such cases the prior provisions of this
48 section shall apply and be construed without reference to such
49 amendment; and

50 Insofar as such amendments relate to mandatory sentences

51 without probation, all such matters requiring such sentence
52 shall be proved beyond a reasonable doubt in all cases tried by
53 the jury or the court.

54 (d) For the purpose of this section, the term "firearm" shall
55 mean any instrument which will, or is designed to, or may
56 readily be converted to, expel a projectile by the action of an
57 explosive, gunpowder, or any other similar means.

58 (e) In the case of any person who has been found guilty of,
59 or pleaded guilty to, a felony or misdemeanor under the
60 provisions of section twelve or twenty-four, article eight,
61 chapter sixty-one of this code, or under the provisions of article
62 eight-c or eight-b of said chapter, such person shall only be
63 eligible for probation after undergoing a physical, mental and
64 psychiatric study and diagnosis which shall include an on-going
65 treatment plan requiring active participation in sexual abuse
66 counseling at a mental health facility or through some other
67 approved program: *Provided*, That nothing disclosed by the
68 person during such study or diagnosis shall be made available
69 to any law-enforcement agency, or other party without that
70 person's consent, or admissible in any court of this state, unless
71 such information disclosed shall indicate the intention or plans
72 of the probationer to do harm to any person, animal, institution
73 or property, in which case such information may be released
74 only to such persons as might be necessary for protection of the
75 said person, animal, institution or property.

76 (f) Any person who has been convicted of a violation of the
77 provisions of article eight-b, eight-c or sections five and six,
78 article eight-d, chapter sixty-one of this code, or of section
79 fourteen, article two, or of sections twelve and thirteen, article
80 eight, chapter sixty-one of this code, or of a felony violation
81 involving a minor of section six or seven, article eight, chapter
82 sixty-one of this code, or of a similar provision in another
83 jurisdiction shall be required to be registered upon release on
84 probation. Any person who has been convicted of an attempt to
85 commit any of the offenses set forth in this subsection shall also
86 be registered upon release on probation.

87 (g) The probation officer shall within three days of release
88 of the offender, send written notice to the state police of the
89 release of the offender. The notice shall include:

90 (1) The full name of the person;

91 (2) The address where the person shall reside;

92 (3) The person's social security number;

93 (4) A recent photograph of the person;

94 (5) A brief description of the crime for which the person
95 was convicted;

96 (6) Fingerprints; and

97 (7) For any person determined to be a sexually violent
98 predator as defined in section two-a, article twelve, chapter
99 fifteen of this code, the notice shall also include:

100 (i) Identifying factors, including physical characteristics;

101 (ii) History of the offense; and

102 (iii) Documentation of any treatment received for the
103 mental abnormality or personality disorder.

CHAPTER 233

(H. B. 2719 — By Delegates Givens, Yeager, Thompson and Kelley)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article six, 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 six-a, all relating to authorizing the governor to designate a person to serve on the state armory board in his or her place; and transferring certain functions of the board to the adjutant general.

Be it enacted by the Legislature of West Virginia:

That section four, article six, 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 six-a, all to read as follows:

ARTICLE 6. STATE ARMORY BOARD.

§15-6-4. State armory board — Generally.

§15-6-6a. Transfer of powers and duties to the adjutant general.

§15-6-4. State armory board — Generally.

1 The state armory board is continued. The board may sue
2 and be sued, and plead and be impleaded. It is a body corporate
3 and is an agency of the state. The exercise by the board of the
4 powers conferred by this article in the acquisition, financing,
5 construction, operation and maintenance of armories and
6 armory projects is an essential governmental function. The
7 board consists of the governor or his or her designee, the
8 secretary of state and the auditor. The governor or his or her
9 designee, is chairman of the board and the secretary of state is
10 the secretary of the board. Two members of the board is a
11 quorum and the vote of two members is necessary for any
12 action taken by the board.

13 The members and officers of the board are not entitled to
14 compensation for their services, but each member shall be
15 reimbursed for expenses necessarily incurred in the perfor-
16 mance of his or her duties.

§15-6-6a. Transfer of powers and duties to the adjutant general.

1 (a) Notwithstanding the provisions of sections five and six
2 of this article, all powers and duties of the state armory board,
3 with respect to any armory or armory project upon which there
4 is no bonded indebtedness, and the income of which is not
5 dedicated to retire any bonded indebtedness, to maintain, repair,
6 operate, manage and control the armories; to fix, revise charge
7 and collect rentals; to establish bylaws and rules for their use
8 and operation; to enter into contracts and other agreements; and

9 to manage and control the financial operations of armory
10 facilities, are hereby transferred to the adjutant general.

11 (b) The adjutant general shall transfer any moneys appro-
12 priated to the adjutant general necessary for operation and
13 maintenance of those national guard armories secured by
14 bonded indebtedness to the state armory board, and these
15 moneys may not be commingled with other funds. With respect
16 to all other appropriated moneys, whether from state or federal
17 funds, the adjutant general has signature authority with respect
18 to the management of state armory facilities, is authorized to
19 issue requisitions upon the auditor for payment of money out of
20 the state treasury and has all the powers of the principle officer
21 of a state spending unit.

22 (c) The special revenue account of the state armory board
23 provided for in section ten of this article and designated the
24 "general armory fund," together with all unexpended balances
25 remaining in the account on the first day of July, one thousand
26 nine hundred ninety-nine, shall be transferred on that date to the
27 adjutant general.

CHAPTER 234

(Com. Sub. for H. B. 2136 — By Delegates Manuel, Doyle and Rowe)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five-b, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the state building code; and establishing compliance criteria applicable to renovations performed upon certain historic buildings.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-5b. Promulgation of rules and statewide building code.

1 (a) The state fire commission shall propose rules for
2 legislative approval in accordance with the provisions of article
3 three, chapter twenty-nine-a of this code, to safeguard life and
4 property and to ensure the quality of construction of all struc-
5 tures erected or renovated throughout this state through the
6 adoption of a state building code. The rules shall be in accor-
7 dance with standard safe practices so embodied in widely
8 recognized standards of good practice for building construction
9 and all aspects related thereto and have force and effect in those
10 counties and municipalities adopting the state building code.

11 (b) The state fire commission has authority to propose rules
12 for legislative approval in accordance with the provisions of
13 article three, chapter twenty-nine-a of this code, regarding
14 building construction, renovation and all other aspects as
15 related to the construction and mechanical operations of a
16 structure. The rules shall be known as the "State Building
17 Code."

18 (c) For the purpose of this section the term "building code"
19 is intended to include all aspects of safe building construction
20 and mechanical operations and all safety aspects related thereto.
21 Whenever any other state law, county or municipal ordinance
22 or regulation of any agency thereof is more stringent or imposes
23 a higher standard than is required by the state building code, the
24 provisions of the state law, county or municipal ordinance or
25 regulation of any agency thereof governs if they are not
26 inconsistent with the laws of West Virginia and are not contrary
27 to recognized standards and good engineering practices. In any
28 question, the decision of the state fire commission determines
29 the relative priority of any such state law, county or municipal
30 ordinance or regulation of any agency thereof and determines
31 compliance with state building code by officials of the state,
32 counties, municipalities and political subdivisions of the state.

33 (d) Enforcement of the provisions of the state building code
34 is the responsibility of the respective local jurisdiction. Also,
35 any county or municipality may enter into an agreement with
36 any other county or municipality to provide inspection and
37 enforcement services: *Provided*, That any county or municipal-
38 ity may adopt the state building code with or without adopting
39 the BOCA national property maintenance code.

40 (e) After the state fire commission has promulgated rules as
41 provided in this section, each county or municipality intending
42 to adopt the state building code shall notify the state fire
43 commission of its intent.

44 (f) The state fire commission may conduct public meetings
45 in each county or municipality adopting the state building code
46 to explain the provisions of the rules.

47 (g) The provisions of the state building code relating to the
48 construction, repair, alteration, restoration and movement of
49 structures are not mandatory for existing buildings and struc-
50 tures identified and classified by the state register of historic
51 places under the provisions of section eight, article one, chapter
52 twenty-nine of this code, or the national register of historic
53 places, pursuant to Title XVI, section 470a of the United States
54 Code. Prior to renovations regarding the application of the state
55 building code, in relation to historical preservation of structures
56 identified as such, the authority having jurisdiction shall consult
57 with the division of culture and history, state historic preserva-
58 tion office. The final decision is vested in the state fire commis-
59 sion. Additions constructed on a historic building are not
60 excluded from complying with the state building code.

CHAPTER 235

(S. B. 242 — By Senator Dittmar)

[Passed March 12, 1999; 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-b, relating to directing the state building commission to transfer unexpended funds from completed certified state park bond projects to certified state park bond projects that will experience cost overruns; requiring commission to consult with division of natural resources to identify projects that will be completed with unexpended funds and prioritize those projects to receive funds; providing that public hearing requirements do not apply to reallocation of funds among previously certified bond projects; and requiring commissioner to report details of transfers to the joint committee on government and finance.

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-b, to read as follows:

ARTICLE 6. STATE BUILDING COMMISSION.

§5-6-11b. Power of commission to transfer project funds to other certified projects for state parks.

1 (a) The state building commission shall transfer unex-
2 pended funds allocated to any certified state park project under
3 subsection (f), section eleven-a of this article that has been
4 completed to any other state park project that has been certified
5 under that subsection where the state park project has not been
6 completed and the commission determines that the project is
7 experiencing cost overruns and needs additional funding. Prior
8 to transferring the funds, in consultation with the division of
9 natural resources, the commission shall identify all certified
10 state park projects that will be completed with unexpended
11 funds allocated to them and, in consultation with the division of
12 natural resources, shall prioritize the projects that need addi-
13 tional funding to achieve the best possible allocation of the
14 unexpended funds.

15 (b) The provisions of subsection (f), section eleven-a of this
16 article requiring public hearing do not apply to transfers of
17 funds under subsection (a) of this section.

18 (c) The commission shall report all details of any transfer
19 made pursuant to this section to the joint committee on govern-
20 ment and finance within ten days of the date of the transfer.

CHAPTER 236

(H. B. 2141 — By Delegates Michael and Martin)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article two-a, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections six and seven, article eighteen, chapter twenty-nine of said code, all relating to the state rail authority generally; exempting the state rail authority as an agency for which the secretary of administration is to provide alternative fuel vehicles; legislative rules; providing special competitive bid requirements in certain circumstances; providing exemption from competitive bid requirements in certain circumstances; and permitting state rail authority to enter into contracts or agreements with the division of highways for the lease or purchase and maintenance of vehicles.

Be it enacted by the Legislature of West Virginia:

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

Chapter**5A. Department of Administration.****29. Miscellaneous Boards and Officers.****CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.****ARTICLE 2A. USE OF ALTERNATIVE FUELS IN STATE-OWNED VEHICLES.****§5A-2A-2. Purchase or lease of fleet vehicles; use of alternative fuels.**

1 (a) After the first day of September, one thousand nine
2 hundred ninety-three, the secretary may purchase or lease
3 alternative fuel vehicles for use by any state agency.

4 (b) The secretary may acquire or be provided with equip-
5 ment or refueling facilities necessary to operate alternative fuel
6 vehicles by any of the following methods:

7 (1) Purchase or lease as authorized by law;

8 (2) Gift or loan of the equipment or facilities; or

9 (3) Gift or loan of the equipment or facilities or other
10 arrangement pursuant to a service contract for the supply of
11 alternative fuels.

12 (c) If such equipment or facilities are donated, loaned or
13 provided through other arrangement with the supplier of
14 alternative fuels, the supplier shall be entitled to recoup its
15 actual cost of donating, loaning or providing the equipment or
16 facilities through its fuel charges under the fuel supply contract.

17 (d) Of the total number of vehicles acquired or caused to be
18 acquired by the secretary for use by any state agency vehicle
19 fleet:

20 (1) Twenty percent in fiscal year one thousand nine
21 hundred ninety-five;

22 (2) Thirty percent in fiscal year one thousand nine hundred
23 ninety-six;

24 (3) Fifty percent in fiscal year one thousand nine hundred
25 ninety-seven, shall be alternative fuel vehicles.

26 (e) The secretary shall review this alternative fuel use
27 program on or before the thirty-first day of December, one
28 thousand nine hundred ninety-seven, and if the secretary
29 determines that the program is effective in reducing costs to the
30 state, taking into consideration the cost of operating alternative
31 fuel vehicles over the expected useful life of the vehicles, the
32 secretary shall, of the total number of vehicles acquired in each
33 fiscal year, acquire at least seventy-five percent alternative fuel
34 vehicles for state agency fleets beginning the first day of
35 September, one thousand nine hundred ninety-eight, and
36 thereafter.

37 (f) The secretary shall, in the annual fiscal report to the
38 Legislature, show the progress in achieving these percentage
39 requirements by itemizing purchases, leases and conversions of
40 motor vehicles and usage of alternative fuels.

41 (g) The secretary, in the development of the alternative fuel
42 use program, shall consult with state agency fleet operators,
43 vehicle manufacturers and converters, fuel distributors and
44 others to delineate the vehicles to be covered, taking into
45 consideration range, specialty uses, fuel availability, vehicle
46 manufacturing and conversion capability, safety, resale values
47 and other relevant factors. In order to maximize the savings to
48 the state, the secretary shall attempt to the extent possible to
49 convert first those vehicles that are used the most often for the
50 most miles. The secretary may meet the percentage require-
51 ments of this section through purchase or lease of new vehicles,
52 purchase or lease of used alternative fuel vehicles or the
53 conversion of existing vehicles, in accordance with federal and
54 state requirements and applicable safety laws and standards, to
55 use alternative fuels.

56 (h) The secretary may reduce any percentage specified or
57 waive the requirements of subsection (d) of this section for any
58 state agency upon a determination by the secretary that either
59 of the following situations apply:

60 (1) The agency's vehicles will be operating primarily in an
61 area in which neither the agency nor a supplier has or can

62 reasonably be expected to establish a central refueling station
63 for alternative fuels.

64 (2) The agency is unable to acquire or be provided equip-
65 ment or refueling facilities necessary to operate alternative fuel
66 vehicles at a projected cost that is reasonably expected to result
67 in no greater net costs than the continued use of traditional
68 gasoline or diesel fuels measured over the expected useful life
69 of the equipment or facilities supplied.

70 (i) The provisions of this section do not apply to:

71 (1) Vehicles operated by law-enforcement agencies;

72 (2) Emergency vehicles;

73 (3) Vehicles operated by public transit authorities;

74 (4) School buses;

75 (5) Vehicles operated by the state rail authority; or

76 (6) Nonroad vehicles, including farm and construction
77 vehicles.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.

§29-18-6. Powers, duties and responsibilities of authority generally.

§29-18-7. Operations; purchases.

§29-18-6. Powers, duties and responsibilities of authority generally.

1 The West Virginia state rail authority is hereby granted, has
2 and may exercise all powers necessary or appropriate to carry
3 out and effectuate its corporate purpose.

4 (a) The authority shall have the power and capacity to:

5 (1) Adopt, and from time to time, amend and repeal bylaws
6 necessary and proper for the regulation of its affairs and the
7 conduct of its business and legislative rules to implement and
8 make effective its powers and duties, such rules to be promul-

9 gated in accordance with the provisions of chapter twenty-nine-
10 a of this code.

11 (2) Adopt an official seal.

12 (3) Maintain a principal office and, if necessary, regional
13 suboffices at locations properly designated or provided.

14 (4) Sue and be sued in its own name and plead and be
15 impleaded in its own name, and particularly to enforce the
16 obligations and covenants made under sections ten, eleven and
17 sixteen of this article. Any actions against the authority shall be
18 brought in the circuit court of Kanawha County. The location
19 of the principal office of the authority shall be determined by
20 the governor.

21 (5) Make loans and grants to governmental agencies and
22 persons for carrying out railroad projects by any such govern-
23 mental agency or person and, in accordance with chapter
24 twenty-nine-a of this code, adopt legislative rules and proce-
25 dures for making such loans and grants.

26 (6) Acquire, construct, reconstruct, enlarge, improve,
27 furnish, equip, maintain, repair, operate, lease or rent to, or
28 contract for operation by a governmental agency or person,
29 railroad projects and, in accordance with chapter twenty-nine-a
30 of this code, adopt legislative rules for the use of these projects.

31 (7) Make available the use or services of any railroad
32 project to one or more persons, one or more governmental
33 agencies, or any combination thereof.

34 (8) Issue railroad maintenance authority bonds and notes,
35 and refunding bonds of the state, payable solely from revenues
36 as provided in section ten of this article unless the bonds are
37 refunded by refunding bonds, for the purpose of paying any part
38 of the cost of one or more railroad projects or parts thereof.

39 (9) Acquire, by gift or purchase, hold and dispose of real
40 and personal property in the exercise of its powers and the
41 performance of its duties as set forth in this article.

42 (10) Acquire in the name of the state, by purchase or
43 otherwise, on such terms and in such manner as it considers
44 proper, or by the exercise of the right of eminent domain in the
45 manner provided in chapter fifty-four of this code, rail proper-
46 ties and appurtenant rights and interests necessary for carrying
47 out railroad projects.

48 (11) (A) Make and enter into all contracts and agreements
49 and execute all instruments necessary or incidental to the
50 performance of its duties and the execution of its powers.

51 (B) Where rolling stock, equipment or trackage of the
52 authority is in need of immediate maintenance, repair or
53 reconstruction in order to avoid a cessation of its operations,
54 economic loss, the inability to provide essential service to
55 customers or danger to authority personnel or the public, the
56 following requirements and procedures for entering into the
57 contract or agreement to remedy the condition shall be in lieu
58 of those provided in article three, chapter five-a of this code or
59 any legislative rule promulgated pursuant thereto:

60 (i) If the cost under the contract or agreement involves an
61 expenditure of more than one thousand dollars, but ten thousand
62 dollars or less, the authority shall award the contract to or enter
63 into the agreement with the lowest responsible bidder based
64 upon at least three oral bids made pursuant to the requirements
65 of the contract or agreement.

66 (ii) If the cost under the contract or agreement, other than
67 one for compensation for personal services, involves an
68 expenditure of more than ten thousand dollars, but twenty-five
69 thousand dollars or less, the authority shall award the contract
70 to or enter into the agreement with the lowest responsible
71 bidder based upon at least three bids, submitted to the authority
72 in writing on letterhead stationery, made pursuant to the
73 requirements of the contract or agreement.

74 (C) Notwithstanding any other provision of this code to the
75 contrary, a contract or lease for the operation of a railroad
76 project constructed and owned by the authority or an agreement
77 for cooperation in the acquisition or construction of a railroad

78 project pursuant to section sixteen of this article is not subject
79 to the provisions of article three, chapter five-a of this code or
80 any legislative rule promulgated pursuant thereto, and the
81 authority may enter into the contract or lease or the agreement
82 pursuant to negotiation and upon such terms and conditions and
83 for a period of time as it finds to be reasonable and proper
84 under the circumstances and in the best interests of proper
85 operation or of efficient acquisition or construction of the
86 railroad project.

87 (D) The authority may reject any and all bids. A bond with
88 good and sufficient surety, approved by the authority, shall be
89 required of all contractors in an amount equal to at least fifty
90 percent of the contract price, conditioned upon the faithful
91 performance of the contract.

92 (12) Appoint a director and employ managers, superinten-
93 dents and other employees and retain or contract with consult-
94 ing engineers, financial consultants, accountants, attorneys and
95 other consultants and independent contractors as are necessary
96 in its judgment to carry out the provisions of this article, and fix
97 the compensation or fees thereof. All expenses thereof shall be
98 payable from the proceeds of railroad maintenance authority
99 revenue bonds or notes issued by the authority, from revenues
100 and funds appropriated for this purpose by the Legislature or
101 from grants from the federal government which may be used for
102 such purpose.

103 (13) Receive and accept from any state or federal agency,
104 grants for or in aid of the construction of any railroad project or
105 for research and development with respect to railroads and
106 receive and accept aid or contributions from any source of
107 money, property, labor or other things of value, to be held, used
108 and applied only for the purposes for which such grants and
109 contributions are made.

110 (14) Engage in research and development with respect to
111 railroads.

112 (15) Purchase fire and extended coverage and liability
113 insurance for any railroad project and for the principal office

114 and suboffices of the authority, insurance protecting the
115 authority and its officers and employees against liability, if any,
116 for damage to property or injury to or death of persons arising
117 from its operations and be a member of, and to participate in,
118 the state workers' compensation program.

119 (16) Charge, alter and collect rates, rentals and other
120 charges for the use or services of any railroad project as
121 provided in this article.

122 (17) Do all acts necessary and proper to carry out the
123 powers expressly granted to the authority in this article.

124 (b) In addition, the authority shall have the power to:

125 (1) Acquire rail properties both within and not within the
126 jurisdiction of the interstate commerce commission and rail
127 properties within the purview of the federal Regional Rail
128 Reorganization Act of 1973, any amendments to it and any
129 other relevant federal legislation.

130 (2) Enter into agreements with owners of rail properties for
131 the acquisition of rail properties or use, or both of rail proper-
132 ties upon the terms, conditions, rates or rentals that can best
133 effectuate the purposes of this article.

134 (3) Acquire rail properties and other property of a railroad
135 in concert with another state or states as is necessary to ensure
136 continued rail service in this state.

137 (4) Establish a state plan for rail transportation and local
138 rail services.

139 (5) Administer and coordinate such state plan.

140 (6) Provide in the state plan for the equitable distribution of
141 federal rail service continuation subsidies among state, local
142 and regional transportation authorities.

143 (7) Promote, supervise and support safe, adequate and
144 efficient rail services.

145 (8) Employ sufficiently trained and qualified personnel for
146 these purposes.

147 (9) Maintain adequate programs of investigation, research,
148 promotion and development in connection with such purposes
149 and to provide for public participation therein.

150 (10) Provide satisfactory assurances on behalf of the state
151 that fiscal control and fund accounting procedures will be
152 adopted by the state necessary to assure proper disbursement of
153 and accounting for federal funds paid to the state as rail service
154 continuation subsidies.

155 (11) Comply with the regulations of the secretary of
156 transportation of the United States department of transportation
157 affecting federal rail service continuation programs.

158 (12) Do all things otherwise necessary to maximize federal
159 assistance to the state under Title IV of the federal Regional
160 Rail Reorganization Act of 1973, and to qualify for rail service
161 continuation subsidies pursuant to the federal Regional Rail
162 Reorganization Act of 1973.

§29-18-7. Operations; purchases.

1 (a) The authority may sell, transfer or lease all, or any part,
2 of the rail properties and other property acquired under the
3 provisions of this article to any responsible person, firm or
4 corporation for continued operation of a railroad or other public
5 purpose: *Provided*, That approval for the continued operation
6 or other public purpose, is granted by the interstate commerce
7 commission of the United States, whenever approval is re-
8 quired. The sale, transfer or lease shall be for a price and
9 subject to any further terms and conditions which the authority
10 feels are necessary and appropriate to effectuate the purposes of
11 this article.

12 (b) After acquiring any railroad lines within the state, the
13 authority shall assist any responsible person, firm or corpora-
14 tion to secure, as promptly as possible, any order or certificate
15 required by the interstate commerce commission for the
16 performance of railroad service. The authority shall also give
17 any assurances or guarantees which are necessary or desirable
18 to carry out the purposes of this article.

19 (c) The authority may take whatever steps are necessary in
20 order to determine the absolute fee simple title ownership of all
21 rail properties of any railroad within the state. The determina-
22 tion may include the status of the rail properties with respect to
23 easements, rights-of-way, leases, reversionary rights, fee simple
24 title ownership and any and all related title matters. The
25 authority may retain attorneys, experts or other assistants, and
26 issue any contracts as are necessary to make the title determina-
27 tion.

28 (d) All rail properties within the state offered for sale by
29 any railway corporation after the date of enactment of this
30 article shall be offered for sale to the state in the first instance.

31 (e) The authority may cooperate with other states in
32 connection with the purchase of any rail properties within this
33 state. The authority may also acquire railroad rights in other
34 states and rail properties lying in other states in order to carry
35 out the intentions and purposes of this article. In carrying out
36 the powers and duties conferred by this article, the authority
37 may enter into general contractual arrangements, including joint
38 purchasing and leasing of rail properties with other states.

39 (f) In weighing the varied interests of the residents of this
40 state, the authority shall give consideration to the individual
41 interest of any county or municipality expressing a desire to
42 acquire a portion, or all, of the abandoned real estate located
43 within its jurisdiction. The authority may exercise its powers
44 under this article to acquire the abandoned property for subse-
45 quent conveyance to the county or municipality.

46 (g) The authority may utilize federal funds, grants, gifts or
47 donations which are available and any sums that are appropri-
48 ated in carrying out the purposes of this article. The authority
49 may also apply for discretionary or other funds available under
50 the provisions of the federal Regional Rail Reorganization Act
51 of 1973 or other federal programs.

52 (h) The authority may apply for an acquisition and modern-
53 ization loan, or a guarantee of a loan, pursuant to Section 403
54 of the federal Regional Rail Reorganization Act of 1973, or any

55 other federal programs, within the limit of funds appropriated
56 for those purposes.

57 (i) The authority is authorized to purchase any railroad
58 rolling stock, equipment and machinery necessary for the
59 operation and maintenance of any rail properties purchased by
60 it on behalf of the state, with any funds made available for this
61 purpose. The authority may also acquire and have available a
62 pool of equipment and machinery which may be utilized by the
63 operators of the rail properties for the purpose of track mainte-
64 nance and other related railroad activities upon terms and
65 conditions determined by the authority. Notwithstanding the
66 provisions of sections forty-eight through fifty-three, article
67 three, chapter five-a of this code to the contrary, the authority
68 may enter into contracts or agreements for the lease or purchase
69 and maintenance of any vehicles required for its purposes with
70 the division of highways. For those purposes, the division of
71 highways is authorized and empowered to enter into contracts
72 or agreements for the lease or purchase and maintenance of any
73 vehicles with the authority.

74 (j) The authority may contract for the rebuilding or reloca-
75 tion of any rail properties acquired pursuant to this article,
76 within the provisions of the federal Regional Rail Reorganiza-
77 tion Act of 1973, or any other applicable legislation. The
78 authority may also spend any sums appropriated, as well as any
79 other available funds, for the modernization, rebuilding and
80 relocation of any rail properties owned by the state or by a
81 private carrier. The authority may do any maintenance on any
82 rail properties owned by the state as is necessary in the public
83 interest.

84 (k) The authority may contract with any domestic or foreign
85 person, firm, corporation, agency or government to provide,
86 maintain or improve rail transportation service on the rail
87 properties acquired by the state under this article.

88 (l) Whenever the authority determines that any rail proper-
89 ties acquired by the state are no longer needed for railroad
90 purposes, it may, with the permission of the governor, perma-

91 nently or temporarily transfer the rail properties to any other
92 state department or agency or political subdivision of the state,
93 which shall utilize the properties for a public purpose. When-
94 ever more than one department or agency or political subdivi-
95 sion wishes to utilize the property, the authority shall resolve
96 such a conflict and make a prompt determination of the
97 reasonable and proper order of priority, taking into consider-
98 ation any applicable state plans, policies or objectives. If no
99 state department or agency or political subdivision wants the
100 properties, the authority may sell them, with the proceeds
101 deposited to the special railroad fund established by this article.
102 A public hearing is required prior to the transfer or sale of any
103 rail properties by the authority.

CHAPTER 237

(H. B. 2791 — By Delegates Michael, Mezzatesta, Martin and Proudfoot)

[Passed March 13, 1999; 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, relating to the authority and organization of 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 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.

1 The West Virginia railroad maintenance authority, hereto-
2 fore created, is hereby continued and redesignated the West
3 Virginia state rail authority. References in this code to the West
4 Virginia railroad maintenance authority shall be understood and
5 taken to mean the West Virginia state rail authority. Nothing in
6 this article is intended to invalidate any action or obligation of
7 the West Virginia railroad maintenance authority undertaken
8 prior to the effective date of this article. The authority is a
9 governmental instrumentality of the state and a body corporate.
10 The exercise by the authority of the powers conferred by this
11 article and the carrying out of its purposes and duties shall be
12 deemed and held to be, and are hereby determined to be,
13 essential governmental functions and for a public purpose.

14 The authority shall consist of seven members. The secretary
15 of the department of transportation shall be chairman: *Provided*,
16 That the secretary may appoint a designee to act in his or her
17 stead at meetings of the authority. The other six members shall
18 be appointed by the governor, by and with the advice and
19 consent of the Senate, for a term of six years. Of the members
20 of the authority first appointed, two shall be appointed for a
21 term ending on the thirtieth day of June, one thousand nine
22 hundred seventy-seven, two shall be appointed for a term
23 ending two years thereafter and two shall be appointed for a
24 term ending four years thereafter. A person appointed to fill a
25 vacancy occurring prior to the expiration of the term for which
26 his predecessor was appointed shall be appointed only for the
27 remainder of such term. Each authority member shall serve
28 until the appointment and qualification of his successor. No
29 more than three of the appointed authority members shall at any
30 one time belong to the same political party. Appointed authority
31 members may be reappointed to serve additional terms.

32 All members of the authority shall be citizens of the state.
33 Each appointed member of the board, before entering upon his
34 duties, shall comply with the requirements of article one,
35 chapter six of this code and give bond in the sum of twenty-five
36 thousand dollars in the manner provided in article two, chapter
37 six of this code. The governor may remove any authority

38 member as provided in section four, article six, chapter six of
39 this code.

40 Annually the authority shall elect one of its members as
41 vice chairman, and shall appoint a secretary-treasurer, who need
42 not be a member of the authority. Four members of the author-
43 ity shall constitute a quorum and the affirmative vote of four
44 members shall be necessary for any action taken by vote of the
45 authority. No vacancy in the membership of the authority shall
46 impair the rights of a quorum by such vote to exercise all the
47 rights and perform all the duties of the authority. The person
48 appointed as secretary-treasurer, including an authority member
49 if he is so appointed, shall give bond in the sum of fifty
50 thousand dollars in the manner provided in article two, chapter
51 six of this code.

52 The secretary of the department of transportation shall not
53 receive any compensation for serving as the authority chairman.
54 Each of the six appointed members of the authority shall
55 receive the same compensation and expense reimbursement as
56 is paid to members of the Legislature for their interim duties as
57 recommended by the citizens legislative compensation commis-
58 sion and authorized by law for each day or substantial portion
59 thereof engaged in the discharge of official duties. All such
60 compensation and expenses incurred shall be payable solely
61 from funds of the authority or from funds appropriated for such
62 purpose by the Legislature and no liability or obligation shall be
63 incurred by the authority beyond the extent to which moneys
64 are available from funds of the authority or from such appropri-
65 ations.

66 There shall also be a director of the authority appointed by
67 the authority, with the consent of the secretary.

68 Pursuant to the provisions of article ten, chapter four of this
69 code, the West Virginia state rail authority shall continue to
70 exist until the first day of July, two thousand.

CHAPTER 238

(S. B. 360 — By Senators Bowman, Bailey, Ball, Jackson, Kessler, McCabe, Minard, Plymale, Redd, Snyder, Walker, Boley and Minear)

[Passed February 24, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eight, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the capitol building commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. CAPITOL BUILDING COMMISSION.

§4-8-1. Creation; composition; qualifications; continuation.

1 There is continued a capitol building commission, hereinaf-
2 ter referred to as the commission, which shall be composed of
3 five members, who shall be appointed by the governor with the
4 advice and consent of the Senate, plus the secretary of the
5 department of administration who shall be a nonvoting member.
6 No more than three members shall be of the same political
7 party. One member shall be an architect selected from three
8 persons recommended by the board of architects, one member
9 shall be a registered professional engineer selected from three
10 persons recommended by the board of engineers, one member
11 shall be the commissioner of the division of culture and history,
12 who is chairman of the commission, and two members shall be
13 selected from the public at large.

14 Pursuant to the provisions of section four, article ten of this
15 chapter, and following a preliminary performance audit review

16 conducted through the joint committee on government opera-
17 tions, the capitol building commission shall continue to exist
18 until the first day of July, two thousand two.

CHAPTER 239

(H. B. 3035 — By Delegates Douglas, Collins,
Prunty, H. White, Hatfield, Stalnaker and Willison)

[Passed March 13, 1999; 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; and to further amend said article by adding thereto a new section, designated section six-a, relating to providing for the deposition of property of a terminated agency and 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, and that said article be further amended by adding thereto a new section, designated section six-a, all to read as follows:

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

- §4-10-4. Termination of agencies following full performance evaluations.
- §4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.
- §4-10-5. Termination of agencies following preliminary performance reviews.
- §4-10-5a. Termination of agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates.
- §4-10-6a. Disposition of agency assets, equipment, and records after final termination.

§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: Division of
6 corrections; division of environmental protection; workers'
7 compensation; department of health and human resources;
8 department of tax and revenue.

9 (2) On the first day of July, two thousand one: Division of
10 natural resources; purchasing division within the department of
11 administration; division of motor vehicles.

12 (3) On the first day of July, two thousand two: Division of
13 highways; division of labor.

14 (4) On the first day of July, two thousand three: Division of
15 culture and history; school building authority.

16 (5) On the first day of July, two thousand four: Division of
17 personnel; division of rehabilitation services.

18 (6) 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: Office of judges of
7 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: Family protec-
14 tion services board; environmental quality board; West Vir-
15 ginia's membership in the Ohio River valley water sanitation
16 commission; oil and gas inspector's examining board; board of
17 examiners in counseling; West Virginia state rail authority;
18 state police; terms of family law masters and the family law
19 master system; stream partners program within the division of
20 natural resources; advisory council to the state medicaid
21 agency; soil conservation committee of the department of
22 agriculture; board of medicine.

23 (5) On the first day of July, two thousand one: Real estate
24 commission; marketing and development division of the
25 department of agriculture; board of architects; public employees
26 insurance agency; public employees insurance agency finance
27 board; center for professional development; rural health
28 advisory panel; oil and gas conservation commission; state fire
29 commission; office of water resources of the division of
30 environmental protection; motorcycle safety and education
31 committee.

32 (6) On the first day of July, two thousand two: Whitewater
33 commission within the division of natural resources; state
34 geological and economic survey; unemployment compensation;
35 West Virginia contractor licensing board; women's commis-

36 sion; parks section and parks functions of the division of natural
37 resources; ethics commission; veterans' council; educational
38 broadcasting authority; board of respiratory care practitioners;
39 division of protective services; office of explosives and
40 blasting; office of coalfield community development.

41 (7) On the first day of July, two thousand three: Driver's
42 licensing advisory board; West Virginia commission for
43 national and community service; West Virginia's membership
44 in the southern regional education board.

45 (8) On the first day of July, two thousand four: Meat
46 inspection program of the department of agriculture; state board
47 of risk and insurance management; board of examiners of land
48 surveyors; interstate commission on uniform state laws; design-
49 build board; interstate commission on the Potomac River basin.

50 (9) On the first day of July, two thousand five: Board of
51 banking and financial institutions; board of social work
52 examiners; lending and credit rate board; governor's cabinet on
53 children and families; health care authority; emergency medical
54 services advisory council.

§4-10-5a. Termination of agencies previously subject to preliminary 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: Child support
7 enforcement division; state building commission; board of
8 examiners in speech pathology and audiology; public defender
9 services; racing commission; West Virginia commission for the
10 deaf and hard-of-hearing; office of environmental advocate of
11 the division of environmental protection; investment manage-
12 ment board.

13 (2) On the first day of July, two thousand one: State lottery
14 commission; public service commission; human rights commis-
15 sion.

16 (3) On the first day of July, two thousand two: Capitol
17 building commission.

**§4-10-6a. Disposition of agency assets, equipment, and records
after final termination.**

1 Upon final termination pursuant to section six of this article
2 and on or before the thirtieth day of June of the final year of the
3 entity, the terminated entity shall file a report describing the
4 disposition of assets and records with the secretary of the
5 department of administration and the legislative auditor's
6 performance evaluation and research division. The legislative
7 auditor's performance evaluation and research division shall
8 report to the joint committee on government operations the
9 results of its review of the disposition of furniture, computers
10 and other office equipment, program and personnel records and
11 revenue of the agency. Furniture, computers and other office
12 equipment of a terminated agency shall either be transferred to:
13 (1) The secretary or commissioner of the department or bureau
14 to which the agency is a part; or (2) the state agency for surplus
15 property in the department of administration. All program and
16 fiscal records shall be deposited with the division of administra-
17 tion and support services of the department of administration.
18 The terminated agency's personnel records shall be accepted
19 and stored by the division of personnel, without regard to civil
20 service coverage of the employees of the terminated agency.

CHAPTER 240

(S. B. 439 — By Senators Bowman, Bailey, Ball, Kessler, McCabe,
Minard, Plymale, Redd, Snyder, Wooton and Boley)

[Passed February 26, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the state building commission.

Be it enacted by the Legislature of West Virginia:

That section one, article six, 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 6. STATE BUILDING COMMISSION.

§5-6-1. Name of state office building commission changed; composition; appointment, terms and qualifications of members; chairman and secretary; compensation and expenses; powers and duties generally; frequency of meetings; continuation.

1 “The state office building commission of West Virginia”,
2 hereto created, shall continue in existence, but on and after the
3 ninth day of February, one thousand nine hundred sixty-six,
4 shall be known and designated as “The state building commis-
5 sion of West Virginia” and shall continue as a body corporate
6 and as an agency of the state of West Virginia. On and after the
7 date aforesaid, the commission shall consist of the governor,
8 attorney general, state treasurer and four additional members to
9 be appointed by the governor by and with the advice and
10 consent of the Senate. The terms of office for said members to
11 be appointed by the governor shall be four years, except that the
12 terms of office of the first four members so appointed by the
13 governor shall be for one, two, three and four years, respec-
14 tively. No more than three of such members so appointed by the
15 governor shall be members of the same political party, nor shall
16 any of said members be members or employees of the execu-
17 tive, legislative or judicial branches of government of West
18 Virginia or any political subdivision thereof. The governor shall
19 be chairman of the commission. The secretary of state shall be
20 a member of the commission and serve as its secretary, but
21 shall not have the right to vote upon matters before the commis-
22 sion. All members of the commission shall be citizens and
23 residents of this state. The members of the commission shall be

24 paid or reimbursed for their necessary expenses incurred under
25 this article, but shall receive no compensation for their services
26 as members or officers of the commission: *Provided*, That each
27 member of the commission appointed by the governor shall, in
28 addition to such reimbursement for necessary expenses, receive
29 an amount not to exceed the same compensation as is paid to
30 members of the Legislature for their interim duties as recom-
31 mended by the citizens legislative compensation commission
32 and authorized by law for each day or substantial portion
33 thereof that he is engaged in the work of the commission. Such
34 expenses and per diem shall be paid solely from funds provided
35 under the authority of this article, and the commission shall not
36 proceed to exercise or carry out any authority or power herein
37 given it to bind said commission beyond the extent to which
38 money has been provided under the authority of this article. On
39 or before the fifteenth day of each month, the commission shall
40 prepare and transmit to the president and minority leader of the
41 Senate and the speaker and the minority leader of the House of
42 Delegates a report covering the activities of the said commis-
43 sion for the preceding calendar month.

44 Pursuant to the provisions of article ten, chapter four of this
45 code, the state building commission shall continue to exist until
46 the first day of July, two thousand.

CHAPTER 241

(S. B. 363 — By Senators Bowman, Bailey, Ball, Jackson, Kessler,
McCabe, Minard, Plymale, Redd, Snyder, Walker, Boley and Minear)

[Passed February 24, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article twenty-six,
chapter five of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, related to continuing the
governor's cabinet on children and families.

Be it enacted by the Legislature of West Virginia:

That section eight, article twenty-six, 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 26. GOVERNOR'S CABINET ON CHILDREN AND FAMILIES.

§5-26-8. Termination date.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the governor's cabinet on children and families shall
3 continue to exist until the first day of July, two thousand five:
4 *Provided*, That the cabinet shall prepare an annual progress
5 report and shall present the report to the joint committee on
6 government operations. The report shall detail the cabinet's
7 compliance with its purposes, duties and responsibilities as set
8 forth in sections one, three and four of this article, together with
9 proposed plans for future compliance and proposed programs
10 for the following year.

CHAPTER 242

(H. B. 2673 — By Delegates Douglas, Collins, Prunty,
H. White, Hatfield and Stalnaker)

[Passed February 23, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the purchasing division within the department of administration.

Be it enacted by the Legislature of West Virginia:

That section one, 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-3-1. Division created; purpose; director; applicability of article; continuation.**

1 There is hereby created the purchasing division of the
2 department of administration for the purpose of establishing
3 centralized offices to provide purchasing, travel and leasing
4 services to the various state agencies.

5 No person shall be appointed director of the purchasing
6 division unless that person is, at the time of appointment, a
7 graduate of an accredited college or university and shall have
8 spent a minimum of ten of the fifteen years immediately
9 preceding his or her appointment employed in an executive
10 capacity in purchasing for any unit of government or for any
11 business, commercial or industrial enterprise.

12 The provisions of this article shall apply to all of the
13 spending units of state government, except as is otherwise
14 provided by this article or by law: *Provided*, That the provisions
15 of this article shall not apply to the legislative branch unless
16 otherwise provided or the Legislature or either house thereof
17 requests the director to render specific services under the
18 provisions of this chapter, nor to purchases of stock made by
19 the alcohol beverage control commissioner, nor to purchases of
20 textbooks for the state board of education.

21 Pursuant to the provisions of article ten, chapter four of this
22 code, the purchasing division within the department of adminis-
23 tration shall continue to exist until the first day of July, two
24 thousand one.

CHAPTER 243

**(S. B. 185 — By Senators Bailey, Bowman, Ball, Jackson, Kessler, McCabe,
Minard, Redd, Schoonover, Snyder, Walker, Wooton and Boley)**

[Passed February 24, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the tourism commission under the West Virginia development office.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-13. Continuation.

- 1 Pursuant to the provisions of chapter four, article ten of this
- 2 code, the tourism commission shall continue to exist until the
- 3 first day of July, two thousand five.

CHAPTER 244

(S. B. 514 — By Senators Bowman, Bailey, Ball, Kessler, McCabe,
Minard, Redd, Wooton, Boley and Minear)

[Passed March 1, 1999; 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; and providing for the continuation of the divisions of human services and its statutory functions within the department.

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, to permit a review of their functions to be
18 undertaken by the joint committee on government operations as
19 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 245

**(H. B. 2636 — By Delegates Douglas, Collins, Prunty,
H. White, Hatfield, J. Smith and Stalnaker)**

[Passed February 23, 1999; 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.

CHAPTER 246

(H. B. 2713 — By Delegates Douglas, Collins, Prunty,
H. White, Hatfield, Willison and Stalnaker)

[Passed March 12, 1999; 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, 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 to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§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.

25 Pursuant to the provisions of article ten, chapter four of this
26 code, the West Virginia state police shall continue to exist until
27 the first day of July, two thousand.

CHAPTER 247

**(S. B. 361 — By Senators Bowman, Bailey, Ball, Jackson, Kessler,
McCabe, Minard, Plymale, Redd, Snyder, Walker, Boley and Minear)**

[Passed February 24, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article four-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the emergency medical services advisory council.

Be it enacted by the Legislature of West Virginia:

That section five, article four-c, 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 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-5. Emergency medical services advisory council; duties, composition, appointment, meetings, compensation and expenses; continuation.

1 The emergency medical services advisory council, hereto-
2 fore created and established by former section seven of this
3 article, shall be continued for the purpose of developing, with
4 the commissioner, standards for emergency medical service
5 personnel and for the purpose of providing advice to the office
6 of emergency medical services and the commissioner with
7 respect to reviewing and making recommendations for, and
8 providing assistance to, the establishment and maintenance of
9 adequate emergency medical services for all portions of this
10 state.

11 The council shall have the duty to advise the commissioner
12 in all matters pertaining to his or her duties and functions in
13 relation to carrying out the purposes of this article.

14 The council shall be composed of fifteen members ap-
15 pointed by the governor by and with the advice and consent of
16 the Senate. The mountain state emergency medical services
17 association shall submit to the governor a list of six names of
18 representatives from their association and a list of three names
19 shall be submitted to the governor of representatives of their
20 respective organizations by the county commissioners' associa-
21 tion of West Virginia, the West Virginia state firemen's
22 association, the West Virginia hospital association, the West

23 Virginia chapter of the American college of emergency
24 physicians, the West Virginia emergency medical services
25 administrators association, the West Virginia emergency
26 medical services coalition, the ambulance association of West
27 Virginia and the state department of education. The governor
28 shall appoint from the respective lists submitted, two persons
29 who represent the mountain state emergency medical services
30 association, one of whom shall be a paramedic and one of
31 whom shall be an emergency medical technician-basic, and one
32 person from the county commissioners' association of West
33 Virginia, the West Virginia state firemen's association, the
34 West Virginia hospital association, the West Virginia chapter
35 of the American college of emergency physicians, the West
36 Virginia emergency medical services administrators associa-
37 tion, the West Virginia emergency medical services coalition,
38 the ambulance association of West Virginia and the state
39 department of education. In addition the governor shall appoint
40 one person to represent emergency medical service providers
41 operating within the state, one person to represent small
42 emergency medical service providers operating within this state
43 and three persons to represent the general public. Not more than
44 six of the members may be appointed from any one congressio-
45 nal district.

46 The current advisory council members' terms shall end on
47 the thirtieth day of June, one thousand nine hundred ninety-six
48 and, pursuant to the provisions of this section, the governor
49 shall appoint an advisory council on the first day of July, one
50 thousand nine hundred ninety-six. Of those first appointed, one-
51 third shall serve for one year, one-third shall serve for two years
52 and one-third shall serve for three years. Each subsequent term
53 is to be for three years and no member may serve more than
54 four consecutive terms.

55 The council shall choose its own chairman and meet at the
56 call of the commissioner at least twice a year.

57 The members of the council shall receive compensation and
58 expense reimbursement in an amount not to exceed the same
59 compensation and expense reimbursement as is paid to mem-

60 bers of the Legislature for their interim duties as recommended
61 by the citizens legislative compensation commission and
62 authorized by law, for each day or substantial portion thereof
63 engaged in the performance of official duties.

64 Pursuant to the provisions of article ten, chapter four of this
65 code, the emergency medical services advisory council shall
66 continue to exist until the first day of July, two thousand five.

CHAPTER 248

(S. B. 515 — By Senators Bowman, Bailey, Ball, Kessler,
McCabe, Minard, Redd, Wooton, Boley and Minear)

[Passed March 1, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-eight, article twenty-nine-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the health care authority.

Be it enacted by the Legislature of West Virginia:

That section twenty-eight, article twenty-nine-b, 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 29B. HEALTH CARE AUTHORITY.

§16-29B-28. Termination date.

1 Pursuant to the provisions of section four, article ten,
2 chapter four of this code, the health care authority shall
3 continue to exist until the first day of July, two thousand five,
4 to allow for a completion of an audit by the joint committee on
5 government operations.

CHAPTER 249

(S. B. 184 — By Senators Bailey, Bowman, Ball, Jackson, Kessler, McCabe, Minard, Redd, Schoonover, Snyder, Walker, Wooton and Boley)

[Passed February 24, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article sixteen-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia parkways, economic development and tourism authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16A. WEST VIRGINIA PARKWAYS, ECONOMIC DEVELOPMENT AND TOURISM AUTHORITY.

§17-16A-3. Dissolution and termination of West Virginia turnpike commission; West Virginia parkways, economic development and tourism authority generally.

1 On and after the first day of June, one thousand nine
2 hundred eighty-nine, the West Virginia turnpike commission is
3 hereby abolished in all respects, and there is hereby created the
4 “West Virginia Parkways, Economic Development and Tourism
5 Authority”, and by that name the parkways authority may sue
6 and be sued and plead and be impleaded. The parkways
7 authority is hereby constituted an agency of the state, and the
8 exercise by the parkways authority of the powers conferred by
9 this article in the construction, reconstruction, improvement,
10 operation and maintenance of parkway, economic development
11 and tourism projects shall be deemed and held to be an essential
12 governmental function of the state.

13 The West Virginia parkways, economic development and
14 tourism authority shall consist of seven members, including the
15 transportation secretary, who shall serve as chairman of the
16 parkways authority, and six members, including no less than
17 one from each of the counties which have land bordering
18 parkway projects, appointed by the governor, by and with the
19 advice and consent of the Senate. The appointed members shall
20 be residents of the state and shall have been qualified electors
21 therein for a period of at least one year next preceding their
22 appointment. Upon the effective date of this legislation, the
23 governor shall forthwith appoint six members of the parkways
24 authority for staggered terms. The terms of the parkways
25 authority members first taking office on or after the effective
26 date of this legislation shall expire as designated by the gover-
27 nor at the time of the nomination, one at the end of the first
28 year, one at the end of the second year, one at the end of the
29 third year, one at the end of the fifth year, one at the end of the
30 sixth year and one at the end of the seventh year, after the first
31 day of June, one thousand nine hundred eighty-nine. As these
32 original appointments expire, each subsequent appointment
33 shall be for a full eight-year term. Any member whose term has
34 expired shall serve until his or her successor has been duly
35 appointed and qualified. Any person appointed to fill a vacancy
36 shall serve only for the unexpired term. Any member shall be
37 eligible for reappointment. The term of any person serving as
38 a member of the West Virginia turnpike commission immedi-
39 ately preceding the effective date of this legislation shall cease
40 and otherwise expire upon such effective date: *Provided*, That
41 any such member shall be eligible for reappointment. Each
42 appointed member of the parkways authority before entering
43 upon his duties shall take an oath as provided by section five,
44 article IV of the constitution of the state of West Virginia.

45 The parkways authority shall elect one of the appointed
46 members as vice chairman, and shall also elect a secretary and
47 treasurer who need not be members of the parkways authority.
48 Four members of the parkways authority shall constitute a
49 quorum and the vote of a majority of members present shall be

50 necessary for any action taken by the parkways authority. No
51 vacancy in the membership of the parkways authority shall
52 impair the right of a quorum to exercise all the rights and
53 perform all the duties of the parkways authority. The parkways
54 authority shall meet at least monthly and either the chairman or
55 any four members shall be empowered to call special meetings
56 for any purpose or purposes: *Provided*, That notice of any such
57 meeting shall be given to all members of the parkways authority
58 not less than ten days prior to said special meetings.

59 Before the issuance of any parkway revenue bonds or
60 revenue refunding bonds under the provisions of this article,
61 each appointed member of the parkways authority shall execute
62 a surety bond in the penal sum of twenty-five thousand dollars
63 and the secretary and treasurer shall execute a surety bond in
64 the penal sum of fifty thousand dollars, each such surety bond
65 to be conditioned upon the faithful performance of the duties of
66 his or her office, to be executed by a surety company authorized
67 to transact business in the state of West Virginia as surety and
68 to be approved by the governor and filed in the office of the
69 secretary of state.

70 The members of the parkways authority shall not be entitled
71 to compensation for their services, but each member shall be
72 reimbursed for his or her actual expenses necessarily incurred
73 in the performance of his or her duties. All expenses incurred
74 in carrying out the provisions of this article shall be payable
75 solely from funds provided under the authority of this article
76 and no liability or obligation shall be incurred by the parkways
77 authority hereunder beyond the extent to which moneys shall
78 have been provided under the authority of this article.

79 Pursuant to the provisions of article ten, chapter four of this
80 code, the West Virginia parkways, economic development and
81 tourism authority shall continue to exist until the first day of
82 July, two thousand five.

CHAPTER 250

(H. B. 2480 — By Delegates Douglas, Collins, Prunty,
Hatfield, H. White and Stalnaker)

[Passed March 2, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article two-g, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to terminating the tree fruit industry self-improvement assessment board.

Be it enacted by the Legislature of West Virginia:

That section ten, article two-g, 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 2G. TREE FRUIT INDUSTRY SELF-IMPROVEMENT BOARD.

§19-2G-10. Termination of program.

- 1 Pursuant to the provisions of article ten, chapter four of this
- 2 code, and following a preliminary performance review con-
- 3 ducted through the joint committee on government operations,
- 4 the tree fruit industry self-improvement assessment board shall
- 5 terminate the first day of July, one thousand nine hundred
- 6 ninety-nine. After the termination date, the board shall have the
- 7 powers and authority set forth in section six, article ten, chapter
- 8 four of this code until the first day of July, two thousand.

CHAPTER 251

(S. B. 186 — By Senators Bailey, Bowman, Ball, Jackson, Kessler, McCabe,
Minard, Redd, Schoonover, Snyder, Walker, Wooton and Boley)

[Passed March 2, 1999; 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 shall
46 be serving on the committee. A majority of the committee shall
47 constitute a quorum and the concurrence of a majority in any
48 matter within their duties shall be required for its determination.
49 The chairman and members of the committee shall receive no
50 compensation for their services on the committee but shall be
51 entitled to expenses, including traveling expenses necessarily
52 incurred in the discharge of their duties on the committee. The
53 committee shall provide for the execution of surety bonds for all
54 employees and officers who shall be entrusted with funds or
55 property; shall provide for the keeping of a full and accurate
56 public record of all proceedings and of all resolutions, rules and
57 orders issued or adopted; and shall provide for an annual audit of
58 the accounts of receipts and disbursements.

59 (d) In addition to the duties and powers hereinafter con-
60 ferred upon the state soil conservation committee, it shall have
61 the following duties and powers:

62 (1) To offer such assistance as may be appropriate to the
63 supervisors of soil conservation districts, organized as provided

64 hereinafter, in the carrying out of any of their powers and
65 programs;

66 (2) To keep the supervisors of each of the several districts,
67 organized under the provisions of this article, informed of the
68 activities and experience of all other districts organized
69 hereunder, and to facilitate an interchange of advice and
70 experience between such districts and cooperation between
71 them;

72 (3) To coordinate the programs of the several soil conserva-
73 tion districts organized hereunder so far as this may be done by
74 advice and consultation;

75 (4) To secure the cooperation and assistance of the United
76 States and any of its agencies and of agencies of this state, in
77 the work of such districts;

78 (5) To disseminate information throughout the state
79 concerning the activities and programs of the soil conservation
80 districts organized hereunder, and to encourage the formation
81 of such districts in areas where their organization is desirable;

82 (6) To accept and receive donations, gifts, contributions,
83 grants and appropriations in money, services, materials or
84 otherwise, from the United States or any of its agencies, from
85 the state of West Virginia or from other sources, and to use or
86 expend such money, services, materials or other contributions
87 in carrying out the policy and provisions of this article, includ-
88 ing the right to allocate such money, services or materials in
89 part to the various soil conservation districts created by this
90 article in order to assist them in carrying on their operations;
91 and

92 (7) To obtain options upon and to acquire by purchase,
93 exchange, lease, gift, grant, bequest, devise or otherwise, any
94 property, real or personal, or rights or interests therein; to
95 maintain, administer, operate and improve any properties
96 acquired, to receive and retain income from such property and
97 to expend such income as required for operation, maintenance,
98 administration or improvement of such properties or in other-
99 wise carrying out the purposes and provisions of this article;

100 and to sell, lease or otherwise dispose of any of its property or
101 interests therein in furtherance of the purposes and the provi-
102 sions of this article. Money received from the sale of land
103 acquired in the small watershed program shall be deposited in
104 the special account of the state soil conservation committee and
105 expended as herein provided.

106 After having conducted a performance audit through its
107 joint committee on government operations, pursuant to article
108 ten, chapter four of this code, the Legislature hereby finds and
109 declares that the state soil conservation committee should be
110 continued and reestablished. Accordingly, pursuant to the
111 provisions of section five of said article, the state soil conserva-
112 tion committee shall continue to exist until the first day of July,
113 two thousand.

CHAPTER 252

(S. B. 438 — By Senators Bowman, Bailey, Ball, Kessler, McCabe,
Minard, Plymale, Redd, Snyder, Wooton and Boley)

[Passed February 26, 1999; 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.

CHAPTER 253

(H. B. 2610 — By Delegates Douglas, Collins, Prunty,
H. White, Hatfield, Flanigan and Stainaker)

[Passed March 2, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the parks section and the parks functions of the division of natural resources.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-3. Division of natural resources, office of director and commission established; termination date for division of natural resources and for parks section of division of natural resources.

1 A division of natural resources, the office of director of the
2 division of natural resources and a natural resources
3 commission are hereby created and established in the state
4 government with jurisdiction, powers, functions, services and
5 enforcement processes as provided in this chapter and
6 elsewhere by law.

7 Pursuant to the provisions of article ten, chapter four of this
8 code, the division of natural resources shall continue to exist
9 until the first day of July, two thousand one.

10 Pursuant to the provisions of article ten, chapter four of this
11 code, the parks section and parks functions of the division of

12 natural resources, transferred to the division of natural
13 resources pursuant to the provisions of section twelve, article
14 one, chapter five-b of this code, shall continue to exist within
15 the division of natural resources until the first day of July, two
16 thousand two.

CHAPTER 254

(H. B. 2733 — By Delegates Douglas, Collins, Prunty,
H. White, Hatfield, Kuhn and Stalnaker)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article two, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the authority of the commissioner of the bureau of employment programs to administer unemployment compensation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. THE COMMISSIONER OF THE BUREAU OF EMPLOYMENT PROGRAMS.

§21A-2-9. Continuation of authority of commissioner to administer unemployment compensation.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the commissioner shall continue to administer this chapter
3 until the first day of July, two thousand two, to allow for the
4 completion of a preliminary performance review by the joint
5 committee on government operations.

CHAPTER 255

(H. B. 513 — By Senators Bowman, Bailey, Ball, Kessler,
McCabe, Milnard, Redd, Wooton, Boley and Minear)

[Passed March 2, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the office of water resources within the division of environmental protection.

Be it enacted by the Legislature of West Virginia:

That section seven, 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.

***§22-1-7. Offices within division; continuation of the office of water resources.**

1 Consistent with the provisions of this article the director
2 shall, at a minimum, maintain the following offices within the
3 division:

4 (1) The office of abandoned mine lands and reclamation,
5 which is charged, at a minimum, with administering and
6 enforcing, under the supervision of the director, the provisions
7 of article two of this chapter;

8 (2) The office of mining and reclamation, which is charged,
9 at a minimum, with administering and enforcing, under the
10 supervision of the director, the provisions of articles three and
11 four of this chapter;

12 (3) The office of air quality, which is charged, at a mini-
13 mum, with administering and enforcing, under the supervision
14 of the director, the provisions of article five of this chapter;

* Clerk's Note: This section was also amended by SB 681 (Chapter 120), which passed subsequent to this act.

15 (4) The office of oil and gas, which is charged, at a mini-
16 mum, with administering and enforcing, under the supervision
17 of the director, the provisions of articles six, seven, eight, nine
18 and ten of this chapter;

19 (5) The office of water resources, which is charged, at a
20 minimum, with administering and enforcing, under the supervi-
21 sion of the director, the provisions of articles eleven, twelve,
22 thirteen and fourteen of this chapter; and

23 (6) The office of waste management, which is charged, at
24 a minimum, with administering and enforcing, under the
25 supervision of the director, the provisions of articles fifteen,
26 sixteen, seventeen, eighteen, nineteen and twenty of this
27 chapter.

28 Pursuant to the provisions of article ten, chapter four of this
29 code, the office of water resources within the division of
30 environmental protection shall continue to exist until the first
31 day of July, two thousand one.

CHAPTER 256

(H. B. 2675 — By Delegates Douglas, Collins, Prunty,
H. White, Hatfield, Manchin and McGraw)

[Passed March 12, 1999; 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, relating to the continuation of the office of the environmental advocate of the division of environmental protection.

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, pursuant to article ten, chapter four of this code.

CHAPTER 257

(H. B. 2674 — By Delegates Douglas, Collins, Prunty,
H. White, Hatfield and Stalnaker)

[Passed March 12, 1999; 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 judges of the workers' compensation system.

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 subsequentl
12 removed as provided for in subsection (b) of this section.

13 (b) The chief administrative law judge shall be a perso
14 who has been admitted to the practice of law in this state an
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.

CHAPTER 258

(S. B. 359 — By Senators Bowman, Bailey, Ball, Jackson, Kessler, McCabe,
 Minard, Plymale, Redd, Snyder, Walker, Boley and Minear)

[Passed February 24, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the public service commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS.

*§24-1-3. Commission continued; membership; chairman; compensation.

1 (a) The public service commission of West Virginia,
 2 heretofore established, is continued and directed as provided by
 3 this chapter, chapter twenty-four-a and chapter twenty-four-b
 4 of this code. After having conducted a performance audit
 5 through its joint committee on government operations, pursuant

* Clerk's Note: This section was also amended by HB 2453 (Chapter 224), which passed subsequent to this act.

6 to section nine, article ten, chapter four of this code, the
7 Legislature hereby finds and declares that the public service
8 commission should be continued and reestablished. Accord-
9 ingly, notwithstanding the provisions of section four, article ten,
10 chapter four of this code, the public service commission shall
11 continue to exist until the first day of July, two thousand one.
12 The public service commission may sue and be sued by that
13 name. The public service commission shall consist of three
14 members who shall be appointed by the governor with the
15 advice and consent of the Senate. The commissioners shall be
16 citizens and residents of this state and at least one of them shall
17 be duly licensed to practice law in West Virginia, with not less
18 than ten years' actual work experience in the legal profession
19 as a member of a state bar. No more than two of the commis-
20 sioners shall be members of the same political party. Each
21 commissioner shall, before entering upon the duties of his or
22 her office, take and subscribe to the oath provided by section
23 five, article IV of the constitution of this state. The oath shall be
24 filed in the office of the secretary of state. The governor shall
25 designate one of the commissioners to serve as chairman at the
26 governor's will and pleasure. The chairman shall be the chief
27 administrative officer of the commission. The governor may
28 remove any commissioner only for incompetency, neglect of
29 duty, gross immorality, malfeasance in office or violation of
30 subsection (c) of this section.

31 (b) The unexpired terms of members of the public service
32 commission at the time this subsection becomes effective are
33 continued. Upon expiration of the terms, appointments are for
34 terms of six years, except that an appointment to fill a vacancy
35 is for the unexpired term only. The commissioners whose terms
36 are terminated by the provisions of this subsection are eligible
37 for reappointment.

38 (c) No person while in the employ of, or holding any
39 official relation to, any public utility subject to the provisions
40 of this chapter, or holding any stocks or bonds of a public utility
41 subject to the provisions of this chapter, or who is pecuniarily
42 interested in a public utility subject to the provisions of this
43 chapter, may serve as a member of the commission or as an

44 employee of the commission. Nor may any commissioner be a
45 candidate for or hold public office, or be a member of any
46 political committee, while acting as a commissioner; nor may
47 any commissioner or employee of the commission receive any
48 pass, free transportation or other thing of value, either directly
49 or indirectly, from any public utility or motor carrier subject to
50 the provisions of this chapter. In case any of the commissioners
51 becomes a candidate for any public office or a member of any
52 political committee, the governor shall remove him or her from
53 office and shall appoint a new commissioner to fill the vacancy
54 created.

55 (d) The salaries of members of the public service commis-
56 sion and the manner in which they are paid established by the
57 prior enactment of this section are continued. Effective the first
58 day of July, one thousand nine hundred ninety-six, and in light
59 of the assignment of new, substantial additional duties embrac-
60 ing new areas and fields of activity under certain legislative
61 enactments, each commissioner shall receive an annual salary
62 of sixty-five thousand dollars to be paid in monthly installments
63 from the special funds in the amounts that follow:

64 (1) From the public service commission fund collected
65 under the provisions of section six, article three of this chapter,
66 fifty-two thousand dollars;

67 (2) From the public service commission motor carrier fund
68 collected under the provisions of section six, article six, chapter
69 twenty-four-a of this code, ten thousand eight hundred fifty
70 dollars; and

71 (3) From the public service commission gas pipeline safety
72 fund collected under the provisions of section three, article five,
73 chapter twenty-four-b of this code, two thousand one hundred
74 fifty dollars.

75 In addition to this salary provided for all commissioners,
76 the chairman of the commission shall receive five thousand
77 dollars per annum to be paid in monthly installments from the
78 public service commission fund collected under the provisions
79 of section six, article three of this chapter on and after the first
80 day of July, one thousand nine hundred ninety-six.

CHAPTER 259

(H. B. 2676 — By Delegates Douglas, Collins, Prunty,
Hatfield, H. White, Marshall and Azinger)

[Passed March 2, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article twenty, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the West Virginia women's commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. WOMEN'S COMMISSION.

§29-20-1. Continuation; membership; appointment and terms of members; organization; reimbursement for expenses.

1 The West Virginia commission on the status of women is
2 hereby abolished, and there is hereby continued within the
3 department of health and human resources the West Virginia
4 women's commission, to consist of eighteen members, seven of
5 whom shall be ex officio members, not entitled to vote: The
6 attorney general, the state superintendent of schools, the
7 commissioner of labor, the commissioner of the bureau of
8 human resources of the department of health and human
9 resources, the director of the human rights commission, the
10 director of the division of personnel and the chancellor of the
11 board of directors of the state college system. Each ex officio

12 member may designate one representative employed by his or
13 her department to meet with the commission in his or her
14 absence. The governor shall appoint the additional eleven
15 members, by and with the advice and consent of the Senate,
16 from among the citizens of the state. The governor shall
17 designate the chairman and vice chairman of the commission
18 and the commission may elect such other officers as it deems
19 necessary. The members shall serve a term beginning the first
20 day of July, one thousand nine hundred seventy-seven, three to
21 serve for a term of one year, four to serve for a term of two
22 years and the remaining four to serve for a term of three years.
23 The successors of the members initially appointed as provided
24 herein shall be appointed for a term of three years each in the
25 same manner as the members initially appointed under this
26 article, except that any person appointed to fill a vacancy
27 occurring prior to the expiration of the term for which his or her
28 predecessor was appointed shall be appointed for the remainder
29 of such term. Each member shall serve until the appointment
30 and qualification of his or her successor.

31 No member may receive any salary for his or her services,
32 but each may be reimbursed for actual and necessary expenses
33 incurred in the performance of his or her duties out of funds
34 received by the commission under section four of this article,
35 except that in the event the expenses are paid, or are to be paid,
36 by a third party, the members shall not be reimbursed by the
37 commission.

38 After having conducted a performance audit through its
39 joint committee on government operations, pursuant to section
40 nine, article ten, chapter four of this code, the Legislature
41 hereby finds and declares that the West Virginia women's
42 commission should be continued and reestablished. Accord-
43 ingly, notwithstanding the provisions of section four, article ten,
44 chapter four of this code, the West Virginia women's commis-
45 sion shall continue to exist until the first day of July, two
46 thousand two.

CHAPTER 260

(S. B. 437 — By Senators Bowman, Bailey, Ball, Kessler, McCabe, Minard, Plymale, Redd, Snyder, Wooton and Boley)

[Passed March 2, 1999; 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 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.

CHAPTER 261

(H. B. 2479 — By Delegates Douglas, Collins, Prunty,
H. White, Hatfield and Stalnaker)

[Passed March 2, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article thirty, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the board of social work examiners.

Be it enacted by the Legislature of West Virginia:

That section three, article thirty, 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 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 After having conducted a preliminary performance review
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 262

(S. B. 362 — By Senators Bowman, Bailey, Ball, Jackson, Kessler, McCabe,
Minard, Plymale, Redd, Snyder, Walker, Boley and Mlinear)

[Passed February 26, 1999; 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 in 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, unless sooner terminated or unless
- 5 continued or reestablished pursuant to that article.

CHAPTER 263

(H. B. 2712 — By Delegates Douglas, Collins, Prunty,
H. White, Hatfield, Everson and Stalnaker)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter forty-seven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia lending and credit rate board.

Be it enacted by the Legislature of West Virginia:

That section one, article one, chapter forty-seven-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. LENDING AND CREDIT RATE BOARD.

§47A-1-1. Legislative findings; creation, membership, powers and duties of board; termination of board.

1 (a) The Legislature hereby finds and declares that:

2 (1) Changes in the permissible charges on loans, credit
3 sales or transactions, forbearance or other similar transactions
4 requires specialized knowledge of the needs of the citizens of
5 West Virginia for credit for personal and commercial purposes
6 and knowledge of the availability of such credit at reasonable
7 rates to the citizens of this state while affording a competitive
8 return to persons extending such credit;

9 (2) Maximum charges on loans, credit sales or transactions,
10 forbearance or other similar transactions executed in this state
11 should be prescribed from time to time to reflect changed
12 economic conditions, current interest rates and finance charges
13 throughout the United States and the availability of credit
14 within the state in order to promote the making of such loans in
15 this state; and

16 (3) The prescribing of such maximum interest rates and
17 finance charges can be accomplished most effectively and
18 flexibly by a board comprised of the heads of designated
19 government agencies, university schools of business and
20 administration and members of the public.

21 (b) In view of the foregoing findings, it is the purpose of
22 this section to establish the West Virginia lending and credit
23 rate board and authorize said board to prescribe semiannually
24 the maximum interest rates and finance charges on loans, credit
25 sales or transactions, forbearance or similar transactions made
26 pursuant to this section subject to the provisions, conditions and
27 limitations hereinafter set forth and to authorize lenders, sellers
28 and other creditors to charge up to the maximum interest rates
29 or finance charges so fixed. The rates prescribed by the board
30 are alternative rates and any creditor may utilize either the rate
31 or rates set by the board or any other rate or rates which the
32 creditor is permitted to charge under any other provision of this
33 code.

34 (c) The West Virginia lending and credit rate board shall be
35 comprised of:

36 (1) The director of the governor's office of economic and
37 community development;

38 (2) The West Virginia state treasurer;

39 (3) The West Virginia banking commissioner;

40 (4) The deans of the schools of business and administration
41 at Marshall University and West Virginia University;

42 (5) The director of the division of consumer protection of
43 the attorney general's office; and

44 (6) Three members of the public appointed by the governor
45 with the advice and consent of the Senate. The members of the
46 public shall be appointed for terms of six years each, and until
47 their successors are appointed and qualified; except that of the
48 members first appointed, one shall be appointed for a term of
49 two years, one for a term of four years and one for a term of six
50 years. A member who has served one full term of six years shall

51 be ineligible for appointment for the next succeeding term.
52 Vacancies shall be filled by appointment of the governor with
53 the advice and consent of the Senate, or if any vacancy remains
54 unfilled for three months, by a majority vote of the board. The
55 West Virginia banking commissioner shall serve as chairperson
56 of the board and the rate or rates set by the board shall be
57 determined by a majority vote of those members of the board in
58 attendance at the respective board meeting.

59 (d) The West Virginia lending and credit rate board is
60 hereby authorized and directed to meet after the thirty-first day
61 of December, one thousand nine hundred eighty-three, on the
62 first Tuesday of April and on the first Tuesday of October of
63 each year or more or less frequently as required by the circum-
64 stances and to prescribe by order a maximum rate of interest
65 and finance charge for the next succeeding six months, effective
66 on the first day of June and on the first day of December, for
67 any loans, credit sales or transactions, forbearance or similar
68 transactions made pursuant to this section. In fixing said
69 maximum rates of interest and finance charge, the board shall
70 take into consideration prevailing economic conditions,
71 including the monthly index of long-term United States
72 government bond yields for the preceding calendar month,
73 yields on conventional commercial short-term loans and notes
74 throughout West Virginia and throughout the United States and
75 on corporate interest-bearing securities of high quality, the
76 availability of credit at reasonable rates to the citizens of this
77 state which afford a competitive return to persons extending
78 such credit and such other factors as the board may determine.

79 (e) Any petition proposing a change in the prescribed
80 maximum rates of interest and finance charges must be filed in
81 the office of the banking commissioner no later than the
82 fifteenth day of February in order to be voted on at the board
83 meeting on the first Tuesday of April and no later than the
84 fifteenth day of August in order to be voted on at the board
85 meeting on the first Tuesday of October. Whenever any change
86 in the prescribed maximum rates of interest and finance charges
87 is proposed the board shall schedule a hearing, at least fifteen
88 days prior to the board meeting at which the proposed rates of
89 interest and finance charge will be voted on by the members of

90 the board, and shall give all interested parties the opportunity to
91 testify and to submit information at such public hearing that is
92 relevant. Notice of the scheduled public hearing shall be issued
93 and disseminated to the public at least twenty days prior to the
94 scheduled date of the hearing.

95 (f) The board shall prescribe by order issued not later than
96 the twentieth day of April and not later than the twentieth day
97 of October, in accordance with the provisions of subsection (d)
98 of this section the maximum rates of interest and finance charge
99 for the next succeeding six months for any loan, credit sale,
100 forbearance or similar transaction made pursuant to this section
101 and shall cause such maximum rate of interest and finance
102 charge to be issued and disseminated to the public, such
103 maximum rate of interest and finance charge to be effective on
104 the first day of June and the first day of December for the next
105 succeeding six months.

106 (g) Notwithstanding the other provisions of this chapter, the
107 West Virginia lending and credit rate board shall not be
108 required to meet if no petition has been filed with the board
109 requesting a hearing and interest rates and economic conditions
110 have not changed sufficiently to indicate that any change in the
111 existing rate order would be required, and there are not at least
112 two board members who concur that a meeting of the board is
113 necessary. If the board does not meet, the maximum rates of
114 interest and finance charges prescribed by the board in the
115 existing rate order shall remain in full force and effect until the
116 next time the board meets and prescribes different maximum
117 rates of interest and finance charges.

118 (h) If circumstances and economic conditions require, the
119 chairperson or any three board members, at any time, may call
120 an emergency interim meeting of the West Virginia lending and
121 credit rate board, at which time the chairperson shall give ten
122 days' notice of the scheduled emergency meeting to the public.
123 All interested parties shall have the opportunity to be heard and
124 to submit information at such emergency meeting that is
125 relevant. Any and all emergency rate board orders shall be
126 effective within thirty days from the date of such emergency
127 meeting.

128 (i) Each member of the board, except those whose regular
129 salary is paid by the state of West Virginia, shall receive
130 seventy-five dollars per diem while actually engaged in the
131 performance of the duties of the board. Each member shall be
132 reimbursed for all reasonable and necessary expenses actually
133 incurred during the performance of their duties, except that in
134 the event the expenses are paid by a third party the members
135 shall not be reimbursed by the state. The reimbursement shall
136 be paid out of the revolving fund established by section two of
137 this article upon a requisition upon the state auditor, properly
138 certified by the banking commissioner.

139 (j) In setting the maximum interest rates and finance
140 charges, the board may set varying rates based on the type of
141 credit transaction, the term of transaction, the type of debtor,
142 the type of creditor and other factors relevant to determination
143 of such rates. In addition, the board may set varying rates for
144 ranges of principal balances within a single category of credit
145 transactions.

146 (k) Pursuant to the provisions of article ten, chapter four of
147 this code, the West Virginia lending and credit rate board shall
148 continue to exist until the first day of July, two thousand five.

CHAPTER 264

(H. B. 2034 — By Delegates Damron, Coleman,
Leach, Dempsey and Hubbard)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen, relating to assessment of personal property; and providing for the apportionment of the assessment of taxes on motor vehicles previously titled jointly by a married couple, but awarded to one of the spouses in a final divorce order; duties of assessor, county

commission, clerk of the county commission and sheriff; and payment of tax.

Be it enacted by the Legislature of West Virginia:

That article five, 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 fourteen, to read as follows:

ARTICLE 5. ASSESSMENT OF PERSONAL PROPERTY.

§11-5-14. Assessment of motor vehicles previously titled jointly by married couples following final divorce order.

1 Beginning the first day of July, one thousand nine hundred
2 ninety-nine, upon the presentment to the assessor of a certified
3 copy of a final divorce order, entered under the provisions of
4 section fifteen, article two, chapter forty-eight of this code,
5 which grants the possession of a jointly titled motor vehicle to
6 one of the parties of the divorce, the assessor shall list and
7 assess that motor vehicle in the name of the person awarded
8 possession of the vehicle in the final divorce order. If two
9 jointly owned motor vehicles are involved in the divorce order
10 and the vehicles are awarded exclusively to be titled one in the
11 name of the husband and one in the name of the wife, the
12 assessor shall apportion the assessment of the taxes owed on the
13 vehicles between the husband and wife for the purposes of
14 taxation on the vehicles so that the husband or wife will be
15 responsible for the payment of taxes only on the vehicle
16 awarded to him or her by the final divorce order. The assessor
17 shall file notice of the apportionment with the county commis-
18 sion. Upon receipt of the notice, the county commission shall
19 order that the taxes on the vehicles be apportioned in accor-
20 dance with the apportionment set forth in the notice. The clerk
21 of the county commission shall certify a copy of the order to the
22 sheriff. Upon receipt of the order, the sheriff shall accept
23 payment of the amount of tax apportioned to the motor vehicle
24 awarded to the former spouse determined in the county com-
25 mission's order, and the receipt issued by the sheriff for such
26 payment shall constitute payment in full of the taxes due for the
27 motor vehicle. No provision of this section may be construed to
28 relieve the former spouse from liability for payment of any tax
29 imposed on any other property of the former spouse.

CHAPTER 265

(Com. Sub. for H. B. 2670 — By Delegate Warner)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections seven-a, seven-b, article six, chapter eleven; and section one, article six-g, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one and seven, article six of said chapter; to amend and reenact sections two, three, five, twelve, thirteen and seventeen, article six-g of said chapter; and to amend and reenact section ten-a, article two, chapter seventeen-a, all relating to the assessment of ad valorem fees on interstate motor vehicles; the disclosure and obtaining of information by the motor vehicles commissioner; and the duty and liability of the commissioner of motor vehicles to collect taxes and fees.

Be it enacted by the Legislature of West Virginia:

That sections seven-a, seven-b, article six, chapter eleven; and section one, article six-g, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one and seven, article six of said chapter be amended and reenacted; that sections two, three, five, twelve, thirteen and seventeen, article six-g of said chapter be amended and reenacted; and that section ten-a, article two, chapter seventeen-a be amended and reenacted, all to read as follows:

Chapter

11. Taxation.

17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.

CHAPTER 11. TAXATION.

Article**6. Assessment of Public Service Businesses.****6G. Assessment of Interstate Corporation Motor Vehicle Business Registered under a Promotional Registration Agreement.****ARTICLE 6. ASSESSMENT OF PUBLIC SERVICE BUSINESSES.**

§11-6-1. Returns of property to board of public works.

§11-6-7. Same — Telegraph and telephone companies.

§11-6-1. Returns of property to board of public works.

1 (a) On or before the first day of May in each year a return
2 in writing shall be filed with the board of public works: (1) By
3 the owner or operator of every railroad, wholly or in part,
4 within this state; (2) by the owner or operator of every railroad
5 bridge upon which a separate toll or fare is charged; (3) by the
6 owner or operator of every car or line of cars used upon any
7 railroad within the state for transportation or accommodation of
8 freight or passengers, other than the owners or operators as may
9 own or operate a railroad within the state; (4) by the owner or
10 operator of every express company or express line, wholly or in
11 part, within this state, used for the transportation by steam or
12 otherwise of freight and other articles of commerce; (5) by the
13 owner or operator of every pipeline, wholly or in part, within
14 this state, used for the transportation of oil or gas or water,
15 whether the oil or gas or water be owned by the owner or
16 operator or not, or for the transmission of electrical or other
17 power, or the transmission of steam or heat and power or of
18 articles by pneumatic or other power; (6) by the owner or
19 operator of every telegraph or telephone line, wholly or in part,
20 within this state, except private lines not operated for compen-
21 sation; (7) by the owner and operator of every gas company and
22 electric lighting company furnishing gas or electricity for
23 lighting, heating or power purposes; (8) by the owner or
24 operator of hydroelectric companies for the generation and
25 transmission of light, heat or power; (9) by the owner or
26 operator of water companies furnishing or distributing water;
27 and (10) by the owner or operator of all other public service
28 corporations or persons engaged in public service business
29 whose property is located, wholly or in part, within this state.

30 (b) The words "owner or operator," as applied herein to
31 railroad companies, shall include every railroad company
32 incorporated by or under the laws of this state for the purpose
33 of constructing and operating a railroad, or of operating part of
34 a railroad within this state, whether the railroad or any part of
35 it be in operation or not; and shall also include every other
36 railroad company, or persons or associations of persons, owning
37 or operating a railroad or part of a railroad in this state on which
38 freight or passengers, or both, are carried for compensation. The
39 word "railroad," as used herein includes every street, city,
40 suburban or electric or other railroad or railway.

41 (c) The words "owner or operator," as applied herein to
42 express companies, shall include every express company
43 incorporated by or under the laws of this state, or doing
44 business in this state, whether incorporated or not, and any
45 person or association of persons, owning or operating any
46 express company or express line upon any railroad or other-
47 wise, doing business partly or wholly within this state.

48 (d) The return shall be signed and sworn to by the owner or
49 operator if a natural person, or, if the owner or operator shall be
50 a corporation, shall be signed and sworn to by its president, vice
51 president, secretary or principal accounting officer.

52 (e) The return required by this section of every owner or
53 operator shall cover the year ending on the thirty-first day of
54 December, next preceding, and shall be made on forms pre-
55 scribed by the board of public works, which board is hereby
56 invested with full power and authority and it is hereby made its
57 duty to prescribe the forms as will require from any owner or
58 operator herein mentioned information as in the judgment of the
59 board may be of use to it in determining the true and actual
60 value of the properties of the owners or operators.

§11-6-7. Same — Telegraph and telephone companies.

1 In the case of a telegraph or telephone line, the report shall
2 show for every owner or operator: (a) The number of miles of
3 lines owned, leased or operated within this state, the gauge of
4 the wire, the number of strands of wire, the material of which
5 it is made and, as accurately as may be, the time when the line

6 or any material part thereof was constructed or last replaced; (b)
7 if such lines be partly within and partly without the state, the
8 whole number of miles thereof within this state and the whole
9 number of miles without this state, including all branches and
10 connecting lines in and out of the state; (c) the true and actual
11 value per mile of such line in each county of this state; (d) its
12 stations, shops and machinery therein, and all buildings,
13 structures and appendages connected or used therewith,
14 together with all real estate, other than its telegraph or tele-
15 phone line, owned or used by it in connection with its line, and
16 of each parcel of such real estate and the true and actual value
17 thereof in each county in this state in which it is located; (e) its
18 personal property of every kind whatsoever, including money,
19 credits and investments, and the amounts thereof wholly held
20 or used in this state, showing the amount and value thereof in
21 each county; (f) an itemized list of all other real r property within
22 this state, with the location thereof; and (g) the actual capital
23 employed in the business of such owner or operator, the total
24 amount of the bonded indebtedness of the owner or operator,
25 with respect to the line, and of all indebtedness not bonded;
26 and, if the owner or operator be a corporation, its capital stock,
27 the character, number, amount and the market value of the
28 shares thereof, and the amount of capital stock actually paid in;
29 its bonded indebtedness and its indebtedness not bonded. The
30 board of public works shall have the right to require any such
31 owner or operator to furnish such other and further information
32 as, in the judgment of the board, may be of use to it in deter-
33 mining the true and actual value of the property to be assessed
34 to the owner or operator.

**ARTICLE 6G. ASSESSMENT OF INTERSTATE CORPORATION MOTOR
VEHICLE BUSINESS REGISTERED UNDER A PROPOR-
TIONAL REGISTRATION AGREEMENT.**

§11-6G-2. Disclosure of required information to the tax commissioner.

§11-6G-3. Interstate motor vehicle business; calculation of tax.

§11-6G-5. Compelling such disclosure; procuring information and tentative assessments by motor vehicles commissioner.

§11-6G-12. Payment of assessment by owner or operator.

§11-6G-13. No release of taxes assessed against such corporations.

§11-6G-17. Operating fund for interstate commerce disclosure division in auditor's office.

§11-6G-2. Disclosure of required information to the tax commissioner.

1 (a) "Interstate motor vehicle," for purposes of this article,
2 is defined as every truck, road tractor or semitrailer used as an
3 interstate motor vehicle registered under a proportional registra-
4 tion agreement.

5 (b) The procedure for determining the value thereof is
6 exclusively provided for under section two of this article.

7 (c) The words "owner or operator," as applied herein to
8 trucks or semitrailers used as an interstate motor vehicle in the
9 transportation of property, shall include every company
10 incorporated by or under the laws of this state, or doing
11 business in this state, whether incorporated or not, and any
12 person or association of persons, owning or operating any truck
13 or semitrailer used as an interstate motor vehicle in the trans-
14 portation of property doing business partly or wholly within this
15 state.

16 (d) Every interstate commercial motor vehicle covered by
17 this article shall pay such taxes based upon the assessments as
18 are required by law pursuant to rules promulgated by the tax
19 commissioner.

§11-6G-3. Interstate motor vehicle business; calculation of tax.

1 (a) In the case of interstate motor vehicles used for the
2 transportation of property and which are registered under a
3 proportional registration agreement, pursuant to the provisions
4 of section ten-a, article two, chapter seventeen-a of this code,
5 the owners, operator or operators, for each interstate motor
6 vehicle, on forms prescribed by the commissioner of motor
7 vehicles, shall disclose the total miles driven in West Virginia
8 and the total miles driven in any other states as reported in the
9 most recent taxable year to the division of motor vehicles
10 pursuant to any proportional registration agreement on file
11 therewith. The return shall, additionally, show the gross capital
12 cost of the interstate motor vehicle to the purchaser thereof and
13 the year the purchaser acquired the interstate motor vehicle.

14 (b) Ad valorem fees provided for in this chapter shall,

15 notwithstanding the provisions of section five, article one-c of
16 this chapter, be determined as follows for: (1) The gross capital
17 cost of an interstate motor vehicle shall be multiplied by a
18 percentage factor representing the remainder of the vehicle's
19 value after depreciation according to a depreciation schedule
20 established by the tax commissioner, which calculation shall
21 yield the appraised value of the vehicle, which appraised value
22 shall be multiplied by sixty percent to yield the assessed value;
23 (2) for the interstate truck, road tractor, or power unit, regis-
24 tered in this state as part of a fleet registered under any propor-
25 tional registration agreement under the provisions of section
26 ten-a, article two, chapter seventeen-a of this code, the assessed
27 value shall be multiplied by the apportioned percentage
28 calculated in accordance with the articles and bylaws of any
29 proportional registration agreement for the mileage reporting
30 year, as reported to the division of motor vehicles for the
31 corresponding registration year pursuant to any proportional
32 registration agreement on file therewith to obtain the appor-
33 tioned value, which apportioned value shall be multiplied by the
34 applicable rate of tax.

**§11-6G-5. Compelling such disclosure; procuring information
and tentative assessments by motor vehicles
commissioner.**

1 (a) If any owner or operator fails to make disclosure within
2 the time required by section one of this article, it shall be the
3 duty of the commissioner of motor vehicles to take steps as may
4 be necessary to compel such compliance, and to enforce any
5 and all penalties imposed by law for such failure, pursuant to
6 his or her authority under this article as well as section ten,
7 article two, chapter seventeen-a, and section ten-a, article two,
8 chapter seventeen-a of this code.

9 (b) The disclosure delivered to the motor vehicles commis-
10 sioner shall be examined by him or her, and if it be found
11 insufficient in form or in any respect defective, imperfect or not
12 in compliance with law, he or she shall compel the person
13 required to make it to do so in proper and sufficient form, and
14 in all respects as required by law.

15 (c) If any owner or operator fails to make such disclosure,
16 the motor vehicles commissioner shall proceed, in a manner as
17 to him or her may seem best, to obtain the facts and information
18 required to be furnished by the disclosures.

19 (d) The motor vehicles commissioner may send for persons
20 and papers, and may compel the attendance of any person and
21 the production of any paper necessary, in the opinion of the
22 motor vehicles commissioner, to enable him or her to obtain the
23 information required for the proper discharge of his or her
24 duties under this section.

§11-6G-12. Payment of assessment by owner or operator.

1 Beginning on the first day of July, one thousand nine
2 hundred ninety-nine, it shall be the duty of the foreign regis-
3 tered owner or operator with interstate operations within and
4 through West Virginia, so assessed and charged, to pay annu-
5 ally the amount of such ad valorem fees, and such registration
6 fees as are set by the motor vehicles commissioner as are
7 required into the treasury of the state by delivering payment of
8 the same to the commissioner of motor vehicles in the form and
9 manner prescribed by him or her. Further, beginning with the
10 renewal or registration year starting the first day of July, one
11 thousand nine hundred ninety-nine, it shall be the duty of the
12 commissioner of motor vehicles to assess and charge the owner
13 or operator the annual amount of ad valorem fees and registra-
14 tion fees owed. The ad valorem and registration fees will be
15 assessed and charged annually prior to the registration year
16 during the renewal period. It shall be the duty of the owner or
17 operator with interstate operations and domiciled in the state, so
18 assessed and charged, to pay annually prior to the registration,
19 the amount of taxes and registration fees set by the motor
20 vehicles commissioner in the form and manner prescribed by
21 him or her. The payment of taxes by any owner or operator
22 shall not prejudice or affect the right of the owner or operator
23 to obtain relief against the assessment or valuation of its
24 property in proceedings now pending or hereafter brought under
25 the provisions of section eight of this article, or in any suit,
26 action or proceeding in which relief may be obtainable; and if
27 under the provisions of said section eight or in any suit, action

28 or proceeding, it be ascertained that the assessment or valuation
29 of the property of the owner or operator is too high and the
30 same is accordingly corrected, it shall be the duty of the auditor
31 of the state to issue to the owner or operator a certificate
32 showing the amount of taxes and which have been overpaid,
33 and the certificate shall be receivable thereafter for the amount
34 of overpayment in payment of any ad valorem fees and assessed
35 against the property of the owner or operator, its successors or
36 assigns. It shall likewise be the duty of said auditor to certify to
37 the county commission, school districts and municipalities, the
38 amounts of the respective overpayments distributable to such
39 counties, school districts and municipalities.

40 Implementation of collection of assessments upon interstate
41 commercial motor vehicles by the commissioner of motor
42 vehicles shall begin the first day of July, one thousand nine
43 hundred ninety-nine. The motor vehicles commissioner, upon
44 receipt of funds from other jurisdictions under a proportional
45 registration agreement, shall deliver the funds received to the
46 auditor beginning in August, one thousand nine hundred ninety-
47 nine, and thereafter every thirty days in arrears. All moneys
48 received by the auditor under the provisions of this section shall
49 be transmitted to the several counties within thirty days from
50 receipt thereof.

§11-6G-13. No release of taxes assessed against such corporations.

1 Neither the county commission of any county, nor any
2 board of education, nor the municipal authorities of any
3 incorporated town, shall have jurisdiction, power or authority,
4 by compromise or otherwise, to remit or release any portion of
5 the taxes so assessed upon the property of any owner or
6 operator. It shall be the duty of the motor vehicles commis-
7 sioner to collect the whole thereof, regardless of any order or
8 direction of any county commission, board of education or
9 municipal authority to the contrary. Any member of the county
10 commission or board of education, or of the council of a
11 municipal corporation, who shall vote to remit or release any
12 part of the taxes, so assessed on the property of any owner or

13 operator, shall be guilty of a misdemeanor and fined five
14 hundred dollars, and shall be removed from his or her office by
15 the court by which the judgment of the fine is rendered, in
16 addition to the fine.

**§11-6G-17. Operating fund for interstate commerce disclosure
division in auditor's office.**

1 The auditor shall establish a special operating fund in the
2 state treasury for the interstate commerce disclosure division in
3 his or her office. The auditor shall pay into the fund one percent
4 of the gross receipts of all moneys collected as provided for in
5 this article. From the fund, the auditor shall reimburse the tax
6 division and the division of motor vehicles for the actual
7 operating expenses incurred in the performance of its duties
8 required by this article. The reimbursements to the tax division
9 and division of motor vehicles from the fund shall not exceed
10 one third of the annual deposits to the fund per agency. Any
11 moneys remaining in the special operating fund after reim-
12 bursement to the tax division and the division of motor vehicles
13 shall be used by the auditor for funding the operation of the
14 interstate commerce disclosure division located in his or her
15 office.

16 The interstate commerce disclosure division is hereby
17 granted authority and required to share any and all information
18 obtained by the division in the implementation of this article
19 with state auditor, tax commissioner and the commissioner of
20 motor vehicles to effectuate the collection of taxes and fees
21 under this article. The motor vehicles commissioner is hereby
22 authorized and required to share any and all information
23 obtained by the division of motor vehicles in the implementa-
24 tion of this article. The commissioner of motor vehicles will
25 supply to the interstate commerce disclosure division the names
26 of, location or locations of, and amount or amounts paid by
27 West Virginia owners or operators of interstate motor vehicles
28 registered under the terms of any proportional registration
29 agreement. The tax commissioner is hereby authorized and
30 required to share any and all information obtained by the
31 department of tax and revenue. The state auditor and the

32 interstate commerce disclosure division is hereby authorized
33 and required to share any and all information obtained by the
34 auditor or the division.

**CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION,
REGISTRATION, CERTIFICATE OF TITLE, AND
ANTITHEFT PROVISIONS.**

ARTICLE 2. DEPARTMENT OF MOTOR VEHICLES.

§17A-2-10a. Same — Authorizing the entry of this state into reciprocal proportional registration agreements; payment of taxes; issuance of registration plates or markers; promulgation of rules; interagency cooperation; requirement that all registrants pay tax; intermittent interstate commerce and promulgation of rules; proportional registration agreement prevails.

1 (a) The commissioner of motor vehicles is hereby autho-
2 rized and empowered to enter into reciprocal agreements on
3 behalf of this state with any jurisdiction which permits or
4 requires the licensing of motor vehicles in interstate or com-
5 bined interstate and intrastate commerce and the payment of
6 taxes, registration, licensing or other fees fixed by the motor
7 vehicle commissioner, pursuant to the execution of this article
8 on an apportionment basis commensurate with and determined
9 by the miles traveled on public roads and highways in that
10 jurisdiction, as compared with the miles traveled on public
11 roads and highways in other jurisdictions or on any other
12 equitable basis of apportionment, and if that jurisdiction
13 exempts motor vehicles registered in other jurisdictions under
14 that apportionment basis from the requirements of full payment
15 of its own registration, license or other fixed fees, the commis-
16 sioner, by agreement may adopt the exemption as to those
17 motor vehicles, whether owned by residents or nonresidents of
18 this state and regardless of where the vehicles are registered.

19 (b) The agreements under any terms, conditions or restric-
20 tions as the commissioner considers proper may provide that
21 owners of motor vehicles operated in interstate or combined
22 interstate and intrastate commerce in this state shall be permit-

23 ted to pay registration, license or other fees fixed on an appor-
24 tionment basis, commensurate with and determined by the
25 miles traveled on public roads and highways in this state as
26 compared with the miles traveled on public roads and highways
27 in other jurisdictions or any other equitable basis of appor-
28 tionment. The agreements shall not authorize or be construed as
29 authorizing any motor vehicle so registered to be operated
30 without complying with the provisions of chapter eleven and
31 chapter twenty-four-a of this code.

32 (c) Pursuant to the provisions of this section, the commis-
33 sioner is expressly authorized and empowered to enter into and
34 become a member of the international registration plan or other
35 designation that may from time to time be given to the reciproc-
36 al plan.

37 (d) The commissioner shall prescribe the substance, form,
38 color and context of any registration plate or marker issued
39 under the provisions of this section, each of which shall be
40 visually distinguishable from other registration plates or
41 markers produced by the division of motor vehicles.

42 (e) The commissioner is authorized to promulgate proced-
43 ural rules as may be necessary to carry out the provisions of
44 any agreements entered into pursuant to this section.

45 (f) The commissioner is authorized to collect and receive
46 funds under this article pursuant to the authority vested in him
47 or her under article six-g of chapter eleven of this code.

48 (g) The commissioner is hereby authorized and required to
49 share with the interstate commerce disclosure division of the
50 office of the state auditor any and all information acquired by
51 the division of motor vehicles pursuant to the implementation
52 of this article. The division shall provide to the interstate
53 commerce disclosure division, and the department of tax and
54 revenue the name of the location and amount paid by West
55 Virginia owners or operators of interstate motor vehicles
56 registered under the proportional registration agreement.

57 (h) For any other irregular, intermittent or temporary
58 interstate commerce activity, the division of motor vehicles is

59 hereby empowered to promulgate rules for the administration
60 and oversight thereof.

61 (i) Notwithstanding any other provision of the code to the
62 contrary, the requirements of the proportional assessment plan
63 as contained in article six-g, chapter eleven of this code, and the
64 provisions of this chapter, shall prevail in the event of any
65 conflict with any other portion of the code.

CHAPTER 266

(S. B. 510 — By Senators Prezioso, Craigo, Sprouse, Plymale,
McKenzie, Mitchell, Sharpe, Ross, Bowman, Jackson,
Minard, Kessler, Unger and Ball)

[Passed March 2, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five-n, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article two, chapter twelve of said code, all relating to payment of taxes and other amounts due state; permitting taxes to be paid by credit, charge or debit card or other commercially acceptable means; authorizing the tax commissioner to promulgate legislative rules; setting forth special provisions for the use of credit, debit or charge cards; and providing for confidentiality of information.

Be it enacted by the Legislature of West Virginia:

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

Chapter

11. Taxation.

12. Public Moneys and Securities.

CHAPTER 11. TAXATION.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.**§11-10-5n. Payment by commercially acceptable means.**

1 (a) *Authority to receive.* — The tax commissioner may
2 receive in payment for taxes or fees collected under this article
3 (or in payment for excise tax stamps and tax crowns) any
4 commercially acceptable means that the commissioner consid-
5 ers appropriate to the extent and under the conditions provided
6 in rules proposed by the commissioner for legislative approval
7 in accordance with article three, chapter twenty-nine-a of this
8 code.

9 (b) *Ultimate liability.* — If a check, money order or other
10 method of payment, including payment by credit card, debit
11 card or charge card received in payment of taxes or fees or tax
12 stamps or crowns is not duly paid, or is paid and subsequently
13 charged back to the tax commissioner, the person by whom the
14 check, money order or other method of payment was tendered
15 remains liable for payment of the tax or fee or for the tax
16 stamps or crowns, and for all legal penalties and additions
17 thereto, to the same extent as if the check, money order or other
18 method of payment had not been tendered.

19 (c) *Liability of bank and others.* — If any certified, trea-
20 surer's or cashier's check (or other guaranteed draft), any
21 money order or any means of payment that has been guaranteed
22 by a financial organization (such as a credit card, debit card or
23 charge card transaction which has been guaranteed expressly by
24 a financial organization), is received for payment of taxes or
25 fees or tax stamps or crowns and is not duly paid, the state of
26 West Virginia shall, in addition to its right to exact payment
27 from the party originally indebted therefor, have a lien for:

28 (1) The amount of the check (or draft) upon all the assets of
29 the financial institution on which it is drawn;

30 (2) The amount of the money order upon all the assets of
31 the insurer thereof; or

32 (3) The guaranteed amount of any other transaction upon all
33 assets of the institution making the guarantee; and the amount
34 shall be paid out of the assets in preference to any other claims

35 whatsoever against the financial institution, issuer or guarantee-
36 ing institution, except the necessary costs and expenses of
37 administration and perfected liens that are prior in time.

38 (d) *Bad check charge.* — If any check or money order
39 tendered in payment of any amount of tax or fee or tax stamps
40 or crowns or any interest, additions to tax or penalties is not
41 duly paid, then, in addition to any other penalties provided by
42 law, there shall be paid as a penalty by the person who tendered
43 the check, upon written notice and demand by the tax commis-
44 sioner, in the same manner as tax, an amount equal to the
45 service charge which the bank or other financial institution
46 charged the state for each check returned to the tax commis-
47 sioner because the account is closed or there are insufficient
48 funds in the account.

49 (e) *Payment by other means.* —

50 (1) *Authority to prescribe rule.* — The tax commissioner
51 shall propose rules for legislative approval, in accordance with
52 article three, chapter twenty-nine-a of this code, as the tax
53 commissioner considers necessary to receive payment by
54 commercially acceptable means, including rules that:

55 (A) Specify which methods of payment by commercially
56 acceptable means are acceptable;

57 (B) Specify when payment by those means shall be
58 considered received;

59 (C) Identify types of nontax matters related to payment by
60 those means that are to be resolved by persons ultimately liable
61 for payment and financial intermediaries, without the involve-
62 ment of the tax commissioner; and

63 (D) Ensure that tax matters shall be resolved by the tax
64 commissioner, without the involvement of financial intermedi-
65 aries.

66 (2) *Obtaining services.* — The tax commissioner shall use
67 the state treasurer's contracts and system for receiving pay-
68 ments by credit card, debit card, charge card or any other
69 commercially acceptable means. The tax commissioner may not

70 pay any fee or provide any other consideration in obtaining
71 these services. The state treasurer may not pay any fee or
72 provide any consideration for receiving payments of taxes or
73 fees (or in payment for excise tax stamps and tax crowns)
74 described in this section by credit card, debit card, charge card
75 or any other commercially acceptable means, and any cost for
76 processing the payment shall be included, in advance, in the
77 amount of the transaction and assessed to the party making the
78 payment.

79 (3) *Special provisions for use of credit cards.* — If use of
80 credit cards is accepted as a method of payment of taxes
81 pursuant to subsection (a):

82 (A) To the extent allowed under federal law, a payment of
83 taxes or fees collected under this article (or in payment for
84 excise tax stamps and tax crowns) by a person by use of a credit
85 card shall not be subject to section 161 of the Truth in Lending
86 Act (15 U.S.C. 1666), or to any similar provisions of state law,
87 if the error alleged by the person is an error relating to the
88 underlying tax liability, rather than an error relating to the credit
89 card account such as a computational error or numerical
90 transposition in the credit card transaction or an issue as to
91 whether the person authorized payment by use of the credit
92 card;

93 (B) To the extent allowed under federal law, a payment of
94 taxes or fees collected under this article (or in payment for
95 excise tax stamps and tax crowns) shall not be subject to section
96 170 of the Truth in Lending Act (15 U.S.C. 1666i), or to any
97 similar provisions of state law;

98 (C) To the extent allowed under federal law, a payment of
99 taxes or fees collected under this article (or in payment for
100 excise tax stamps and tax crowns) by a person by use of a debit
101 card shall not be subject to section 908 of the Electronic Fund
102 Transfer Act (15 U.S.C. 1693f), or to any similar provisions of
103 state law, if the error alleged by the person is an error relating
104 to the underlying tax liability, rather than an error relating to the
105 debit card account such as a computational error or numerical
106 transposition in the debit card transaction or an issue as to
107 whether the person authorized payment by use of the debit card;

108 (D) To the extent allowed under federal law, the term
109 “creditor” under section 103(f) of the Truth in Lending Act (15
110 U.S.C. 1602 (f)) shall not include the tax commissioner with
111 respect to credit card transactions in payment of taxes or fees
112 collected under this article (or in payment for excise tax stamps
113 and tax crowns); and

114 (E) Notwithstanding any other provisions of law to the
115 contrary, in the case of payment made by credit card or debit
116 card transaction of an amount owed to a person as the result of
117 the correction of an error under section 161 of the Truth in
118 Lending Act (15 U.S.C. 1666) or section 908 of the Electronic
119 Fund Transfer Act (15 U.S.C. 1693f), the tax commissioner is
120 authorized to provide such amount to such person as a credit to
121 that person’s credit card or debit card account through the
122 applicable credit card or debit card system.

123 (f) *Confidentiality of information.* —

124 (1) *In general.* — Except as otherwise authorized by this
125 subsection, no person may use or disclose any information
126 relating to credit card, debit card or charge card transactions
127 other than for purposes directly related to the processing of the
128 transactions or the billing or collection of amounts charged or
129 debited pursuant thereto.

130 (2) *Exceptions.* —

131 (A) Credit card, debit card or charge card issuers or others
132 acting on behalf of the issuers may also use and disclose the
133 information for purposes directly related to servicing an issuer’s
134 accounts.

135 (B) Credit card, debit card or charge card issuers or others
136 directly involved in the processing of credit card, debit card or
137 charge card transactions or the billing or collection of amounts
138 charged or debited to the credit card, debit card or charge card,
139 may also use and disclose the information for purposes directly
140 related to:

141 (i) Statistical risk and profitability assessment;

142 (ii) Transferring receivables, accounts or interest therein;

- 143 (iii) Auditing the account information;
144 (iv) Complying with federal, state or local law; and
145 (v) Properly authorized civil, criminal or regulatory
146 investigation by federal, state or local authorities.
- 147 (3) *Procedures.* — Use and disclosure of information under
148 this paragraph shall be made only to the extent authorized by
149 written procedures promulgated by the tax commissioner.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER AMOUNTS DUE THE STATE OR ANY POLITICAL SUBDIVISION.

§12-2-1. How and to whom taxes and other amounts due the state or any political subdivision, official, department, board, commission or other collecting agency thereof may be paid.

1 All persons, firms and corporations shall promptly pay all
2 taxes and other amounts due from them to the state, or to any
3 political subdivision, official, department, board, commission
4 or other collecting agency thereof authorized by law to collect
5 the taxes and other amounts due by any authorized commer-
6 cially acceptable means, in money, United States currency or by
7 check, bank draft, certified check, cashier's check, post office
8 money order or express money order payable and delivered to
9 the official, department, board, commission or collecting
10 agency thereof authorized by law to collect the taxes and other
11 amounts due and having the account upon which the taxes or
12 amounts due are chargeable against the payer of the taxes or
13 amounts due. The duly elected or appointed officers of the state
14 and of its political subdivisions, departments, boards, commis-
15 sions and collecting agencies having the account on which the
16 taxes or other amounts due are chargeable against the payer of
17 the taxes or other amounts due and authorized by law to collect
18 the taxes or other amounts due, and their respective agents,
19 deputies, assistants and employees shall in no case be the agent
20 of the payer in and about the collection of the taxes or other
21 amounts, but shall at all times and under all circumstances be

22 the agent of the state, its political subdivision, official, depart-
 23 ment, board, commission or collecting agency having the
 24 account on which the taxes or amounts are chargeable against
 25 the payer of the taxes or other amounts due and authorized by
 26 law to collect the same.

CHAPTER 267

(H. B. 2884 — By Mr. Speaker, Mr. Kiss, and
 Delegates Michael, Trump and Faircloth)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-o, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to business and occupation tax for producing electricity; exempting municipally-owned generating units from tax; and providing that electricity generated in this state by a partnership or limited liability company be considered to be generated pro rata by its partners or members.

Be it enacted by the Legislature of West Virginia:

That section two-o, article thirteen, 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 13. BUSINESS AND OCCUPATION TAX.

§11-13-20. Business of generating or producing or selling electricity on and after the first day of June, one thousand nine hundred ninety-five; definitions; rate of tax; exemptions; effective date.

1 (a) *Definitions.* — As used in this section:

2 (1) “Average four-year generation” is computed by dividing
 3 by four the sum of a generating unit’s net generation, expressed
 4 in kilowatt hours, for calendar years one thousand nine hundred
 5 ninety-one, one thousand nine hundred ninety-two, one thou-

6 sand nine hundred ninety-three, and one thousand nine hundred
7 ninety-four. For any generating unit which was newly installed
8 and placed into commercial operation after the first day of
9 January, one thousand nine hundred ninety-one and prior to the
10 effective date of this section, "average four-year generation" is
11 computed by dividing such unit's net generation for the period
12 beginning with the month in which the unit was placed into
13 commercial operation and ending with the month preceding the
14 effective date of this section by the number of months in such
15 period and multiplying the resulting amount by twelve with the
16 result being a representative twelve-month average of the unit's
17 net generation while in an operational status.

18 (2) "Capacity factor" means a fraction, the numerator of
19 which is average four-year generation and the denominator of
20 which is the maximum possible annual generation.

21 (3) "Generating unit" means a mechanical apparatus or
22 structure which through the operation of its component parts is
23 capable of generating or producing electricity and is regularly
24 used for this purpose.

25 (4) "Inactive reserve" means the removal of a generating
26 unit from commercial service for a period of not less than
27 twelve consecutive months as a result of lack of need for
28 generation from the generating unit or as a result of the require-
29 ments of state or federal law or the removal of a generating unit
30 from commercial service for any period as a result of any
31 physical exigency which is beyond the reasonable control of the
32 taxpayer.

33 (5) "Maximum possible annual generation" means the
34 product, expressed in kilowatt hours, of official capability times
35 eight thousand seven hundred sixty hours.

36 (6) "Official capability" means the nameplate capacity
37 rating of a generating unit expressed in kilowatts.

38 (7) "Peaking unit" means a generating unit designed for the
39 limited purpose of meeting peak demands for electricity or
40 filling emergency electricity requirements.

41 (8) "Retired from service" means the removal of a generat-
42 ing unit from commercial service for a period of at least twelve
43 consecutive months with the intent that the unit will not
44 thereafter be returned to active service.

45 (9) "Taxable generating capacity" means the product,
46 expressed in kilowatts, of the capacity factor times the official
47 capability of a generating unit, subject to the modifications set
48 forth in subdivisions (2) and (3), subsection (c) of this section.

49 (10) "Net generation" for a period means the kilowatt hours
50 of net generation available for sale generated or produced by
51 the generating unit in this state during such period less the
52 following:

53 (A) Twenty-one twenty-sixths of the kilowatt hours of
54 electricity generated at the generating unit and sold during such
55 period to a plant location of a customer engaged in manufactur-
56 ing activity if the contract demand at such plant location
57 exceeds two hundred thousand kilowatts per hour in a year or
58 where the usage at such plant location exceeds two hundred
59 thousand kilowatts per hour in a year;

60 (B) Twenty-one twenty-sixths of the kilowatt hours of
61 electricity produced or generated at the generating unit during
62 such period by any person producing electric power and an
63 alternative form of energy at a facility located in this state
64 substantially from gob or other mine refuse;

65 (C) The total kilowatt hours of electricity generated at the
66 generating unit exempted from tax during such period by
67 subsection (b), section two-n of this article.

68 (b) *Rate of tax.* — Upon every person engaging or continu-
69 ing within this state in the business of generating or producing
70 electricity for sale, profit or commercial use, either directly or
71 indirectly through the activity of others, in whole or in part, or
72 in the business of selling electricity to consumers, or in both
73 businesses, the tax imposed by section two of this article shall
74 be equal to:

75 (1) For taxpayers who generate or produce electricity for
76 sale, profit or commercial use, the product of twenty-two

77 dollars and seventy-eight cents multiplied by the taxable
78 generating capacity of each generating unit in this state owned
79 or leased by the taxpayer, subject to the modifications set forth
80 in subsection (c) of this section: *Provided*, That with respect to
81 each generating unit in this state which has installed a flue gas
82 desulfurization system, the tax imposed by section two of this
83 article shall, on and after the thirty-first day of January, one
84 thousand nine hundred ninety-six, be equal to the product of
85 twenty dollars and seventy cents multiplied by the taxable
86 generating capacity of the units, subject to the modifications set
87 forth in subsection (c) of this section: *Provided, however*, That
88 with respect to kilowatt hours sold to or used by a plant location
89 engaged in manufacturing activity in which the contract
90 demand at such plant location exceeds two hundred thousand
91 kilowatts per hour per year or if the usage at such plant location
92 exceeds two hundred thousand kilowatts per hour in a year, in
93 no event shall the tax imposed by this article with respect to the
94 sale or use of such electricity exceed five hundredths of one
95 cent times the kilowatt hours sold to or used by a plant engaged
96 in such a manufacturing activity; and

97 (2) For taxpayers who sell electricity to consumers in this
98 state that is not generated or produced in this state by the
99 taxpayer, nineteen hundredths of one cent times the kilowatt
100 hours of electricity sold to consumers in this state that were not
101 generated or produced in this state by the taxpayer, except that
102 the rate shall be five hundredths of one cent times the kilowatt
103 hours of electricity not generated or produced in this state by
104 the taxpayer which is sold to a plant location in this state of a
105 customer engaged in manufacturing activity if the contract
106 demand at such plant location exceeds two hundred thousand
107 kilowatts per hour per year or if the usage at such plant location
108 exceeds two hundred thousand kilowatts per hour in a year. The
109 measure of tax under this subdivision (2) shall be equal to the
110 total kilowatt hours of electricity sold to consumers in the state
111 during the taxable year, that were not generated or produced in
112 this state by the taxpayer, to be determined by subtracting from
113 the total kilowatt hours of electricity sold to consumers in the
114 state the net kilowatt hours of electricity generated or produced
115 in the state by the taxpayer during the taxable year. For the

116 purposes of this subdivision, net kilowatt hours of electricity
117 generated or produced in this state by the taxpayer includes the
118 taxpayer's pro rata share of electricity generated or produced in
119 this state by a partnership or limited liability company of which
120 the taxpayer is a partner or member. The provisions of this
121 subdivision (2) shall not apply to those kilowatt hours exempt
122 under subsection (b), section two-n of this article. Any person
123 taxable under this subdivision (2) shall be allowed a credit
124 against the amount of tax due under this subdivision (2) for any
125 electric power generation taxes or a tax similar to the tax
126 imposed by subdivision (1) of this subsection (b) paid by the
127 taxpayer with respect to such electric power to the state in
128 which such power was generated or produced. The amount of
129 credit allowed shall not exceed the tax liability arising under
130 this subdivision (2) with respect to the sale of such power.

131 (c) The following provisions are applicable to taxpayers
132 subject to tax under subdivision (1), subsection (b) of this
133 section:

134 (1) *Retired units; inactive reserve.* — If a generating unit is
135 retired from service or placed in inactive reserve, a taxpayer
136 shall not be liable for tax computed with respect to the taxable
137 generating capacity of the unit for the period that the unit is
138 inactive or retired. The taxpayer shall provide written notice to
139 the joint committee on government and finance, as well as to
140 any other entity as may be otherwise provided by law, eighteen
141 months prior to retiring any generating unit from service in this
142 state.

143 (2) *New generating units.* — If a new generating unit, other
144 than a peaking unit, is placed in initial service on or after the
145 effective date of this section, the generating unit's taxable
146 generating capacity shall equal forty percent of the official
147 capability of the unit: *Provided*, That the taxable generating
148 capacity of a municipally-owned generating unit shall equal
149 zero percent of the official capability of the unit.

150 (3) *Peaking units.* — If a peaking unit is placed in initial
151 service on or after the effective date of this section, the generat-
152 ing unit's taxable generating capacity shall equal five percent

153 of the official capability of the unit: *Provided*, That the taxable
154 generating capacity of a municipally-owned generating plant
155 shall equal zero percent of the official capability of the unit.

156 (4) *Transfers of interests in generating units.* — If a
157 taxpayer acquires an interest in a generating unit, the taxpayer
158 shall include the computation of taxable generating capacity of
159 said unit in the determination of the taxpayer's tax liability as
160 of the date of the acquisition. Conversely, if a taxpayer transfers
161 an interest in a generating unit, the taxpayer shall not for
162 periods thereafter be liable for tax computed with respect to the
163 taxable generating capacity of such transferred unit.

164 (5) *Proration, allocation.* — The tax commissioner shall
165 promulgate rules in conformity with the provisions of article
166 three, chapter twenty-nine-a of this code to provide for the
167 administration of this section and to equitably prorate taxes for
168 a taxable year in which a generating unit is first placed in
169 service, retired or placed in inactive reserve, or in which a
170 taxpayer acquires or transfers an interest in a generating unit, to
171 equitably allocate and reallocate adjustments to net generation,
172 and to equitably allocate taxes among multiple taxpayers with
173 interests in a single generating unit, it being the intent of the
174 Legislature to prohibit multiple taxation of the same taxable
175 generating capacity.

176 So as to provide for an orderly transition with respect to the
177 rate making effect of this section, those electric light and power
178 companies which, as of the effective date of this section, are
179 permitted by the West Virginia public service commission to
180 utilize deferred accounting for purposes of recovery from
181 ratepayers of any portion of business and occupation tax
182 expense under this article shall be permitted, until such time
183 that action pursuant to a rate application or order of the com-
184 mission provides for appropriate alternative rate making
185 treatment for such expense, to recover the tax expense imposed
186 by this section by means of deferred accounting to the extent
187 that the tax expense imposed by this section exceeds the level
188 of business and occupation tax under this article currently
189 allowed in rates.

190 (6) *Electricity generated by manufacturer or affiliate for*
191 *use in manufacturing activity.* — When electricity used in a
192 manufacturing activity is generated in this state by the person
193 who owns the manufacturing facility in which the electricity is
194 used and the electricity generating unit or units producing the
195 electricity so used are owned by such manufacturer, or by a
196 member of the manufacturer's controlled group, as defined in
197 section 267 of the Internal Revenue Code of 1986, as amended,
198 the generation of the electricity shall not be taxable under this
199 article: *Provided*, That any electricity generated or produced at
200 the generating unit or units which is sold or used for purposes
201 other than in the manufacturing activity shall be taxed under
202 this section and the amount of tax payable shall be adjusted to
203 be equal to an amount which is proportional to the electricity
204 sold for purposes other than the manufacturing activity. The
205 department of tax and revenue shall promulgate rules in
206 accordance with article three, chapter twenty-nine-a of the
207 code: *Provided, however*, That the rules shall be promulgated
208 as emergency rules.

209 (d) Beginning the first day of June, one thousand nine
210 hundred ninety-five, electric light and power companies that
211 actually paid tax based on the provisions of subdivision (3),
212 subsection (a), section two-d of this article or section two-m of
213 this article for every taxable month in one thousand nine
214 hundred ninety-four shall determine their liability for payment
215 of tax under this article in accordance with subdivisions (1) and
216 (2) of this subsection. All other electric light and power
217 companies shall determine their liability for payment of tax
218 under this article exclusively under this section beginning the
219 first day of June, one thousand nine hundred ninety-five and
220 thereafter.

221 (1) If for taxable months beginning on or after the first day
222 of June, one thousand nine hundred ninety-five, liability for tax
223 under this section is equal to or greater than the sum of the
224 power company's liability for payment of tax under subdivision
225 (3), subsection (a), section two-d of this article and this section,
226 then the company shall pay the tax due under this section and
227 not the tax due under subdivision (3), subsection (a), section

228 two-d of this article and section two-m of this article. If tax
229 liability under this section is less, then the tax shall be paid
230 under subdivision (3), subsection (a), section two-d of this
231 article and section two-m and the tax due under this section
232 shall not be paid.

233 (2) Notwithstanding subdivision (1) of this subsection, for
234 taxable years beginning on or after the first day of January, one
235 thousand nine hundred ninety-eight, all electric light and power
236 companies shall determine their liability for payment of tax
237 under this article exclusively under this section.

CHAPTER 268

(Com. Sub. for H. B. 2749 — By Delegates Cann,
Coleman, Laird, Kominar and Jenkins)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exemptions of certain natural gas and oil production from imposition of the severance tax.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-3a. Imposition of tax on privilege of severing natural gas or oil.

- 1 (a) *Imposition of tax.* — For the privilege of engaging or
- 2 continuing within this state in the business of severing natural
- 3 gas or oil for sale, profit or commercial use, there is hereby
- 4 levied and shall be collected from every person exercising such

5 privilege an annual privilege tax: *Provided*, That effective for
6 all taxable periods beginning on or after the first day of January,
7 two thousand, there is an exemption from the imposition of the
8 tax provided for in this article on the following: (1) Free natural
9 gas provided to any surface owner; (2) natural gas produced
10 from any well which produced an average of less than five
11 thousand cubic feet of natural gas per day during the calendar
12 year immediately preceding a given taxable period; (3) oil
13 produced from any oil well which produced an average of less
14 than one-half barrel of oil per day during the calendar year
15 immediately preceding a given taxable period; and (4) for a
16 maximum period of ten years, all natural gas or oil produced
17 from any well which has not produced marketable quantities of
18 natural gas or oil for five consecutive years immediately
19 preceding the year in which a well is placed back into produc-
20 tion and thereafter produces marketable quantities of natural
21 gas or oil.

22 (b) *Rate and measure of tax.* — The tax imposed in
23 subsection (a) of this section shall be five percent of the gross
24 value of the natural gas or oil produced, as shown by the gross
25 proceeds derived from the sale thereof by the producer, except
26 as otherwise provided in this article.

27 (c) *Tax in addition to other taxes.* — The tax imposed by
28 this section shall apply to all persons severing gas or oil in this
29 state, and shall be in addition to all other taxes imposed by law.

CHAPTER 269

(Com. Sub. for H. B. 2999 — By Delegates Warner, Michael And Martin)

[Passed March 5, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend article thirteen-d, 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-f,

relating to a tax credit for investment in aerospace industrial facilities; authorizing credit for eligible taxpayers, and members, distributive interest holders and partners of eligible taxpayers; specifying credit amount for qualified investment in property placed in service or use in an aerospace industrial facility after the thirtieth day of June, one thousand nine hundred ninety-eight; and specifying conditions and limitations on the tax credit.

Be it enacted by the Legislature of West Virginia:

That article thirteen-d, 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-f, to read as follows:

ARTICLE .13D. TAX CREDITS FOR INDUSTRIAL EXPANSION AND REVITALIZATION, RESEARCH AND DEVELOPMENT PROJECTS, CERTAIN HOUSING DEVELOPMENT PROJECTS, MANAGEMENT INFORMATION SERVICES FACILITIES, INDUSTRIAL FACILITIES PRODUCING COAL-BASED LIQUIDS USED TO PRODUCE SYNTHETIC FUELS, AND AEROSPACE INDUSTRIAL FACILITY INVESTMENTS.

§11-13D-3f. Amount of credit allowed and application of credit for qualified investment in an aerospace industrial facility.

1 (a) *Credit allowed.* — (1) There is allowed to eligible
2 taxpayers which have made qualified investment in an aero-
3 space industrial facility, a credit against the taxes imposed by
4 articles twenty-three and twenty-four of this chapter for
5 qualified investment in an aerospace industrial facility. The
6 amount of credit is determined as provided in this section.

7 (2) There is allowed to members, distributive interest
8 holders and partners of eligible taxpayers described in para-
9 graph (3), subsection (c) of this section, a credit against the
10 taxes imposed by article twenty-four of this chapter for quali-
11 fied investment in an aerospace industrial facility. The amount
12 of credit is determined as provided in this section.

13 (b) *Credit amount for qualified investment in property*
14 *placed in service or use in an aerospace industrial facility after*

15 *the thirtieth day of June, one thousand nine hundred ninety-*
16 *eight.* — For property purchased or leased by an eligible
17 taxpayer and placed in service or use after the thirtieth day of
18 June, one thousand nine hundred ninety-eight, as part of an
19 aerospace industrial facility, the amount of allowable credit is
20 equal to fifteen percent of the qualified investment (as deter-
21 mined under subsection (e) of this section), and reduces the
22 taxpayer's annual business franchise tax liability under article
23 twenty-three of this chapter and the taxpayer's annual corpora-
24 tion net income tax liability under article twenty-four of this
25 chapter, subject to the following conditions and limitations:

26 (1) The amount of credit allowable is applied over a ten-
27 year period, at the rate of one-tenth thereof per taxable year,
28 beginning with the taxable year in which the qualified invest-
29 ment is first placed in service or use in this state.

30 (2) When in any taxable year a taxpayer is entitled to claim
31 credit under this section and under any other section of this
32 article, (or any combination thereof), the total amount of all
33 credits allowed for the tax year under this article shall not
34 exceed the sixty percent of total tax liability offset limitations
35 set forth in subsection (c) of this section.

36 (3) No carryover to a subsequent taxable year or carryback
37 to a prior taxable year is allowed for any unused portion of any
38 annual credit allowance. Such unused credit is forfeited.

39 (4) No credit is allowed under this article for investment in
40 any property for which credit is allowed under article thirteen-c
41 of this chapter.

42 (5) No credit is allowed under this section for investment in
43 any property for which credit is allowed under any other section
44 of this article.

45 (c) *Application of credit.* — (1) The annual credit for
46 qualified investment in an aerospace industrial facility is first
47 applied to reduce the annual West Virginia business franchise
48 tax liability imposed under article twenty-three of this chapter
49 for the tax year. The amount of annual credit allowed may not
50 reduce the annual liability for such tax year below sixty percent

51 of the amount of the annual tax liability which would otherwise
52 be imposed for such tax year in the absence of this credit and in
53 the absence of all other credits against such tax, except the
54 credits set forth in section seventeen, article twenty-three of this
55 chapter.

56 (2) After application of this credit against business fran-
57 chise tax as provided in subdivision (1) of this subsection, the
58 remaining annual credit, if any, is then applied to reduce the
59 annual West Virginia corporation net income tax liability
60 imposed under article twenty-four of this chapter for the tax
61 year. The amount of annual credit allowed may not reduce the
62 annual corporation net income tax liability for such tax year
63 below sixty percent of the amount of the annual tax liability
64 which would otherwise be imposed for such tax year in the
65 absence of this credit and in the absence of all other credits
66 against tax.

67 (3) In the case of an eligible taxpayer that:

68 (A) Is a limited liability company, partnership or other
69 business organization taxed under article twenty-three of this
70 chapter, but not taxed under article twenty-four of this chapter,

71 (B) Is not treated as a corporation for federal income tax
72 purposes, and

73 (C) Is a "flow through" entity or conduit for income
74 distributed to members, distributional interest holders or
75 partners, the following applies: Members, distributional interest
76 holders or partners, of the eligible taxpayer subject to the
77 corporation net income tax imposed under article twenty-four
78 of this chapter may apply this credit against that portion of their
79 annual corporation net income tax liability imposed under
80 article twenty-four of this chapter for the tax year on that
81 distributive income directly and solely derived from the eligible
82 taxpayer. The amount of annual credit allowed may not reduce
83 the annual corporation net income tax liability for such tax year
84 below sixty percent of the amount of the annual tax liability
85 which would otherwise be imposed for such tax year in the
86 absence of this credit and in the absence of all other credits
87 against tax.

88 (d) *Definitions.* — For purposes of this section:

89 (1) “Aerospace industrial facility” means a facility used by
90 an eligible taxpayer for the manufacturing, rebuilding or
91 physical refurbishment of:

92 (A) Aircraft,

93 (B) Aircraft engines,

94 (C) Aircraft engine parts,

95 (D) Other aircraft parts,

96 (E) Aircraft auxiliary equipment, including fluid power
97 aircraft subassemblies,

98 (F) Guided missiles,

99 (G) Space vehicles,

100 (H) Guided missile and space vehicle propulsion units,

101 (I) Guided missile parts,

102 (J) Propellers,

103 (K) Space vehicle parts, or

104 (L) Guided missile and space vehicle auxiliary parts.

105 (2) “Controlled group” means one or more chains of
106 corporations connected through stock ownership with a
107 common parent corporation if stock possessing at least fifty
108 percent of the voting power of all classes of stock of each of the
109 corporations is owned directly or indirectly by one or more of
110 the corporations; and the common parent owns directly stock
111 possessing at least fifty percent of the voting power of all
112 classes of stock of at least one of the other corporations.

113 (3) “Corporation” means any corporation, joint-stock
114 company or association, and any business conducted by a
115 trustee or trustees wherein interest or ownership is evidenced by
116 a certificate of interest or ownership or similar written instru-
117 ment, and any organization which is treated as a corporation for
118 federal income tax purposes.

119 (4) "Eligible taxpayer" means, for purposes of this section,
120 a person subject to tax under article twenty-three or article
121 twenty-four of this chapter, and regularly engaged in the
122 business of manufacturing, rebuilding or physical refurbishment
123 of:

124 (A) Aircraft,

125 (B) Aircraft engines,

126 (C) Aircraft engine parts,

127 (D) Other aircraft parts,

128 (E) Aircraft auxiliary equipment, including fluid power
129 aircraft subassemblies,

130 (F) Guided missiles,

131 (G) Space vehicles,

132 (H) Guided missile and space vehicle propulsion units,

133 (I) Guided missile parts,

134 (J) Propellers,

135 (K) Space vehicle parts, or

136 (L) Guided missile and space vehicle auxiliary parts.

137 The term "eligible taxpayer" does not include any person
138 whose only activity with respect to an aerospace industrial
139 facility is to lease it to another person or persons.

140 (5) "Placed in service or use." For purposes of the credit
141 allowed by this section, property shall be considered "placed in
142 service or use" on the earliest of the following dates:

143 (A) The date on which the property is physically placed in
144 service or use in an aerospace industrial facility;

145 (B) The closing date of the eligible taxpayer's federal
146 income tax year during which federal income tax depreciation
147 with respect to the property has begun, or in the case of leased
148 property, the closing date of the eligible taxpayer's federal
149 income tax year during which expenses for lease payments for

150 the property are first taken as a deduction from income for
151 federal income tax purposes; or

152 (C) The closing date of the eligible taxpayer's federal
153 income tax year during which the property is placed in a
154 condition or state of readiness and availability for a specifically
155 assigned function in an aerospace industrial facility, but where
156 the property has not been physically placed in service or use in
157 the aerospace industrial facility on that closing date.

158 (e) *Qualified investment in an aerospace industrial facility.*
159 — (1) *Purchased property.* — The qualified investment in
160 tangible personal property or real property purchased for use as
161 a component part of an aerospace industrial facility is the
162 applicable percentage of the cost of such property purchased for
163 an aerospace industrial facility, which is placed in service or
164 use in this state, by the eligible taxpayer during the tax year as
165 determined under this section.

166 (2) *Applicable percentage.* — For the purposes of this
167 subsection, the applicable percentage for any property shall be
168 determined under the following table:

169 If useful life is:	The applicable 170 percentage is:
171 4 years or more but less than 6 years	33 1/3%
172 6 years or more but less than 8 years	66 2/3%
173 8 years or more	100%

174 The useful life of any property for purposes of this section shall
175 be the actual economic useful life determined as of the date
176 such property is first placed in service or use in this state by the
177 taxpayer, determined for financial accounting purposes in
178 accordance with generally accepted principles of accounting.

179 (3)(A) *Cost.* — For purposes of this subsection, the cost of
180 each item of property purchased for use as a component part of
181 an aerospace industrial facility shall be the fair market value or
182 the actual cost, whichever is less, and in no event shall the cost
183 exceed the fair market value as of the date such property is first
184 placed in service or use in this state by the eligible taxpayer.
185 Cost is determined under the following rules:

186 (B) *Trade-ins.* — Cost does not include the value of
187 property given in trade or exchange for the property purchased
188 for use as a component part of an aerospace industrial facility.

189 (C) *Damaged, destroyed or stolen property.* — If property
190 is damaged or destroyed by fire, flood, storm or other casualty,
191 or is stolen, then the cost of replacement property does not
192 include any insurance proceeds received in compensation for
193 the loss.

194 (4) *Rental property.* — (A) The qualified investment in
195 tangible personal property or real property leased for use as a
196 component part of an aerospace industrial facility is the portion
197 specified in this subdivision of the cost of such property
198 purchased for an aerospace industrial facility, which is placed
199 in service or use in this state, by the eligible taxpayer during the
200 tax year as determined under this section.

201 (B) The qualified investment in leases of real property
202 acquired by written lease for a primary term of ten years or
203 longer is one hundred percent of the rent reserved for the
204 primary term of the lease, not to exceed twenty years. Leases of
205 realty having a primary term of less than ten years do not
206 qualify for purposes of this section.

207 (C) The qualified investment in leases of tangible personal
208 property acquired by written lease for a primary term of:

209 (i) Four years, or longer, is one third of the rent reserved for
210 the primary term of the lease;

211 (ii) Six years, or longer, is two thirds of the rent reserved
212 for the primary term of the lease; or

213 (iii) Eight years, or longer, is one hundred percent of the
214 rent reserved for the primary term of the lease, not to exceed
215 twenty years: *Provided,* That in no event does rent reserved
216 include rent for any year subsequent to expiration of the book
217 life of the property, determined using the straight-line method
218 of depreciation.

219 (5) *Transferred property.* — (A) The cost of property
220 owned and used by the taxpayer out-of-state and then brought

221 into this state, is determined based on the remaining useful life
222 of the property at the time it is placed in service or use in this
223 state, and the cost is the original cost of the property to the
224 taxpayer less straight line depreciation allowable for the tax
225 years or portions thereof taxpayer used the property outside this
226 state.

227 (B) In the case of leased tangible personal property, cost is
228 based on the period remaining in the primary term of the lease
229 after the property is brought into this state for use in an aero-
230 space industrial facility of an eligible taxpayer, and is the rent
231 reserved for the remaining period of the primary term of the
232 lease, not to exceed twenty years, or the remaining useful life
233 of the property, whichever is less.

234 (C) Qualified investment in transferred property is com-
235 puted by applying the four-year, six-year and eight-year
236 requirements of this section to the cost thereof with the applica-
237 ble four-year, six-year and eight-year period determined based
238 on the remaining useful life or remaining primary lease term at
239 the time the property is placed in service or use in this state.

240 (6) *Property purchased for multiple use.* — Investment in
241 property purchased for use in an aerospace industrial facility
242 and for some other use does not qualify for purposes of this
243 credit.

244 (7) *Self-constructed property.* — In the case of self-
245 constructed property, the cost thereof is the amount properly
246 charged to the capital account for purposes of depreciation for
247 federal income tax purposes.

248 (8) *Specific exclusions from qualification.* — The following
249 investment does not constitute qualified investment in an
250 aerospace industrial facility, and does not qualify for purposes
251 of this credit.

252 (A) Investment by purchase or lease in natural resources in
253 place.

254 (B) Investment in purchased or leased property, the cost or
255 consideration for which cannot be quantified with any reason-
256 able degree of accuracy at the time such property is placed in

257 service or use: *Provided*, That when the contract of purchase or
258 lease specifies a minimum purchase price which can be
259 quantified or minimum annual rent which can be quantified, the
260 amount thereof shall be used to determine the cost thereof. If
261 the property and lease otherwise qualify under the primary lease
262 term requirements and other requirements of this section for
263 property purchased or leased for use as a component part of an
264 aerospace industrial facility, then qualified investment in such
265 property is determined in accordance with the four-year, six-
266 year and eight-year useful life or primary lease term require-
267 ments of this subsection.

268 (C) Investment in property purchased, or leased, or placed
269 in service or use prior to the first day of July, one thousand nine
270 hundred ninety-eight.

271 (D) Investment in the purchase, acquisition or transfer of
272 any facility or component thereof that was in service or use
273 during the ninety days immediately prior to transfer of the title
274 to such facility or component thereof, or to the commencement
275 of the term of the lease of such facility or component thereof,
276 unless upon application of the taxpayer, setting forth good and
277 sufficient cause, the tax commissioner consents to waiving this
278 ninety day period.

279 (E) Investment in any facility or component part thereof
280 that was acquired by the taxpayer from a related person. The tax
281 commissioner may waive this requirement if the facility was
282 acquired from a related party for its fair market value, and the
283 basis of the property for federal income tax purposes, in the
284 hands of the person acquiring it, is not determined:

285 (i) In whole or in part by reference to the federal adjusted
286 basis of such property in the hands of the person from whom it
287 was acquired; or

288 (ii) Under Section 1014(e) of the United States Internal
289 Revenue Code of 1986, as amended, and in effect on the first
290 day of January, one thousand nine hundred ninety-eight.

291 (F) Investment in or cost incurred for property owned or
292 leased by the taxpayer and for which credit was previously

293 taken under article thirteen-c, article thirteen-d or thirteen-e of
294 this chapter: *Provided*, That this paragraph shall not be con-
295 strued to prevent the transfer of this credit in the event of a
296 mere change in the form of doing business of an eligible
297 taxpayer, or transfer of credit to successors in business in
298 accordance with section seven of this article.

299 (G) Repair costs, including costs or materials used in the
300 repair, unless for federal income tax purposes, the cost of the
301 repair must be capitalized.

302 (H) Investment in airplanes.

303 (I) Investment in property which is primarily used outside
304 this state.

305 (J) Investment in property acquired incident to the purchase
306 of a corporation, business organization or ongoing business or
307 a substantial portion thereof through transfer of stock, owner-
308 ship interests or assets thereof, or any other transfer, merger or
309 purchase, unless for good cause shown, the tax commissioner
310 consents to waiving this requirement: *Provided*, That this
311 paragraph shall not be construed to prevent the transfer of this
312 credit in the event of a mere change in the form of doing
313 business of an eligible taxpayer, or transfer of credit to succes-
314 sors in business in accordance with section seven of this article.

315 (K) Investment in property acquired from a person whose
316 relationship to the person acquiring it would result in the
317 disallowance of deductions under Section 267 or 707(b) of the
318 United States Internal Revenue Code of 1986, as amended, and
319 in effect on the first day of January, one thousand nine hundred
320 ninety-nine.

321 (L) Investment in property acquired by one component
322 member of a controlled group from another component member
323 of the same controlled group: *Provided*, That, the tax commis-
324 sioner can waive this requirement if the property was acquired
325 from a related party for its then fair market value, and the basis
326 of the property for federal income tax purposes, in the hands of
327 the person acquiring it, is not determined:

328 (i) In whole or in part by reference to the federal adjusted
329 basis of such property in the hands of the person from whom it
330 was acquired; or .

331 (ii) Under Section 1014(e) of the United States Internal
332 Revenue Code of 1986, as amended, and in effect on the first
333 day of January, one thousand nine hundred ninety-nine.

CHAPTER 270

(S. B. 165 — By Senators Boley and Deem)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article thirteen-i, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to extending the expiration of the Colin Anderson employee tax credit to the thirty-first day of December, two thousand.

Be it enacted by the Legislature of West Virginia:

That section two, article thirteen-i, 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 13I. TAX CREDIT FOR EMPLOYING FORMER EMPLOYEES
OF COLIN ANDERSON CENTER WHO LOST THEIR
JOBS DUE TO THE CLOSURE OF COLIN ANDERSON
CENTER.**

§11-13I-2. Credit allowed; amount and duration of credit; recapture of credit and effective date.

1 (a) There shall be allowed to eligible taxpayers a credit
2 against the taxes imposed in articles twenty-one, twenty-three
3 and twenty-four of this chapter. For the purpose of this article,
4 “eligible taxpayer” means a person, firm, partnership, corpora-
5 tion or other entity who employs a person or persons who lost
6 his or her job as a result of the closure of the Colin Anderson
7 Center. Such credit shall be in an amount equal to one half of

8 the cost to the state of unemployment compensation which shall
9 be determined based on the unemployment compensation cost
10 to the state of an employee who earns twenty-one thousand
11 dollars per year and shall be further determined as if such
12 person was unemployed for and drew a full sixteen weeks of
13 unemployment benefits. In the event an eligible taxpayer
14 employs more than one such person, the credit allowed shall be
15 multiplied by the number of persons so employed.

16 (b) The credit set forth in this article shall apply to personal
17 income tax liabilities, corporation net income tax liabilities and
18 business franchise tax liabilities arising after the thirty-first day
19 of December, one thousand nine hundred ninety-five. The credit
20 established in this article shall expire and may not be claimed
21 for those tax years ending after the thirty-first day of December,
22 two thousand, and in order to claim this credit an eligible
23 taxpayer shall have employed a person who lost his or her job
24 after the thirty-first day of December, one thousand nine
25 hundred ninety-five, as a result of the closing of Colin Ander-
26 son Center and must be employed after said date and prior to
27 the thirty-first day of December, one thousand nine hundred
28 ninety-nine.

29 (c) As a condition of receiving the credit established in this
30 article, the eligible taxpayer shall employ the person or persons
31 for a period of time at least equal to one year. In the event such
32 person is employed for less than one year the credit herein shall
33 be recaptured at the rate of twenty percent of the dollar value of
34 the credit for each month under twelve months the person
35 works.

CHAPTER 271

(Com. Sub. for S. B. 650 — By Senators Tomblin, Mr. President, Oliverio,
Kessler, Chafin, Craigo, Sprouse, McCabe, Plymale, Minard, Anderson, Minear,
McKenzie, Mitchell, Ross, Hunter, Snyder, Prezioso, Sharpe and Unger)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, five, six and twelve, article thirteen-j, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to reauthorizing the neighborhood investment program act; stating definitions; establishing amount of credit allowed; permitting application of credit within five years; setting forth application of annual credit allowance; requiring forfeiture of unused credit; requiring independent program evaluation; and setting termination date for the act.

Be it enacted by the Legislature of West Virginia:

That sections three, five, six and twelve, article thirteen-j, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13J. NEIGHBORHOOD INVESTMENT PROGRAM.

§11-13J-3. Definitions.

§11-13J-5. Amount of credit allowed.

§11-13J-6. Application of annual credit allowance.

§11-13J-12. Program evaluation; expiration of credit; preservation of entitlement.

§11-13J-3. Definitions.

1 (a) *General.* — When used in this article, or in the adminis-
 2 tration of this article, terms defined in subsection (b) of this
 3 section shall have the meanings ascribed to them by this
 4 section, unless a different meaning is clearly required by either
 5 the context in which the term is used, or by specific definition
 6 in this article.

7 (b) *Terms defined.*

8 (1) *Affiliate.* — The terms “affiliate” or “affiliates” include
 9 all concerns which are affiliates of each other when either
 10 directly or indirectly:

11 (A) One concern controls or has the power to control the
 12 other; or

13 (B) A third party or third parties control or have the power
 14 to control both. In determining whether concerns are independ-
 15 ently owned and operated and whether or not affiliation exists,

16 consideration shall be given to all appropriate factors, including
17 common ownership, common management and contractual
18 relationships.

19 (2) *Capacity building.* — The term “capacity building”
20 means to generally enhance the capacity of the community to
21 achieve improvements and to obtain the community services
22 described in subparagraphs (i) through (v), inclusive, of the
23 definition of that term, as set forth in subdivision (4) of this
24 subsection. Capacity building includes, but is not limited to,
25 improvement of the means, or capacity, to:

26 (i) Access, obtain and use private, charitable and govern-
27 mental assistance programs, administrative assistance and
28 private, charitable and governmental resources or funds;

29 (ii) Fulfill legal, bureaucratic and administrative require-
30 ments and qualifications for accessing assistance, resources or
31 funds; and

32 (iii) Attract and direct political and community attention to
33 needs of the community for the purpose of increasing access to
34 and use of assistance, resources or funds for a given purpose,
35 goal or need.

36 (3) *Commissioner or tax commissioner.* — The terms
37 “commissioner” and “tax commissioner” are used interchange-
38 ably herein and mean the tax commissioner of the state of West
39 Virginia, or his or her delegate.

40 (4) *Community services.* — “Community services” means
41 services, provided at no charge whatsoever, of:

42 (i) Providing any type of health, personal finance, psycho-
43 logical or behavioral, religious, legal, marital, educational or
44 housing counseling and advice to economically disadvantaged
45 citizens or a specifically designated group of economically
46 disadvantaged citizens or in an economically disadvantaged
47 area; or

48 (ii) Providing emergency assistance or medical care to
49 economically disadvantaged citizens or to a specifically
50 designated group of economically disadvantaged citizens or in

51 an economically disadvantaged area; or

52 (iii) Establishing, maintaining or operating recreational
53 facilities, or housing facilities for economically disadvantaged
54 citizens or a specifically designated group of economically
55 disadvantaged citizens or in an economically disadvantaged
56 area; or

57 (iv) Providing economic development assistance to
58 economically disadvantaged citizens or a specifically desig-
59 nated group of economically disadvantaged citizens; without
60 regard to whether they are located in an economically disadvan-
61 tagged area, or to individuals, groups or neighborhood or
62 community organizations, in an economically disadvantaged
63 area; or

64 (v) Providing community technical assistance and capacity
65 building to economically disadvantaged citizens or a specifi-
66 cally designated group of economically disadvantaged citizens,
67 or to individuals, groups or neighborhood or community
68 organizations in an economically disadvantaged area.

69 (5) *Compensation.* — The term “compensation” means
70 wages, salaries, commissions and any other form of remunera-
71 tion paid to employees for personal services.

72 (6) *Corporation.* — The term “corporation” means any
73 corporation, joint-stock company or association and any
74 business conducted by a trustee or trustees wherein interest or
75 ownership is evidenced by a certificate of interest or ownership
76 or similar written instrument.

77 (7) *Crime prevention.* — “Crime prevention” means any
78 activity which aids in the reduction of crime.

79 (8) *Delegate.* — The term “delegate” in the phrase “or his
80 or her delegate”, when used in reference to the tax commis-
81 sioner, means any officer or employee of the tax division of the
82 department of tax and revenue duly authorized by the tax
83 commissioner directly, or indirectly by one or more
84 redelegations of authority, to perform the functions mentioned
85 or described in this article.

86 (9) *Director or director of the West Virginia development*
87 *office.* — The term “director” or “director of the West Virginia
88 development office” means the director of the West Virginia
89 office.

90 (10) *Economically disadvantaged area.* — The term
91 “economically disadvantaged area” means:

92 (A) In a municipality — any area not exceeding fifteen
93 square miles in West Virginia which contains any portion of an
94 incorporated municipality and:

95 (i) In which area the aggregate poverty rate of persons
96 residing in the area, based upon the most recent decennial
97 census of population, is at least one hundred twenty-five
98 percent of the statewide poverty rate; and

99 (ii) That is certified as an economically disadvantaged area
100 by the West Virginia development office;

101 (B) In a rural area — any area not exceeding twenty-five
102 square miles in West Virginia:

103 (i) Which area is located in a rural area and which contains
104 no incorporated municipalities or portions thereof;

105 (ii) In which area the aggregate poverty rate of persons
106 residing in the area, based upon the most recent decennial
107 census of population, is at least one hundred twenty-five
108 percent of the statewide poverty rate; and

109 (iii) That is certified as an economically disadvantaged area
110 by the West Virginia development office;

111 (C) An economically disadvantaged area shall qualify as
112 such only pursuant to a certification issued by the West Virginia
113 development office. Such certifications issued by the West
114 Virginia development office shall expire after the passage of
115 five calendar years, unless specifically limited to a shorter time
116 by specific order of the West Virginia development office, and
117 no area shall hold the status of a certified economically disad-
118 vantaged area for a period of time greater than ten years, either
119 consecutively or in the aggregate;

120 (D) The certification of an economically disadvantaged area
121 shall be made on the basis of a determination by the develop-
122 ment office that an area meets the poverty criteria established
123 in paragraphs (A) and (B) of this subdivision;

124 (E) No economically disadvantaged area may be certified
125 within twenty-five miles of any other certified economically
126 disadvantaged area. Not more than six economically disadvan-
127 taged areas may hold the status of certified economically
128 disadvantaged areas at any one time in this state;

129 (F) At least a majority of all economically disadvantaged
130 areas holding designations as economically disadvantaged areas
131 at any one time shall be located in rural areas; and

132 (G) Such certification shall be filed with the secretary of
133 state and shall specifically set forth the boundaries of the
134 economically disadvantaged area by both description and map,
135 the date of certification of the area as an economically disad-
136 vantaged area, the date on which such certification will termi-
137 nate and a statement of the director's findings as to the aggre-
138 gate poverty rate of persons living in the certified economically
139 disadvantaged area.

140 (11) *Economically disadvantaged citizen.* — The term
141 “economically disadvantaged citizen” means a natural person,
142 who during the current taxable year has, or during the immedi-
143 ately preceding taxable year had, an annual gross personal
144 income not exceeding one hundred twenty-five percent of the
145 federal designated poverty level for personal incomes, and who
146 is a domiciliary and resident of this state.

147 (12) *Education.* — “Education” means any type of scholas-
148 tic instruction to, or scholarship by, an individual that enables
149 such individual to prepare for better life opportunities. Educa-
150 tion does not include courses in physical training, physical
151 conditioning, physical education, sports training, sports camps
152 and similar training or conditioning courses (except for physical
153 therapy prescribed by a physician or other person licensed to
154 prescribe courses of medical treatment under West Virginia
155 law).

156 (13) *Eligible contribution.* —

157 (A) An eligible contribution consists of cash, publicly
158 traded common or preferred stock representing ownership in a
159 corporation valued at the closing price on the date of transfer,
160 tangible personal property valued at its fair market value, real
161 property valued at its fair market value: *Provided*, That any
162 common or preferred stock contributed shall be sold by the
163 project transferee within one hundred eighty days of its receipt;
164 or a contribution of in kind professional services valued at
165 seventy-five percent of fair market value;

166 (B) For purposes of this definition, the value of in kind
167 professional services will not qualify as an eligible contribution
168 unless the services are:

169 (i) Reasonably priced and valued, and reasonably necessary
170 services customarily and normally provided by the contributor
171 in the normal course of business to customers, clients or
172 patients other than those encompassed by the project plan;

173 (ii) Not reimbursable, in whole or in part, from sources
174 other than the tax credit provided under this article; and

175 (iii) Are services which are not available without cost
176 elsewhere in the community;

177 (C) The term “professional services” means only those
178 services provided directly by a physician licensed to practice in
179 this state, those services provided directly by a dentist licensed
180 to practice in this state, those services provided directly by a
181 lawyer licensed to practice in this state, those services provided
182 directly by a registered nurse, licensed practical nurse, dental
183 hygienist or other health care professional licensed to practice
184 in this state and those services provided directly by a certified
185 public accountant or public accountant licensed to practice in
186 this state;

187 (D) *Minimum contribution.* — No contribution of cash,
188 stock, property or professional services or any combination
189 thereof contributed in any tax year by any taxpayer having a
190 fair market value of less than five hundred dollars qualifies as
191 an eligible contribution;

192 (E) *Maximum contribution.* — No contribution of cash,
193 stock, property or professional services or any combination
194 thereof contributed in any tax year by any taxpayer having a
195 fair market value in excess of two hundred thousand dollars
196 qualifies as an eligible contribution; and

197 (F) *Limitations.* — Not more than twenty-five percent of
198 total eligible contributions to a certified project may be in kind
199 contributions. Not more than twenty-five percent of total
200 eligible contributions made by any taxpayer to any certified
201 project may be in kind contributions.

202 (14) *Eligible taxpayer.* —

203 (A) The term “eligible taxpayer” means any person subject
204 to the taxes imposed by article twenty-one, twenty-three or
205 twenty-four of this chapter which makes an eligible contribu-
206 tion to a qualified charitable organization pursuant to the terms
207 of a certified project plan for the purpose of providing neigh-
208 borhood assistance, community services or crime prevention, or
209 for the purpose of providing job training or education for
210 individuals not employed by the contributing taxpayer or an
211 affiliate of the contributing taxpayer or a person related to the
212 contributing taxpayer;

213 (B) “Eligible taxpayer” also includes an affiliated group of
214 taxpayers if such group elects to file a consolidated corporation
215 net income tax return under article twenty-four of this chapter
216 and if one or more affiliates included in such affiliated group
217 would qualify as an eligible taxpayer under paragraph (A) of
218 this subdivision.

219 (15) *Includes and including.* — The terms “includes” and
220 “including”, when used in a definition contained in this article,
221 shall not be considered to exclude other things otherwise within
222 the meaning of the term defined.

223 (16) *Job training.* — “Job training” means instruction to an
224 individual that enables the individual to acquire vocational
225 skills so as to become employable or to be able to seek a higher
226 grade of employment.

227 (17) *Natural person or individual.* — The term “natural
228 person” and the term “individual” means a human being. The
229 terms “natural person” and “individual” do not mean, and
230 specifically exclude any corporation, limited liability company,
231 partnership, joint venture, trust, organization, association,
232 agency, governmental subdivision, syndicate, affiliate or
233 affiliation, group, unit or any entity other than a human being.

234 (18) *Neighborhood assistance.* — “Neighborhood assis-
235 tance” means either:

236 (A) Furnishing financial assistance, labor, material and
237 technical advice to aid in the physical or economic improve-
238 ment of any part or all of an economically disadvantaged area;
239 or

240 (B) Furnishing technical advice to promote higher employ-
241 ment in an economically disadvantaged area.

242 (19) *Neighborhood organization.* — “Neighborhood
243 organization” means any organization:

244 (A) Which is performing community services, as defined in
245 this section; and

246 (B) Which is exempt from income taxation under Section
247 501(c)(3) of the Internal Revenue Code.

248 (20) *Partnership and partner.* — The term “partnership”
249 includes a syndicate, group, pool, joint venture or other
250 unincorporated organization through or by means of which any
251 business, financial operation or venture is carried on, and which
252 is not a trust or estate, a corporation or a sole proprietorship.
253 The term “partner” includes a member in such a syndicate,
254 group, pool, joint venture or organization.

255 (21) *Person.* — The term “person” includes any natural
256 person, corporation, limited liability company or partnership.

257 (22) *Project transferee.* — The term “project transferee”
258 means any neighborhood organization, qualified charitable
259 organization, charitable organization or other organization,
260 entity or person that receives an eligible contribution or part of
261 an eligible contribution from an eligible taxpayer for the

262 purpose of directly or indirectly providing neighborhood
263 assistance, community services or crime prevention, or for the
264 purpose of providing job training or education or other services
265 or assistance pursuant to a project plan. The project transferee
266 is typically the first entity or person receiving eligible contribu-
267 tions from eligible taxpayers under a project plan. However, in
268 the case of eligible contributions of in kind services or other
269 eligible contributions or portions thereof made pursuant to a
270 certified project plan directly to indigent, disadvantaged or
271 needy persons, economically disadvantaged citizens or other
272 persons or organizations under the sponsorship or auspices of
273 any neighborhood organization, qualified charitable organiza-
274 tion, charitable organization or other organization, entity or
275 person as a certified project participant, such eligible contribu-
276 tions shall be considered to have been made to the entity,
277 organization or person under whose sponsorship or auspices
278 such eligible contributions are made, and that entity, organiza-
279 tion or person is considered to be the project transferee with
280 relation to those eligible contributions. The project transferee
281 is the entity, organization or person that is liable under this
282 article for payment of the project certification fee to the West
283 Virginia development office. The term "project transferee"
284 shall mean and include any considered project transferee,
285 considered as such under the provisions of this article.

286 (23) *Qualified charitable organization.* — The term
287 "qualified charitable organization" means a neighborhood
288 organization, as defined in this section, which is the sponsor of
289 a project which has received certification by the director of the
290 West Virginia development office pursuant to the requirements
291 of this article: *Provided*, That no organization may qualify as a
292 qualified organization for purposes of this article if the organi-
293 zation is not registered with this state as required under the
294 solicitation of charitable funds act.

295 (24) *Related person.* — The term "related person" or
296 "person related to" a stated taxpayer means:

297 (A) An individual, corporation, partnership, affiliate,
298 association or trust or any combination or group thereof
299 controlled by the taxpayer; or

300 (B) An individual, corporation, partnership, affiliate,
301 association or trust or any combination or group thereof that is
302 in control of the taxpayer; or

303 (C) An individual, corporation, partnership, affiliate,
304 association or trust or any combination or group thereof
305 controlled by an individual, corporation, partnership, affiliate,
306 association or trust or any combination or group thereof that is
307 in control of the taxpayer; or

308 (D) A member of the same controlled group as the tax-
309 payer.

310 For purposes of this article, "control", with respect to a
311 corporation means ownership, directly or indirectly, of stock
312 possessing fifty percent or more of the total combined voting
313 power of all classes of the stock of the corporation which
314 entitles its owner to vote. "Control", with respect to a trust,
315 means ownership, directly or indirectly, of fifty percent or more
316 of the beneficial interest in the principal or income of the trust.
317 The ownership of stock in a corporation, of a capital or profits
318 interest in a partnership or association or of a beneficial interest
319 in a trust shall be determined in accordance with the rules for
320 constructive ownership of stock provided in Section 267(c),
321 other than paragraph (3) of such section, of the United States
322 Internal Revenue Code, as amended.

323 (25) *State fiscal year.* — "State fiscal year" means a
324 twelve-month period beginning on the first day of July and
325 ending on the thirtieth day of June.

326 (26) *Taxpayer.* — The term "taxpayer" means any person
327 subject to the tax imposed by article twenty-one, twenty-three
328 or twenty-four of this chapter (or any one or combination of the
329 articles of this chapter).

330 (27) *Technical assistance.* — The term "technical assis-
331 tance" means:

332 (A) Assistance in understanding, using and fulfilling the
333 legal, bureaucratic and administrative requirements and
334 qualifications which must be negotiated for the purpose of
335 effectively accessing, obtaining and using private, charitable,

336 not-for-profit or governmental assistance, resources or funds,
337 and maximizing the value thereof;

338 (B) Assistance provided by any person holding a license
339 under West Virginia law to practice any licensed profession or
340 occupation, whereby the person, in the practice of the profes-
341 sion or occupation, assists economically disadvantaged citizens
342 or the persons in an economically disadvantaged area by:

343 (i) Providing any type of health, personal finance, psycho-
344 logical or behavioral, religious, legal, marital, educational or
345 housing counseling and advice to economically disadvantaged
346 citizens or a specifically designated group of economically
347 disadvantaged citizens or in an economically disadvantaged
348 area; or

349 (ii) Providing emergency assistance or medical care to
350 economically disadvantaged citizens or to a specifically
351 designated group of economically disadvantaged citizens or in
352 an economically disadvantaged area; or

353 (iii) Establishing, maintaining or operating recreational
354 facilities, or housing facilities for economically disadvantaged
355 citizens or a specifically designated group of economically
356 disadvantaged citizens or in an economically disadvantaged
357 area; or

358 (iv) Providing economic development assistance to
359 economically disadvantaged citizens or a specifically desig-
360 nated group of economically disadvantaged citizens, without
361 regard to whether they are located in an economically disadvan-
362 taged area, or to individuals, groups or neighborhood or
363 community organizations, in an economically disadvantaged
364 area; or

365 (v) Providing community technical assistance and capacity
366 building to economically disadvantaged citizens or a specifi-
367 cally designated group of economically disadvantaged citizens
368 or to individuals, groups or neighborhood or community
369 organizations in an economically disadvantaged area.

§11-13J-5. Amount of credit allowed.

1 (a) *Credit allowed.* — Eligible taxpayers shall be allowed
2 a credit against taxes imposed by this state, the application of
3 which and the amount of which shall be determined as provided
4 in this article.

5 (b) *Amount of credit.* — The amount of credit allowable is
6 fifty percent of the amount of the taxpayer's "eligible contribu-
7 tion".

8 (c) *Application of credit within five years.* — The amount
9 of credit allowable must be taken within a five-year period,
10 beginning with the tax year in which the taxpayer irrevocably
11 transfers its eligible contribution to the project plan transferee.
12 Notwithstanding any other provision of this article to the
13 contrary, the tax credit which a taxpayer receives under this
14 article may not exceed one hundred thousand dollars in any tax
15 year of the eligible taxpayer. A tax credit shall be allowable
16 under this article only for the tax year of the eligible taxpayer
17 in which the eligible contribution is irretrievably transferred to
18 the project plan transferee, and for the next succeeding four tax
19 years.

§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 parts (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) No credit may be allowed under this section against any
42 tax due under article twenty-one of this chapter on any wage,
43 salary or other compensation paid to any employee of any
44 electing small business corporation, limited liability company,
45 partnership, other unincorporated organization or sole propri-
46 etorship or against any amount of tax due on any wage, salary
47 or other compensation reported on federal form W2.

48 (c) *Unused credit forfeited.* — If any credit to an eligible
49 taxpayer remains after application of subsections (a) and (b) of
50 this section, the amount thereof may be carried forward no
51 more than four years from the tax year in which the contribu-
52 tion was made. Unused credits of an eligible taxpayer may not
53 be carried forward beyond the time limits imposed under

54 section five of this article and the total maximum aggregate tax
55 credits certified in any state fiscal year may not exceed two
56 million dollars.

57 (d) *Addition of deductions, decreasing adjustments or*
58 *decreasing modifications taken in determining taxable income*
59 *for which credit is taken.* — Any deduction, decreasing
60 adjustment or decreasing modification taken by any taxpayer in
61 determining federal taxable income which affects West Virginia
62 taxable income or in determining West Virginia taxable income
63 under article twenty-one or twenty-four of this chapter for the
64 taxable year for any charitable contribution, or payment or
65 portion thereof, which qualifies as an eligible contribution
66 under this article and for which credit is claimed, shall be added
67 to West Virginia taxable income in determining the tax liability
68 of the taxpayer under article twenty-one or twenty-four of this
69 chapter, as appropriate, before application of the credit allowed
70 under this article for the taxable year.

71 (e) *Annual limit.* — The aggregate annual credit allowance
72 to any taxpayer may not exceed one hundred thousand dollars
73 in any tax year.

**§11-13J-12. Program evaluation; expiration of credit; preserva-
tion of entitlement.**

1 On or before the fifteenth day of December, two thousand
2 one, the director shall secure an independent review of the
3 neighborhood investment program created by this article and
4 present the findings to the Legislature. Unless sooner termi-
5 nated by law, the neighborhood investment program act shall
6 terminate on the first day of July, two thousand two. No
7 entitlement to the tax credit under this article shall result from
8 any contribution made to any certified project after the first day
9 of July, two thousand two, and no credit shall be available to
10 any taxpayer for any contribution made after that date. Taxpay-
11 ers which have gained entitlement to the credit pursuant to
12 eligible contributions made to certified projects prior to the first
13 day of July, two thousand two, shall retain that entitlement and
14 apply the credit in due course pursuant to the requirements and
15 limitations of this article.

CHAPTER 272

(S. B. 623 — By Senator Tomblin, Mr. President)

[Passed March 10, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight-g, relating to providing a tax credit from the personal income tax to encourage preservation of West Virginia's historic houses and neighborhoods.

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 eight-g, to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-8g. Credit for qualified rehabilitated residential buildings 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 designated by the national
8 park service, United States department of the interior as
9 "certified historic structures" as defined in 26 U.S.C. §47.

10 (b)(1) "Certified historic structure" means any building
11 located in this state that is listed individually in the national
12 register of historic places or located in a registered historic
13 district, reviewed by the West Virginia division of culture and

14 history and certified by the national park service as being of
15 historic significance to the district.

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 certified by the national
19 park service as being consistent with the historic character of
20 the property and, where applicable, the district in which it is
21 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 any district that is listed in the
27 national register of historic places or designated under a state or
28 local statute which has been certified as containing criteria
29 which will substantially achieve the purpose of preserving and
30 rehabilitating buildings of significance to the district and which
31 is certified as substantially meeting all of the requirements for
32 listing of districts in the national register of historic places.

33 (5) "Historic preservation application" means application
34 forms published by the national park service, United States
35 department of the interior, Parts 1, 2 and 3, Form No. 1-168, or
36 its successor.

37 (6) "Material rehabilitation" means improvements or
38 reconstruction consistent with the "Secretary of the Interior's
39 Standards for Rehabilitation," the actual cost of which amounts
40 to at least twenty percent of the assessed value of a certified
41 historic structure for ad valorem real estate tax purposes for the
42 year before such rehabilitation expenses were incurred, exclu-
43 sive of the assessed value of the land.

44 (7) "Residential certified historic structure" means any
45 certified historic structure that is:

46 (A) Classified as Class II property for levy purposes
47 pursuant to section five, article eight, chapter eleven of this
48 code for the year in which the rehabilitation expenses are
49 incurred; or

50 (B) Not classified as Class II property for levy purposes for
51 the year in which the rehabilitation expenses are incurred but
52 will satisfy the requirements for classification as Class II for
53 real property assessment purposes pursuant to section five,
54 article eight, chapter eleven of this code as of the first day of
55 July of the year following the year in which the rehabilitation
56 expenses are incurred.

57 (8) "Secretary of the interior standards" means standards
58 and guidelines adopted and published by the national park
59 service, United States department of the interior, for rehabilita-
60 tion of historic properties.

61 (9) "State historic preservation office" means the state
62 official designated by the governor pursuant to provisions in the
63 National Historic Preservation Act of 1966, as amended and
64 further defined in section six, article one, chapter twenty-nine
65 of this code.

66 (c)(1) Application and processing procedures for provisions
67 of this section shall be the same or substantially similar as any
68 required under provisions of 36 C.F.R., Part 67, and to the
69 extent applicable 26 C.F.R., Part 1. Obtaining historic preserva-
70 tion certification by proper application automatically qualifies
71 the applicant to be considered for tax credits under this section.

72 (2) The state historic preservation officer's role in the
73 application procedure shall be identical, or substantially similar,
74 to that in 36 C.F.R., Part 67 and 26 C.F.R., Part 1, to the extent
75 applicable.

76 (d) All standards including the secretary of the interior
77 standards and provisions in 36 C.F.R., Part 67 and 26 C.F.R.,
78 Part 1 that apply to tax credits available from the United States
79 government apply to this section, except that the property
80 eligible for the tax credit under this article may not be income
81 producing property or property for which depreciation is
82 allowed under 26 U.S.C. §168.

83 (e) If the amount of the credit for qualified rehabilitated
84 residential buildings investment exceeds the taxpayer's tax
85 liability for the taxable year to which the credit applies, the

86 amount that exceeds the tax liability for the taxable year may be
87 carried over for credits against the income taxes of the taxpayer
88 in each of the ensuing five tax years or until the full credit is
89 used, whichever occurs first. In no event may the amount of the
90 credit taken in a taxable year exceed the tax liability due for the
91 taxable year.

92 (f) The tax commissioner shall require disclosure of
93 information regarding credits granted pursuant to this section in
94 accordance with the provisions of section five-s, article ten of
95 this chapter. The commissioner of the West Virginia division of
96 culture and history may establish by rule the requirements to
97 implement the credit for qualified rehabilitated residential
98 buildings investment, including reasonable fees to defray the
99 necessary expenses of administration of the credit.

100 (g) The credit authorized by this section shall be available
101 for tax years beginning after the thirty-first day of December,
102 one thousand nine hundred ninety-nine.

CHAPTER 273

(S. B. 143 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed February 18, 1999; 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 shall have the same
2 meaning as when used in a comparable context in the laws of
3 the United States relating to income taxes unless a different
4 meaning is clearly required. Any reference in this article to the
5 laws of the United States shall mean the provisions of the
6 Internal Revenue Code of 1986, as amended, and any other
7 provisions of the laws of the United States as relate to the
8 determination of income for federal income tax purposes. All
9 amendments made to the laws of the United States after the
10 thirty-first day of December, one thousand nine hundred ninety-
11 seven, but prior to the first day of January, one thousand nine
12 hundred ninety-nine, shall be given effect in determining the
13 taxes imposed by this article to the same extent those changes
14 are allowed for federal income tax purposes, whether such
15 changes are retroactive or prospective, but no amendment to the
16 laws of the United States made on or after the first day of
17 January, one thousand nine hundred ninety-nine, shall be given
18 any effect.

19 (b) *Medical savings accounts.* — The term “taxable trust”
20 does not include a medical savings account established pursuant
21 to section twenty, article fifteen, chapter thirty-three of this
22 code or section fifteen, article sixteen of said chapter. Employer
23 contributions to a medical savings account established pursuant
24 to said sections are not “wages” for purposes of withholding
25 under section seventy-one of this article.

26 (c) *Surtax.* — The term “surtax” means the twenty percent
27 additional tax imposed on taxable withdrawals from a medical
28 savings account under section twenty, article fifteen, chapter
29 thirty-three of this code, and the twenty percent additional tax
30 imposed on taxable withdrawals from a medical savings
31 account under section fifteen, article sixteen of said chapter,
32 which are collected by the tax commissioner as tax collected
33 under this article.

34 (d) *Effective date.* — The amendments to this section
35 enacted in the year one thousand nine hundred ninety-nine shall

36 be retroactive to the extent allowable under federal income tax
37 law. With respect to taxable years that begin prior to the first
38 day of January, one thousand nine hundred ninety-eight, the law
39 in effect for each of those years shall be fully preserved as to
40 such year, except as provided in this section.

CHAPTER 274

(Com. Sub. for H. B. 2693 — By Delegates Hunt, Damron, Compton, and Tillis)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve-a, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing a reduction of the federal gross income for the premiums paid for a qualified long-term care insurance policy.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

***§11-21-12a. Additional modification reducing federal adjusted gross income.**

1 (a) In addition to amounts authorized to be subtracted from
2 federal adjusted gross income pursuant to subsection (c),
3 section twelve of this article, any payment made under a
4 prepaid tuition contract as provided under section seven, article
5 thirty, chapter eighteen of this code, is also an authorized
6 modification reducing federal adjusted gross income, but only
7 to the extent the amount is not allowable as a deduction when
8 arriving at the taxpayer's federal adjusted gross income for the
9 taxable year in which the payment is made.

* Clerk's Note: This section was also amended by SB 431 (Chapter 95), which passed subsequent to this act.

10 (b) For taxable years beginning on and after the first day of
11 January, two thousand, in addition to the amounts authorized to
12 be subtracted from federal adjusted gross income pursuant to
13 subsection (c), section twelve of this article, any payment made
14 during the taxable year for premiums for a qualified long-term
15 care insurance policy as defined in section four, article fifteen-
16 a, chapter thirty-three of this code that offers coverage to either
17 the taxpayer, the taxpayer's spouse, parent or a dependent as
18 defined in section 152 of the United States Internal Revenue
19 Code of 1986, as amended, is an authorized modification
20 reducing federal adjusted gross income, but only to the extent
21 the amount is not allowable as a deduction when arriving at the
22 taxpayer's federal adjusted gross income for the taxable year in
23 which the payment is made.

CHAPTER 275

(S. B. 358 — By Senators Craigo, Bowman, Bailey, Jackson, Fanning, Sharpe, Minard, Helmick, Ross, Anderson, Love, Mlnear, Sprouse, Walker, Chafin, Dittmar, Hunter, Kessler, Tomblin, Mr. President, and Olliverio)

[Passed March 9, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article twenty-two, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to real estate transfer taxes; exempting certain transfers between grandparent and grandchild; exempting certain transfers made pursuant to conversions to limited liability companies from corporations, partnerships, limited partnerships or trusts; exempting certain transfers made pursuant to mergers of limited liability companies, partnerships, limited partnerships, testamentary or inter vivos trusts; and defining the term limited liability company.

Be it enacted by the Legislature of West Virginia:

That section one, article twenty-two, 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 22. EXCISE TAX ON PRIVILEGE OF TRANSFERRING REAL PROPERTY.**§11-22-1. Definitions.**

1 As used in this chapter:

2 (1) "Association" means a partnership, limited partnership
3 or any other form of unincorporated enterprise, owned or
4 conducted by two or more persons.

5 (2) "Corporation" means a corporation or joint-stock
6 association, organized under the laws of this state, the United
7 States or any other state, territory or foreign country or depend-
8 ency including, but not limited to, banking institutions.

9 (3) "Commissioner" means the state tax commissioner.

10 (4) "Document" means any deed, or instrument or writing
11 by which any real property within this state or any interest in
12 real property is granted, conveyed or otherwise transferred to
13 the grantee, purchaser or any other person; but does not include
14 wills, transfer of real property where the value of the property
15 transferred is one hundred dollars or less, testamentary or inter
16 vivos trusts, deeds of partition, deeds made pursuant to mergers
17 of corporations, limited liability companies, partnerships,
18 limited partnerships, testamentary or inter vivos trusts, deeds
19 made pursuant to conversions to limited liability companies
20 from corporations, partnerships, limited partnerships or trusts,
21 deeds made by a subsidiary corporation to its parent corporation
22 for no consideration other than the cancellation or surrender of
23 the subsidiary's stock, leases, transfers between husband and
24 wife, transfers between parent and child or transfers between
25 parent and child and his or her spouse, without consideration,
26 transfers between grandparent and grandchild or transfers
27 between grandparent and grandchild and his or her spouse,
28 without consideration, transfers without consideration between
29 a principal and straw party for any purpose, gifts to or transfers
30 from or between voluntary charitable or educational associa-
31 tions or trustees of voluntary charitable or educational associa-
32 tions and like nonprofit corporations having the same or similar

33 purposes, quitclaim or corrective deeds without consideration,
34 transfers to or from the United States, the state of West Vir-
35 ginia, or to or from any of their instrumentalities, agencies or
36 political subdivisions, by gift, dedication, deed or condemnation
37 proceedings, or mortgages or deeds of trust given as security for
38 a debt.

39 (5) "Limited liability company" means a limited liability
40 company organized under the laws of this state, the United
41 States or by any other state, territory or the District of Colum-
42 bia.

43 (6) "Person" means every natural person, association or
44 corporation. Whenever used in any clause prescribing and
45 imposing a fine or imprisonment, or both, the term "person" as
46 applied to associations, means the partners or members of the
47 association, and, as applied to corporations, the officers of the
48 corporation.

49 (7) "Transaction" means the delivering, accepting or
50 presenting for recording of a document.

51 (8) "Value" means in the case of any document not a gift,
52 the amount of the full actual consideration for the document,
53 paid or to be paid, including the amount of any lien or liens
54 assumed; in the case of a gift, or any other document without
55 consideration, the actual monetary value of the property
56 conveyed or transferred. In the event any document includes
57 real property or any interest in real property lying outside the
58 state of West Virginia or includes personal property, value is
59 the proportion of the consideration paid in case of the transfer
60 for consideration, or the proportion of the true and actual value
61 in case of a gift, which the actual value of the real property
62 located in West Virginia bears to the total actual value of all the
63 property, real or personal, transferred by the document. The
64 value as defined in this subdivision shall be stated in the
65 declaration of consideration or value provided for in section six
66 of this article.

CHAPTER 276

(S. B. 144 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed February 18, 1999; 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 shall have the same
2 meaning as when used in a comparable context in the laws of
3 the United States relating to federal income taxes, unless a
4 different meaning is clearly required by the context or by
5 definition in this article. Any reference in this article to the laws
6 of the United States shall mean the provisions of the Internal
7 Revenue Code of 1986, as amended, and such other provisions
8 of the laws of the United States as relate to the determination of
9 income for federal income tax purposes. All amendments made
10 to the laws of the United States after the thirty-first day of
11 December, one thousand nine hundred ninety-seven, but prior
12 to the first day of January, one thousand nine hundred ninety-
13 nine, shall be given effect in determining the taxes imposed by
14 this article to the same extent those changes are allowed for

15 federal income tax purposes, whether such changes are retroac-
16 tive or prospective, but no amendment to the laws of the United
17 States made on or after the first day of January, one thousand
18 nine hundred ninety-nine, shall be given any effect.

19 (b) The term "Internal Revenue Code of 1986" means the
20 Internal Revenue Code of the United States enacted by the
21 "Federal Tax Reform Act of 1986" and includes the provisions
22 of law formerly known as the Internal Revenue Code of 1954,
23 as amended, and in effect when the "Federal Tax Reform Act
24 of 1986" was enacted, that were not amended or repealed by the
25 "Federal Tax Reform Act of 1986". Except when inappropriate,
26 any references in any law, executive order or other docu-
27 ment:

28 (1) To the Internal Revenue Code of 1954 shall include
29 reference to the Internal Revenue Code of 1986; and

30 (2) To the Internal Revenue Code of 1986 shall include a
31 reference to the provisions of law formerly known as the
32 Internal Revenue Code of 1954.

33 (c) *Effective date.* — The amendments to this section
34 enacted in the year one thousand nine hundred ninety-nine shall
35 be retroactive to the extent allowable under federal income tax
36 law. With respect to taxable years that begin prior to the first
37 day of January, one thousand nine hundred ninety-eight, the law
38 in effect for each of those years shall be fully preserved as to
39 such year, except as provided in this section.

CHAPTER 277

(S. B. 522 — By Senator Tomblin, Mr. President)

[Passed March 11, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three-f, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the tax credit for qualified historic rehabilitated buildings investment.

Be it enacted by the Legislature of West Virginia:

That section twenty-three-f, 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.

§11-24-23f. Credit allowed for specific taxable years.

1 Subject to the provisions of section twenty-three-e of this
2 article, the credit authorized in section twenty-three-a of this
3 article, for investment in a rehabilitated building made by a
4 taxpayer in any taxable year beginning on the first day of
5 January, one thousand nine hundred ninety-five, and thereafter,
6 shall be allowed against the tax imposed by this article in the
7 applicable taxable year. The tax commissioner shall require
8 disclosure of information regarding the credits allowed in
9 section twenty-three-a of this article in accordance with the
10 provisions of section five-s, article ten of this chapter.

CHAPTER 278

(Com. Sub. for S. B. 503 — By Senator Prezioso)

[Passed March 9, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one-b, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to technology; and defining terms.

Be it enacted by the Legislature of West Virginia:

That section two, article one-b, 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 1B. CHIEF TECHNOLOGY OFFICER.

§5-1B-2. Definitions.

1 As used in this article:

2 (a) "Information systems" means computer-based informa-
3 tion equipment and related services designed for the automated
4 transmission, storage, manipulation and retrieval of data by
5 electronic or mechanical means;

6 (b) "Information technology" means data processing and
7 telecommunications hardware, software, services, supplies,
8 personnel, maintenance and training, and includes the programs
9 and routines used to employ and control the capabilities of data
10 processing hardware;

11 (c) "Information equipment" includes central processing
12 units, front-end processing units, miniprocessors, microproces-
13 sors and related peripheral equipment such as data storage
14 devices, networking equipment, services, routers, document
15 scanners, data entry equipment, terminal controllers, data
16 terminal equipment, computer-based word processing systems
17 other than memory typewriters and equipment and systems for
18 computer networks;

19 (d) "Related services" include feasibility studies, systems
20 design, software development and time-sharing services
21 whether provided by state employees or others;

22 (e) "Telecommunications" means any transmission,
23 emission or reception of signs, signals, writings, images or
24 sounds of intelligence of any nature by wire, radio or other
25 electromagnetic or optical systems. The term includes all
26 facilities and equipment performing those functions that are
27 owned, leased or used by the executive agencies of state
28 government;

29 (f) "Chief technology officer" means the person holding the
30 position created in section three of this article and vested with
31 authority to assist state spending units in planning and coordi-
32 nating information systems that serve the effectiveness and
33 efficiency of the individual state spending units, and further the
34 overall management goals and purposes of government; and

35 (g) "Experimental program to stimulate competitive
36 research" (EPSCoR) means the West Virginia component of the

37 national EPSCoR program which is designed to improve the
38 competitive research and development position of selected
39 states through investments in academic research laboratories
40 and laboratory equipment. The recognized West Virginia
41 EPSCoR, which is part of the governor's office of technology,
42 is the responsible organization for the coordination and submis-
43 sion of proposals to all federal agencies participating in the
44 EPSCoR program.

CHAPTER 279

(Com. Sub. for H. B. 2924 — By Delegates Capito, Rowe,
Hutchins, Mahan, Smlrl and Webb)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-e, relating to regulating transfers of intrastate phone service; limiting transfer of phone services by telephone public utilities; establishing disclosure requirements for telephone public utilities for transfer of phone services; providing for third-party conformation of transfers; establishing criteria for third-party verification companies and conformation procedures for service transfers; prohibiting disclosure of subscriber information for marketing purposes; creating civil remedy for prohibited release; excepting certain transactions from this section; providing liability to prior phone service provider and subscribers for unauthorized charges; providing that this section does not limit any other remedies; providing conformity with federal requirements; and providing that public service commission has certain rulemaking and enforcement authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2E. REQUIREMENTS FOR PHONE SERVICE SALES.**§24-2E-1. Transfer of phone service providers.**

1 (a) No telephone public utility may submit a change on
2 behalf of a subscriber in the subscriber's selection of a provider
3 of telephone service, except in accordance with the require-
4 ments of this section and the rules adopted by the public service
5 commission.

6 (1) The telephone public utility, its representatives or agents
7 shall thoroughly inform the subscriber of the nature and extent
8 of the service being offered.

9 (2) The telephone public utility, its representatives or agents
10 shall specifically establish whether the subscriber intends to
11 make any change in his or her telephone service provider, and
12 explain any charges associated with that change. The public
13 service commission may by rule establish additional require-
14 ments for disclosure of services or fees and any additional
15 appropriate requirements relating to disclosure or cancellation
16 of services, as the commission deems appropriate.

17 (3) Except as provided in subsection (b), the subscriber's
18 decision to change his or her telephone service provider may be
19 confirmed by an independent third-party verification company.
20 For purposes of this provision, the confirmation by a third-party
21 verification company shall be made as follows:

22 (A) The third-party verification company shall meet each
23 of the following criteria:

24 (i) Not be directly or indirectly managed, controlled, or
25 directed, or owned, wholly or in part, by the telephone public
26 utility or its marketing agent;

27 (ii) Operate from facilities physically separate from those
28 of the telephone public utility that seeks to provide the sub-
29 scriber's new service; and

30 (iii) Not derive commissions or compensation based upon
31 the number of sales confirmed.

32 (B) The telephone public utility seeking to verify the sale

33 shall do so by connecting the subscriber by telephone to the
34 third-party verification company or by arranging for the
35 third-party verification company to call the subscriber to
36 confirm the sale.

37 (b) As an alternative to third-party verification, the tele-
38 phone public utility may authenticate the transaction by one of
39 the following methods:

40 (i) Verifying the subscriber's change in his or her telephone
41 service provider by obtaining the subscriber's signature on a
42 document fully explaining the nature and extent of the action.
43 The document shall be a separate document whose sole purpose
44 is to explain the nature and extent of the action; or

45 (ii) Obtaining the subscriber's authorization through an
46 electronic means that takes the information, including the
47 calling number, and confirms the change to which the sub-
48 scriber has given his or her consent; or

49 (iii) Obtaining the subscriber's oral confirmation regarding
50 the change, and shall record that confirmation by obtaining
51 appropriate verification data.

52 The verification record shall be available to the subscriber
53 upon request. Information obtained from the subscriber through
54 confirmation shall not be used for marketing purposes. Any
55 unauthorized release of this information is grounds for a civil
56 suit by the aggrieved subscriber against the person or persons
57 responsible for the violation.

58 (4) Where the telephone public utility obtains a written
59 order for service, the document shall thoroughly inform the
60 subscriber of the nature and extent of the action in accordance
61 with this section and the rules adopted by the public service
62 commission.

63 (5) The telephone public utility shall retain a record of the
64 verification of the sale for at least two years. These records
65 shall be made available to the subscriber, the Attorney General,
66 or the commission upon request.

67 (c) Any telephone public utility that violates the provisions
68 of this section shall be liable to the telephone public utility
69 previously selected by the subscriber. The violating telephone
70 public utility shall refund to the properly authorized telephone
71 public utility all charges collected by the violating telephone
72 public utility. The properly authorized telephone public utility
73 shall then refund any overcharges due the subscriber. The
74 public service commission shall adopt regulations to govern
75 credits to subscribers pursuant to subsection (f) of this section.

76 (d) The remedies provided by this section are in addition to
77 any other remedies available by law. Violations of this section
78 shall be subject to orders and other actions consistent with the
79 public service commission's authority as provided in this
80 chapter. This section is intended to supplement and be in
81 addition to federal laws and regulations regulating phone
82 transactions.

83 (e) Nothing in this section shall be construed to impose any
84 obligation or liability on a local exchange telephone public
85 utility that executes, in good faith, an order for a change in a
86 subscriber's telephone service provider submitted to it by the
87 subscriber or by another telephone public utility.

88 (f) The public service commission shall promulgate rules
89 consistent with and necessary to effectuate the purposes of this
90 section.

CHAPTER 280

(H. B. 3034 — By Delegates Hines, L. White, Mahan,
Wills, Coleman, Amores and Capito)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifty-two, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the offense of

wrongful injury to timber; and making the first violation a misdemeanor; second and subsequent violations deemed a felony; and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-52. Wrongful injuries to timber; criminal penalties.

1 (a) Any person who willfully and maliciously and with
2 intent to do harm unlawfully enters upon the lands of another,
3 cuts down, injures, removes or destroys any timber, without the
4 permission of the owner or his or her representative is guilty of
5 a misdemeanor and, upon conviction thereof, shall be fined not
6 more than three times the value of timber injured, removed or
7 destroyed, or confined in the county or regional jail for thirty
8 days, or both: *Provided*, That if the timber is valued at one
9 thousand dollars or less, the fine shall be no more than one
10 thousand dollars: *Provided, however*, That a person convicted
11 of a second or subsequent violation of the provisions of this
12 section shall be guilty of a felony and, upon conviction thereof,
13 shall be confined in a correctional facility for not less than one
14 nor more than three years, or fined not more than three times
15 the value of the timber injured, removed or destroyed, or both
16 fined and confined.

17 (b) The necessary trimming and removal of timber to
18 permit the construction, repair, maintenance, cleanup and
19 operations of pipelines and utility lines and appurtenances of
20 public utilities, public service corporations and to aid registered
21 land surveyors and professional engineers in the performance
22 of their professional services, and municipalities, and pipeline
23 companies, or lawful operators and product purchasers of
24 natural resources other than timber shall not be deemed a
25 willful and intentional cutting down, injuring, removing or
26 destroying of timber.

27 (c) The necessary trimming and removal of timber for
28 boundary line maintenance, for the construction, maintenance
29 and repair of streets, roads and highways or for the control and
30 regulation of traffic thereon by the state and its political
31 subdivisions or registered land surveyors and professional
32 engineers shall not be deemed a willful and intentional cutting
33 down, injuring, removing or destroying of timber.

34 (d) No fine or imprisonment imposed pursuant to this
35 section shall be construed to limit any cause of action by a
36 landowner for recovery of damages otherwise allowed by law.

CHAPTER 281

(H. B. 3031 — By Delegates Leach, Compton, Ashley,
Thompson, Fleischauer, Laird and Miller)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-a, all relating to appropriations of tobacco settlement money; creating two funds for the deposit of tobacco settlement moneys; authorizing the expenditure of the interest from the West Virginia tobacco settlement medical trust fund; authorizing certain expenditures from the "Tobacco Settlement Fund" only upon legislative appropriation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11A. LEGISLATIVE APPROPRIATION OF TOBACCO SETTLEMENT FUNDS.

§4-11A-1. Legislative findings and purpose.

§4-11A-2. Receipt of settlement funds and required deposit in West Virginia tobacco settlement medical trust fund.

§4-11A-3. Receipt of settlement funds and required deposit in the West Virginia tobacco settlement fund.

§4-11A-1. Legislative findings and purpose.

1 (a) On the twenty-third day of November, one thousand
2 nine hundred ninety-eight, tobacco product manufacturers
3 entered into a settlement agreement with the state. This “master
4 settlement agreement” releases those manufacturers from past,
5 present and specific future claims against them in return for
6 payment of annual sums of money to the state, obligates the
7 manufacturers to change their advertising and marketing
8 practices, and requires the establishment by the manufacturers
9 of a national foundation for the interests of public health.

10 (b) The revenues received pursuant to the master settlement
11 agreement are directly related to the past, present and future
12 costs incurred by the state for the treatment of tobacco related
13 illnesses. The purpose of this article is to preserve the revenues
14 received from the settlement.

15 (c) The receipt of funds in accordance with the master
16 settlement agreement shall be deposited only in accordance
17 with the provisions of this article.

**§4-11A-2. Receipt of settlement funds and required deposit in
West Virginia tobacco settlement medical trust
fund.**

1 (a) The Legislature finds and declares that certain dedicated
2 revenues should be preserved in trust for the purpose of
3 stabilizing the states health related programs and delivery
4 systems. It further finds and declares that these dedicated
5 revenues should also be preserved in trust for the purpose of
6 educating the public about the health risks associated with
7 tobacco usage and for the establishment of a program designed
8 to reduce and stop the use of tobacco by the citizens of this state
9 and in particular by teenagers.

10 (b) There is hereby created a special account in the state
11 treasury, designated the “West Virginia Tobacco Settlement
12 Medical Trust Fund”, which shall be an interest-bearing
13 account and may be invested in the manner permitted by section

14 nine, article six, chapter twelve of this code, with the interest
15 income a proper credit to the fund. Unless contrary to federal
16 law, fifty percent of all revenues received pursuant to the
17 master settlement agreement shall be deposited in this fund.
18 Funds paid into the account may also be derived from the
19 following sources:

20 (1) All interest or return on investment accruing to the fund;

21 (2) Any gifts, grants, bequests, transfers or donations which
22 may be received from any governmental entity or unit or any
23 person, firm, foundation or corporation; and

24 (3) Any appropriations by the Legislature which may be
25 made for this purpose.

26 (c) The moneys from the principal in the trust fund may not
27 be expended for any purpose. The moneys in the trust fund
28 resulting from interest earned on the moneys in the fund and the
29 return on investments of the moneys in the fund shall be
30 available only upon appropriation by the Legislature as part of
31 the state budget and expended in accordance with the provisions
32 of section three of this article.

**§4-11A-3. Receipt of settlement funds and required deposit in the
West Virginia tobacco settlement fund.**

1 (a) There is hereby created in the state treasury a special
2 revenue account, designated the "Tobacco Settlement Fund",
3 which shall be an interest bearing account and may be invested
4 in the manner permitted by the provisions of article six, chapter
5 twelve of this code, with the interest income a proper credit to
6 the fund. Unless contrary to federal law, fifty percent of all
7 revenues received pursuant to the master settlement agreement
8 shall be deposited in this fund. These funds shall be available
9 only upon appropriation by the Legislature as part of the state
10 budget: *Provided*, That for the fiscal year two thousand, the first
11 five million dollars received into the fund shall be transferred
12 to the public employees insurance reserve fund created in
13 article two, chapter five-a of this code.

14 (b) Appropriations from the tobacco settlement fund are
15 limited to expenditures for the following purposes:

16 (1) Reserve funds for continued support of the programs
17 offered by the public employees insurance agency established
18 in article sixteen, chapter five of this code;

19 (2) Funding for expansion of the federal-state medicaid
20 program as authorized by the Legislature or mandated by the
21 federal government;

22 (3) Funding for public health programs, services and
23 agencies; and

24 (4) Funding for any state owned or operated health facili-
25 ties.

26 (c) Notwithstanding the provisions of section two, article
27 two, chapter twelve of this code, moneys within the tobacco
28 settlement trust fund may not be redesignated for any purpose
29 other than those set forth in this section.

CHAPTER 282

(S. B. 372 — By Senators Tomblin, Mr. President, Walker, Prezioso, Plymale, Sharpe, Wooton, Ross, Hunter, McCabe, Redd, Snyder, Unger, Sprouse, Jackson, Craigo, Bowman, Schoonover, Dittmar, Edgell, Fanning, Minard, Bailey, Helmick, Kessler and Ball)

[Passed March 12, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nine-b, relating to implementation of the tobacco master settlement agreement; providing for escrow of funds; and setting civil penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9B. IMPLEMENTING TOBACCO MASTER SETTLEMENT AGREEMENT.

§16-9B-1. Findings and purpose.

§16-9B-2. Definitions.

§16-9B-3. Requirements.

§16-9B-1. Findings and purpose.

1 (a) Cigarette smoking presents serious public health
2 concerns to the state and to the citizens of the state. The
3 surgeon general has determined that smoking causes lung
4 cancer, heart disease and other serious diseases, and that there
5 are hundreds of thousands of tobacco-related deaths in the
6 United States each year. These diseases most often do not
7 appear until many years after the person in question begins
8 smoking.

9 (b) Cigarette smoking also presents serious financial
10 concerns for the state. Under certain health-care programs, the
11 state may have a legal obligation to provide medical assistance
12 to eligible persons for health conditions associated with
13 cigarette smoking, and those persons may have a legal entitle-
14 ment to receive such medical assistance.

15 (c) Under these programs, the state pays millions of dollars
16 each year to provide medical assistance for these persons for
17 health conditions associated with cigarette smoking.

18 (d) It is the policy of the state that financial burdens
19 imposed on the state by cigarette smoking be borne by tobacco
20 product manufacturers rather than by the state to the extent that
21 such manufacturers either determine to enter into a settlement
22 with the state or are found culpable by the courts.

23 (e) On the twenty-third day of November, one thousand
24 nine hundred ninety-eight, leading United States tobacco
25 product manufacturers entered into a settlement agreement,
26 entitled the "master settlement agreement", with the state. The
27 master settlement agreement obligates these manufacturers, in
28 return for a release of past, present and certain future claims
29 against them as described therein, to pay substantial sums to the
30 state (tied in part to their volume of sales); to fund a national
31 foundation devoted to the interests of public health; and to
32 make substantial changes in their advertising and marketing
33 practices and corporate culture, with the intention of reducing

34 underage smoking.

35 (f) It would be contrary to the policy of the state if tobacco
36 product manufacturers who determine not to enter into such a
37 settlement could use a resulting cost advantage to derive large,
38 short-term profits in the years before liability may arise without
39 ensuring that the state will have an eventual source of recovery
40 from them if they are proven to have acted culpably. It is thus
41 in the interest of the state to require that such manufacturers
42 establish a reserve fund to guarantee a source of compensation
43 and to prevent such manufacturers from deriving large,
44 short-term profits and then becoming judgment-proof before
45 liability may arise.

§16-9B-2. Definitions.

1 (a) "Adjusted for inflation" means increased in accordance
2 with the formula for inflation adjustment set forth in Exhibit C
3 to the master settlement agreement.

4 (b) "Affiliate" means a person who directly or indirectly
5 owns or controls, is owned or controlled by, or is under
6 common ownership or control with, another person. Solely for
7 purposes of this definition, the terms "owns," "is owned" and
8 "ownership" mean ownership of an equity interest, or the
9 equivalent thereof, of ten percent or more, and the term
10 "person" means an individual, partnership, committee, associa-
11 tion, corporation or any other organization or group of persons.

12 (c) "Allocable share" means allocable share as that term is
13 defined in the master settlement agreement.

14 (d) "Cigarette" means any product that contains nicotine, is
15 intended to be burned or heated under ordinary conditions of
16 use, and consists of or contains: (1) Any roll of tobacco
17 wrapped in paper or in any substance not containing tobacco; or
18 (2) tobacco, in any form, that is functional in the product,
19 which, because of its appearance, the type of tobacco used in
20 the filler, or its packaging and labeling, is likely to be offered
21 to, or purchased by, consumers as a cigarette; or (3) any roll of
22 tobacco wrapped in any substance containing tobacco which,
23 because of its appearance, the type of tobacco used in the filler,

24 or its packaging and labeling, is likely to be offered to, or
25 purchased by, consumers as a cigarette as that term is described
26 in this subsection. The term "cigarette" includes
27 "roll-your-own", which means any tobacco which, because of
28 its appearance, type, packaging, or labeling is suitable for use
29 and likely to be offered to, or purchased by, consumers as
30 tobacco for making cigarettes. For purposes of this definition of
31 cigarette, 0.09 ounces of "roll-your-own" tobacco shall consti-
32 tute one individual cigarette.

33 (e) "Master settlement agreement" means the settlement
34 agreement (and related documents) entered into on the twenty-
35 third day of November, one thousand nine hundred ninety-
36 eight, by the state and leading United States tobacco product
37 manufacturers.

38 (f) "Qualified escrow fund" means an escrow arrangement
39 with a federally- or state- chartered financial institution having
40 no affiliation with any tobacco product manufacturer and
41 having assets of at least \$1,000,000,000 where such arrange-
42 ment requires that such financial institution hold the escrowed
43 funds' principal for the benefit of releasing parties and prohibits
44 the tobacco product manufacturer placing the funds into escrow
45 from using, accessing or directing the use of the funds' princi-
46 pal except as consistent with subdivision (2), subsection (b),
47 section three of this article.

48 (g) "Released claims" means released claims as that term
49 is defined in the master settlement agreement.

50 (h) "Releasing parties" means releasing parties as that term
51 is defined in the master settlement agreement.

52 (i) "Tobacco product manufacturer" means an entity that
53 after the date of enactment of this article directly (and not
54 exclusively through any affiliate):

55 (1) Manufactures cigarettes anywhere that such manufac-
56 turer intends to be sold in the United States, including cigarettes
57 intended to be sold in the United States through an importer
58 (except where such importer is an original participating
59 manufacturer, as that term is defined in the master settlement

60 agreement, that will be responsible for the payments under the
61 master settlement agreement with respect to such cigarettes as
62 a result of the provisions of subsections II(mm) of the master
63 settlement agreement and that pays the taxes specified in
64 subsection II(z) of the master settlement agreement, and
65 provided that the manufacturer of such cigarettes does not
66 market or advertise such cigarettes in the United States);

67 (2) Is the first purchaser anywhere for resale in the United
68 States of cigarettes manufactured anywhere that the manufac-
69 turer does not intend to be sold in the United States; or

70 (3) Becomes a successor of an entity described in subdivi-
71 sion (1) or (2) of this subsection.

72 The term "tobacco product manufacturer" shall not include
73 an affiliate of a tobacco product manufacturer unless such
74 affiliate itself falls within subdivision (1), (2) or (3).

75 (j) "Units sold" means the number of individual cigarettes
76 sold in the state by the applicable tobacco product manufacturer
77 (whether directly or through a distributor, retailer or similar
78 intermediary or intermediaries) during the year in question, as
79 measured by excise taxes collected by the state on packs or
80 "roll-your-own" tobacco containers bearing the excise tax
81 stamp of the state. The tax commissioner shall propose legisla-
82 tive rules for promulgation, in accordance with article three,
83 chapter twenty-nine of this code, as are necessary to ascertain
84 the amount of state excise tax paid on the cigarettes of such
85 tobacco product manufacturer for each year.

§16-9B-3. Requirements.

1 Any tobacco product manufacturer selling cigarettes to
2 consumers within the state (whether directly or through a
3 distributor, retailer or similar intermediary or intermediaries)
4 after the date of enactment of this article shall do one of the
5 following:

6 (a) Become a participating manufacturer (as that term is
7 defined in section II(jj) of the master settlement agreement) and
8 generally perform its financial obligations under the master
9 settlement agreement; or

10 (b) (1) Place into a qualified escrow fund by the fifteenth
11 day of April of the year following the year in question the
12 following amounts, adjusted for inflation:

13 (A) For the year one thousand nine hundred ninety-nine:
14 \$.0094241 per unit sold after the date of enactment of this
15 article;

16 (B) For the year two thousand: \$.0104712 per unit sold;

17 (C) For each of the years two thousand one and two
18 thousand two: \$.0136125 per unit sold;

19 (D) For each of the years two thousand three through two
20 thousand six: \$.0167539 per unit sold; and

21 (E) For the year two thousand seven or each year thereafter:
22 \$.0188482 per unit sold.

23 (2) A tobacco product manufacturer that places funds into
24 escrow pursuant to this subsection shall receive the interest or
25 other appreciation on such funds as earned. Such funds them-
26 selves shall be released from escrow only under the following
27 circumstances:

28 (A) To pay a judgment or settlement on any released claim
29 brought against such tobacco product manufacturer by the state
30 or any releasing party located or residing in the state. Funds
31 shall be released from escrow under this paragraph: (i) In the
32 order in which they were placed into escrow; and (ii) only to the
33 extent and at the time necessary to make payments required
34 under such judgment or settlement;

35 (B) To the extent that a tobacco product manufacturer
36 establishes that the amount it was required to place into escrow
37 in a particular year was greater than the state's allocable share
38 of the total payments that such manufacturer would have been
39 required to make in that year under the master settlement
40 agreement (as determined pursuant to section IX(i)(2) of the
41 master settlement agreement, and before any of the adjustments
42 or offsets described in section IX(i)(3) of that agreement other
43 than the inflation adjustment) had it been a participating
44 manufacturer, the excess shall be released from escrow and
45 revert back to such tobacco product manufacturer; or

46 (C) To the extent not released from escrow under paragraph
47 (A) or (B) of this subdivision, funds shall be released from
48 escrow and revert back to the tobacco product manufacturer
49 twenty-five years after the date on which they were placed into
50 escrow.

51 (3) Each tobacco product manufacturer that elects to place
52 funds into escrow pursuant to this subsection shall annually
53 certify to the attorney general that it is in compliance with this
54 subsection. The attorney general may bring a civil action on
55 behalf of the state against any tobacco product manufacturer
56 that fails to place into escrow the funds required under this
57 section. Any tobacco product manufacturer that fails in any year
58 to place into escrow the funds required under this section shall:

59 (A) Be required within fifteen days to place such funds into
60 escrow as shall bring it into compliance with this section. The
61 court, upon a finding of a violation of this subsection, may
62 impose a civil penalty, to be paid to the general fund of the
63 state, in an amount not to exceed five percent of the amount
64 improperly withheld from escrow per day of the violation and
65 in a total amount not to exceed one hundred percent of the
66 original amount improperly withheld from escrow;

67 (B) In the case of a knowing violation, be required within
68 fifteen days to place such funds into escrow as shall bring it into
69 compliance with this section. The court, upon a finding of a
70 knowing violation of this subsection, may impose a civil
71 penalty, to be paid to the general fund of the state, in an amount
72 not to exceed fifteen percent of the amount improperly withheld
73 from escrow per day of the violation and in a total amount not
74 to exceed three hundred percent of the original amount improv-
75 erly withheld from escrow; and

76 (C) In the case of a second knowing violation, be prohibited
77 from selling cigarettes to consumers within the state (whether
78 directly or through a distributor, retailer or similar intermedi-
79 ary) for a period not to exceed two years.

80 Each failure to make an annual deposit required under this
81 section shall constitute a separate violation.

CHAPTER 283

(S. B. 697 — By Senators Cralgo, Anderson, Bailey, Bowman, Chafin, Edgell, Helmick, Jackson, Love, Plymale, Prezioso, Sharpe, Unger, Walker, Sprouse, Boley and Minear)

[Passed March 9, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nine-c, relating to the creation of a state tobacco growers' settlement board; setting forth legislative findings; defining terms; establishing the membership of and positions on the board; and duties and responsibilities of the state tobacco grower's settlement board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9C. STATE TOBACCO GROWERS' SETTLEMENT BOARD.

§16-9C-1. Findings and purpose.

§16-9C-2. Definitions.

§16-9C-3. Creation of board.

§16-9C-4. Duties and responsibilities of the state tobacco grower board.

§16-9C-1. Findings and purpose.

- 1 (a) Cigarette smoking presents serious public health
- 2 concerns as well as serious financial concerns for the state. In
- 3 response, the state pursued legal claims against leading tobacco
- 4 product manufacturers to recover damages caused by the public
- 5 health and financial consequences of cigarette smoking. On the
- 6 twenty-third day of November, one thousand nine hundred
- 7 ninety-eight, leading United States tobacco product manufactur-
- 8 ers entered into a settlement agreement, entitled "master
- 9 settlement agreement", with the state. The master settlement

10 agreement obligates these manufacturers to pay substantial
11 sums to the state in exchange for a release of past, present and
12 future claims against them.

13 (b) The tobacco growers of the state are not a party or a
14 beneficiary of the master settlement agreement.

15 (c) In view of the master settlement agreement, similar
16 agreements between other states and tobacco product manufac-
17 turers, and the heightened public awareness and scrutiny of the
18 dangers associated with cigarette smoking, the state has a
19 significant interest in protecting tobacco growers from negative
20 economic and financial consequences arising from changes in
21 the cigarette industry, such as decreased consumption, demand
22 and prices.

23 (d) On the twenty-first day of January, one thousand nine
24 hundred ninety-nine, leading United States tobacco product
25 manufacturers agreed to establish a national tobacco commu-
26 nity trust, for the sole benefit of tobacco growers, payable over
27 a twelve-year period, beginning in the year one thousand nine
28 hundred ninety-nine. The tobacco growers in this state (and
29 thirteen other states) are eligible to participate in the national
30 tobacco community trust upon the creation of a state tobacco
31 grower board, which will consummate a tobacco grower
32 settlement with the tobacco product manufacturers.

§16-9C-2. Definitions.

1 (a) "Cigarette" means any product that contains nicotine, is
2 intended to be burned or heated under ordinary conditions of
3 use, and consists of or contains: (1) Any roll of tobacco
4 wrapped in paper or in any substance not containing tobacco; or
5 (2) tobacco, in any form, that is functional in the product,
6 which, because of its appearance, the type of tobacco used in
7 the filler, or its packaging and labeling, is likely to be offered
8 to, or purchased by, consumers as a cigarette; or (3) any roll of
9 tobacco wrapped in any substance containing tobacco which,
10 because of its appearance, the type of tobacco used in the filler,
11 or its packaging and labeling, is likely to be offered to, or
12 purchased by, consumers as a cigarette as that term is described
13 in this subsection. The term "cigarette" includes "roll-your-

14 own” which means any tobacco which, because of its appear-
15 ance, type, packaging, or labeling is suitable for use and likely
16 to be offered to, or purchased by, consumers as tobacco for
17 making cigarettes. For purposes of this definition of cigarette,
18 0.09 ounces of “roll-your-own” tobacco shall constitute one
19 individual cigarette.

20 (b) “Master settlement agreement” means the settlement
21 agreement (and related documents) entered into on the twenty-
22 third day of November, one thousand nine hundred ninety-
23 eight, by the state and leading United States tobacco product
24 manufacturers.

25 (c) “National tobacco community trust” means the trust
26 fund agreed to by leading United States tobacco product
27 manufacturers, to be established and funded by them for the
28 sole benefit of state tobacco growers.

29 (d) “Tobacco grower” means a person who has a direct
30 financial interest in planting, cultivating and harvesting tobacco
31 for sale. Tobacco grower includes a person who possesses a
32 quota to market tobacco as administered by the United States
33 Department of Agriculture.

34 (e) “Trust” means the national tobacco community trust as
35 defined in subsection (c) of this section.

§16-9C-3. Creation of board.

1 There is hereby created a board to be known as the “state
2 tobacco growers’ settlement board” consisting of three mem-
3 bers: the governor, the attorney general and the commissioner
4 of agriculture, or their designees. The governor or his or her
5 designee shall serve as the chair, the commissioner of agricul-
6 ture or his or her designee shall serve as the vice chair, and the
7 attorney general or his or her designee shall serve as the
8 secretary.

§16-9C-4. Duties and responsibilities of the state tobacco grower board.

1 The duties and responsibilities of the board shall include,
2 but are not limited to:

- 3 (a) The consummation of a settlement with leading United
4 States tobacco product manufacturers for the exclusive benefit
5 of state tobacco growers;
- 6 (b) The execution of all necessary written agreements
7 relative to the national tobacco community trust to ensure state
8 tobacco growers' receipt of funds directly from the trust;
- 9 (c) Consultation with tobacco growers within the state in
10 order to determine how funds allocated by the national tobacco
11 community trust shall be distributed among state tobacco
12 growers to compensate them for the adverse effects of de-
13 creased consumption, demand and price for cigarettes;
- 14 (d) The submission of a plan to the national tobacco
15 community trust identifying state tobacco growers and the
16 distribution of trust funds to state tobacco growers; and
- 17 (e) The certification of instructions annually to the national
18 tobacco community trust regarding distribution of funds from
19 the trust directly to the state tobacco growers during the twelve
20 year payment period, beginning in the year one thousand nine
21 hundred ninety-nine.

CHAPTER 284

(Com. Sub. for H. B. 2277 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to adding four members to the tourism commission and allowing for the appointment of two members from the public sector.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-8. Tourism commission created; members, appointment and expenses.

1 (a) There is hereby created within the West Virginia
2 development office an independent tourism commission, which
3 is a body corporate and politic, constituting a public corporation
4 and government instrumentality. Membership on the council
5 shall consist of thirteen members:

6 (1) Nine members to be appointed by the governor, with the
7 advice and consent of the Senate, representing participants in
8 the state's tourism industry. At least seven of the members shall
9 be from the private sector. Of the nine members so appointed,
10 one shall represent a convention and visitors bureau and another
11 shall be a member of a convention and visitors bureau. In
12 making the appointments the governor may select from a list
13 provided by the West Virginia hospitality and travel association
14 of qualified applicants. Of the nine members so appointed, no
15 more than three shall be from each congressional district within
16 the state and shall be appointed to provide the broadest geo-
17 graphic distribution which is feasible;

18 (2) One member to be appointed by the governor from the
19 membership of the council for community and economic
20 development created pursuant to the provisions of section two
21 of this article;

22 (3) One member to be appointed by the governor to
23 represent public sector nonstate participants in the tourism
24 industry within the state;

25 (4) The secretary of transportation or his or her designee, *ex*
26 *officio*; and

27 (5) The director of the division of natural resources or his
28 or her designee, *ex officio*.

29 (b) Each member appointed by the governor shall serve
30 staggered terms of four years. Any member whose term has

31 expired shall serve until his or her successor has been ap-
32 pointed. Any person appointed to fill a vacancy shall serve only
33 for the unexpired term. Any member shall be eligible for
34 reappointment. In cases of vacancy in the office of member,
35 such vacancy shall be filled by the governor in the same manner
36 as the original appointment.

37 (c) Members of the commission shall not be entitled to
38 compensation for services performed as members. A majority
39 of these members shall constitute a quorum for the purpose of
40 conducting business. The governor shall appoint a chair of the
41 commission for a term to run concurrent with the term of the
42 office of the member appointed to be the chair. The chair is
43 eligible for successive terms in that position.

CHAPTER 285

(H. B. 2294 — By Delegates Johnson, Fleischauer,
Hutchins, Rowe, Tillis, Riggs and Trump)

[Passed February 17, 1999; in effect March 1, 1999. Approved by the Governor.]

AN ACT to amend and reenact section four-b, article three, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article six of said chapter, all relating to speed limitations; providing a jail penalty for third or subsequent convictions of violating the speed limit by fifteen miles per hour or more; and providing a jail penalty for conviction of violating the speed limit in a school zone or the speed limit in a construction zone by fifteen miles per hour or more.

Be it enacted by the Legislature of West Virginia:

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

Article

- 3. **Traffic Signs, Signals and Markings.**
- 6. **Speed Restrictions.**

ARTICLE 3. TRAFFIC SIGNS, SIGNALS AND MARKINGS.***§17C-3-4b. Traffic violations in construction zones; posting requirement; criminal penalty.**

1 (a) At each and every location where street or highway
2 construction work is to be conducted a sign shall be posted at
3 least one thousand feet from the construction site, or as close to
4 one thousand feet from the construction site as is practicable
5 given the location of the site when workers are present, notify-
6 ing all motorists as to the speed limit and displaying the words
7 "construction work".

8 (b) Any person who exceeds any posted speed restriction or
9 traffic restriction at a construction site referred to in subsection
10 (a) of this section by less than fifteen miles per hour is guilty of
11 a misdemeanor and, upon conviction thereof, shall be fined not
12 more than two hundred dollars.

13 (c) Any person who exceeds any posted speed restriction or
14 traffic restriction at a construction site referred to in subsection
15 (a) of this section by fifteen miles per hour or more is guilty of
16 a misdemeanor and, upon conviction thereof, shall be fined not
17 more than two hundred dollars or confined in a county or
18 regional jail not more than twenty days, or both.

19 (d) Nothing in this section shall be construed to preclude
20 prosecution of any operator of a motor vehicle who commits a
21 violation of any other provision of this code for such violation.

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

* **Clerk's Note:** This section was also amended by HB 2295 (Chapter 180), which passed prior to this act.

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 less than ten miles per hour 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 less than ten miles per hour 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.

83 (h) If an owner or driver is convicted in another state for the
84 offense of driving above the maximum speed limit on a
85 controlled-access highway or interstate highway, and if the
86 maximum speed limit in such other state is less than the
87 maximum speed limit for a comparable controlled-access
88 highway or interstate highway in this state, and if the evidence
89 shall show that the motor vehicle was being operated at less
90 than ten miles per hour above what would be the maximum
91 speed limit for a comparable controlled-access highway or
92 interstate highway in this state, then notwithstanding the
93 provisions of section four, article three, chapter seventeen-b of
94 this code, a certified abstract of the judgment on such convic-
95 tion shall not be transmitted to the division of motor vehicles,
96 or, if transmitted, shall not be recorded by the division, unless
97 within a reasonable time after conviction, the person convicted
98 has failed to pay all fines and costs imposed by the other state:
99 *Provided*, That the provisions of this subsection do not apply to
100 conviction of owners or drivers who have been issued a
101 commercial driver's license as defined in chapter seventeen-e
102 of this code, if the offense was committed while operating a
103 commercial vehicle.

CHAPTER 286

(Com. Sub. for S. B. 428 — By Senators Love, Wooton and Fanning)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exempting information and

records of the treasurer regarding certain checks which have not been presented for payment from the freedom of information act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

***§12-3-1. Manner of payment from treasury; form of checks.**

1 Every person claiming to receive money from the treasury
2 of the state shall apply to the auditor for a warrant for same.
3 The auditor shall thereupon examine the claim, and the vouch-
4 ers, certificates and evidence, if any, offered in support thereof,
5 and for so much thereof as he or she finds to be justly due from
6 the state, if payment thereof is authorized by law, and if there
7 is an appropriation not exhausted or expired out of which it is
8 properly payable, the auditor shall issue his or her warrant on
9 the treasurer, specifying to whom and on what account the
10 money mentioned therein is to be paid, and to what appropria-
11 tion it is to be charged. The auditor shall present to the treasurer
12 daily reports on the number of warrants issued, the amounts of
13 the warrants and the dates on the warrants for the purpose of
14 effectuating the investment policy of the investment manage-
15 ment board. On the presentation of the warrant to the treasurer,
16 the treasurer shall ascertain whether there are sufficient funds
17 in the treasury to pay that warrant, and if he or she finds it to be
18 so, he or she shall in that case, but not otherwise, endorse his or
19 her check upon the warrant, directed to some depository, which
20 check shall be payable to the order of the person who is to
21 receive the money therein specified; or the treasurer may issue
22 an electronic funds transfer in payment of the warrant. If the
23 check is not presented for payment within six months after it is
24 drawn, it shall then be the duty of the treasurer to credit it to the
25 depository on which it was drawn, to credit the unclaimed
26 property fund pursuant to the provisions of article eight, chapter
27 thirty-six of this code, and immediately notify the auditor to
28 make corresponding entries on the auditor's books. No state

* **Clerk's Note:** This section was also amended by SB 137 (Chapter 223), which passed subsequent to this act.

29 depository may pay a check unless it is presented within six
30 months after it is drawn and every check shall bear upon its face
31 the words, "Void, unless presented for payment within six
32 months." Any information or records maintained by the
33 treasurer concerning any check which has not been presented
34 for payment within six months of the date of issuance may only
35 be disclosed to the state agency specified on the check, or to the
36 payee, his or her personal representative, next of kin or
37 attorney-at-law and is otherwise confidential and exempt from
38 disclosure under the provisions of article one, chapter twenty-
39 nine-b of this code. All claims required by law to be allowed by
40 any court, and payable out of the state treasury, shall have the
41 seal of the court allowing or authorizing the payment of the
42 claim affixed by the clerk of the court to his or her certificate of
43 its allowance. No claim may be audited and paid by the auditor
44 unless the seal of the court is thereto attached as aforesaid. No
45 tax or fee may be charged by the clerk for affixing his or her
46 seal to the certificate, referred to in this section. The treasurer
47 shall propose rules in accordance with the provisions of article
48 three, chapter twenty-nine-a of this code governing the proce-
49 dure for such payments from the treasury.

CHAPTER 287

(S. B. 534 — By Senators Wooton, Ball, Dittmar, Fanning, Hunter, Kessler,
McCabe, Minard, Mitchell, Oliverio, Redd, Ross, Deem and McKenzie)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article five-a, chapter twenty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to report of tuberculosis cases; reducing reporting time from forty-eight hours to twenty-four hours; and clarifying reporting requirements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5A. TUBERCULOSIS CONTROL.

§26-5A-4. Report of tuberculosis cases.

1 (a) Every physician practicing in this state, every public
2 health officer in the state, and every chief medical officer
3 having charge of any hospital or clinic or other similar public
4 or private institution in the state shall report in writing to the
5 local department of health in the patient's county of residence
6 the name, age, sex, race, home address and type of disease of
7 every person having tuberculosis who comes under his or her
8 observation or care. Such report shall be made within twenty-
9 four hours after diagnosis.

10 (b) Every local department of health shall forward all
11 reports of tuberculosis cases filed pursuant to this section to the
12 state department of health and human resources tuberculosis
13 program within twenty-four hours of receipt of such reports.

CHAPTER 288

(Com. Sub. for H. B. 2278 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article nine, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to appropriating federal funds made available to the state for unemployment insurance and job service activities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. UNEMPLOYMENT COMPENSATION ADMINISTRATION FUND.**§21A-9-9. Reed Act appropriations.**

1 (a) Pursuant to 42 U.S.C. 1103, Section 903 of the Social
2 Security Act, as amended, funds may become available to the
3 state. The provisions of 42 U.S.C. 1103, Section 903 of the
4 Social Security Act, as amended, impose certain requirements
5 that affect the state's use of the funds. It is the purpose of this
6 section to ensure that the state meets each requirement imposed
7 by the provisions of 42 U.S.C. 1103, Section 903 of the Social
8 Security Act, as amended, to enable the state to expend the
9 funds for the purposes intended by federal law.

10 (b) The bureau of employment programs is designated as
11 the state agency authorized to receive funds made available
12 pursuant to 42 U.S.C. 1103, Section 903 of the Social Security
13 Act, as amended.

14 (c) Expenditure of any funds made available to the state
15 pursuant to 42 U.S.C. 1103, Section 903 of the Social Security
16 Act, as amended, shall be for the specific purposes and in the
17 amounts authorized under 42 U.S.C. 1103, Section 903 of the
18 Social Security Act, as amended, and are to be made only in
19 accordance with appropriation by the Legislature.

20 (d) The specific purpose and amount of an appropriation of
21 funds received under 42 U.S.C. 1103, Section 903 of the Social
22 Security Act, as amended, is, by operation of this section, the
23 specific purpose and amount stated in the act of the Legislature
24 appropriating the funds. Where the specific purpose or amount
25 stated in the act of this Legislature appropriating the funds is
26 not consistent with the provisions of 42 U.S.C. 1103, Section
27 903 of the Social Security Act, as amended, the provisions of 42
28 U.S.C. 1103, Section 903 of the Social Security Act, as
29 amended, shall control and the specific purpose or amount
30 authorized by those provisions are hereby incorporated into the
31 appropriations act and, by the operation of this section, shall be
32 the specific purpose or amount of the appropriation as if fully
33 set forth in the appropriations act.

34 (e) Any restriction, limitation or obligation imposed by 42
35 U.S.C. 1103, Section 903 of the Social Security Act, as
36 amended, upon the use of funds made available to the state or
37 upon the purposes for which they may be expended is hereby
38 incorporated and made a part of this subsection as if fully set
39 forth herein, and is hereby incorporated into the act of the
40 Legislature appropriating the funds and, by the operation of this
41 section, the appropriations act shall impose each and every
42 restriction, limitation or obligation imposed by 42 U.S.C. 1103,
43 Section 903 of the Social Security Act, as amended, upon the
44 use of the funds as if fully set forth in the appropriations act.

45 (f) Notwithstanding any other provision of this section to
46 the contrary, moneys credited to the state under Section 903 of
47 the Social Security Act, as codified in 42 U.S.C. §1103, with
48 respect to federal fiscal years 1999, 2000 and 2001 are autho-
49 rized to be used only for the administration of the state's
50 unemployment compensation program.

51 (g) The effective date of the use of any funds made avail-
52 able to the state under the provisions of 42 U.S.C. 1103, Section
53 903 of the Social Security Act, as amended, and the effective
54 date of any restriction, limitation or obligation imposed by
55 those provisions on the use of those funds, shall be the effective
56 date of the appropriations act of the Legislature appropriating
57 the funds, and the use of the funds shall not extend beyond the
58 conclusion of any time limitation imposed by 42 U.S.C. 1103,
59 Section 903 of the Social Security Act, as amended, for the
60 expenditure of the funds.

61 (h) Notwithstanding any provision of article eleven, chapter
62 four of this code to the contrary, the governor may not authorize
63 the expenditure of funds received under 42 U.S.C. 1103,
64 Section 903 of the Social Security Act, as amended, pursuant to
65 the provisions of section five, article eleven, chapter four of this
66 code unless otherwise permitted under federal law.

CHAPTER 289

(Com. Sub. for H. B. 2685 — By Delegates Michael, Compton,
Amores, Johnson, Jenkins, Capito and L. White)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four, article eleven, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to creating a felony offense for certain violations of the water pollution control act.

Be it enacted by the Legislature of West Virginia:

That section twenty-four, article eleven, 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 11. WATER POLLUTION CONTROL ACT.

§22-11-24. Violations; Criminal Penalties.

1 (a) Any person who causes pollution or who fails or refuses
2 to discharge any duty imposed upon him or her by this article
3 or by any rule of the board or director, promulgated pursuant to
4 the provisions and intent of this article or article three, chapter
5 twenty-two-b of this code, or by an order of the director or
6 board, or who fails or refuses to apply for and obtain a permit
7 as required by the provisions of this article, or who fails or
8 refuses to comply with any term or condition of such permit, is
9 guilty of a misdemeanor and, upon conviction thereof, shall be
10 punished by a fine of not less than one hundred dollars nor
11 more than one thousand dollars, or by imprisonment in the
12 county jail for a period not exceeding six months, or by both
13 fine and imprisonment.

14 (b) Any person who intentionally misrepresents any
15 material fact in an application, record, report, plan or other
16 document filed or required to be maintained under the provi-

17 sions of this article or any rules promulgated by the director
18 thereunder is guilty of a misdemeanor and, upon conviction
19 thereof, shall be punished by a fine of not less than one thou-
20 sand dollars nor more than ten thousand dollars or by imprison-
21 ment in the county jail not exceeding six months or by both fine
22 and imprisonment.

23 (c) Any person who willfully or negligently violates any
24 provision of any permit issued under or subject to the provi-
25 sions of this article or who willfully or negligently violates any
26 provision of this article or any rule of the board or director or
27 any effluent limitation or any order of the director or board is
28 guilty of a misdemeanor and, upon conviction thereof, shall be
29 punished by a fine of not less than two thousand five hundred
30 dollars nor more than twenty-five thousand dollars per day of
31 violation or by imprisonment in the county jail not exceeding
32 one year or by both fine and imprisonment.

33 (d) Any person convicted of a second or subsequent willful
34 violation of subsections (b) or (c) of this section or knowingly
35 and willfully violates any provision of any permit, rule or order
36 issued under or subject to the provisions of this article, or
37 knowingly and willfully violates any provision of this article,
38 is guilty of a felony, and upon conviction shall be imprisoned
39 in a correctional facility not less than one nor more than three
40 years, or fined not more than fifty thousand dollars for each day
41 of violation, or both fined and imprisoned.

42 (e) Any person may be prosecuted and convicted under the
43 provisions of this section notwithstanding that none of the
44 administrative remedies provided for in this article have been
45 pursued or invoked against said person and notwithstanding that
46 civil action for the imposition and collection of a civil penalty
47 or an application for an injunction under the provisions of this
48 article has not been filed against such person.

49 (f) Where a person holding a permit is carrying out a
50 program of pollution abatement or remedial action in compli-
51 ance with the conditions and terms of the permit, the person is
52 not subject to criminal prosecution for pollution recognized and
53 authorized by the permit.

CHAPTER 290

(S. B. 148 — By Senators Dittmar, Kessler, Ross and Snyder)

[Passed March 3, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five-a, article twelve, chapter eight of said code, all relating to restricting the power of counties and municipalities to control the purchase, possession, transfer, carrying, transport, sale and storage of certain weapons and ammunition; and providing certain exceptions thereto.

Be it enacted by the Legislature of West Virginia:

That section three, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section five-a, article twelve, chapter eight of said code be amended and reenacted, all to read as follows:

Chapter

7. County Commissions and Officers.
8. Municipal Corporations.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3. Jurisdiction, powers and duties.

- 1 The county commissions, through their clerks, shall have
- 2 the custody of all deeds and other papers presented for record
- 3 in their counties and the same shall be preserved therein, or
- 4 otherwise disposed of as now is, or may be prescribed by law.
- 5 They shall have jurisdiction in all matters of probate, the
- 6 appointment and qualification of personal representatives,

7 guardians, committees, curators and the settlement of their
8 accounts and in all matters relating to apprentices. They shall
9 also, under the rules as now are or may be prescribed by law,
10 have the superintendence and administration of the internal
11 police and fiscal affairs of their counties, including the estab-
12 lishment and regulation of roads, ways, streets, avenues, drives
13 and the like, and the naming or renaming thereof, in coopera-
14 tion with local postal authorities, the division of highways and
15 the directors of county emergency communications centers, to
16 assure uniform, nonduplicative conversion of all rural routes to
17 city-type addressing on a permanent basis, bridges, public
18 landings, ferries and mills, with authority to lay and disburse
19 the county levies. They shall, in all cases of contest, judge of
20 the election, qualification and returns of their own members,
21 and of all county and district officers, subject to appeal as
22 prescribed by law. The tribunals as have been heretofore
23 established by the Legislature under and by virtue of section
24 thirty-four, article VIII of the constitution of one thousand eight
25 hundred seventy-two, for police and fiscal purposes, shall, until
26 otherwise provided by law, remain and continue as at present
27 constituted in the counties in which they have been respectively
28 established, and shall be and act as to police and fiscal matters
29 in lieu of the county commission herein mentioned, until
30 otherwise provided by law. And until otherwise provided by
31 law, the clerk as is mentioned in section twenty-six of said
32 article, as amended, shall exercise any powers and discharge
33 any duties heretofore conferred on, or required of, any court or
34 tribunal established for judicial purposes under said section, or
35 the clerk of the court or tribunal, respectively, respecting the
36 recording and preservation of deeds and other papers presented
37 for record, matters of probate, the appointment and qualifica-
38 tion of personal representatives, guardians, committees,
39 curators and the settlement of their accounts and in all matters
40 relating to apprentices. The county commission may not limit
41 the right of any person to purchase, possess, transfer, own,
42 carry, transport, sell or store any revolver, pistol, rifle or
43 shotgun or any ammunition or ammunition components to be
44 used therewith nor to so regulate the keeping of gunpowder so
45 as to, directly or indirectly, prohibit the ownership of the

46 ammunition: *Provided*, That no provision in this section may be
47 construed to limit the authority of a county to restrict the
48 commercial use of real estate in designated areas through
49 planning or zoning ordinances.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOY- EES; SUITS AGAINST MUNICIPALITIES.

§8-12-5a. Limitations upon municipalities' power to restrict the purchase, possession, transfer, ownership, carrying, transport, sale and storage of certain weapons and ammunition.

1 The provisions of section five of this article notwithstand-
2 ing, neither a municipality nor the governing body of any
3 municipality may limit the right of any person to purchase,
4 possess, transfer, own, carry, transport, sell or store any
5 revolver, pistol, rifle or shotgun or any ammunition or ammuni-
6 tion components to be used therewith nor to so regulate the
7 keeping of gunpowder so as to directly or indirectly prohibit the
8 ownership of the ammunition. Nothing herein shall in any way
9 impair the authority of any municipality, or the governing body
10 thereof, to enact any ordinance or resolution respecting the
11 power to arrest, convict and punish any individual under the
12 provisions of subdivision (16), section five of this article or
13 from enforcing any such ordinance or resolution: *Provided*,
14 That any municipal ordinance in place as of the effective date
15 of this section shall be excepted from the provisions of this
16 section: *Provided, however*, That no provision in this section
17 may be construed to limit the authority of a municipality to
18 restrict the commercial use of real estate in designated areas
19 through planning or zoning ordinances.

CHAPTER 291

(Com. Sub. for S. B. 638 — By Senators Wooton, Snyder and Love)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter thirty-two-b, relating to the adoption of the model state commodity code; establishing state jurisdiction over commodity issues that are not preempted by federal law; providing for enforcement and prosecutorial power; and granting jurisdiction to courts of competent jurisdiction in the state to hear certain commodity matters; penalties.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 32B. THE WEST VIRGINIA COMMODITIES ACT.

Article

1. General Provisions.
2. Administration and Enforcement.
3. Notice Filing.
4. Severability and Saving Provision.

ARTICLE 1. GENERAL PROVISIONS.

- §32B-1-1. Definitions.
- §32B-1-2. Unlawful commodity transactions.
- §32B-1-3. Exempt person transactions.
- §32B-1-4. Exempt transactions.
- §32B-1-5. Unlawful commodity activities.
- §32B-1-6. Fraudulent conduct.
- §32B-1-7. Liability of principals, controlling persons and others.
- §32B-1-8. Securities laws unaffected.
- §32B-1-9. Purpose.

§32B-1-1. Definitions.

1 (a) "Commissioner" means the auditor of the state of West
2 Virginia.

3 (b) "Board of trade" means any person or group of persons
4 engaged in buying or selling any commodity or receiving the
5 same for sale on consignment, whether such person or group of
6 persons is characterized as a board of trade, exchange or other
7 form of marketplace.

8 (c) "CFTC Rule" means any rule, regulation or order of the
9 commodity futures trading commission in effect on the effec-
10 tive date of this chapter, and all subsequent amendments,
11 additions or other revisions thereto unless the commissioner,
12 within ten days following the effective date of any such
13 amendment, addition or revision, disallows the application
14 thereof to this part or to any provision thereof by rule, regula-
15 tion or order.

16 (d) "Commodity" means, except as otherwise specified by
17 the commissioner by rule, regulation or order, any agricultural,
18 grain or livestock product or byproduct, any metal or mineral,
19 including a precious metal defined in subsection (m) of this
20 section, any gem or gemstone, whether characterized as
21 precious, semi-precious or otherwise, any fuel, whether liquid,
22 gaseous or otherwise, any foreign currency, and all other goods,
23 articles, products or items of any kind. The term commodity
24 does not include:

25 (1) A numismatic coin whose fair market value is at least
26 fifteen percent higher than the value of the metal it contains; (2)
27 Real property or any timber, agricultural or livestock product
28 grown or raised on real property and offered or sold by the
29 owner or lessee of the real property;

30 (2) Real property or any timber, agricultural or livestock
31 product grown or raised on real property and offered or sold by
32 the owner or lessee of the real property; or

33 (3) Any work of art offered or sold by art dealers, at public
34 auction or offered or sold through a private sale by the owner
35 thereof.

36 (e) "Commodity contract" means any account, agreement
37 or contract for the purchase or sale, primarily for speculation or
38 investment purposes and not for use or consumption by the
39 offeree or purchaser, of one or more commodities, whether for
40 immediate or subsequent delivery or whether delivery is
41 intended by the parties, and whether characterized as a cash
42 contract, deferred shipment or deferred delivery contract,
43 forward contract, futures contract, installment or margin
44 contract, leverage contract or otherwise. Any commodity
45 contract offered or sold, in the absence of evidence to the
46 contrary, is presumed to be offered or sold for speculation or
47 investment purposes. A commodity contract does not include
48 any contract or agreement which requires, and under which the
49 purchaser receives, within twenty-eight calendar days from the
50 payment in good funds of any portion of the purchase price,
51 physical delivery of the total amount of each commodity to be
52 purchased under the contract or agreement.

53 (f) "Commodity Exchange Act" means the act of Congress
54 known as the Commodity Exchange Act, 7 U.S.C. 1 (1974), as
55 amended, and all subsequent amendments, additions or other
56 revisions thereto, unless the commissioner, within ten days
57 following the effective date of any such amendment, addition
58 or revision, disallows the application thereof to this part or to
59 any provision thereof by rule, regulation or order.

60 (g) "Commodity futures trading commission" means the
61 independent regulatory agency established by Congress to
62 administer the Commodity Exchange Act.

63 (h) "Commodity merchant" means any of the following as
64 defined or described in the Commodity Exchange Act or by
65 CFTC Rule:

- 66 (1) Futures commission merchant;
- 67 (2) Commodity pool operator;
- 68 (3) Commodity trading advisor;
- 69 (4) Introducing broker;
- 70 (5) Leverage transaction merchant;
- 71 (6) An associated person of any of the foregoing;

72 (7) Floor broker; and

73 (8) Any other person, other than a futures association,
74 required to register with the commodity futures trading com-
75 mission.

76 (i) "Commodity option" means any account, agreement or
77 contract giving a party thereto the right but not the obligation to
78 purchase or sell one or more commodities or one or more
79 commodity contracts, or both commodities and commodity
80 contracts, whether characterized as an option, privilege,
81 indemnity, bid, offer, put, call, advance guaranty, decline
82 guaranty or otherwise, but does not include an option traded on
83 a national securities exchange registered with the United States
84 securities and exchange commission.

85 (j) "Financial institution" means a bank, savings institution
86 or trust company organized under, or supervised pursuant to,
87 the laws of the United States or of any state.

88 (k) "Offer" includes every offer to sell, offer to purchase,
89 or offer to enter into a commodity contract or commodity
90 option.

91 (l) "Person" means an individual, a corporation, a partner-
92 ship, association, a joint-stock company, a trust where the
93 interests of the beneficiaries are evidenced by a security, an
94 unincorporated organization, a government or a political
95 subdivision of a government. "Person" does not include a
96 contract market designated by the commodity futures trading
97 commission, any clearinghouse of that commission, a national
98 securities exchange registered with the securities and exchange
99 commission, or any employee, officer or director of such
100 contract market, clearinghouse or exchange acting solely in that
101 capacity.

102 (m) "Precious metal" means the following in coin, bullion
103 or other form: Silver, gold, platinum, palladium, copper, and
104 any other metals as specified by the commissioner by rule,
105 regulation or order.

106 (n) "Sale" or "sell" includes every sale, contract of sale,
107 contract to sell or disposition for value.

§32B-1-2. Unlawful commodity transactions.

1 Except as otherwise provided in section three or four of this
2 article, a person shall not sell or purchase or offer to sell or
3 purchase any commodity under any commodity contract or
4 commodity option, nor shall a person offer to enter into or enter
5 into a contract as a seller or purchaser any commodity contract
6 or any commodity option.

§32B-1-3. Exempt person transactions.

1 (a) The prohibitions in section two of this article do not
2 apply to any transaction offered by and in which one of the
3 following persons, or any employee, officer or director thereof
4 acting solely in that capacity, is the purchaser or seller:

5 (1) A person registered with the commodity futures trading
6 commission as a futures commission merchant or as a leverage
7 transaction merchant whose activities require such registration;

8 (2) A person registered with the securities and exchange
9 commission as a broker-dealer whose activities require such
10 registration;

11 (3) A person affiliated with, and whose obligations and
12 liabilities under the transaction are guaranteed by, a person
13 referred to in subdivision (1) or (2) of this section;

14 (4) A person who is a member of a contract market desig-
15 nated by the commodity futures trading commission, or any
16 clearinghouse thereof;

17 (5) A financial institution; or

18 (6) A person registered under the laws of this state as a
19 securities broker-dealer whose activities require such registra-
20 tion.

21 (b) The exemption provided by this section does not apply
22 to any transaction or activity which is prohibited by the
23 Commodity Exchange Act or CFTC Rule.

§32B-1-4. Exempt transactions.

1 (a) The prohibitions in section two of this article do not
2 apply to the following:

3 (1) An account, agreement or transaction within the
4 exclusive jurisdiction of the commodity futures trading com-
5 mission as granted under the Commodity Exchange Act;

6 (2) A commodity contract for the purchase of one or more
7 precious metals which requires, and under which the purchaser
8 receives, within twenty-eight calendar days from the payment
9 in good funds of any portion of the purchase price, physical
10 delivery of the quantity of the precious metals purchased by the
11 payment: *Provided*, That for purposes of this subdivision,
12 physical delivery occurs if, within the twenty-eight day period,
13 the quantity of precious metals purchased by the payment is
14 delivered, whether in specifically segregated or fungible bulk
15 form, into the possession of a depository, other than the seller,
16 that is:

17 (A) A financial institution;

18 (B) A depository in which the warehouse receipts are
19 recognized for delivery purposes for any commodity on a
20 contract market designated by the commodity futures trading
21 commission;

22 (C) A storage facility licensed or regulated by the United
23 States or any agency thereof; or

24 (D) A depository designated by the commissioner in which
25 the depository, or other person which itself qualifies as a
26 depository, or a qualified seller issues and the purchaser
27 receives, a certificate, document of title, confirmation or other
28 instrument evidencing that the quantity of precious metals has
29 been delivered to the depository and is being and will continue
30 to be held by the depository on the purchaser's behalf, free and
31 clear of all liens and encumbrances, other than liens of the
32 purchaser, tax liens, liens agreed to by the purchaser or liens of
33 the depository for fees and expenses, which have previously
34 been disclosed to the purchaser;

35 (3) A commodity contract solely between persons engaged
36 in producing, processing, using commercially or handling as

37 merchants, each commodity subject to the contract, or any by-
38 product of the commodity; or

39 (4) A commodity contract under which the offeree or the
40 purchaser is a person referred to in section three of this article,
41 an insurance company, an investment company as defined in
42 the Investment Company Act of 1940, or an employee pension
43 and profit sharing or benefit plan other than a self-employed
44 individual retirement plan or individual retirement account.

45 (b) For the purposes of subdivision (2), subsection (a) of
46 this section, a qualified seller is a person who:

47 (1) Is a seller of precious metals and has a tangible net
48 worth of at least five million dollars, or has an affiliate who has
49 unconditionally guaranteed the obligations and liabilities of the
50 seller and the affiliate has a tangible net worth of at least five
51 million dollars;

52 (2) Has stored precious metals with one or more deposito-
53 ries on behalf of customers for at least the previous three years;

54 (3) Prior to any offer, and annually thereafter, files with the
55 commissioner a sworn notice of intent to act as a qualified
56 seller under subdivision (2), subsection (a) of this section,
57 containing:

58 (A) The seller's name and address, and the names of the
59 seller's directors, officers, controlling shareholders, partners,
60 principals and other controlling persons;

61 (B) The address of the seller's principal place of business
62 and date of incorporation or organization, and the name and
63 address of seller's registered agent in this state;

64 (C) A statement that the seller, or a person affiliated with
65 the seller who has guaranteed the obligations and liabilities of
66 the seller, has a tangible net worth of at least five million
67 dollars;

68 (D) Depository information including:

69 (i) The name and address of each depository that the seller
70 intends to use;

71 (ii) The name and address of each depository where the
72 seller has stored precious metals on behalf of customers for the
73 previous three years; and

74 (iii) Independent verification from each depository named
75 by the seller stating that the depository has stored precious
76 metals on behalf of the seller's customers for the previous three
77 years and the total deposits made by the seller during this
78 period;

79 (E) Financial statements from the seller, or the person
80 affiliated with the seller who has guaranteed the obligations and
81 liabilities of the seller, for the past three years, audited by an
82 independent certified public accountant, including the account-
83 ant's report;

84 (F) A statement describing the details of all civil, criminal
85 or administrative proceedings currently pending or adversely
86 resolved against the seller or its directors, officers, controlling
87 shareholders, partners, principals or other controlling persons
88 during the past ten years including:

89 (i) Civil litigation and administrative proceedings involving
90 securities or commodities violations or fraud;

91 (ii) Criminal proceedings;

92 (iii) Denials, suspensions or revocations of securities or
93 commodities, licenses or registrations;

94 (iv) Suspensions or expulsions from membership in, or
95 associations with, self-regulatory organizations registered under
96 the Securities Exchange Act of 1934, or the Commodities
97 Exchange Act; or

98 (v) A statement that there were no such proceedings;

99 (4) Notifies the commissioner within fifteen days of any
100 material changes in the information provided in the notice of
101 intent; and

102 (5) Annually furnishes to each purchaser for whom the
103 seller is then storing precious metals, and furnishes to the
104 commissioner a report by an independent certified public

105 accountant of the accountant's examination of the seller's
106 precious metals storage program.

107 (c) The commissioner may, upon request by the seller,
108 waive any of the exemption requirements in subsection (b) of
109 this section, conditionally or unconditionally.

110 (d) The commissioner may, by order, deny, suspend, revoke
111 or place limitations on the authority to engage in business as a
112 qualified seller under the provisions of subdivision (2), subsec-
113 tion (a) of this section, if the commissioner finds that the order
114 is in the public interest and that the person, the person's
115 officers, directors, partners, agents, servants or employees, any
116 person occupying a similar status or performing similar
117 functions, any person who directly or indirectly controls or is
118 controlled by the seller or the seller's affiliates or subsidiaries:

9 (1) Has filed a notice of exemption under the provisions of
0 subsection (c) of this section with the commissioner or the
1 designee of the commissioner which was incomplete in any
2 material respect or contained any statement which was, in light
123 of the circumstances under which it was made, false or mislead-
124 ing with respect to any material fact;

125 (2) Has, within the last ten years, pled guilty or nolo
126 contendere to, or has been convicted of any crime indicating a
127 lack of fitness to engage in the investment commodity business;

128 (3) Has been permanently or temporarily enjoined by any
129 court of competent jurisdiction from engaging in or continuing
130 any conduct or practice which injunction indicates a lack of
131 fitness to engage in the investment commodities business;

132 (4) Is the subject of an order of the commissioner denying,
133 suspending or revoking the person's license as a securities
134 broker-dealer, sales representative or investment advisor;

135 (5) Is the subject of any of the following orders which are
136 currently effective and which were issued within the last five
137 years:

138 (A) An order by the securities agency or commissioner of
139 another state, Canadian province or territory, the securities and

140 exchange commission, or the commodity futures trading
141 commission, entered after notice and opportunity for hearing,
142 denying, suspending or revoking the person's registration as a
143 futures commission merchant, commodity trading adviser,
144 commodity pool operator, securities broker-dealer, sales
145 representative or investment adviser or the substantial equiva-
146 lent of those terms;

147 (B) Suspension or expulsion from membership in, or
148 association with, a self-regulatory organization registered under
149 the Securities Exchange Act of 1934 or the Commodity
150 Exchange Act;

151 (C) A United States postal service fraud order;

152 (D) A cease and desist order entered after notice and
153 opportunity of hearing by the commissioner or the securities
154 agency or commissioner of another state, Canadian province or
155 territory, the securities and exchange commission, or the
156 commodity futures trading commission;

157 (E) An order entered by the commodity futures trading
158 commission denying, suspending or revoking registration under
159 the Commodity Exchange Act;

160 (6) Has engaged in an unethical or dishonest act or practice
161 in the investment commodities or securities business; or

162 (7) Has failed reasonably to supervise sales representatives
163 or employees.

164 (e) If the public interest or the protection of investors so
165 requires, the commissioner may, by order, summarily deny or
166 suspend the exemption for a qualified seller. Upon the entry of
167 the order, the commissioner shall promptly notify the person
168 claiming this status that an order has been entered, the reasons
169 for the order and that within thirty days after the receipt of a
170 written request the matter will be set for hearing. The provi-
171 sions of section ten, article two of this chapter apply with
172 respect to all subsequent proceedings.

173 (f) If the commissioner finds that any applicant or qualified
174 seller is no longer in existence, has ceased to do business, is

175 subject to an adjudication of mental incompetence or to the
176 control of a committee, conservator or guardian or cannot be
177 located after reasonable search, then the commissioner may, by
178 order, deny or revoke the exemption for a qualified seller.

179 (g) The commissioner may issue rules or orders prescribing
180 the terms and conditions of all transactions and contracts
181 covered by the provisions of this chapter that are not within the
182 exclusive jurisdiction of the commodity futures trading com-
183 mission as granted by the Commodity Exchange Act, exempt-
184 ing, conditionally or unconditionally, and implementing the
185 provisions of this chapter for the protection of purchasers and
186 sellers of commodities.

§32B-1-5. Unlawful commodity activities.

1 (a) A person may not engage in a trade or business or
2 otherwise act as a commodity merchant unless the person: (1)
3 Is registered or temporarily licensed with the commodity
4 futures trading commission for each activity in which the
5 person is acting as a commodity merchant and the registration
6 or temporary license has not expired, been suspended or
7 revoked; or (2) is exempt from registration by virtue of the
8 Commodity Exchange Act or of a CFTC Rule.

9 (b) A board of trade shall not trade or provide a place for
10 the trading of any commodity contract or commodity option
11 required to be traded on or subject to the rules of a contract
12 market designated by the commodity futures trading commis-
13 sion unless the board of trade has been so designated for the
14 commodity contract or commodity option and the designation
15 has not been vacated, suspended or revoked.

§32B-1-6. Fraudulent conduct.

1 (a) A person may not directly or indirectly:

2 (1) Cheat or defraud, or attempt to cheat or defraud any
3 other person or employ any device, scheme or artifice to
4 defraud any other person;

5 (2) Make any false report, enter any false record, or make
6 any untrue statement of a material fact or omit to state a

7 material fact necessary in order to make the statements made,
8 in the light of the circumstances under which they were made,
9 not misleading;

10 (3) Engage in any transaction, act, practice or course of
11 business, including, without limitation, any form of advertising
12 or solicitation, which operates or would operate as a fraud or
13 deceit upon any person; or

14 (4) Misappropriate or convert the funds, security or
15 property of any other person in or in connection with the
16 purchase or sale of, the offer to sell, the offer to purchase, the
17 offer to enter into, or the entry into of, any commodity contract
18 or commodity option subject to the provisions of subdivision
19 (2), (3) or (4), subsection (a), section four of this article.

§32B-1-7. Liability of principals, controlling persons and others.

1 (a) The act, omission or failure of any official, agent or
2 other person acting for any individual, association, partnership,
3 corporation or trust within the scope of his or her employment
4 or office is considered the act, omission or failure of the
5 individual, association, partnership, corporation or trust, as well
6 as of such official, agent or other person.

7 (b) Every person who directly or indirectly controls a
8 person liable under any provision of this chapter, every partner,
9 officer or director of a person, every person occupying a similar
10 status or performing similar functions and every employee of a
11 person who materially aids in the violation is also liable jointly
12 and severally with and to the same extent as the other person,
13 unless the person who is also liable by virtue of this provision
14 sustains the burden of proof that he or she did not know and, in
15 the exercise of reasonable care, could not have known of the
16 existence of the alleged facts that the liability is based upon.

§32B-1-8. Securities laws unaffected.

1 Nothing in this chapter impairs, derogates or otherwise
2 affects the authority or powers of the commissioner under the
3 West Virginia Uniform Securities Act, or the application of any
4 provision of chapter thirty-two of this code to any person or

5 transaction subject to its provisions.

§32B-1-9. Purpose.

1 This chapter may be construed and implemented to effectu-
2 ate its general purpose to protect investors, to prevent and
3 prosecute illegal and fraudulent schemes involving commodity
4 contracts and to maximize coordination with federal and other
5 states' laws and the administration and enforcement thereof.
6 This chapter is not intended to create any rights or remedies
7 upon which actions may be brought by private persons against
8 persons who violate the provisions of this chapter.

ARTICLE 2. ADMINISTRATION AND ENFORCEMENT.

§32B-2-1. Investigations.

§32B-2-2. Enforcement of chapter.

§32B-2-3. Power of court to grant relief.

§32B-2-4. Criminal penalties.

§32B-2-5. Administration of chapter.

§32B-2-6. Cooperation with other agencies.

§32B-2-7. General authority to adopt rules, forms and orders.

§32B-2-8. Consent to service of process.

§32B-2-9. Scope of the chapter.

§32B-2-10. Procedure for entry of an order.

§32B-2-11. Judicial review of orders.

§32B-2-12. Pleading exemptions.

§32B-2-13. Affirmative defense.

§32B-2-1. Investigations.

1 (a) The commissioner may make investigations, within or
2 without this state, as it finds necessary or appropriate to:

3 (1) Determine whether any person has violated, or is about
4 to violate, any provision of this chapter or any rule or order of
5 the commissioner; or

6 (2) Aid in enforcement of this chapter.

7 (b) The commissioner may publish information concerning
8 any violation of this chapter or any rule or order of the commis-
9 sioner.

10 (c) For purposes of any investigation or proceeding under
11 this chapter, the commissioner or any officer or employee

12 designated by rule or order may administer oaths and affirma-
13 tions, subpoena witnesses, compel their attendance, take
14 evidence and require the production of any books, papers,
15 correspondence, memoranda, agreements or other documents or
16 records which the commissioner finds to be relevant or material
17 to the inquiry.

18 (d)(1) If a person does not give testimony or produce the
19 documents required by the commissioner or a designated
20 employee pursuant to an administrative subpoena, the commis-
21 sioner or designated employee may apply for a court order
22 compelling compliance with the subpoena or the giving of the
23 required testimony.

24 (2) The request for order of compliance may be addressed
25 to either:

26 (A) The circuit court of Kanawha County or the circuit
27 court for the respective judicial circuit where service may be
28 obtained on the person refusing to testify or produce, if the
29 person is within this state; or

30 (B) The appropriate court of the state having jurisdiction
31 over the person refusing to testify or produce, if the person is
32 outside this state.

§32B-2-2. Enforcement of chapter.

1 (a) If the commissioner believes, whether or not based upon
2 an investigation conducted under the provisions of section one
3 of this article, that any person has engaged or is about to engage
4 in any act or practice constituting a violation of any provision
5 of this chapter or any rule or order under the provisions of this
6 chapter, then the commissioner may:

7 (1) Issue a cease and desist order;

8 (2) Issue an order imposing a civil penalty in amount which
9 may not exceed ten thousand dollars for any single violation or
10 one hundred thousand dollars for multiple violations in a single
11 proceeding or a series of related proceedings;

12 (3) Initiate any of the actions specified in subsection (b) of
13 this section; or

14 (4) Take disciplinary action against a licensed person as
15 specified in section eight, article three of this chapter.

16 (b) The commissioner may institute any of the following
17 actions in an appropriate court of this state or of another state,
18 in addition to any legal or equitable remedies otherwise
19 available:

20 (1) A declaratory judgment;

21 (2) An action for a prohibitory or mandatory injunction to
22 enjoin the violation and to ensure compliance with this chapter
23 or any rule or order of the commissioner;

24 (3) An action for disgorgement;

25 (4) An action for appointment of a receiver or conservator
26 for the defendant or the defendant's assets; or

27 (5) An action to enjoin permanently any person from acting
28 as a commodity broker-dealer or a commodity sales representa-
29 tive, as defined in subsection (a) or (b), section one, article
30 three of this chapter.

§32B-2-3. Power of court to grant relief.

1 (a)(1) Upon a proper showing by the commissioner that a
2 person has violated, or is about to violate, any provision of this
3 chapter or any rule or order of the commissioner, the circuit
4 court may grant appropriate legal or equitable remedies.

5 (2) Upon showing of violation of this chapter or a rule or
6 order of the commissioner, the court, in addition to traditional
7 legal and equitable remedies, including temporary restraining
8 orders, permanent or temporary prohibitory or mandatory
9 injunctions, and writs of prohibition or mandamus, may grant
10 the following special remedies:

11 (A) Imposition of a civil penalty in amount which may not
12 exceed ten thousand dollars for any single violation or one
13 hundred thousand dollars for multiple violations in a single
14 proceeding or a series of related proceedings;

15 (B) Disgorgement;

16 (C) Declaratory judgment;

17 (D) Restitution to investors wishing restitution;

18 (E) Appointment of a receiver or conservator for the
19 defendant or the defendant's assets; and

20 (F) An injunction permanently enjoining the defendant or
21 defendants from acting as a commodity broker-dealer or a
22 commodity sales representative, as defined in section one-a or
23 one-b, article three of this chapter.

24 (3) Upon a showing that the defendant is about to violate
25 this chapter or a rule or order of the commissioner, the remedies
26 shall be limited to:

27 (A) A temporary restraining order;

28 (B) A temporary or permanent injunction;

29 (C) A writ of prohibition or mandamus; or

30 (D) An order appointing a receiver or conservator for the
31 defendant or the defendant's assets.

32 (b) The court may not require the commissioner to post a
33 bond in any official action under this chapter.

34 (c)(1) Upon a proper showing by the commissioner of
35 securities or commodity agency of another state that a person,
36 other than a government or governmental agency or instrumen-
37 tality, has violated, or is about to violate, any provision of the
38 commodity code of that state or any rule or order of the
39 commissioner or securities or commodity agency of that state,
40 the circuit court may grant appropriate legal and equitable
41 remedies.

42 (2) Upon showing of a violation of the securities or
43 commodity act of the foreign state or a rule or order of the
44 commissioner of securities or commodity agency of the foreign
45 state, the court, in addition to traditional legal or equitable
46 remedies, including temporary restraining orders, permanent or
47 temporary prohibitory or mandatory injunctions and writs of
48 prohibition or mandamus, may grant the following special
49 remedies:

50 (A) Disgorgement; and

51 (B) Appointment of a receiver, conservator, or ancillary
52 receiver or conservator for the defendant or the defendant's
53 assets located in this state.

54 (3) Upon a showing that the defendant is about to violate
55 the securities or commodity act of the foreign state or a rule or
56 order of the commissioner of securities or commodity agency
57 of the foreign state, the remedies shall be limited to:

58 (A) A temporary restraining order;

59 (B) A temporary or permanent injunction;

60 (C) A writ of prohibition or mandamus; or

61 (D) An order appointing a receiver, conservator or ancillary
62 receiver or conservator for the defendant or the defendant's
63 assets located in this state.

§32B-2-4. Criminal penalties.

1 (a) Any person who willfully violates:

2 (1) Any provision of this chapter; or

3 (2) Any rule or order of the commissioner under this
4 chapter shall, upon conviction of each violation, be fined not
5 more than twenty thousand dollars or imprisoned at a state
6 correctional facility not more than ten years, or both.

7 (b) Any person convicted of violating a rule or order under
8 this chapter may be fined but not imprisoned if the person
9 proves that he or she had no knowledge of the rule or order.

10 (c) The commissioner may refer any evidence concerning
11 violations of this chapter or any rule or order of the commis-
12 sioner to the United States attorney or the appropriate county
13 prosecuting attorneys, who may, with or without a reference
14 from the commissioner, institute the appropriate criminal
15 proceedings under this chapter.

§32B-2-5. Administration of chapter.

1 (a) This chapter shall be administered by the commissioner

2 of this state.

3 (b) Neither the commissioner nor any employees of the
4 commissioner may use any information that is filed with or
5 obtained by the commissioner that is not public information for
6 personal gain or benefit, nor may the commissioner nor any
7 employees of the commissioner conduct any securities or
8 commodity dealings whatsoever based upon any such informa-
9 tion, even though public, if there has not been a sufficient
10 period of time for the securities or commodity markets to
11 assimilate the information.

12 (c)(1) Except as provided for in subdivision (2) of this
13 subsection, all information collected, assembled or maintained
14 by the commissioner is public information and is available for
15 the examination of the public as provided by the Freedom of
16 Information Act in chapter twenty-nine-b of this code.

17 (2) The following exceptions to subdivision (1) of this
18 subsection are confidential:

19 (A) Information obtained in private investigations pursuant
20 to section one of this article;

21 (B) Information made confidential by the provisions of the
22 Freedom of Information Act in chapter twenty-nine-b of this
23 code; and

24 (C) Information obtained from federal agencies that cannot
25 be disclosed under federal law.

26 (3) The commissioner may disclose any information made
27 confidential under paragraph (A), subdivision (2), subsection
28 (c) of this section to persons identified in subsection (a), section
29 six of this article.

30 (4) No provision of this chapter creates or negates any
31 privilege that exists at common law, by statute or otherwise,
32 when any documentary or other evidence is sought under
33 subpoena directed to the commissioner or any employee of the
34 commissioner.

§32B-2-6. Cooperation with other agencies.

1 (a) To encourage uniform application and interpretation of
2 this chapter and of securities regulation and enforcement in
3 general, the commissioner and the employees of the commis-
4 sioner may cooperate, and bear the expense of such coopera-
5 tion, with the securities agencies or commissioner of another
6 jurisdiction, Canadian province or territory, any other agencies
7 administering this chapter, the commodity futures trading
8 commission, the securities and exchange commission, any self-
9 regulatory organization established under the Commodity
10 Exchange Act or the Securities Exchange Act of 1934, any
11 national or international organization of commodities or
12 securities officials or agencies and any governmental law-
13 enforcement agencies.

14 (b) The cooperation authorized by subsection (a) of this
15 section includes, but is not limited to, the following:

16 (1) Making joint examinations or investigations;

17 (2) Holding joint administrative hearings;

18 (3) Filing and prosecuting joint litigation;

19 (4) Sharing and exchanging personnel;

20 (5) Sharing and exchanging information and documents;

21 (6) Formulating and adopting mutual regulations, state-
22 ments of policy, guidelines, proposed statutory changes and
23 releases; and

24 (7) Issuing and enforcing subpoenas at the request of the
25 agency administering this chapter in another jurisdiction, the
26 securities agency of another jurisdiction, the commodity futures
27 trading commission or the securities and exchange commission
28 if the information sought would also be subject to lawful
29 subpoena for conduct occurring in this state.

§32B-2-7. General authority to adopt rules, forms and orders.

1 (a) In addition to specific authority granted elsewhere in
2 this chapter, the commissioner may make, amend and rescind
3 rules, forms and orders as are necessary to effectuate the
4 provisions of this chapter. The rules or forms include, but are

5 not limited to, the following:

6 (1) Rules defining any terms, whether or not used in this
7 chapter, insofar as the definitions are not inconsistent with the
8 provisions of this chapter.

9 (2) For the purpose of rules or forms, the commissioner
10 may classify commodities and commodity contracts, persons
11 and matters within the commissioner's jurisdiction.

12 (b) Unless specifically provided for in this chapter, no rule,
13 form or order may be adopted, amended or rescinded unless the
14 commissioner finds that the action is:

15 (1) Necessary or appropriate in the public interest or for the
16 protection of investors; and

17 (2) Consistent with the purposes fairly intended by the
18 policy and provisions of this chapter.

19 (c) All rules and forms of the commissioner shall be
20 published.

21 (d) A provision of this chapter imposing any liability does
22 not apply to any act done or omitted in good faith in conformity
23 with a rule, order or form adopted by the commissioner,
24 notwithstanding that the rule, order or form may later be
25 amended, rescinded or be determined by judicial or other
26 authority to be invalid for any reason.

§32B-2-8. Consent to service of process.

1 When a person, including a nonresident of this state,
2 engages in conduct prohibited or made actionable by this
3 chapter or any rule or order of the commissioner, such conduct
4 shall cause the appointment of the commissioner as the person's
5 attorney to receive service of any lawful process in a noncrimi-
6 nal proceeding against the person, a successor or personal
7 representative for an action brought under this chapter or any
8 rule or order of the commissioner with the same force and
9 validity as if served personally.

§32B-2-9. Scope of the chapter.

1 (a) Sections two, five and six, article one of this chapter

2 shall apply to persons who sell or offer to sell when:

3 (1) An offer to sell is made in this state; or

4 (2) An offer to buy is made and accepted in this state.

5 (b) Sections two, five and six, article one of this chapter
6 apply to persons who buy or offer to buy when:

7 (1) An offer to buy is made in this state; or

8 (2) An offer to sell is made and accepted in this state.

9 (c) For the purposes of this section, an offer to sell or to buy
10 is made in this state, whether or not either party is then present
11 in this state, when the offer:

12 (1) Originates from this state; or

13 (2) Is directed by the offeror to this state and received at the
14 place to which it is directed, or at any post office in this state in
15 the case of a mailed offer.

16 (d) For the purposes of this section, an offer to buy or to
17 sell is accepted in this state when acceptance:

18 (1) Is communicated to the offeror in this state; and

19 (2) Has not previously been communicated to the offeror,
20 orally or in writing, outside this state and acceptance is commu-
21 nicated to the offeror in this state, whether or not either party is
22 then present in this state, when the offeree directs it to the
23 offeror in this state, reasonably believing the offeror to be in
24 this state, and the offer is received at the place to which it is
25 directed, or at any post office in this state in the case of a
26 mailed acceptance.

27 (e) An offer to sell or to buy is not made in this state when:

28 (1) The publisher circulates or there is circulated on his or
29 her behalf any bona fide newspaper or other publication of
30 general, regular or paid circulation that is not published in this
31 state, or that is published in this state but has had more than two
32 thirds of its circulation outside this state during the past twelve
33 months; or

34 (2) A radio or television program originating outside this
35 state that is received in this state.

§32B-2-10. Procedure for entry of an order.

1 (a) The commissioner may commence an administrative
2 proceeding under this chapter by entering a notice of intent to
3 do a contemplated act or a summary order. The notice of intent
4 or summary order may be entered without notice, without
5 opportunity for hearing, and need not be supported by findings
6 of fact or conclusions of law, but it shall be in writing.

7 (b) Upon entry of a notice of intent or summary order, the
8 commissioner shall promptly notify all interested parties that
9 the notice or summary order has been entered and the reasons
10 therefor. If the proceeding is pursuant to a notice of intent, then
11 the commissioner shall inform all interested parties of the date,
12 time and place set for the hearing in the notice. If the proceed-
13 ing is pursuant to a summary order, then the commissioner shall
14 inform all interested parties that they have thirty business days
15 from the entry of the order to file a written request for a hearing
16 on the matter with the commissioner and that the hearing will
17 be scheduled to commence within thirty business days after the
18 receipt of the written request.

19 (c) If the proceeding is pursuant to a summary order, then
20 the commissioner, whether or not a written request for a hearing
21 is received from any interested party, may set a hearing on the
22 matter on the commissioner's own motion.

23 (d) If no hearing is requested and none is ordered by the
24 commissioner, then the summary order will automatically
25 become a final order after thirty business days.

26 (e) If a hearing is requested or ordered, then the commis-
27 sioner, after notice of and an opportunity for a hearing is made
28 to all interested persons, may modify or vacate the order or
29 extend it until final determination.

30 (f) No final order or order after a hearing may be returned
31 without:

32 (1) Appropriate notice to all interested persons;

33 (2) Opportunity for hearing by all interested persons; and

34 (3) Entry of written findings of fact and conclusions of law.

35 (g) Every hearing in an administrative proceeding under
36 this chapter is public unless the commissioner grants a request
37 joined in by all the respondents that the hearing be conducted
38 privately.

§32B-2-11. Judicial review of orders.

1 (a) Any person aggrieved by a final order of the commis-
2 sioner may obtain a review of the order in the circuit court of
3 Kanawha County by filing, within sixty days after the entry of
4 the order, a written petition requesting that the order be
5 modified or set aside, in whole or in part. A copy of the petition
6 for review shall be served upon the commissioner.

7 (b) Upon the filing of a petition for review, except where
8 the taking of additional evidence is ordered by the court
9 pursuant to the provisions of subsection (e) or (f) of this
10 section, the court has exclusive jurisdiction of the matter and
11 the commissioner may not modify or set aside the order, in
12 whole or in part.

13 (c) The filing of a petition for review under the provisions
14 of subsection (a) of this section, does not, unless specifically
15 ordered by the court, operate as a stay on the commissioner's
16 order, and the commissioner may enforce or ask the court to
17 enforce the order pending the outcome of the review proceed-
18 ings.

19 (d) Upon receipt of the petition for review, the commis-
20 sioner shall certify and file in the court a copy of the order and
21 the transcript or record of the evidence upon which it was
22 based. If the order became final by operation of law under the
23 provisions of subsection (d), section ten of this article, then the
24 commissioner shall certify and file in court the summary order
25 and evidence of its service upon the parties and an affidavit
26 certifying that no hearing has been held and that the order
27 became final pursuant to the provisions of subsection (d),
28 section ten of this article.

29 (e) If either the aggrieved party or the commissioner applies
30 to the court for leave to present additional evidence, and shows
31 to the satisfaction of the court that there were reasonable
32 grounds for failure to adduce the evidence in the hearing before
33 the commissioner or other good cause, then the court may order
34 the additional evidence to be taken by the commissioner under
35 such conditions as the court considers proper.

36 (f) If new evidence is ordered to be taken by the court, then
37 the commissioner may modify the findings and order by reason
38 of the additional evidence and shall file in the court the addi-
39 tional evidence together with any modified or new findings or
40 order.

41 (g) The court shall review the petition based upon the
42 original record before the commissioner as amended under the
43 provisions of subsections (e) and (f) of this section. The
44 findings of the commissioner as to the facts, if supported by
45 competent, material and substantive evidence, are conclusive.
46 Based upon this review, the court may affirm, modify, enforce
47 or set aside the order, in whole or in part.

48 (h) The judgment of the circuit court is subject to review by
49 the supreme court of appeals of this state.

§32B-2-12. Pleading exemptions.

1 It is not necessary to negate any of the exemptions of this
2 chapter in any complaint, information or indictment, or in any
3 writ or proceeding brought under this chapter, and the burden
4 of proof of any such exemption is upon the party claiming the
5 exemption.

§32B-2-13. Affirmative defense.

1 (a) It is a defense in any complaint, information, indict-
2 ment, writ or proceeding brought under this chapter alleging a
3 violation of the provisions of section two, article one of this
4 chapter, based solely on the failure in an individual case to
5 make physical delivery within the applicable time period under
6 the provisions of subsection (e), section one or subdivision (2),
7 subsection (a), section four, article one of this chapter if:

8 (b) Failure to make physical delivery was due solely to
9 factors beyond the control of the seller, the seller's officers,
10 directors, partners, agents, servants or employees, every person
11 occupying a similar status or performing similar functions,
12 every person who directly or indirectly controls or is controlled
13 by the seller, or the seller's affiliates, subsidiaries or successors;
14 and

15 (c) Physical delivery was completed within a reasonable
16 time under the applicable circumstances.

ARTICLE 3. NOTICE FILING.

§32B-3-1. Definitions.

1 (a) "Commodity broker-dealer" means any person engaged
2 in the business of effecting transactions in commodity contracts
3 or commodity options, as defined in article one of this chapter,
4 for the account of others or for the person's own account.

5 (b) "Commodity sales representative" means any person
6 authorized to act and that is acting for a commodity broker-
7 dealer in effecting or attempting to effect a transaction in a
8 commodity contract or a commodity option.

9 (c) All commodity broker-dealers and commodity sales
10 representatives shall provide notice to the commissioner of
11 securities on a form prescribed by the commissioner of securi-
12 ties that they are doing business in sales, offers or other
13 nonexempt transactions involving sales of commodities. All
14 notices shall contain such information as the commissioner of
15 securities determines necessary or appropriate to facilitate the
16 administration of this chapter.

17 (d) The notice does not constitute the granting of a license,
18 registration or other authorization to do business under this
19 chapter but is to be maintained as a record of those engaged in
20 commodities transactions in the state.

ARTICLE 4. SEVERABILITY AND SAVING PROVISIONS.

§32B-4-1. Severability of provisions.

§32B-4-2. Saving provisions.

§32B-4-1. Severability of provisions.

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

§32B-4-2. Saving provisions.

1 (a) Prior law exclusively governs all suits, actions, prosecu-
2 tions or proceedings that are pending or may be initiated on the
3 basis of facts or circumstances occurring before the effective
4 date of this chapter, except that no civil suit or action may be
5 maintained to enforce any liability under prior law unless
6 brought within the period of limitation that applied when the
7 cause of action accrued, and in any event, within three years
8 after the effective date of this chapter.

9 (b) All administrative orders applicable to this chapter
10 remain in effect so long as they would have remained in effect
11 if this chapter had not been enacted. They are considered to
12 have been filed, entered or imposed under this chapter, but are
13 governed by prior law.

14 (c) Prior law applies in respect of any offer or sale made
15 prior to the effective date of this chapter pursuant to an offering
16 begun in good faith before its effective date on the basis of an
17 exemption available under prior law. Fraudulent transactions or
18 transactions in violation of the federal commodities trading
19 laws are expressly subject to the provisions of this chapter
20 regardless of whether they were undertaken prior to the
21 effective date of this chapter.

22 (d) Judicial review of all administrative orders in which
23 review proceedings have not been instituted by the effective
24 date of this chapter are governed by section eleven of this
25 article, except that no review proceeding may be instituted
26 unless the petition is filed within the period of limitation that
27 applied to a review proceeding when the order was entered and,
28 in any event, within sixty days after the effective date of this
29 chapter.

CHAPTER 292

(S. B. 572 — By Senators Wooton, Love, Ball, Anderson, Hunter,
Bailey, Schoonover, Kessler and Edgell)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-three-a and twenty-three-e, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article five-c, chapter twenty-one of said code, all relating to providing for the issuance of one additional whitewater rafting license on the Gauley River; instituting a moratorium on additional whitewater licenses on certain sections of the New and Gauley rivers; freezing minimum license allocations for existing licenses on certain sections of the New and Gauley rivers; defining minimum license allocations; providing for the continued study of rafting carrying capacity of the state's rivers by the whitewater commission; and clarifying that seasonal employees of commercial whitewater outfitters are exempt from overtime wage requirements.

Be it enacted by the Legislature of West Virginia:

That sections twenty-three-a and twenty-three-e, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and to amend and reenact section one, article five-c, chapter twenty-one of said code, all to read as follows:

Chapter

20. Natural Resources.

20. Labor.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-23a. Whitewater commission; powers and duties of commission and division of natural resources; allocations; civil and criminal penalties for violations.

§20-2-23e. Implementation of allocation methodology.

§20-2-23a. Whitewater commission; powers and duties of commission and division of natural resources; allocations; civil and criminal penalties for violations.

1 (a) There is hereby created a whitewater commission within
2 the division of natural resources. The commission shall consist
3 of the director of the division of natural resources or his or her
4 designee; the director of the division of parks and tourism or his
5 or her designee; three representatives of private river users who
6 have no affiliation with any commercial river enterprise to be
7 appointed by the governor: *Provided*, That no more than one
8 representative of the private river users may be from each
9 whitewater zone; and four persons representing four different
10 licensed commercial whitewater outfitters currently operating
11 within the state to be appointed by the governor. The superin-
12 tendent of the New River Gorge National Park or his or her
13 designee shall be a nonvoting member of the commission. All
14 appointed members of the commission shall be citizens and
15 residents of West Virginia. Of the four representatives of
16 commercial outfitters, two persons shall represent commercial
17 whitewater outfitters holding or controlling through corporate
18 affiliation or common ownership multiple licenses in West
19 Virginia and two persons shall represent commercial white-
20 water outfitters in West Virginia who hold only a single license
21 and who have no common ownership or corporate affiliation
22 with another licensee, the director of the division of natural
23 resources shall serve as chairperson of the commission. Of the
24 seven members of the commission first appointed by the
25 governor, two shall be appointed for a term of one year, two for
26 a term of two years and three for a term of three years. Thereaf-
27 ter, the terms of all appointed members of the commission are
28 for three years. Members shall serve until their successors have
29 been appointed and any vacancy in the office of a member shall
30 be filled by appointment for the unexpired term. Members
31 representing commercial outfitters who have served at least two

32 years on the commission are not eligible for reappointment to
33 a successive term.

34 (b) The commission has the following powers and duties:

35 (1) To investigate and study commercial whitewater rafting,
36 outfitting and activities related thereto which take place along
37 the rivers or waters of the state;

38 (2) To designate any such rivers or waters or any portions
39 thereof as "whitewater zones" for which commercial white-
40 water rafting, outfitting and activities are to be investigated and
41 studied, and to determine the order and the periods of time
42 within which the investigations and studies are to be conducted.
43 The commission shall first investigate and study those white-
44 water zones which it finds to present serious problems requiring
45 immediate regulation, including, without limitation, safety
46 hazards and problems of overcrowding or environmental
47 misuse;

48 (3) To restrict, deny or postpone the issuance of licenses to
49 additional commercial whitewater outfitters seeking to operate
50 in areas and portions of rivers and waters in this state desig-
51 nated whitewater zones by action of the director of the division
52 of natural resources as authorized under prior enactment of this
53 section and so designated by the filing of a written notice
54 entered upon the records of the division containing the designa-
55 tion and reasonable description of the whitewater zone:
56 *Provided*, That in consideration of the consolidation occurring
57 among outfitting companies providing rafting services on the
58 Gauley River, the commission shall grant one additional
59 whitewater rafting license for the Gauley River on or before the
60 first day of July, one thousand nine hundred ninety-nine, with
61 preference being given in the selection process to the applicant
62 best satisfying the following criteria: (i) The applicant demon-
63 strates a record of providing commercial rafting and related
64 whitewater services in a safe and lawful manner on the New
65 River and other rivers; (ii) the applicant has continuously
66 engaged for three or more years in the commercial rafting
67 business on the New River and has, or can obtain, the necessary
68 equipment and facilities to support Gauley River operations;
69 (iii) the seniority of the application as measured by the length

70 of time the applicant has sought a Gauley River license with the
71 more senior application given preference; (iv) that the applicant
72 is not affiliated with, operated or owned by an existing Gauley
73 River licensee; (v) that the applicant has no common ownership
74 with an existing Gauley River licensee; and (vi) that the
75 economic benefit represented by the award of a Gauley River
76 license will serve to assist the promotion of tourism and the
77 delivery of outfitting services beyond Fayette and Nicholas
78 counties. In authorizing the issuance of an additional Gauley
79 River license, it is the intention of the Legislature that the
80 commission not increase the carrying capacity of a current
81 Gauley River licensee, but that the commission promote and
82 maintain competition among licensees by increasing the
83 number of independent outfitters operating on the Gauley;

84 (4) To commission such studies as are necessary to deter-
85 mine the physical carrying capacity and monitor the levels of
86 use on the New, Gauley, Cheat, Shenandoah and Tygart rivers
87 and how each relates to the overall quality of the rafting
88 experience, the economic impact of rafting, tourism and
89 employment in the state and the safety of the general public:
90 *Provided*, That if, during a study period, the commission deems
91 that overcrowding is not a problem on any whitewater zone on
92 the Cheat, Shenandoah and Tygart rivers, or on the New River
93 upstream of the confluence of the Greenbrier and New rivers
94 and on the Gauley River upstream of the Summersville Dam,
95 then it may issue a license;

96 (5) Based on the findings of a study of the carrying capacity
97 of a river, to formulate rational criteria for an allocation
98 methodology for the river subject to the study, including, but
99 not limited to, a minimum allocation for each river studied;

100 (6) To immediately implement a freeze on mandated
101 changes in use allocations for the licenses of existing licensees
102 on moratorium sections of the Gauley and New rivers as
103 defined in subsection (d) of this section. All such licenses shall
104 carry the use allocation in effect on the second day of May, one
105 thousand nine hundred ninety-two. The commission shall
106 implement allocation methodologies for other rivers as the
107 commission, after appropriate study, may deem necessary with

108 all such allocation methodologies implemented by rules
109 promulgated pursuant to chapter twenty-nine-a of this code;

110 (7) To determine administrative policies relating to
111 regulation of the whitewater industry and to administer such
112 policies, except that the commission shall delegate to the
113 director of the division of natural resources or his or her
114 designee the authority to administer the day-to-day responsibi-
115 lities of the commission pursuant to this section and may vest in
116 the director of the division of natural resources or his or her
117 designee the authority to make determinations with respect to
118 which it is not practicable to convene or to poll the commission,
119 within guidelines established by the commission;

120 (8) To review all contracts or agreements with governmen-
121 tal agencies related to whitewater studies or regulation, and any
122 negotiations related thereto;

123 (9) To verify reports by outfitters of numbers of river users
124 and guides, to monitor the extent of the crowding conditions on
125 the rivers and to establish a system for reporting the number of
126 river users and guides on each whitewater expedition;

127 (10) To regulate the issuance, transfer, and renewal of
128 licenses. However, licenses issued to commercial whitewater
129 outfitters or use allocations or other privileges conferred by a
130 license may be transferred, sold, offered as security to financial
131 institutions or otherwise encumbered, upon notice in writing to
132 the commission and the director of the division of natural
133 resources, subject to the following limitations: (i) The commis-
134 sion may refuse a transfer upon a finding that there is reason-
135 able cause to believe that the safety of members of the public
136 may be adversely affected by the transfer; and (ii) the commis-
137 sion shall require that taxes, workers' compensation and other
138 obligations due the state be paid prior to any transfer;

139 (11) To collect, for the duration of a study period estab-
140 lished in subdivision (4) of this subsection, an annual license
141 fee of five hundred dollars for each river on which a commer-
142 cial whitewater outfitter operates. The annual per river license
143 fee is limited to the Cheat, Gauley, New, Shenandoah and
144 Tygart rivers. The annual license fee for a commercial white-

145 water outfitter operating on a river not so designated is five
146 hundred dollars regardless of the number of rivers operated on.
147 A commercial whitewater outfitter who is operating on a river
148 designated in this subdivision and who has paid the annual per
149 river license fee may not be required to pay an additional
150 annual license fee to operate on a nondesignated river. The
151 commercial whitewater outfitter license shall be issued by the
152 commission and is for a period of ten years: *Provided*, That an
153 outfitter pays the required annual license fee. If an outfitter fails
154 to pay the license fee, then the license shall be suspended until
155 the license fee is paid. Licenses are subject to the bonding
156 provisions set forth in section twenty-three-d of this article and
157 the revocation provisions set forth in the rules promulgated by
158 the director of the division of natural resources. License fees
159 shall be used by the division of natural resources for the
160 purpose of enforcing and administering the provisions of this
161 section;

162 (12) To establish a special study and improvement fee to be
163 paid by outfitters and to establish procedures for the collection
164 and enforcement of the special study and improvement fee;

165 (13) To establish a procedure for hearings on violations of
166 this section and rules promulgated thereunder and to establish
167 civil penalties for violations of this section and rules promul-
168 gated thereunder; and

169 (14) To approve rules promulgated by the director of the
170 division of natural resources pursuant to chapter twenty-nine-a
171 of this code, with respect to commercial whitewater outfitters
172 operating upon the waters of the state, whether or not such
173 waters have been designated whitewater zones, which relate to:
174 (i) Minimum safety requirements for equipment; (ii) standards
175 for the size of rafts and number of persons which may be
176 transported in any one raft; (iii) qualifications of commercial
177 whitewater guides; and, with respect to waters designated
178 whitewater zones, (iv) standards for the number of rafts and
179 number of persons transported in rafts.

180 (c) The commission shall meet upon the call of the chair-
181 person or a majority of the members of the commission.

182 However, the commission shall meet at least quarterly and shall
183 conduct business when a majority of the members are present.
184 At the meetings, the commission shall review all data, materials
185 and relevant findings compiled relating to any investigation and
186 study then under consideration and, as soon as practicable
187 thereafter, the commission may recommend rules to govern and
188 apply to the designated whitewater zone(s). The commission
189 may meet at its discretion for the purpose of considering and
190 adjusting allocations and review fees and proposed expendi-
191 tures. A budget shall be approved for each fiscal year for the
192 expenditure of funds subject to the commission's control. The
193 commission may not limit the number of commercial white-
194 water outfitters operating on rivers not designated as whitewater
195 zones, nor may the commission limit the number of rafts or
196 total number of persons transported in rafts by commercial
197 whitewater outfitters on rivers not designated as whitewater
198 zones. Commission members shall be reimbursed all reasonable
199 and necessary expenses incurred in the exercise of their duties.

200 (d) Special provisions for the New River and the Gauley
201 River:

202 (1) After the issuance of the Gauley River rafting license
203 provided for in subdivision (3), subsection (b) of this section,
204 a moratorium shall be imposed by the commission upon the
205 issuance of additional commercial rafting licenses on white-
206 water zones of the New River between the confluence of the
207 Greenbrier and New rivers and the confluence of the New and
208 Gauley rivers and upon whitewater zones of the Gauley River
209 from the Summersville Dam to the confluence of the New and
210 Gauley rivers. The moratorium hereby imposed shall continue
211 until such time as the commission is authorized by the Legisla-
212 ture to discontinue the moratorium.

213 (2) For the portions of the Gauley and New rivers subject
214 to the moratorium imposed by this section, the minimum use
215 allocation conferred by a license is one hundred twenty for each
216 designated section of a whitewater zone on the Gauley and one
217 hundred fifty for each designated section of a whitewater zone
218 on the New River. A licensee who held a use allocation on the
219 second day of May, one thousand nine hundred ninety-two,

220 with a use allocation greater than the minimum allocation
221 established in this subdivision shall retain such use allocation
222 on each designated section of a whitewater zone on the morato-
223 rium portions of the New and Gauley rivers subject only to the
224 sale, loss or forfeiture of the license or to a subsequent action of
225 the commission imposing a reduction in use allocations
226 pursuant to subdivision (4) of this subsection. The commission
227 is authorized to increase or decrease minimum use allocations
228 for the moratorium sections of the New and Gauley rivers only
229 in accordance with the provisions of subdivisions (4) and (5) of
230 this subsection. The commission may permit additional
231 allocations or licenses for whitewater outfitters which are
232 nonprofit entities operating upon the waters of the state upon
233 the effective date of this section. Except as provided in subdivi-
234 sion (4), subsection (d) of this section, nothing in this section
235 shall be deemed to require the reduction of a use allocation
236 granted under an existing license or to prohibit a commercial
237 whitewater outfitter from acquiring a license with a use
238 allocation in excess of the minimum allocations hereby
239 established: *Provided*, That if a licensee has sold, leased or
240 assigned his license, or sold or leased a portion of the use
241 allocation under his license, nothing herein shall be deemed to
242 have the effect of increasing the use allocation assigned to such
243 license.

244 (3) The commission may permit peak-day variances from
245 license limitations not exceeding ten percent of the use alloca-
246 tion granted under a license. The commission may permit off-
247 peak-day variances from license limitations not exceeding
248 twenty-five percent of the use allocation granted under a
249 license.

250 (4) If, as result of a study employing the limits of accept-
251 able change process, the whitewater commission acts to reduce
252 the aggregate maximum daily use limit for all commercial
253 rafting licenses on a section of the New River or Gauley River
254 subject to the license moratorium, the reduction shall be
255 distributed on a pro-rata basis among all licenses granted for the
256 section in proportion to an individual license's relative share of
257 the total use allocation for such river section.

258 (5) If the limits of acceptable change process results in an
259 increase in the aggregate maximum daily use limit for all
260 commercial rafting licenses on any section of the New River or
261 Gauley River subject to a moratorium on new licenses, such
262 increase shall be divided by the total number of commercial
263 rafting licenses issued for the relevant section of river and the
264 minimum use allocation for each such license shall be increased
265 by the nearest whole number resulting from the division.

266 (6) If any party contracts to purchase a license containing
267 a use allocation for a moratorium section of the New River or
268 the Gauley River, or if a licensee has obtained, or in the future
269 shall obtain additional use allocations for a moratorium section
270 by lease or purchase from another licensee, the commission
271 shall permit the transfer of such license rights in accordance
272 with the provisions of subdivision (10), subsection (b) of this
273 section. Unless the owners of a license otherwise agree, when
274 two or more licensees share ownership or control of the use
275 allocation assigned to a license, any increase or decrease in use
276 allocations which results from an action of the commission
277 under subdivisions (4) and (5) of this subsection shall be
278 distributed by the commission between such owners in propor-
279 tion to their ownership or control of the use allocation assigned
280 to such license.

281 (e) In the event the commission determines through an
282 appropriate study and the limits of acceptable change process
283 that a whitewater zone or a designated section of a whitewater
284 zone on waters other than the moratorium sections of the New
285 and Gauley rivers requires implementation of use allocations,
286 all whitewater rafting licenses issued for such zone or section
287 thereof shall be given the same use allocation.

288 (f) Violation of this section or any rule promulgated
289 pursuant to this section constitutes a misdemeanor punishable
290 by the penalties set forth in section twenty-three-d of this
291 article.

292 (g) The director of the division of natural resources shall
293 promulgate, pursuant to the provisions of chapter twenty-nine-a
294 of this code, all rules necessary to effectuate the purposes of

295 this section and these rules must be approved by the commis-
296 sion. The division of natural resources shall enforce the
297 provisions of this section and rules promulgated pursuant to this
298 section, and shall provide necessary staff and support services
299 to the commission to effectuate the purposes of this section.

300 (h) All orders, determinations, rules, permits, grants,
301 contracts, certificates, licenses, waivers, bonds, authorizations
302 and privileges which have been issued, made, granted or
303 allowed to become effective pursuant to any prior enactments
304 of this section by the governor, the secretary of the department
305 of commerce, labor and environmental resources, the director
306 of the division of natural resources, the whitewater advisory
307 board or by a court of competent jurisdiction, and which are in
308 effect on the effective date of this section, shall continue in
309 effect according to their terms until modified, terminated,
310 superseded, set aside or revoked by the governor, secretary,
311 director or commission pursuant to this section, by a court of
312 competent jurisdiction, or by operation of law.

20-2-23e. Implementation of allocation methodology.

1 Other provisions of this article notwithstanding, the
2 implementation of an allocation methodology for the
3 nonmoratorium whitewater zones of the New, Gauley, Cheat,
4 Shenandoah and Tygart rivers, shall be made based upon
5 criteria identified in existing or future studies of carrying
6 capacity, the overall economic impact on the state and the
7 safety of the general public as identified in section
8 twenty-three-a of this article, and shall be implemented at such
9 time as the commission deems appropriate, by rules promul-
10 gated pursuant to chapter twenty-nine-a of this code. In
11 determining whether to increase or decrease existing use
12 allocations on the portions of the New and Gauley rivers
13 subjected to a moratorium on new licenses by this article, the
14 commission may continue existing studies and undertake new
15 studies of the carrying capacity of whitewater zones, the quality
16 of the rafting experience, the economic impact of rafting and
17 the safety of the general public.

CHAPTER 21. LABOR.

**ARTICLE 5C. MINIMUM WAGE AND MAXIMUM HOURS STANDARDS
FOR EMPLOYEES.**

21-5C-1. Definitions.

1 As used in this article:

2 (a) "Commissioner" means the commissioner of labor or
3 his duly authorized representatives.

4 (b) "Wage and hour director" means the wage and hour
5 director appointed by the commissioner of labor as chief of the
6 wage and hour division.

7 (c) "Wage" means compensation due an employee by
8 reason of his employment.

9 (d) "Employ" means to hire or permit to work.

10 (e) "Employer" includes the state of West Virginia, its
11 agencies, departments and all its political subdivisions, any
12 individual, partnership, association, public or private corpora-
13 tion, or any person or group of persons acting directly or
14 indirectly in the interest of any employer in relation to an
15 employee; and who employs during any calendar week six or
16 more employees as herein defined in any one separate, distinct
17 and permanent location or business establishment: *Provided,*
18 That the term "employer" shall not include any individual,
19 partnership, association, corporation, person or group of
20 persons or similar unit if eighty percent of the persons em-
21 ployed by him are subject to any federal act relating to mini-
22 mum wage, maximum hours and overtime compensation.

23 (f) "Employee" includes any individual employed by an
24 employer but shall not include: (1) Any individual employed by
25 the United States; (2) any individual engaged in the activities of
26 an educational, charitable, religious, fraternal or nonprofit
27 organization where the employer-employee relationship does
28 not in fact exist, or where the services rendered to such organi-
29 zations are on a voluntary basis; (3) newsboys, shoeshine boys,
30 golf caddies, pinboys and pin chasers in bowling lanes; (4)
31 traveling salesmen and outside salesmen; (5) services per-
32 formed by an individual in the employ of his parent, son,

33 daughter or spouse; (6) any individual employed in a bona fide
34 professional, executive or administrative capacity; (7) any
35 person whose employment is for the purpose of on-the-job
36 training; (8) any person having a physical or mental handicap
37 so severe as to prevent his employment or employment training
38 in any training or employment facility other than a nonprofit
39 sheltered workshop; (9) any individual employed in a boys or
40 girls summer camp; (10) any person sixty-two years of age or
41 over who receives old-age or survivors benefits from the social
42 security administration; (11) any individual employed in
43 agriculture as the word agriculture is defined in the Fair Labor
44 Standards Act of 1938, as amended; (12) any individual
45 employed as a fire fighter by the state or agency thereof; (13)
46 ushers in theaters; (14) any individual employed on a part-time
47 basis who is a student in any recognized school or college; (15)
48 any individual employed by a local or interurban motorbus
49 carrier; (16) so far as the maximum hours and overtime
50 compensation provisions of this article are concerned, any
51 salesman, parts man or mechanic primarily engaged in selling
52 or servicing automobiles, trailers, trucks, farm implements,
53 aircraft if employed by a nonmanufacturing establishment
54 primarily engaged in the business of selling such vehicles to
55 ultimate purchasers; (17) any employee with respect to whom
56 the United States department of transportation has statutory
57 authority to establish qualifications and maximum hours of
58 service; (18) any person employed on a per diem basis by the
59 Senate, the House of Delegates, or the joint committee on
60 government and finance of the Legislature of West Virginia,
61 other employees of the Senate or House of Delegates designated
62 by the presiding officer thereof, and additional employees of the
63 joint committee on government and finance designated by such
64 joint committee; or (19) any person employed as a seasonal
65 employee of a commercial whitewater outfitter where the
66 seasonal employee works less than seven months in any one
67 calendar year and, in such case, only for the limited purpose of
68 exempting the seasonal employee from the maximum wage
69 provisions of section three of this article.

70 (g) "Workweek" means a regularly recurring period of one
71 hundred sixty-eight hours in the form of seven consecutive

72 twenty-four hour periods, need not coincide with the calendar
 73 week, and may begin any day of the calendar week and any
 74 hour of the day.

75 (h) "Hours worked", in determining for the purposes of
 76 sections two and three of this article, the hours for which an
 77 employee is employed, there shall be excluded any time spent
 78 in changing clothes or washing at the beginning or end of each
 79 workday, time spent in walking, riding or traveling to and from
 80 the actual place of performance of the principal activity or
 81 activities which such employee is employed to perform and
 82 activities which are preliminary to or postliminary to said
 83 principal activity or activities, subject to such exceptions as the
 84 commissioner may by rules and regulations define.

CHAPTER 293

(H. B. 2732 — By Delegates Douglas, Collins, Prunty,
 H. White, Hatfield, Butcher and Stalnaker)

[Passed March 12, 1999; 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 to administer workers' compensation.

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.

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 294

(Com. Sub. for S. B. 579 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 8, 1999; in effect from passage. Approved by the Governor.]

AN ACT to repeal section sixteen, article one, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal sections three-a and nineteen, article four of said chapter; to amend and reenact sections two, five, five-d, thirteen, fourteen and fifteen, article two of said chapter; to further amend said article by adding thereto a new section, designated section five-b; to amend and reenact section four, article three of said chapter; to amend and reenact sections six, eight-a, nine and ten, article four of said chapter; to amend and reenact sections seven and nine, article five of said chapter; to amend article six of said chapter by adding thereto two new sections, designated sections two and three; and to amend article three, chapter sixty-one of said code by adding thereto four new sections, designated sections twenty-four-e, twenty-four-f, twenty-four-g and twenty-four-h, all relating generally to workers' compensation and reform thereof; providing that information obtained from the state tax commissioner and the unemployment compensation division may be used to determine employment status; eliminating penalty premium tax; modifying the method of calculating penalties for late reporting and other improprieties; providing for premium tax settlements and relief from accrued interest and penalties; authorizing compensation programs performance council to review and approve write-off of uncollectible receivables; modifying interest rate on past-due

payments; providing that certain deposits and disbursements are abandoned property and providing for the disposition thereof; modifying the method of compensating the interdisciplinary examining board and confirming the duties thereof; lowering the threshold for consideration of a permanent total disability award to forty percent medical impairment or thirty-five percent disability based on statutory schedule; clarifying appointment and compensation of the occupational pneumoconiosis board; restoring terminated provisions establishing physical and vocational rehabilitation program; restoring the one hundred four weeks benefit to dependents of deceased permanent total disability award recipients; authorizing lump sum or periodic payment of such benefits; providing that employers not be directly charged with the experience of such award; modifying compromise and settlement procedures of workers' compensation claims; providing for review of claim settlements by the office of judges; requiring the office of judges to provide written notice of settlement to parties, the appeal board or the supreme court of appeals; precluding the reopening of settlement issues; revising hearing procedures on objections to workers' compensation decisions; providing that objections be filed with the office of judges; requiring the office of judges to promulgate a rule establishing an adjudicatory process; eliminating reference to authorized hearing locations; providing for ten days' notice of hearings; eliminating requirement to hold hearing within thirty days; revising record requirements; removing requirement that office of judges' decisions be rendered within thirty days; setting forth legislative intent that compensation programs performance council consider employer rate reductions commensurate with cost of employee benefits; establishing operative date of certain provisions; clarifying and strengthening criminal penalties for any person who knowingly and willfully fails to subscribe to the workers' compensation fund, fails to pay premium taxes, fails to file premium tax reports, fails to file other reports or makes a false report or statement under oath; providing that certain property is subject to forfeiture; imposing costs to accomplish forfeiture on person convicted; clarifying and strengthening criminal penalties for any person who knowingly and with fraudulent intent secures or attempts to secure workers' compen-

sation to which they are not entitled or who knowingly and willfully makes a false report under oath; authorizing restitution and termination of benefits; clarifying and strengthening criminal penalties for knowingly and willfully committing certain fraudulent offenses in connection with the delivery of or payment for workers' compensation health care benefits, items or services; barring persons from providing future services; terminating payments for such services; providing that certain property is subject to forfeiture; imposing costs to accomplish forfeiture on person convicted; and establishing criminal penalties for any person who provides false information with the intent to defraud workers' compensation or who alters documents or certificates to indicate good standing with workers' compensation.

Be it enacted by the Legislature of West Virginia:

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

Chapter

23. Workers' Compensation.

61. Crimes and Their Punishment.

CHAPTER 23. WORKERS' COMPENSATION.

Article

2. Employers and Employees Subject to Chapter; Extraterritorial Coverage.

3. Workers' Compensation Fund.

4. Disability and Death Benefits.
5. Review.
6. Severability; Legislative Intent; Operative Date.

**ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER;
EXTRATERRITORIAL COVERAGE.**

- §23-2-2. Commissioner to be furnished information by employers, state tax commissioner and division of unemployment compensation; secrecy of information; examination of employers, etc.; violation a misdemeanor.
- §23-2-5. Application; payment of premium taxes; gross wages; payroll report; deposits; delinquency; default; reinstatement; payment of benefits; notice to employees; criminal provisions; penalties.
- §23-2-5b. Premium tax default settlements; relief from liability for accrued interest and penalties; repayment terms and conditions; reinstatement to good standing; voided reinstatement agreements.
- §23-2-5d. Uncollectible receivables; write-offs.
- §23-2-13. Interest on past-due payments; reinstatement agreements.
- §23-2-14. Sale or transfer of business; attachment of lien for premium, etc., payments due; criminal penalties for failure to pay; creation and avoidance or elimination of lien; enforcement of lien; successor liability.
- §23-2-15. Liabilities of successor employer; waiver of payment by division; assignment of predecessor employer's premium rate to successor.

**§23-2-2. Commissioner to be furnished information by employers,
state tax commissioner and division of unemploy-
ment compensation; secrecy of information; exami-
nation of employers, etc.; violation a misdemeanor.**

1 (a) Every employer shall furnish the commissioner, upon
2 request, all information required by him or her to carry out the
3 purposes of this chapter. The commissioner, or any person
4 employed by the commissioner for that purpose, shall have the
5 right to examine under oath any employer or officer, agent or
6 employee of any employer.

7 (b) Notwithstanding the provisions of any other statute,
8 specifically, but not exclusively, sections five and five-b, article
9 ten, chapter eleven of this code, and section eleven, article ten,
10 chapter twenty-one-a of this code the commissioner of the
11 bureau of employment programs may receive the following
12 information:

13 (1) Upon written request to the state tax commissioner: The
14 names, addresses, places of business and other identifying
15 information of all businesses receiving a business franchise
16 registration certificate and the dates thereof; and the names and
17 social security numbers or other tax identification numbers of
18 the businesses and of the businesses' workers and employees,
19 if otherwise collected, and the quarterly and annual gross wages
20 or other compensation paid to the workers and employees of
21 such businesses reported pursuant to the requirement of
22 withholding of tax on income.

23 (2) Upon written application to the division of unemploy-
24 ment compensation: In addition to the information that may be
25 released to the division of workers' compensation for the
26 purposes of this chapter under the provisions of chapter twenty-
27 one-a of this code, the names, addresses and other identifying
28 information of all employing units filing reports and informa-
29 tion pursuant to section eleven, article ten, chapter twenty-one-a
30 of this code as well as information contained in those reports
31 regarding the number and names, addresses and social security
32 numbers of employees employed and the gross quarterly wages
33 paid by each employing unit to each identified employee.

34 (c) All information acquired by the division of workers'
35 compensation pursuant to subsection (b) of this section shall be
36 used only for auditing premium payments, assisting in the
37 determination of employment status, and registering businesses
38 under the single point of registration program as defined in
39 section two, article one, chapter eleven of this code. The
40 division of workers' compensation, upon receiving the business
41 franchise registration certificate information made available
42 pursuant to subsection (b) of this section, shall contact all
43 businesses receiving a business franchise registration certificate
44 and provide all necessary forms to register the business under
45 the provisions of this article. Any officer or employee of this
46 state who uses the aforementioned information in any manner
47 other than the one stated herein or elsewhere authorized in this
48 code, or who divulges or makes known in any manner any of
49 the aforementioned information shall be guilty of a misde-
50 meanor and, upon conviction thereof, shall be fined not more

51 than one thousand dollars or imprisoned in the county jail for
52 not more than one year, or both, together with cost of prosecu-
53 tion.

54 (d) Reasonable costs of compilation and production of any
55 information made available pursuant to subsection (b) of this
56 section shall be charged to the division of workers' compensa-
57 tion.

58 (e) Information acquired by the commissioner pursuant to
59 subsection (b) of this section shall not be subject to disclosure
60 under the provisions of chapter twenty-nine-b of this code.

**§23-2-5. Application; payment of premium taxes; gross wages;
payroll report; deposits; delinquency; default; rein-
statement; payment of benefits; notice to employees;
criminal provisions; penalties.**

1 (a) For the purpose of creating a workers' compensation
2 fund, each employer who is required to subscribe to the fund or
3 who elects to subscribe to the fund shall pay premium taxes
4 calculated as a percentage of the employer's gross wages
5 payroll at the rate determined by the workers' compensation
6 division and then in effect. At the time each employer sub-
7 scribes to the fund, the application required by the division shall
8 be filed and a premium deposit equal to the first quarter's
9 estimated premium tax payment shall be remitted. The mini-
10 mum quarterly premium to be paid by any employer shall be
11 twenty-five dollars.

12 (1) Thereafter, premium taxes shall be paid quarterly on or
13 before the last day of the month following the end of the
14 quarter, and shall be the prescribed percentage of the entire
15 gross wages of all employees, from which net payroll is
16 calculated and paid, during the preceding quarter. The division
17 may permit employers who qualify under the provisions of
18 rules promulgated by the compensation programs performance
19 council to report gross wages and pay premium taxes at other
20 intervals.

21 (2) Every subscribing employer shall make a gross wages
22 payroll report to the division for the preceding reporting period.

23 The report shall be on the form or forms prescribed by the
24 division, and shall contain all information required by the
25 division.

26 (3) After subscribing to the fund, each employer shall remit
27 with each premium tax payment an amount calculated to be
28 sufficient to maintain a premium deposit equal to the premium
29 payment for the previous reporting period. The division may
30 reduce the amount of the premium deposit required from
31 seasonal employers for those quarters during which employ-
32 ment is significantly reduced. If the employer pays premium tax
33 on a basis other than quarterly, the division may require the
34 deposit to be based upon some other time period. The premium
35 deposit shall be credited to the employer's account on the books
36 of the division and used to pay premium taxes and any other
37 sums due the fund when an employer becomes delinquent or in
38 default as provided in this article.

39 (4) All premium taxes and premium deposits required by
40 this article to be paid shall be paid by the employers to the
41 division, which shall maintain a record of all sums so received.
42 Any such sum mailed to the division shall be deemed to be
43 received on the date the envelope transmitting it is postmarked
44 by the United States postal service. All sums received by the
45 division shall be deposited in the state treasury to the credit of
46 the workers' compensation division in the manner now pre-
47 scribed by law.

48 (5) The division may encourage employer efforts to create
49 and maintain safe workplaces, to encourage loss prevention
50 programs, and to encourage employer provided wellness
51 programs, through the normal operation of the experience rating
52 formula, seminars and other public presentations, the develop-
53 ment of model safety programs and other initiatives as may be
54 determined by the commissioner and the compensation pro-
55 grams performance council.

56 (b) Failure of an employer to timely pay premium taxes, to
57 timely file a payroll report or to maintain an adequate premium
58 deposit, shall cause the employer's account to become delin-
59 quent. No employer will be declared delinquent or be assessed

60 any penalty therefor if the division determines that such
61 delinquency has been caused by delays in the administration of
62 the fund. The division shall, in writing, within sixty days of the
63 end of each quarter notify all delinquent employers of their
64 failure to timely pay premium taxes, to timely file a payroll
65 report or to maintain an adequate premium deposit. Each
66 employer who shall fail to timely file any quarterly payroll
67 report or timely pay the premium tax due with such report, or
68 both, for any quarter commencing on and after the first day of
69 July, one thousand nine hundred ninety-five, shall pay a late
70 reporting or payment penalty of the greater of fifty dollars or a
71 sum obtained by multiplying the premium tax due with such
72 report by the penalty rate applicable to that quarter. The penalty
73 rate to be used in a workers' compensation division's fiscal year
74 shall be calculated annually on the first day of each fiscal year.
75 The penalty rate used to calculate the penalty for each quarter
76 in a fiscal year is the quotient, rounded to the nearest higher
77 whole number percentage rate, obtained by dividing the sum of
78 the prime rate plus four percent by four. The prime rate shall be
79 the rate published in the *Wall Street Journal* on the last business
80 day of the division's prior fiscal year reflecting the base rate on
81 corporate loans posted by at least seventy-five percent of the
82 nation's thirty largest banks. Such late penalty shall be paid
83 with the most recent quarter's report and payment and is due
84 when that quarter's report and payment are filed. If such late
85 penalty is not paid when due, the same may be charged to and
86 collected by the division from the employer's premium deposit
87 account or otherwise as provided for by law. The notification
88 shall demand the filing of the delinquent payroll report and
89 payment of delinquent premium taxes, the penalty for late
90 reporting or payment of premium taxes or premium deposit, the
91 interest penalty and an amount sufficient to maintain the
92 premium deposit, before the end of the third month following
93 the end of the preceding quarter. Interest shall accrue and be
94 charged on the delinquent premium payment and premium
95 deposit pursuant to section thirteen of this article.

96 (c) Whenever the division notifies an employer of the
97 delinquent status of its account, the notification shall explain
98 the legal consequence of subsequent default by an employer

99 required to subscribe to the fund and the legal consequences of
100 termination of an electing employer's account.

101 (d) Failure by the employer, who is required to subscribe to
102 the fund and who fails to resolve the delinquency within the
103 prescribed period, shall place the account in default and shall
104 deprive such default employer of the benefits and protection
105 afforded by this chapter, including section six of this article,
106 and the employer shall be liable as provided in section eight of
107 this article. The default employer's liability under said sections
108 shall be retroactive to midnight of the last day of the month
109 following the end of the quarter for which the delinquency
110 occurs. The division shall notify the default employer of the
111 method by which the employer may be reinstated with the fund.
112 The division shall also notify the employees of such employer
113 by written notice as hereinafter provided for in this section.

114 (e) Failure by any employer, who voluntarily elects to
115 subscribe, to resolve the delinquency within the prescribed
116 period shall place the account in default and shall automatically
117 terminate the election of such employer to pay into the workers'
118 compensation fund and shall deprive such employer and the
119 employees of the default elective employer of the benefits and
120 protection afforded by this chapter, including section six of this
121 article, and such employer shall be liable as provided in section
122 eight of this article. The default employer's liability under said
123 section shall be retroactive to midnight of the last day of the
124 month following the end of the quarter for which the delin-
125 quency occurs. Employees who were the subject of the default
126 employer's voluntary election to provide them the benefits
127 afforded by this chapter shall have such protection terminated
128 at the time of their employer's default.

129 (f) (1) Except as provided for in subdivision (3) of this
130 subsection, any employer who is required to subscribe to the
131 fund and who is in default on the effective date of this section
132 or who subsequently defaults, and any employer who has
133 elected to subscribe to the fund and who defaults and whose
134 account is terminated prior to the effective date of this section
135 or whose account is subsequently terminated, shall be restored
136 immediately to the benefits and protection of this chapter only

137 upon the filing of all delinquent payroll and other reports
138 required by the division and payment into the fund of all unpaid
139 premiums, an adequate premium deposit, accrued interest and
140 the penalty for late reporting and payment. Interest shall be
141 calculated as provided for by section thirteen of this article.

142 The division shall not have the authority to waive either
143 premium or accrued interest. The provisions of section seven-
144 teen of this article apply to any action or decision of the
145 division under this section.

146 (2) The division shall have the authority to restore a
147 defaulted or terminated employer through a reinstatement
148 agreement. Such reinstatement agreement shall require the
149 payment in full of all premium taxes, premium deposits, the
150 penalty for late reporting and payment, past accrued interest and
151 future interest calculated pursuant to the provisions of section
152 thirteen of this article. Notwithstanding the filing of a reinstatement
153 application or the entering into of a reinstatement agree-
154 ment, the division is authorized to file a lien against the
155 employer as provided by section five-a of this article. In
156 addition, entry into a reinstatement agreement is discretionary
157 with the division. Such discretion shall be exercised in keeping
158 with the fiduciary obligations owed to the workers' compensa-
159 tion fund. Should the division decline to enter into a reinstatement
160 agreement and should the employer not comply with the
161 provisions of subdivision (1) of this subsection, then the
162 division may proceed with any of the collection efforts pro-
163 vided for by section five-a of this article or as otherwise
164 provided for by this code. Applications for reinstatement shall:
165 (A) Be made upon forms prescribed by the division; (B) include
166 a report of the gross wages payroll of the employer which had
167 not been reported to the division during the entire period of
168 delinquency and default, which gross wages information shall
169 be certified by the employer or its authorized agent; and (C)
170 include a payment of a portion of the liability equal to one half
171 of one percent of the gross payroll during the period of delin-
172 quency and default or equal to another portion of the liability as
173 may be determined from time to time by rule but not to exceed
174 the amount of the entire liability due and owing for the period
175 of delinquency and default. An employer who applies for

176 reinstatement shall be entitled to the benefits and protection of
177 this chapter on the day a properly completed and acceptable
178 application which is accompanied by the application payment
179 is received by the division: *Provided*, That if the division
180 reinstates an employer subject to the terms of a reinstatement
181 agreement, the subsequent failure of the employer to make
182 scheduled payments or to pay accrued or future interest in
183 accordance with the reinstatement agreement or to timely file
184 current quarterly reports and to pay current quarterly premiums
185 within the month following the end of the quarter for which the
186 report and payment are due, or to otherwise maintain its
187 account in good standing or, if the reinstatement agreement
188 does not require earlier restoration of the premium deposit, to
189 restore the premium deposit to the required amount by the end
190 of the repayment period shall cause the reinstatement applica-
191 tion and the reinstatement agreement to be null, void and of no
192 effect, and the employer shall be denied the benefits and
193 protection of this chapter effective from the date that such
194 employer's account originally became delinquent.

195 (3) Any employer who fails to maintain its account in good
196 standing with regard to subsequent premium taxes and premium
197 deposits after filing an application for reinstatement and prior
198 to the final resolution of an application for reinstatement by
199 entering into a reinstatement agreement or by payment of the
200 liability in full as provided for in subdivision (1) of this
201 subsection shall cause the reinstatement application to be null,
202 void and of no effect, and the employer shall be denied the
203 benefits and protection of this chapter effective from the date
204 that such employer's account originally became delinquent.

205 (4) Following any failure of an employer to comply with
206 the provisions of a reinstatement agreement, the division may
207 then make and continue with any of the collection efforts
208 provided for by this chapter or elsewhere in this code even if
209 the employer files another reinstatement application.

210 (g) With the exception noted in subsection (h), section one
211 of this article, no employee of an employer required by this
212 chapter to subscribe to the workers' compensation fund shall be
213 denied benefits provided by this chapter because the employer
214 failed to subscribe or because the employer's account is either

215 delinquent or in default.

216 (h) (1) The provisions of this section shall not deprive any
217 individual of any cause of action which has accrued as a result
218 of an injury or death which occurred during any period of
219 delinquency not resolved in accordance with the provisions of
220 this article, or subsequent failure to comply with the terms of
221 the repayment agreement.

222 (2) Upon withdrawal from the fund or termination of
223 election of any employer, the employer shall be refunded the
224 balance due the employer of its deposit, after deducting all
225 amounts owed by the employer to the workers' compensation
226 fund and other agencies of this state, and the division shall
227 notify the employees of such employer of said termination in
228 such manner as the division may deem best and sufficient.

229 (3) Notice to employees in this section provided for shall be
230 given by posting written notice that the employer is defaulted
231 under the compensation law of West Virginia, and in the case
232 of employers required by this chapter to subscribe and pay
233 premiums to the fund, that the defaulted employer is liable to its
234 employees for injury or death, both in workers' compensation
235 benefits and in damages at common law or by statute; and in the
236 case of employers not required by this chapter to subscribe and
237 pay premiums to the fund, but voluntarily electing to do so as
238 herein provided, that neither the employer nor the employees of
239 such employer are protected by said laws as to any injury or
240 death sustained after the date specified in said notice. Such
241 notice shall be in the form prescribed by the division and shall
242 be posted in a conspicuous place at the chief works of the
243 employer, as the same appear in records of the division. If said
244 chief works of the employer cannot be found or identified, then
245 said notices shall be posted at the front door of the courthouse
246 of the county in which said chief works are located, according
247 to the division's records. Any person who shall, prior to the
248 reinstatement of said employer, as hereinbefore provided for, or
249 prior to sixty days after the posting of said notice, whichever
250 shall first occur, remove, deface or render illegible said notice,
251 shall be guilty of a misdemeanor and, upon conviction thereof,
252 shall be fined one thousand dollars, and said notice shall state

253 this provision upon its face. The division may require any
254 sheriff, deputy sheriff, constable or other official of the state of
255 West Virginia, who may be authorized to serve civil process, to
256 post such notice and to make return thereof of the fact of such
257 posting to the division, and any failure of such officer to post
258 any notice within ten days after he or she shall have received
259 the same from the division, without just cause or excuse, shall
260 constitute a willful failure or refusal to perform a duty required
261 of him or her by law within the meaning of section twenty-
262 eight, article five, chapter sixty-one of this code. Any person
263 actually injured by reason of such failure shall have an action
264 against said official, and upon any official bond he or she may
265 have given, for such damages as such person may actually have
266 incurred, but not to exceed, in the case of any surety upon said
267 bond, the amount of the penalty of said bond. Any official
268 posting said notice as herein required shall be entitled to the
269 same fee as is now or may hereafter be provided for the service
270 of process in suits instituted in courts of record in the state of
271 West Virginia, which fee shall be paid by the division out of
272 any funds at its disposal, but shall be charged by the division
273 against the account of the employer to whose delinquency such
274 notice relates.

**§23-2-5b. Premium tax default settlements; relief from liability
for accrued interest and penalties; repayment
terms and conditions; reinstatement to good
standing; voided reinstatement agreements.**

1 The Legislature hereby declares that it is the purpose of this
2 section to provide any employer who is in default as of the
3 effective date of this section in any payment due pursuant to the
4 provisions of this article an opportunity to settle the amount of
5 the default in accordance with the provisions hereinafter set
6 forth. For the purposes of this section, the term "default" applies
7 to any failure by an employer to subscribe to or pay premium
8 taxes that are attributable to the quarter ended on the thirty-first
9 day of December, one thousand nine hundred ninety-eight or
10 quarters ended before that date. In addition, for the purposes of
11 this section, "employer" means any corporation, partnership,
12 limited liability company, sole proprietor, person or other legal
13 entity which is liable or which directly or indirectly may be

14 held liable as a responsible party for the nonpayment of
15 premium taxes.

16 (a) An employer who qualifies under this section will have
17 six months from the first day of July, one thousand nine
18 hundred ninety-nine, to apply to the commissioner for a
19 settlement of the amount of premium taxes, accrued interest and
20 penalties and any award of attorney's fees made pursuant to
21 subdivision (17), section six, article two, chapter twenty-one-a
22 of this code, owed to the workers' compensation fund as a
23 result of the employer's default on premium tax payments to
24 the division. Such application shall be made on a form pre-
25 scribed by the commissioner and may impose on the employer
26 such obligations and constraints concerning the time and
27 manner of payment as the commissioner deems necessary to
28 effectuate the purpose of this section.

29 (b) Notwithstanding provisions in this article to the
30 contrary, the employer shall be relieved of liability for the
31 payment of the interest and penalties which have accrued by
32 operation of other provisions in this article and shall further be
33 relieved of liability for payment of any award of attorney's fees
34 made pursuant to subdivision (17), section six, article two,
35 chapter twenty-one-a of this code, by tendering payment in full
36 of all past-due premium taxes within thirty days from the date
37 that the commissioner notifies the employer in writing that the
38 application has been approved: *Provided*, That in the alterna-
39 tive, an employer shall be relieved of liability for the payment
40 of the interest and penalties which have accrued by operation of
41 other provisions in this article by fulfilling the terms of a
42 written agreement with the division to pay, within three
43 hundred sixty-five days from the date upon which the agree-
44 ment is executed, all past-due premium taxes in monthly
45 installments which shall include interest on such past-due
46 premium taxes calculated at the annual percentage rate of nine
47 percent.

48 (c) Notwithstanding any provisions in this article to the
49 contrary, an employer which is remitting payments to the
50 division pursuant to the terms of an agreement entered into
51 prior to the effective date of this section may apply to the

52 commissioner in accordance with subsection (a) of this section
53 to discharge the remaining balance of its indebtedness to the
54 division by tendering, within thirty days from the date upon
55 which the commissioner notifies the employer in writing that
56 the application has been approved, payment in full for that
57 portion of the balance which consists of unpaid premium taxes
58 that are attributable to the quarter ended on the thirty-first day
59 of December, one thousand nine hundred ninety-eight, or
60 quarters ended before that date: *Provided*, That in the alterna-
61 tive, an employer which is remitting payments to the division
62 pursuant to the terms of an agreement entered into prior to the
63 effective date of this section may apply to the commissioner in
64 accordance with subsection (a) of this section to discharge the
65 balance of its indebtedness to the division by fulfilling the
66 terms of a written agreement with the division to pay, within
67 three hundred sixty-five days from the date upon which the
68 agreement is executed, all past-due premium taxes in monthly
69 installments which shall include interest on such past-due
70 premium taxes calculated at an annual percentage rate of nine
71 percent.

72 (d) An employer with which the commissioner is, as of the
73 effective date of this section, engaged in litigation concerning
74 the extent to which that employer is liable to the division for
75 past-due premium taxes, accrued interest and penalties may in
76 settlement: (1) Tender payment in full for the past-due premium
77 taxes; or (2) fulfill the terms of a written agreement with the
78 division to pay, within three hundred sixty-five days from the
79 date that the agreement is executed, all past-due premium taxes
80 in monthly installments which shall include interest on such
81 past-due premium taxes calculated at an annual percentage rate
82 of nine percent.

83 (e) An employer shall be reinstated to good standing as of
84 the date that the employer tenders payment in full for all past-
85 due premium taxes. An employer who enters into a written
86 agreement with the division to pay past-due premium taxes in
87 monthly installments shall be reinstated to good standing as of
88 the date on which the agreement is executed: *Provided*, That the
89 failure of the employer to make scheduled payments in accor-

90 dance with a repayment agreement entered into under this
91 section may at the discretion of the commissioner cause the
92 repayment agreement to be voided and the employer shall be
93 denied the benefits and protections of this chapter effective
94 from the date of the employer's initial default. In addition, the
95 employer shall be subject to all remedies available to the
96 division pursuant to the provisions of this chapter.

§23-2-5d. Uncollectible receivables; write-offs.

1 Notwithstanding any other provision to the contrary, the
2 division, with the approval of the compensation programs
3 performance council, may write-off any uncollected receivable
4 due under the provisions of this article which the division and
5 the compensation programs performance council deem to be
6 uncollectible.

§23-2-13. Interest on past-due payments; reinstatement agreements.

1 Effective the first day of July, one thousand nine hundred
2 ninety-nine, payments unpaid on the date on which due and
3 payable shall immediately begin bearing interest as specified
4 hereinafter. The interest rate per annum for each fiscal year
5 shall be calculated as the greater of the division's current
6 discount rate or the prime rate plus four percent, each rounded
7 to the nearest whole percent. The discount rate shall be deter-
8 mined by the compensation programs performance council on
9 an annual basis. The prime rate shall be the rate published in the
10 *Wall Street Journal* on the last business day of the division's
11 prior fiscal year reflecting the base rate on corporate loans
12 posted by at least seventy-five percent of the nation's thirty
13 largest banks. This same rate of interest shall be applicable to
14 all reinstatement agreements entered into by the commissioner
15 pursuant to section five of this article on and after the effective
16 date of this section: *Provided*, That if an employer enters into
17 a subsequent reinstatement agreement within seven years of the
18 date of the first agreement, the interest rate shall be eighteen
19 percent per annum. Interest shall be compounded quarterly until
20 payment plus accrued interest is received by the commissioner:
21 *Provided, however*, That on and after the date of execution of

22 a reinstatement agreement, for determining future interest on
23 any past-due premium, premium deposit, and past compounded
24 interest thereon, any reinstatement agreement entered into by
25 the commissioner shall provide for a simple rate of interest,
26 determined in accordance with the provisions of this section
27 which shall not be subject to change during the life of the
28 reinstatement agreement for such future interest. Interest
29 collected pursuant to this section shall be paid into the workers'
30 compensation fund: *Provided further*, That in no event shall the
31 rate of interest charged a political subdivision of the state or a
32 volunteer fire department pursuant to this section exceed ten
33 percent per annum.

§23-2-14. Sale or transfer of business; attachment of lien for premium, etc., payments due; criminal penalties for failure to pay; creation and avoidance or elimination of lien; enforcement of lien; successor liability.

1 (a) If any employer shall sell or otherwise transfer substan-
2 tially all of the employer's assets, so as to give up substantially
3 all of the employer's capacity and ability to continue in the
4 business in which the employer has previously engaged, then:

5 (1) Such employer's premium taxes, premium deposits,
6 interest and other payments owed to the division shall be due
7 and owing to the division upon the execution of the agreement
8 of sale or other transfer;

9 (2) Any repayment agreement entered into by the employer
10 with the division pursuant to section five of this article shall
11 terminate upon the execution of the aforesaid agreement of sale
12 or other transfer and all amounts owed to the division but not
13 yet paid shall become due; and

14 (3) Upon execution of an agreement of sale or other
15 transfer, as aforesaid, the division shall continue to have a lien,
16 as provided for in section five-a of this article, against all of the
17 remaining property of the employer as well as all of the sold or
18 transferred assets, which lien shall constitute a personal
19 obligation of the employer.

20 (b) Notwithstanding any provisions of section five-a of this
21 article to the contrary, in the event that a new employer acquires
22 by sale or other transfer or assumes all or substantially all of a
23 predecessor employer's assets, then:

24 (1) Any liens for payments owed to the division for
25 premium taxes, premium deposits, interest or other payments
26 owed to the division by the predecessor employer shall be
27 extended to the successor employer;

28 (2) Any liens held by the division against the predecessor
29 employer's property shall be extended to all of the assets of the
30 successor employer; and

31 (3) Liens acquired in the manner described in subdivisions
32 (1) and (2) of this subsection shall be enforceable by the
33 division to the same extent as provided for the enforcement of
34 liens against the predecessor employer in section five-a of this
35 article.

36 (c) Notwithstanding the provisions of section five-a of this
37 article to the contrary, if any employer as described in subsec-
38 tion (a) of this section shall sell or otherwise transfer a portion
39 of the employer's assets so as to affect the employer's capacity
40 to do business, then:

41 (1) Such employer's premium taxes, premium deposits,
42 interest, and other payments owed to the division shall be due
43 and owing to the division upon the execution of the agreement
44 of sale or other transfer;

45 (2) Any repayment agreement entered into by the employer
46 with the division pursuant to section five of the article shall
47 terminate upon the execution of the aforesaid agreement of sale
48 or other transfer and all amounts owed to the division but not
49 yet paid shall become due; and

50 (3) Upon execution of an agreement of sale or other
51 transfer, as aforesaid, the division shall continue to have a lien,
52 as provided for in section five-a of this article, against all of the
53 remaining property of the employer as well as all the sold or
54 transferred assets, which lien shall constitute a personal
55 obligation of the employer.

56 (d) If an employer subject to subsection (a), (b) or (c) of
57 this section pays to the division, prior to the execution of an
58 agreement of sale or other transfer, a sum sufficient to retire all
59 of the indebtedness that the employer would owe at the time of
60 the execution, then the division shall issue a certificate to the
61 employer stating that the employer's account is in good
62 standing with the division and that the assets may be sold or
63 otherwise transferred without the attachment of the division's
64 lien. An agreement of sale or other transfer may provide for the
65 creation of an escrow account into which the employers shall
66 pay the full amount owed to the division. The subsequent
67 timely payment of that full amount to the division shall operate
68 to place both employers in good standing with the division to
69 the extent of the predecessor employer's liabilities retroactive
70 to the date of sale or other transfer. In the event that the
71 employer would not owe any sum to the division on the
72 aforesaid date of execution, then a certificate shall also be
73 issued to the employer upon the employer's request stating that
74 the employer's account is in good standing with the division
75 and that the assets may be sold or otherwise transferred without
76 the attachment of the division's lien.

77 (e) As used in this article, the term "assets" means all
78 property of whatever type in which the employer has an interest
79 including, but not limited to, good will, business assets,
80 customers, clients, contracts, access to leases such as the right
81 to sublease, assignment of contracts for the sale of products,
82 operations, stock of goods or inventory, accounts receivable,
83 equipment or transfer of substantially all of its employees.

84 (f) The transfer of any assets of the employer shall be
85 presumed to be a transfer of all or substantially all of the assets
86 if the transfer affects the employer's capacity to do business.
87 The presumption can be overcome upon petition presented and
88 an administrative hearing in accordance with section fifteen of
89 this article and in consideration of the factors thereunder.

90 (g) The foregoing provisions are expressly intended to
91 impose upon such successor employers the duty of obtaining
92 from the division or predecessor employer, prior to the date of
93 such acquisition, a valid "certificate of good standing to transfer

94 a business or business assets" to verify that the predecessor
95 employer's account with the division is in good standing.

**§23-2-15. Liabilities of successor employer; waiver of payment by
division; assignment of predecessor employer's
premium rate to successor.**

1 (a) At any time prior to or following the acquisition
2 described in subsection (a), (b) or (c), section fourteen of this
3 article, the buyer or other recipient may file a certified petition
4 with the division requesting that the division waive the payment
5 by the buyer or other recipient of premiums, premium deposits,
6 interest and imposition of the modified rate of premiums
7 attributable to the predecessor employer or other penalty, or any
8 combination thereof. The division shall review the petition by
9 considering the seven factors set forth below:

- 10 (1) The exact nature of the default;
- 11 (2) The amount owed to the division;
- 12 (3) The solvency of the fund;
- 13 (4) The financial condition of the buyer or other recipient;
- 14 (5) The equities exhibited towards the fund by the buyer or
15 other recipient during the acquisition process;
- 16 (6) The potential economic impact upon the state and the
17 specific geographic area in which the buyer or other recipient
18 is to be or is located, if the acquisition were not to occur; and
- 19 (7) Whether the assets are purchased in an arms-length
20 transaction.

21 Unless requested by a party or by the division, no hearing
22 need be held on the petition. However, any decision made by
23 the division on the petition shall be in writing and shall include
24 appropriate findings of fact and conclusions of law. Such
25 decision shall be effective ten days following notice to the
26 public of the decision unless an objection is filed in the manner
27 herein provided. Such notice shall be given by the division's
28 filing with the secretary of state, for publication in the state
29 register, of a notice of the decision. At the time of filing the

30 notice of its decision, the division shall also file with the
31 secretary of state a true copy of the decision. The publication
32 shall include a statement advising that any person objecting to
33 the decision must file, within ten days after publication of the
34 notice, a verified response with the division setting forth the
35 objection and the basis therefor. If any such objection is filed,
36 the division shall hold an administrative hearing, conducted
37 pursuant to article five, chapter twenty-nine-a of this code,
38 within fifteen days of receiving the response unless the buyer
39 or other recipient consents to a later hearing. Nothing in this
40 subsection shall be construed to be applicable to the seller or
41 other transferor or to affect in any way a proceeding under
42 sections five and five-a of this article.

43 (b) In the factual situations set forth in subsection (a), (b)
44 or (c), section fourteen of this article, if the predecessor's
45 modified rate of premium tax, as calculated in accordance with
46 section four of this article, is greater than the manual rate of
47 premium tax, as calculated in accordance with said section, for
48 other employers in the same class or group, then, if the new
49 employer does not already have a modified rate of premium, it
50 shall also assume the predecessor employer's modified rates for
51 the payment of premiums as determined under sections four and
52 five of this article until sufficient time has elapsed for the new
53 employer's experience record to be combined with the experi-
54 ence record of the predecessor employer so as to calculate the
55 new employer's own modified rate of premium tax.

ARTICLE 3. WORKERS' COMPENSATION FUND.

§23-3-4. Deposits and disbursements considered abandoned property; disposition of property.

1 (a) All disbursements from the workers' compensation fund
2 and the other funds created pursuant to this chapter including
3 the advance deposits by employers where there has been no
4 activity for a period of five years, are presumed abandoned and
5 subject to the custody of the state as unclaimed property under
6 the provisions of article eight, chapter thirty-six of this code.
7 The funds shall be kept in a separate account by the state
8 treasurer, apart from other unclaimed property funds. Ninety

9 days after the state treasurer has advertised the accounts and
10 paid any claims, he or she shall remit the balance of those funds
11 held in the account to the credit of the workers' compensation
12 fund or to other affected funds. Such property shall become the
13 property of and owned exclusively by the workers' compensa-
14 tion fund.

15 (b) Notwithstanding any provision of law to the contrary,
16 all interest and other earnings accruing to the investments and
17 deposits of the workers' compensation fund and of the other
18 funds created pursuant to this chapter are credited only to the
19 account of the workers' compensation fund or to such other
20 affected fund.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-6. Classification of and criteria for disability benefits.

§23-4-8a. Occupational pneumoconiosis board--Compensation; term of office;
duties; quorum; remuneration.

§23-4-9. Physical and vocational rehabilitation.

§23-4-10. Classification of death benefits; "dependent" defined.

§23-4-6. Classification of and criteria for disability benefits.

1 Where compensation is due an employee under the provi-
2 sions of this chapter for personal injury, the compensation shall
3 be as provided in the following schedule:

4 (a) The expressions "average weekly wage earnings,
5 wherever earned, of the injured employee, at the date of injury"
6 and "average weekly wage in West Virginia", as used in this
7 chapter, shall have the meaning and shall be computed as set
8 forth in section fourteen of this article except for the purpose of
9 computing temporary total disability benefits for part-time
10 employees pursuant to the provisions of section six-d of this
11 article.

12 (b) If the injury causes temporary total disability, the
13 employee shall receive during the continuance thereof a
14 maximum weekly benefit to be computed on the basis of
15 seventy percent of the average weekly wage earnings, wherever
16 earned, of the injured employee, at the date of injury, not to
17 exceed one hundred percent of the average weekly wage in
18 West Virginia: *Provided*, That in the case of a claimant whose

19 injury occurred prior to the second day of February, one
20 thousand nine hundred ninety-five, the maximum benefit rate
21 shall be the rate applied under the prior enactment of this
22 subsection which was in effect at the time the injury occurred,
23 and the rate shall not be affected by the amendment and
24 reenactment of this section during the regular session of the
25 Legislature in the year one thousand nine hundred ninety-five.
26 The minimum weekly benefits paid hereunder shall not be less
27 than thirty-three and one-third percent of the average weekly
28 wage in West Virginia, except as provided in section six-d and
29 section nine of this article. In no event, however, shall such
30 minimum weekly benefits exceed the level of benefits deter-
31 mined by use of the then applicable federal minimum hourly
32 wage: *Provided, however,* That any claimant receiving perma-
33 nent total disability benefits, permanent partial disability
34 benefits or dependents' benefits prior to the first day of July,
35 one thousand nine hundred ninety-four, shall not have his or her
36 benefits reduced based upon the requirement herein that the
37 minimum weekly benefit shall not exceed the applicable federal
38 minimum hourly wage.

39 (c) Subdivision (b) of this section shall be limited as
40 follows: Aggregate award for a single injury causing temporary
41 disability shall be for a period not exceeding two hundred eight
42 weeks.

43 (d) For all awards of permanent total disability benefits that
44 are made on or after the second day of February, one thousand
45 nine hundred ninety-five, including those claims in which a
46 request for an award was pending before the division or which
47 were in litigation but not yet submitted for a decision, then
48 benefits shall be payable until the claimant attains the age
49 necessary to receive federal old age retirement benefits under
50 the provisions of the Social Security Act, 42 U. S. C. 401 and
51 402, in effect on the effective date of this section. Such a
52 claimant shall be paid benefits so as not to exceed a maximum
53 benefit of sixty-six and two-thirds percent of the claimant's
54 average weekly wage earnings, wherever earned, at the time of
55 the date of injury not to exceed one hundred percent of the
56 average weekly wage in West Virginia. The minimum weekly

57 benefits paid hereunder shall be as is provided for in subdivi-
58 sion (b) of this section. In all claims in which an award for
59 permanent total disability benefits was made prior to the second
60 day of February, one thousand nine hundred ninety-five, such
61 awards shall continue to be paid at the rate in effect prior to the
62 said date, subject to annual adjustments for changes in the
63 average weekly wage in West Virginia: *Provided*, That the
64 provisions of sections one through eight, article four-a of this
65 chapter shall be applied thereafter to all such prior awards that
66 were previously subject to its provisions. A single or aggregate
67 permanent disability of eighty-five percent or more shall entitle
68 the employee to a rebuttable presumption of a permanent total
69 disability for the purpose of paragraph (2), subdivision (n) of
70 this section: *Provided, however*, That the claimant must also be
71 at least forty percent medically impaired upon a whole body
72 basis or has sustained a thirty-five percent statutory disability
73 pursuant to the provisions of subdivision (f) of this section. The
74 presumption may be rebutted if the evidence establishes that the
75 claimant is not permanently and totally disabled pursuant to
76 subdivision (n) of this section. Under no circumstances shall the
77 division grant an additional permanent disability award to a
78 claimant receiving a permanent total disability award: *Provided*
79 *further*, That if any claimant thereafter sustains another
80 compensable injury and has permanent partial disability
81 resulting therefrom, the total permanent disability award benefit
82 rate shall be computed at the highest benefit rate justified by
83 any of the compensable injuries, and the cost of any increase in
84 the permanent total disability benefit rate shall be paid from the
85 second injury reserve created by section one, article three of
86 this chapter.

87 (e)(1) For all awards made on or after the second day of
88 February, one thousand nine hundred ninety-five, if the injury
89 causes permanent disability less than permanent total disability,
90 the percentage of disability to total disability shall be deter-
91 mined and the award computed on the basis of four weeks'
92 compensation for each percent of disability determined, at the
93 maximum or minimum benefit rates provided for in subdivision
94 (d) of this section: *Provided*, That in the case of a claimant
95 whose injury occurred prior to the second day of February, one

96 thousand nine hundred ninety-five, the maximum benefit rate
97 shall be the rate applied under the prior enactment of this
98 section which was in effect at the time the injury occurred, and
99 the rate shall not be affected by the amendment and
100 reenactment of this section during the regular session of the
101 Legislature in the year one thousand nine hundred ninety-five.

102 (2) If a claimant is released by his or her treating physician
103 to return to work at the job he or she held before the occupa-
104 tional injury occurred and if the claimant's preinjury employer
105 does not offer the preinjury job or a comparable job to the
106 employee when such a position is available to be offered, then
107 the award for the percentage of partial disability shall be
108 computed on the basis of six weeks of compensation for each
109 percent of disability.

110 (3) The minimum weekly benefit under this subdivision
111 shall be as provided in subdivision (b) of this section for
112 temporary total disability.

113 (f) If the injury results in the total loss by severance of any
114 of the members named in this subdivision, the percentage of
115 disability shall be determined by the percentage of disability,
116 specified in the following table:

117 The loss of a great toe shall be considered a ten percent
118 disability.

119 The loss of a great toe (one phalanx) shall be considered a
120 five percent disability.

121 The loss of other toes shall be considered a four percent
122 disability.

123 The loss of other toes (one phalanx) shall be considered a
124 two percent disability.

125 The loss of all toes shall be considered a twenty-five
126 percent disability.

127 The loss of forepart of foot shall be considered a thirty
128 percent disability.

129 The loss of a foot shall be considered a thirty-five percent
130 disability.

131 The loss of a leg shall be considered a forty-five percent
132 disability.

133 The loss of thigh shall be considered a fifty percent
134 disability.

135 The loss of thigh at hip joint shall be considered a sixty
136 percent disability.

137 The loss of a little or fourth finger (one phalanx) shall be
138 considered a three percent disability.

139 The loss of a little or fourth finger shall be considered a five
140 percent disability.

141 The loss of ring or third finger (one phalanx) shall be
142 considered a three percent disability.

143 The loss of ring or third finger shall be considered a five
144 percent disability.

145 The loss of middle or second finger (one phalanx) shall be
146 considered a three percent disability.

147 The loss of middle or second finger shall be considered a
148 seven percent disability.

149 The loss of index or first finger (one phalanx) shall be
150 considered a six percent disability.

151 The loss of index or first finger shall be considered a ten
152 percent disability.

153 The loss of thumb (one phalanx) shall be considered a
154 twelve percent disability.

155 The loss of thumb shall be considered a twenty percent
156 disability.

157 The loss of thumb and index finger shall be considered a
158 thirty-two percent disability.

159 The loss of index and middle finger shall be considered a
160 twenty percent disability.

161 The loss of middle and ring finger shall be considered a
162 fifteen percent disability.

163 The loss of ring and little finger shall be considered a ten
164 percent disability.

165 The loss of thumb, index and middle finger shall be
166 considered a forty percent disability.

167 The loss of index, middle and ring finger shall be consid-
168 ered a thirty percent disability.

169 The loss of middle, ring and little finger shall be considered
170 a twenty percent disability.

171 The loss of four fingers shall be considered a thirty-two
172 percent disability.

173 The loss of hand shall be considered a fifty percent disabil-
174 ity.

175 The loss of forearm shall be considered a fifty-five percent
176 disability.

177 The loss of arm shall be considered a sixty percent disabil-
178 ity.

179 The total and irrecoverable loss of the sight of one eye shall
180 be considered a thirty-three percent disability. For the partial
181 loss of vision in one, or both eyes, the percentages of disability
182 shall be determined by the division, using as a basis the total
183 loss of one eye.

184 The total and irrecoverable loss of the hearing of one ear
185 shall be considered a twenty-two and one-half percent disabil-
186 ity. The total and irrecoverable loss of hearing of both ears shall
187 be considered a fifty-five percent disability.

188 For the partial loss of hearing in one, or both ears, the
189 percentage of disability shall be determined by the division,
190 using as a basis the total loss of hearing in both ears.

191 Should a claimant sustain a compensable injury which
192 results in the total loss by severance of any of the bodily
193 members named in this subdivision, die from sickness or

194 noncompensable injury before the division makes the proper
195 award for such injury, the division shall make such award to
196 claimant's dependents as defined in this chapter, if any; such
197 payment to be made in the same installments that would have
198 been paid to claimant if living: *Provided*, That no payment shall
199 be made to any surviving spouse of such claimant after his or
200 her remarriage, and that this liability shall not accrue to the
201 estate of such claimant and shall not be subject to any debts of,
202 or charges against, such estate.

203 (g) Should a claimant to whom has been made a permanent
204 partial award die from sickness or noncompensable injury, the
205 unpaid balance of such award shall be paid to claimant's
206 dependents as defined in this chapter, if any; such payment to
207 be made in the same installments that would have been paid to
208 claimant if living: *Provided*, That no payment shall be made to
209 any surviving spouse of such claimant after his or her remar-
210 riage, and that this liability shall not accrue to the estate of such
211 claimant and shall not be subject to any debts of, or charges
212 against, such estate.

213 (h) For the purposes of this chapter, a finding of the
214 occupational pneumoconiosis board shall have the force and
215 effect of an award.

216 (i) For the purposes of this chapter, with the exception of
217 those injuries provided for in subdivision (f) of this section and
218 in section six-b of this article, the degree of permanent disabili-
219 ty other than permanent total disability shall be determined
220 exclusively by the degree of whole body medical impairment
221 that a claimant has suffered. For those injuries provided for in
222 subdivision (f) of this section and section six-b of this article,
223 the degree of disability shall be determined exclusively by the
224 provisions of said subdivision and said section. The occupa-
225 tional pneumoconiosis board created pursuant to section eight-a
226 of this article shall premise its decisions on the degree of
227 pulmonary function impairment that claimants suffer solely
228 upon whole body medical impairment. The workers' compensa-
229 tion division shall adopt standards for the evaluation of claim-
230 ants and the determination of a claimant's degree of whole body
231 medical impairment. Once the degree of medical impairment

232 has been determined, that degree of impairment shall be the
233 degree of permanent partial disability that shall be awarded to
234 the claimant. This subdivision shall be applicable to all injuries
235 incurred and diseases with a date of last exposure on or after the
236 second day of February, one thousand nine hundred ninety-five,
237 to all applications for an award of permanent partial disability
238 made on and after such date, and to all applications for an
239 award of permanent partial disability that were pending before
240 the division or pending in litigation but not yet submitted for
241 decision on and after such date. The prior provisions of this
242 subdivision shall remain in effect for all other claims.

243 (j) From a list of names of seven persons submitted to the
244 commissioner by the health care advisory panel, the commis-
245 sioner shall appoint an interdisciplinary examining board
246 consisting of five members to evaluate claimants, including by
247 examination if the board so elects. The board shall be composed
248 of three qualified physicians with specialties and expertise
249 qualifying them to evaluate medical impairment and two
250 vocational rehabilitation specialists who are qualified to
251 evaluate the ability of a claimant to perform gainful employ-
252 ment with or without retraining. One member of the board shall
253 be designated annually as chairperson by the commissioner.
254 The term of office of each member of the board shall be six
255 years and until his or her successor has been appointed and has
256 qualified: *Provided*, That two of the persons initially appointed
257 shall serve a term of six years, two of the remaining persons
258 shall serve a term of four years and the remaining member shall
259 serve a term of two years. Any member of the board may be
260 appointed to any number of terms. Any two physician members
261 and one vocational rehabilitation specialist member shall
262 constitute a quorum for the transaction of business. The
263 commissioner, from time to time, shall fix the compensation to
264 be paid to each member of the board, and the members shall
265 also be entitled to reasonable and necessary traveling and other
266 expenses incurred while actually engaged in the performance of
267 their duties. The board shall perform the duties and responsibil-
268 ities as assigned by the provisions of this chapter, consistent
269 with the administrative policies developed by the commissioner

270 with the assistance of the compensation programs performance
271 council.

272 (1) Prior to the referral of any issue to the interdisciplinary
273 examining board, the division shall conduct such examinations
274 of the claimant as it finds necessary and obtain all pertinent
275 records concerning the claimant's medical history and reports
276 of examinations and forward them to the board at the time of
277 the referral. The division shall provide adequate notice to the
278 employer of the filing of the request for a permanent total
279 disability award and the employer shall be granted an appropri-
280 ate period in which to respond to the request. The claimant and
281 the employer may furnish all pertinent information to the board
282 and shall furnish to the board any information requested by the
283 board. The claimant and the employer may each submit no
284 more than one report and opinion regarding each issue present
285 in a given claim. The employer shall be entitled to have the
286 claimant examined by medical specialists and vocational
287 rehabilitation specialists: *Provided*, That the employer is
288 entitled to only one such examination on each issue present in
289 a given claim. Any additional examinations must be approved
290 by the division and shall be granted only upon a showing of
291 good cause. The reports from all employer-conducted examina-
292 tions must be filed with the board and served upon the claimant.
293 The board may request that those persons who have furnished
294 reports and opinions regarding a claimant provide it with such
295 additional information as the board may deem necessary. Both
296 the claimant and the employer, as well as the division, may
297 submit reports from experts challenging or supporting the other
298 reports in the record regardless of whether or not such an expert
299 examined the claimant or relied solely upon the evidence of
300 record.

301 (2) If the board or a quorum thereof elects to examine a
302 claimant, the individual members shall conduct such examina-
303 tions as are pertinent to each of their specialties. If a claim
304 presents an issue beyond the expertise of the board, the board
305 may obtain advice or evaluations by other specialists. In
306 addition, if the compensation programs performance council
307 determines that the number of applications pending before the

308 board has exceeded the level at which the board can review and
309 make recommendations within a reasonable time, then the
310 council may authorize the commissioner to appoint such
311 additional members to the board as may be necessary to reduce
312 the backlog of applications. Such additional members shall be
313 recommended by the health care advisory panel and the
314 commissioner may make such appointments as he or she
315 chooses from the recommendations. The additional board
316 members shall not serve a set term but shall serve until the
317 council determines that the number of pending applications has
318 been reduced to an acceptable level.

319 (3) Referrals to the board shall be limited to matters related
320 to the determination of permanent total disability under the
321 provisions of subdivision (n) of this section and to questions
322 related to medical cost containment, utilization review deci-
323 sions and managed care decisions arising under section three of
324 this article.

325 (4) In the event the board members elect to examine a
326 claimant, the board shall prepare a report stating the tests,
327 examinations, procedures and other observations that were
328 made, the manner in which each was conducted, and the results
329 of each. The report shall state the findings made by the board
330 and the reasons therefor. Copies of the reports of all such
331 examinations shall be served upon the parties and the division
332 and each shall be given an opportunity to respond in writing to
333 the findings and conclusions stated in the reports.

334 (5) The board shall state its initial recommendations to the
335 division in writing with an explanation for each such recom-
336 mendation setting forth the reasons for each. The recommenda-
337 tions shall be served upon the parties and the division and each
338 shall be afforded a thirty-day opportunity to respond in writing
339 to the board regarding the board's recommendations. The board
340 shall then review any such responses and issue its final recom-
341 mendations. The final recommendations shall then be effectua-
342 ted by the entry of an appropriate order by the division.

343 (6) Except as noted below, objections pursuant to section
344 one, article five of this chapter to any such order shall be

345 limited in scope to matters within the record developed before
346 the workers' compensation division and the board and shall
347 further be limited to the issue of whether the board properly
348 applied the standards for determining medical impairment, if
349 applicable, and the issue of whether the board's findings are
350 clearly wrong in view of the reliable, probative and substantial
351 evidence on the whole record. Should either party contend that
352 the claimant's condition has changed significantly since the
353 review conducted by the board, the party may file a motion with
354 the administrative law judge, together with a report supporting
355 that assertion. Upon the filing of such motion, the administra-
356 tive law judge shall cause a copy of the report to be sent to the
357 examining board asking the board to review the report and
358 provide such comments as the board chooses within sixty days
359 of the board's receipt of the report. The board may then either
360 supply such comments or, at the board's discretion, request that
361 the claim be remanded to the board for further review by the
362 board. If remanded, the claimant is not required to submit to
363 further examination by the employer's medical specialists or
364 vocational rehabilitation specialists. Following any such
365 remand, the board shall file its recommendations with the
366 administrative law judge for his or her review. If the board
367 elects to respond with comments, such comments shall be filed
368 with the administrative law judge for his or her review. Follow-
369 ing the receipt of either the board's recommendations or
370 comment, the administrative law judge shall then issue a
371 written decision ruling upon the asserted change in the claim-
372 ant's condition. No additional evidence may be introduced
373 during the review of the objection before the office of judges or
374 elsewhere on appeal: *Provided*, That each party and the division
375 may submit one written opinion on each issue pertinent to a
376 given claim based upon a review of the evidence of record
377 either challenging or defending the board's findings and
378 conclusions. Thereafter, based upon the evidence then of
379 record, the administrative law judge shall issue a written
380 decision containing his or her findings of fact and conclusions
381 of law regarding each issue involved in the objection.

382 (k) Compensation payable under any subdivision of this
383 section shall not exceed the maximum nor be less than the
384 weekly benefits specified in subdivision (b) of this section.

385 (1) Except as otherwise specifically provided in this
386 chapter, temporary total disability benefits payable under
387 subdivision (b) of this section shall not be deductible from
388 permanent partial disability awards payable under subdivision
389 (e) or (f) of this section. Compensation, either temporary total
390 or permanent partial, under this section shall be payable only to
391 the injured employee and the right thereto shall not vest in his
392 or her estate, except that any unpaid compensation which would
393 have been paid or payable to the employee up to the time of his
394 or her death, if he or she had lived, shall be paid to the depend-
395 ents of such injured employee if there be such dependents at the
396 time of death.

397 (m) The following permanent disabilities shall be conclu-
398 sively presumed to be total in character:

399 Loss of both eyes or the sight thereof.

400 Loss of both hands or the use thereof.

401 Loss of both feet or the use thereof.

402 Loss of one hand and one foot or the use thereof.

403 (n) (1) Other than for those injuries specified in subdivision
404 (m) of this section, in order to be eligible to apply for an award
405 of permanent total disability benefits for all injuries incurred
406 and all diseases, including occupational pneumoconiosis, with
407 a date of last exposure on and after the second day of February,
408 one thousand nine hundred ninety-five, and for all requests for
409 such an award pending before the division on and after the
410 second day of February, one thousand nine hundred ninety-five,
411 a claimant must have been awarded the sum of forty percent in
412 prior permanent partial disability awards, have suffered an
413 occupational injury or disease which results in a finding that the
414 claimant has suffered a medical impairment of forty percent or
415 has sustained a thirty-five percent statutory disability pursuant
416 to the provisions of subdivision (f) of this section. Upon filing

417 such an application, the claim will be reevaluated by the
418 examining board pursuant to subdivision (i) of this section to
419 determine if he or she has suffered a whole body medical
420 impairment of forty percent or more resulting from either a
421 single occupational injury or occupational disease or a combi-
422 nation of occupational injuries and occupational diseases or has
423 sustained a thirty-five percent statutory disability pursuant to
424 the provisions of subdivision (f) of this section. A claimant
425 whose prior permanent partial disability awards total eighty-
426 five percent or more shall also be examined by the board and
427 must be found to have suffered a whole body medical impair-
428 ment of forty percent in order for his or her request to be
429 eligible for further review. The examining board shall review
430 the claim as provided for in subdivision (j) of this section. If the
431 claimant has not suffered whole body medical impairment of at
432 least forty percent or has sustained a thirty-five percent statu-
433 tory disability pursuant to the provisions of subdivision (f) of
434 this section, then the request shall be denied. Upon a finding
435 that the claimant does have a forty percent whole body medical
436 impairment or has sustained a thirty-five percent statutory
437 disability pursuant to the provisions of subdivision (f) of this
438 section, then the review of the application shall continue as
439 provided for in the following paragraph of this subdivision.
440 Those claimants whose prior permanent partial disability
441 awards total eighty-five percent or more and who have been
442 found to have a whole body medical impairment of at least
443 forty percent or have sustained a thirty-five percent statutory
444 disability pursuant to the provisions of subdivision (f) of this
445 section shall then be entitled to the rebuttable presumption
446 created pursuant to subdivision (d) for the remaining issues in
447 the request. For the purposes of determining whether the
448 claimant should be awarded permanent total disability benefits
449 under the second injury provisions of subsection (d), section
450 one, article three of this chapter, only a combination of occupa-
451 tional injuries and occupational diseases, including occupa-
452 tional pneumoconiosis, shall be considered.

453 (2) A disability which renders the injured employee unable
454 to engage in substantial gainful activity requiring skills or

455 abilities comparable to those of any gainful activity in which he
456 or she has previously engaged with some regularity and over a
457 substantial period of time shall be considered in determining the
458 issue of total disability. In addition, the vocational standards
459 adopted pursuant to subsection (m), section seven, article three,
460 chapter twenty-one-a of this code shall be considered once they
461 are effective.

462 (3) In the event that a claimant, who has been found to have
463 at least a forty percent whole body medical impairment or has
464 sustained a thirty-five percent statutory disability pursuant to
465 the provisions of subdivision (f) of this section, is denied an
466 award of permanent total disability benefits pursuant to this
467 subdivision and then accepts and continues to work at a lesser
468 paying job than he or she previously held, then such a claimant
469 shall be eligible, notwithstanding the provisions of section nine
470 of this article, to receive temporary partial rehabilitation
471 benefits for a period of four years. Such benefits shall be paid
472 at the level necessary to ensure the claimant's receipt of the
473 following percentages of the average weekly wage earnings of
474 the claimant at the time of injury calculated as provided in this
475 section and sections six-d and fourteen of this article:

476 (A) Eighty percent for the first year;

477 (B) Seventy percent for the second year;

478 (C) Sixty percent for the third year; and

479 (D) Fifty percent for the fourth year: *Provided*, That in no
480 event shall such benefits exceed one hundred percent of the
481 average weekly wage in West Virginia. In no event shall such
482 benefits be subject to the minimum benefit amounts required by
483 the provisions of subdivision (b) of this section.

484 (4) It is the intent of the Legislature that the amendments to
485 this section enacted during the regular session of the Legislature
486 in the year one thousand nine hundred ninety-nine which
487 change criteria for an award of permanent total disability
488 benefits be applied retroactively to all injuries incurred and all
489 occupational diseases, including occupational pneumoconiosis,
490 with a date of last exposure on and after the second day of

491 February, one thousand nine hundred ninety-five, and for all
492 requests for such an award pending before the division on and
493 after the second day of February, one thousand nine hundred
494 ninety-five: *Provided*, That any claimant whose application for
495 permanent total disability benefits was rejected on or after the
496 second day of February, one thousand nine hundred ninety-five,
497 based on a finding that the claimant: (1) Was not awarded the
498 sum of fifty percent in prior permanent partial disability
499 awards; or (2) did not suffer an occupational injury or occupa-
500 tional disease which resulted in a finding that the claimant has
501 suffered a medical impairment of fifty percent; or (3) did not
502 suffer whole body medical impairment of at least fifty percent,
503 then such claimant may, during the period beginning on the first
504 day of July, one thousand nine hundred ninety-nine, and ending
505 on the thirtieth day of September, one thousand nine hundred
506 ninety-nine, file with the division a petition for reconsideration
507 of the denial of permanent total disability benefits. After review
508 of the petition by the division and the examining board, the
509 division shall enter an appropriate order on the claimant's
510 petition for reconsideration.

**§23-4-8a. Occupational pneumoconiosis board — Composition;
term of office; duties; quorum; remuneration.**

1 The occupational pneumoconiosis board shall consist of
2 five licensed physicians, who shall be appointed by the com-
3 missioner. No person shall be appointed as a member of the
4 board, or as a consultant thereto, who has not by special study
5 or experience, or both, acquired special knowledge of pulmo-
6 nary diseases. All members of the occupational pneumoconiosis
7 board shall be physicians of good professional standing,
8 admitted to practice medicine and surgery in this state, and two
9 of them shall be roentgenologists. One of the board shall be
10 designated annually as chairman by the commissioner. The
11 term of office of each member of the board shall be six years.
12 The five members of the existing board in office on the
13 effective date of this section shall continue to serve until their
14 terms expire and until their successors have been appointed and
15 have qualified. Any member of the board may be appointed to
16 any number of terms. The function of the board is to determine

17 all medical questions relating to cases of compensation for
18 occupational pneumoconiosis under the direction and supervi-
19 sion of the commissioner. Any three members of the board
20 constitute a quorum for the transaction of its business, if at least
21 one of the members present is a roentgenologist. The commis-
22 sioner shall from time to time fix the compensation to be paid
23 each member of the board, and members are also entitled to
24 reasonable and necessary traveling and other expenses incurred
25 while actually engaged in the performance of their duties. In
26 fixing the compensation of board members, the commissioner
27 shall take into consideration the number of claimants a member
28 of the board actually examines, the actual time spent by
29 members in discharging their duties and the recommendation of
30 the compensation programs performance council as to reason-
31 able reimbursement per unit of time expended based on
32 comparative data for physicians within the state in the same
33 medical specialties.

§23-4-9. Physical and vocational rehabilitation.

1 (a) The Legislature hereby finds that it is a goal of the
2 workers' compensation program to assist workers to return to
3 suitable gainful employment after an injury. In order to encour-
4 age workers to return to employment and to encourage and
5 assist employers in providing suitable employment to injured
6 employees, it shall be a priority of the commissioner to achieve
7 early identification of individuals likely to need rehabilitation
8 services and to assess the rehabilitation needs of these injured
9 employees. It shall be the goal of rehabilitation to return injured
10 workers to employment which shall be comparable in work and
11 pay to that which the individual performed prior to the injury.
12 If a return to comparable work is not possible, the goal of
13 rehabilitation shall be to return the individual to alternative
14 suitable employment, using all possible alternatives of job
15 modification, restructuring, reassignment and training, so that
16 the individual will return to productivity with his or her
17 employer or, if necessary, with another employer. The Legisla-
18 ture further finds that it is the shared responsibility of the
19 employer, the employee, the physician and the commissioner to

20 cooperate in the development of a rehabilitation process
21 designed to promote reemployment for the injured employee.

22 (b) In cases where an employee has sustained a permanent
23 disability, or has sustained an injury likely to result in tempo-
24 rary disability in excess of one hundred twenty days, and such
25 fact has been determined by the commissioner, the commis-
26 sioner shall at the earliest possible time determine whether the
27 employee would be assisted in returning to remunerative
28 employment with the provision of rehabilitation services and if
29 the commissioner determines that the employee can be physi-
30 cally and vocationally rehabilitated and returned to remunera-
31 tive employment by the provision of rehabilitation services
32 including, but not limited to, vocational or on-the-job training,
33 counseling, assistance in obtaining appropriate temporary or
34 permanent work site, work duties or work hours modification,
35 by the provision of crutches, artificial limbs, or other approved
36 mechanical appliances, or medicines, medical, surgical, dental
37 or hospital treatment, the commissioner shall forthwith develop
38 a rehabilitation plan for the employee and, after due notice to
39 the employer, expend such an amount as may be necessary for
40 the aforesaid purposes: *Provided*, That such expenditure for
41 vocational rehabilitation shall not exceed ten thousand dollars
42 for any one injured employee: *Provided, however*, That no
43 payment shall be made for such vocational rehabilitation
44 purposes as provided in this section unless authorized by the
45 commissioner prior to the rendering of such physical or
46 vocational rehabilitation, except that payments shall be made
47 for reasonable medical expenses without prior authorization if
48 sufficient evidence exists which would relate the treatment to
49 the injury and the attending physician or physicians have
50 requested authorization prior to the rendering of such treatment:
51 *Provided further*, That payment for physical rehabilitation,
52 including the purchase of prosthetic devices and other equip-
53 ment and training in use of such devices and equipment, shall
54 be considered expenses within the meaning of section three of
55 this article and shall be subject to the provisions of sections
56 three, three-a, three-b and three-c of this article. The provision
57 of any rehabilitation services shall be pursuant to a rehabilita-

58 tion plan to be developed and monitored by a rehabilitation
59 professional for each injured employee.

60 (c) In every case in which the commissioner shall order
61 physical or vocational rehabilitation of a claimant as provided
62 herein, the claimant shall, during the time he or she is receiving
63 any vocational rehabilitation or rehabilitative treatment that
64 renders him or her totally disabled during the period thereof, be
65 compensated on a temporary total disability basis for such
66 period.

67 (d) In every case in which the claimant returns to gainful
68 employment as part of a rehabilitation plan, and the employee's
69 average weekly wage earnings are less than the average weekly
70 wage earnings earned by the injured employee at the time of the
71 injury, he or she shall receive temporary partial rehabilitation
72 benefits calculated as follows: The temporary partial rehabilita-
73 tion benefit shall be seventy percent of the difference between
74 the average weekly wage earnings earned at the time of the
75 injury and the average weekly wage earnings earned at the new
76 employment, both to be calculated as provided in sections six,
77 six-d and fourteen of this article as such calculation is per-
78 formed for temporary total disability benefits, subject to the
79 following limitations: In no event shall such benefits be subject
80 to the minimum benefit amounts required by the provisions of
81 subdivision (b), section six of this article, nor shall such
82 benefits exceed the temporary total disability benefits to which
83 the injured employee would be entitled pursuant to sections six,
84 six-d and fourteen of this article during any period of temporary
85 total disability resulting from the injury in the claim: *Provided,*
86 That no temporary total disability benefits shall be paid for any
87 period for which temporary partial rehabilitation benefits are
88 paid. The amount of temporary partial rehabilitation benefits
89 payable under this subsection shall be reviewed every ninety
90 days to determine whether the injured employee's average
91 weekly wage in the new employment has changed and, if such
92 change has occurred, the amount of benefits payable hereunder
93 shall be adjusted prospectively. Temporary partial rehabilitation
94 benefits shall only be payable when the injured employee is

95 receiving vocational rehabilitation services in accordance with
96 a rehabilitation plan developed under this section.

97 (e) The commissioner shall promulgate rules for the
98 purpose of developing a comprehensive rehabilitation program
99 which will assist injured workers to return to suitable gainful
100 employment after an injury in a manner consistent with the
101 provisions and findings of this section. Such rules shall provide
102 definitions for rehabilitation facilities and rehabilitation
103 services pursuant to this section.

104 (f) The reenactment of the provisions of this section during
105 the regular session of the Legislature in the year one thousand
106 nine hundred ninety-nine is for the purpose of reestablishing the
107 rehabilitation program heretofore created by virtue of the
108 provisions of this section and the rules promulgated pursuant
109 thereto for all injured employees who sustained injuries on or
110 after the first day of July, one thousand nine hundred ninety-
111 eight. To this end, the performance council is directed to
112 reenact the rules promulgated under the prior enactment of this
113 section within fifteen days of the effective date hereof and the
114 commissioner shall promulgate any revisions to the rules for
115 review by the performance council on or before the first day of
116 July, one thousand nine hundred ninety-nine.

§23-4-10. Classification of death benefits; "dependent" defined.

1 In case a personal injury, other than occupational pneumo-
2 coniosis or other occupational disease, suffered by an employee
3 in the course of and resulting from his or her employment,
4 causes death, and disability is continuous from date of such
5 injury until date of death, or if death results from occupational
6 pneumoconiosis or from any other occupational disease, the
7 benefits shall be in the amounts and to the persons as follows:

8 (a) If there be no dependents, the disbursements shall be
9 limited to the expense provided for in sections three and four of
10 this article.

11 (b) If there be dependents as defined in subdivision (d) of
12 this section, such dependents shall be paid for as long as their

13 dependency shall continue in the same amount as was paid or
14 would have been paid the deceased employee for total disability
15 had he or she lived. The order of preference of payment and
16 length of dependence shall be as follows:

17 (1) A dependent widow or widower until death or remar-
18 riage of such widow or widower, and any child or children
19 dependent upon the decedent until each such child shall reach
20 eighteen years of age or where such child after reaching
21 eighteen years of age continues as a full-time student in an
22 accredited high school, college, university, business or trade
23 school, until such child reaches the age of twenty-five years or
24 if an invalid child to continue as long as such child remains an
25 invalid. All such persons shall be jointly entitled to the amount
26 of benefits payable as a result of employee's death.

27 (2) A wholly dependent father or mother until death.

28 (3) Any other wholly dependent person for a period of six
29 years after the death of the deceased employee.

30 (c) If the deceased employee leaves no wholly dependent
31 person, but there are partially dependent persons at the time of
32 death, the payment shall be fifty dollars a month, to continue
33 for such portion of the period of six years after the death, as the
34 division may determine, but no such partially dependent person
35 shall receive compensation payments as a result of the death of
36 more than one employee.

37 Compensation under subdivisions (b) and (c) hereof shall,
38 except as may be specifically provided to the contrary therein,
39 cease upon the death of the dependent, and the right thereto
40 shall not vest in his or her estate.

41 (d) "Dependent", as used in this chapter, shall mean a
42 widow, widower, child under eighteen years of age, or under
43 twenty-five years of age when a full-time student as provided
44 herein, invalid child or posthumous child, who, at the time of
45 the injury causing death, is dependent, in whole or part, for his
46 or her support upon the earnings of the employee, stepchild
47 under eighteen years of age, or under twenty-five years of age
48 when a full-time student as provided herein, child under

49 eighteen years of age legally adopted prior to the injury causing
50 death, or under twenty-five years of age when a full-time
51 student as provided herein, father, mother, grandfather or
52 grandmother, who at the time of the injury causing death, is
53 dependent, in whole or in part, for his or her support upon the
54 earnings of the employee; and invalid brother or sister wholly
55 dependent for his or her support upon the earnings of the
56 employee at the time of the injury causing death.

57 (e) If a person receiving permanent total disability benefits
58 dies from a cause other than a disabling injury leaving any
59 dependents as defined in subdivision (d) of this section, an
60 award shall be made to such dependents in an amount equal to
61 one hundred four times the weekly benefit the worker was
62 receiving at the time of his or her death and be paid either as a
63 lump sum or in periodic payments, at the option of the depend-
64 ent or dependents. Direct premium rating experience charges
65 for the payment of such benefits granted as a result of a second
66 injury award of permanent total disability shall not be made to
67 the employee's employer. It is the intent of the Legislature that
68 the amendments to this subsection enacted during the regular
69 session of the Legislature in the year one thousand nine hundred
70 ninety-nine be construed so as to make dependents eligible for
71 benefits under this subsection retroactive to the second day of
72 February, one thousand nine hundred ninety-five.

ARTICLE 5. REVIEW.

§23-5-7. Compromise and settlement.

§23-5-9. Hearings on objections to division decisions by office of judges.

§23-5-7. Compromise and settlement.

1 With the exception of medical benefits, the claimant, the
2 employer and the workers' compensation division, may
3 negotiate a final settlement of any and all issues in a claim
4 wherever the claim may then be in the review or appellate
5 processes. Upon entering into an agreement, the parties shall
6 file the written and executed agreement with the office of
7 judges. The office of judges shall review the proposed agree-
8 ment to determine if it is fair and reasonable to the parties and
9 shall ensure that each of the parties are fully aware of the

10 effects of the agreement including what each party is conceding
11 in exchange for the agreement. If the office of judges concludes
12 that the agreement is not fair or is not reasonable or that one of
13 the parties is not fully informed, then the agreement will not be
14 approved, which decision shall not be reviewable. If the
15 employer is not active in the claim, then the division may
16 negotiate a final settlement of any and all issues in a claim
17 except for medical benefits with the claimant. Upon approval
18 of the settlement, it shall be made a part of the claim record and
19 the office of judges shall send written notice of the settlement
20 to all parties and, where appropriate, to the appeal board or the
21 supreme court of appeals. Except in cases of fraud, no issue that
22 is the subject of an approved settlement agreement may be
23 reopened by any party, including the division. Any settlement
24 agreement may provide for a lump sum payment or a structured
25 payment plan, or any combination thereof, or such other basis
26 as the parties may agree. If such self-insured employer later
27 fails to make the agreed upon payment, the division shall
28 assume the obligation to make the payments and shall be
29 entitled to recover the amounts paid or to be paid from the self-
30 insured employer and its sureties or guarantors or both as
31 provided for in sections five and five-a, article two of this
32 chapter.

33 The amendments to this section enacted during the regular
34 session of the Legislature in the year one thousand nine hundred
35 ninety-nine shall apply to all settlement agreements executed
36 after such effective date.

**§23-5-9. Hearings on objections to division decisions by office of
judges.**

1 (a) Objections to a workers' compensation division decision
2 made pursuant to the provisions of section one of this article
3 shall be filed with the office of judges. Upon receipt of an
4 objection, the office of judges shall notify the division and all
5 other parties of the filing of the objection. The office of judges
6 shall establish by rule promulgated in accordance with the
7 provisions of subsection (e), section eight of this article an
8 adjudicatory process that enables parties to present evidence in
9 support of their positions and provides an expeditious resolution

10 of the objection. The employer, the claimant and the division
11 shall be notified of any hearing at least ten days in advance.

12 (b) The office of judges shall keep full and complete
13 records of all proceedings concerning a disputed claim. Subject
14 to the rules of practice and procedure promulgated pursuant to
15 section eight of this article, the record upon which the matter
16 shall be decided shall include any evidence submitted by a party
17 to the office of judges, evidence taken at hearings conducted by
18 the office of judges and any documents in the division's claim
19 files which relate to the matter objected to. The record may
20 include evidence or documents submitted in electronic form or
21 other appropriate medium in accordance with the rules of
22 practice and procedure referred to herein. The office of judges
23 shall not be bound by the usual common law or statutory rules
24 of evidence.

25 (c) All hearings shall be conducted as determined by the
26 chief administrative law judge pursuant to the rules of practice
27 and procedure promulgated pursuant to section eight of this
28 article. Upon consideration of the entire record, the chief
29 administrative law judge or other authorized adjudicator within
30 the office of judges shall render a decision affirming, reversing
31 or modifying the division's action. Said decision shall contain
32 findings of fact and conclusions of law and shall be mailed to
33 all parties.

34 (d) The rule authorized by subsection (a) of this section
35 shall be promulgated on or before the first day of July, one
36 thousand nine hundred ninety-nine. Until the rule is finally
37 promulgated, the prior provisions of this section as found in
38 chapter two hundred fifty-three of the acts of the Legislature,
39 one thousand nine hundred ninety-five, shall remain in effect.

ARTICLE 6. SEVERABILITY; LEGISLATIVE INTENT; OPERATIVE DATE.

§23-6-2. Legislative intent.

§23-6-3. Operative date for particular enactment.

§23-6-2. Legislative intent.

1 It is the intent of the Legislature in enacting the amend-
2 ments to this chapter during the regular session of the Legisla-

3 ture in the year one thousand nine hundred ninety-nine relating
 4 to employee benefits that the compensation programs perform-
 5 mance council consider employer rate reductions commensurate
 6 with the cost of such employee benefits.

§23-6-3. Operative date for particular enactment.

1 The amendments to this chapter effected by the enactment
 2 of Enrolled Committee Substitute for Senate Bill No. 579
 3 during the regular session of the Legislature, one thousand nine
 4 hundred ninety-nine, become operative on the first day of July,
 5 one thousand nine hundred ninety-nine.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-24e. Omission to subscribe to the workers' compensation fund; failure to file a premium tax report or pay premium taxes; false testimony or statements; failure to file reports; penalties; asset forfeiture; venue.

§61-3-24f. Wrongfully seeking workers' compensation; false testimony or statements; penalties; venue.

§61-3-24g. Workers' compensation health care offenses; fraud; theft or embezzlement; false statements; penalties; notice; prohibition against providing future services; penalties; asset forfeiture; venue.

§61-3-24h. Providing false documentation to workers' compensation; altering documents or certificates from workers' compensation; penalties; venue.

§61-3-24e. Omission to subscribe to the workers' compensation fund; failure to file a premium tax report or pay premium taxes; false testimony or statements; failure to file reports; penalties; asset forfeiture; venue.

1 (1) Failure to subscribe:

2 (A) Responsible person. Any person who individually or as
 3 owner, partner, president, other officer, or manager of a sole
 4 proprietorship, firm, partnership, company, corporation or
 5 association, who, as a person who is responsible for and who is
 6 required by specific assignment, duty or legal duty, which is
 7 either expressed or inherent in laws which require the em-
 8 ployer's principals to be informed and to know the facts and
 9 laws affecting the business organization and to make internal
 10 policy and decisions which ensure that the individual and

11 organization comply with the general laws and provisions of
12 chapter twenty-three of this code, knowingly and willfully fails
13 to subscribe to the workers' compensation fund shall be guilty
14 of a felony and, upon conviction, shall be imprisoned in the
15 penitentiary not less than one nor more than ten years, or in the
16 discretion of the court, be confined in jail not more than one
17 year and shall be fined not more than two thousand five
18 hundred dollars.

19 (B) Any corporation, association or partnership who, as an
20 employer as defined in chapter twenty-three of this code,
21 knowingly and willfully fails to subscribe to the workers'
22 compensation fund shall be guilty of a felony and, upon
23 conviction, shall be fined not less than two thousand five
24 hundred dollars nor more than ten thousand dollars.

25 (2) Failure to pay:

26 (A) Any person who individually or as owner, partner,
27 president, other officer or manager of a sole proprietorship,
28 firm, partnership, company, corporation or association, who, as
29 a responsible person as defined in section twenty-four-e of this
30 article, knowingly and willfully fails to make premium tax
31 payments to the workers' compensation fund as required by
32 chapter twenty-three of this code, shall be guilty of the larceny
33 of the premium owed and, if the amount is one thousand dollars
34 or more, such person shall be guilty of a felony and, upon
35 conviction thereof, shall be imprisoned in the penitentiary not
36 less than one nor more than ten years or, in the discretion of the
37 court, be confined in jail not more than one year and shall be
38 fined not more than two thousand five hundred dollars. If the
39 amount is less than one thousand dollars, such person shall be
40 guilty of a misdemeanor and, upon conviction thereof, shall be
41 confined in jail for a term not to exceed one year or fined an
42 amount not to exceed two thousand five hundred dollars, or
43 both, in the discretion of the court.

44 (B) Any corporation, association, company or partnership
45 which, as an employer as defined in chapter twenty-three of this
46 code, knowingly and willfully fails to make premium tax
47 payments to the workers' compensation fund as required by

48 chapter twenty-three of this code shall be guilty of the larceny
49 of the premium owed, and, if the amount is one thousand
50 dollars or more, such corporation, association, company or
51 partnership shall be guilty of a felony and, upon conviction
52 thereof, shall be fined not less than two thousand five hundred
53 dollars nor more than ten thousand dollars. If the amount is less
54 than one thousand dollars, such corporation, association,
55 company or partnership shall be guilty of a misdemeanor and,
56 upon conviction thereof, shall be fined an amount not to exceed
57 two thousand five hundred dollars.

58 (C) Any person who individually or as owner, partner,
59 president, other officer, or manager of a sole proprietorship,
60 firm, partnership, company, corporation or association, who, as
61 a responsible person, as defined in section twenty-four-e of this
62 article, knowingly and willfully and with fraudulent intent sells,
63 transfers or otherwise disposes of substantially all of the
64 employer's assets for the purpose of evading the payment of
65 workers' compensation premium taxes to the workers' compen-
66 sation fund as required by chapter twenty-three of this code,
67 shall be guilty of the larceny of the premium owed and, if the
68 amount is one thousand dollars or more, such person shall be
69 guilty of a felony and, upon conviction thereof, shall be
70 imprisoned in a state correctional facility not less than one nor
71 more than ten years or, in the discretion of the court, be
72 confined in jail not more than one year and shall be fined not
73 more than two thousand five hundred dollars. If the amount is
74 less than one thousand dollars, such person shall be guilty of a
75 misdemeanor and, upon conviction thereof, shall be confined in
76 jail for a term not to exceed one year or fined an amount not to
77 exceed two thousand five hundred dollars, or both, in the
78 discretion of the court.

79 (D) Any corporation, association, company or partnership
80 which, as an employer as defined in chapter twenty-three of this
81 code, knowingly and willfully and with fraudulent intent sells,
82 transfers or otherwise disposes of substantially all of the
83 employer's assets for the purpose of evading the payment of
84 workers' compensation premium taxes to the workers' compen-
85 sation fund as required by chapter twenty-three of this code

86 shall be guilty of the larceny of the premium owed, and, if the
87 amount is one thousand dollars or more, such corporation,
88 association, company or partnership shall be guilty of a felony
89 and, upon conviction thereof, shall be fined not less than two
90 thousand five hundred dollars nor more than ten thousand
91 dollars. If the amount is less than one thousand dollars, such
92 corporation, association, company or partnership shall be guilty
93 of a misdemeanor and, upon conviction thereof, shall be fined
94 an amount not to exceed two thousand five hundred dollars.

95 (3) Failure to file premium tax reports:

96 (A) Any person who individually or as owner, partner,
97 president, other officer, or manager of a sole proprietorship,
98 firm, partnership, company, corporation or association, who, as
99 a responsible person as defined in section twenty-four-e of this
100 article, knowingly and willfully fails to file a premium tax
101 report with the workers' compensation fund as required by
102 chapter twenty-three of this code, shall be guilty of a felony
103 and, upon conviction thereof, shall be imprisoned in the
104 penitentiary not less than one nor more than ten years, or in the
105 discretion of the court, be confined in jail for a term not to
106 exceed one year and shall be fined not more than two thousand
107 five hundred dollars.

108 (B) Any corporation, association, company or partnership
109 which, as an employer as defined in chapter twenty-three of this
110 code, knowingly and willfully fails to file a premium tax report
111 with the workers' compensation fund as required by chapter
112 twenty-three of this code, shall be guilty of a felony and, upon
113 conviction thereof, shall be fined not less than two thousand
114 five hundred dollars nor more than ten thousand dollars.

115 (4) Failure to file other reports:

116 (A) Any person, individually or as owner, partner, president
117 or other officer, or manager of a sole proprietorship, firm,
118 partnership, company, corporation or association who, as a
119 responsible person as defined in section twenty-four-e of this
120 article, knowingly and willfully fails to file any report, other
121 than a premium tax report, required by such chapter shall be
122 guilty of a misdemeanor and, upon conviction thereof, shall be

123 confined in jail for a term not to exceed one year or fined an
124 amount not to exceed two thousand five hundred dollars, or
125 both, in the discretion of the court.

126 (B) Any corporation, association, company or partnership
127 which, as an employer as defined in chapter twenty-three of this
128 code, knowingly and willfully fails to file any report, other than
129 a premium tax report, with the workers' compensation fund as
130 required by chapter twenty-three of this code, shall be guilty of
131 a misdemeanor and, upon conviction thereof, shall be fined an
132 amount not to exceed two thousand five hundred dollars.

133 (5) False testimony or statements:

134 Any person, individually or as owner, partner, president,
135 other officer, or manager of a sole proprietorship, firm, partner-
136 ship, company, corporation or association who, as a responsible
137 person as defined in section twenty-four-e of this article,
138 knowingly and willfully makes a false report or statement under
139 oath, affidavit, certification or by any other means respecting
140 any information required to be provided under chapter twenty-
141 three of this code shall be guilty of a felony and, upon convic-
142 tion thereof, shall be confined in the penitentiary for a definite
143 term of imprisonment which is not less than one year nor more
144 than three years or fined not less than one thousand dollars nor
145 more than ten thousand dollars, or both, in the discretion of the
146 court.

147 (6) Asset forfeiture:

148 (A) The court, in imposing sentence on a person or entity
149 convicted of an offense under this section, shall order the
150 person or entity to forfeit property, real or personal, that
151 constitutes or is derived, directly or indirectly, from gross
152 proceeds traceable to the commission of the offense. Any
153 person or entity convicted under this section shall pay the costs
154 of asset forfeiture.

155 (B) For purposes of paragraph (6) (A), the term "payment
156 of the costs of asset forfeiture" means:

157 (i) The payment of any expenses necessary to seize, detain,
158 inventory, safeguard, maintain, advertise, sell or dispose of

159 property under seizure, detention, forfeiture or of any other
160 necessary expenses incident to the seizure, detention, forfeiture,
161 or disposal of such property, including payment for:

162 (a) Contract services;

163 (b) The employment of outside contractors to operate and
164 manage properties or provide other specialized services
165 necessary to dispose of such properties in an effort to maximize
166 the return from such properties; and

167 (c) Reimbursement of any state or local agency for any
168 expenditures made to perform the functions described in this
169 subparagraph;

170 (ii) The compromise and payment of valid liens and
171 mortgages against property that has been forfeited, subject to
172 the discretion of the workers' compensation fund to determine
173 the validity of any such lien or mortgage and the amount of
174 payment to be made, and the employment of attorneys and
175 other personnel skilled in state real estate law as necessary;

176 (iii) Payment authorized in connection with remission or
177 mitigation procedures relating to property forfeited; and

178 (iv) The payment of state and local property taxes on
179 forfeited real property that accrued between the date of the
180 violation giving rise to the forfeiture and the date of the
181 forfeiture order.

182 (7) Venue:

183 Venue for prosecution of any violation of this section shall
184 be either the county in which the defendant's principal business
185 operations are located or in Kanawha County where the
186 workers' compensation fund is located.

**§61-3-24f. Wrongfully seeking workers' compensation; false
testimony or statements; penalties; venue.**

1 (1) Any person who shall knowingly and with fraudulent
2 intent secure or attempt to secure compensation from the
3 workers' compensation fund or from a self-insured employer:

4 (A) That is larger in amount than that to which he or she is
5 entitled; or

6 (B) That is longer in term than that to which he or she is
7 entitled; or

8 (C) To which he or she is not entitled, shall be guilty of a
9 larceny and, if the amount is one thousand dollars or more, such
10 person shall be guilty of a felony and, upon conviction thereof,
11 shall be imprisoned in the penitentiary not less than one nor
12 more than ten years or, in the discretion of the court, be
13 confined in jail not more than one year and shall be fined not
14 more than two thousand five hundred dollars. If the amount is
15 less than one thousand dollars, such person shall be guilty of a
16 misdemeanor and, upon conviction thereof, shall be confined in
17 jail for a term not to exceed one year or fined an amount not to
18 exceed two thousand five hundred dollars, or both, in the
19 discretion of the court.

20 (2) Any person who shall knowingly and willfully make a
21 false report or statement under oath, affidavit, certification or
22 by any other means respecting any information required to be
23 provided under chapter twenty-three of this code shall be guilty
24 of a felony and, upon conviction thereof, shall be confined in
25 the penitentiary for a definite term of imprisonment which is
26 not less than one year nor more than three years or fined not
27 less than one thousand dollars nor more than ten thousand
28 dollars, or both, in the discretion of the court.

29 (3) In addition to any other penalty imposed, the court shall
30 order any person convicted under this section to make full
31 restitution of all moneys paid by the workers' compensation
32 fund or self-insured employer as the result of a violation of this
33 section.

34 (4) If the person so convicted is receiving compensation
35 from such fund or employer, he or she shall, from and after
36 such conviction, cease to receive such compensation as a result
37 of that alleged injury or disease.

38 (5) Venue for prosecution of any violation of this section
39 shall either be the county in which the claimant resides, the

40 county in which the claimant is employed or working, or in
41 Kanawha County where the workers' compensation fund is
42 located.

**§61-3-24g. Workers' compensation health care offenses; fraud;
theft or embezzlement; false statements; penal-
ties; notice; prohibition against providing future
services; penalties; asset forfeiture; venue.**

1 (1) Any person who knowingly and willfully executes, or
2 attempts to execute, a scheme or artifice:

3 (A) To defraud the workers' compensation fund or a self-
4 insured employer in connection with the delivery of or payment
5 for workers' compensation health care benefits, items or
6 services; or

7 (B) To obtain, by means of false or fraudulent pretenses,
8 representations, or promises any of the money or property
9 owned by or under the custody or control of the workers'
10 compensation fund or a self-insured employer in connection
11 with the delivery of or payment for workers' compensation
12 health care benefits, items or services; or

13 (C) To make any charge or charges against any injured
14 employee or any other person, firm or corporation which would
15 result in a total charge for the treatment or service rendered in
16 excess of the maximum amount set forth therefore in the
17 workers' compensation division's schedule of maximum
18 reasonable amounts to be paid for such treatment or services
19 issued pursuant to subsection (a), section three, article four,
20 chapter twenty-three of this code shall be guilty of a felony and,
21 upon conviction thereof, shall be imprisoned in the penitentiary
22 not less than one nor more than ten years or, in the discretion of
23 the court, be confined in jail not more than one year and shall
24 be fined not more than two thousand five hundred dollars.

25 (2) Any person who, in any matter involving a health care
26 program related to the workers' compensation fund, knowingly
27 and willfully:

28 (A) Falsifies, conceals or covers up by any trick, scheme,
29 or device a material fact; or

30 (B) Makes any materially false, fictitious or fraudulent
31 statement or representation, or makes or uses any materially
32 false writing or document knowing the same to contain any
33 materially false, fictitious, or fraudulent statement or entry,
34 shall be guilty of a felony and, upon conviction thereof, shall be
35 confined in the penitentiary for a definite term of imprisonment
36 which is not less than one year nor more than three years or
37 fined not less than one thousand dollars nor more than ten
38 thousand dollars, or both, in the discretion of the court.

39 (3) Any person who willfully embezzles, steals or otherwise
40 unlawfully converts to the use of any person other than the
41 rightful owner, or intentionally misapplies any of the moneys,
42 funds, securities, premiums, credits, property or other assets of
43 a health care program related to the workers' compensation
44 fund, shall be guilty of a felony and, upon conviction thereof,
45 shall be imprisoned in the penitentiary for not less than one nor
46 more than ten years or fined not less than ten thousand dollars,
47 or both, in the discretion of the court.

48 (4) Any health care provider who fails, in violation of
49 subsection (5) of this section to post a notice, in the form
50 required by the workers' compensation division, in the pro-
51 vider's public waiting area that the provider cannot accept any
52 patient whose treatment or other services or supplies would
53 ordinarily be paid for from the workers' compensation fund or
54 by a self-insured employer unless such patient consents, in
55 writing, prior to the provision of such treatment or other
56 services or supplies, to make payment for that treatment or
57 other services or supplies himself or herself, shall be guilty of
58 a misdemeanor and, upon conviction thereof, shall be fined one
59 thousand dollars.

60 (5) Any person convicted under the provisions of this
61 section shall, from and after such conviction, be barred from
62 providing future services or supplies to injured employees for
63 the purposes of workers' compensation and shall cease to
64 receive payment for such services or supplies.

65 (6) (A) The court, in imposing sentence on a person
66 convicted of an offense under this section, shall order the

67 person to forfeit property, real or personal, that constitutes or is
68 derived, directly or indirectly, from gross proceeds traceable to
69 the commission of the offense. Any person convicted under this
70 section shall pay the costs of asset forfeiture.

71 (B) For purposes of paragraph (6) (A), the term "payment
72 of the costs of asset forfeiture" means:

73 (i) The payment of any expenses necessary to seize, detain,
74 inventory, safeguard, maintain, advertise, sell or dispose of
75 property under seizure, detention or forfeiture, or of any other
76 necessary expenses incident to the seizure, detention, forfeiture
77 or disposal of such property, including payment for:

78 (a) Contract services;

79 (b) The employment of outside contractors to operate and
80 manage properties or provide other specialized services
81 necessary to dispose of such properties in an effort to maximize
82 the return from such properties; and

83 (c) Reimbursement of any state or local agency for any
84 expenditures made to perform the functions described in this
85 subparagraph;

86 (ii) The compromise and payment of valid liens and
87 mortgages against property that has been forfeited, subject to
88 the discretion of the workers' compensation fund to determine
89 the validity of any such lien or mortgage and the amount of
90 payment to be made, and the employment of attorneys and
91 other personnel skilled in state real estate law as necessary;

92 (iii) Payment authorized in connection with remission or
93 mitigation procedures relating to property forfeited; and

94 (iv) The payment of state and local property taxes on
95 forfeited real property that accrued between the date of the
96 violation giving rise to the forfeiture and the date of the
97 forfeiture order.

98 (7) Venue for prosecution of any violation of this subsec-
99 tion shall be either the county in which the defendant's princi-
100 pal business operations are located or in Kanawha County
101 where the workers' compensation fund is located.

§61-3-24h. Providing false documentation to workers' compensation; altering documents or certificates from workers' compensation; penalties; venue.

1 (1) Any person, firm, partnership, company, corporation
2 association or medical provider who submits false documenta-
3 tion to workers' compensation with the intent to defraud
4 workers' compensation shall be guilty of a misdemeanor and,
5 upon conviction thereof, shall be confined in jail for a term not
6 to exceed one year or fined an amount not to exceed two
7 thousand five hundred dollars, or both, in the discretion of the
8 court.

9 (2) Any person, firm, partnership, company, corporation,
10 association or medical provider who alters, falsifies, defaces,
11 changes or modifies any certificate or other document which
12 would indicate good standing with workers' compensation or
13 endorsement by workers' compensation for medical services
14 shall be guilty of a misdemeanor and, upon conviction thereof,
15 shall be confined in jail for a term not to exceed one year or
16 fined an amount not to exceed two thousand five hundred
17 dollars, or both, in the discretion of the court.

18 (3) Venue for prosecution of any violation of this section
19 shall be either the county in which the claimant resides, a
20 defendant's principal business operations are located, or in
21 Kanawha County where the workers' compensation fund is
22 located.

CHAPTER 295

(Com. Sub. for S. B. 351 — By Senators Hunter, Prezioso,
Oliverio, Mitchell and Ball)

[Passed March 11, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend article five-a, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

by adding thereto a new section, designated section four, relating to state employees continuing to accrue increment pay while off work because of a work-related injury; and legislative rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5A. DISCRIMINATORY PRACTICES.

§23-5A-4. State employees to accrue increment pay during absence due to work-related injuries; legislative rules.

- 1 (a) All employees of the state of West Virginia shall
- 2 continue to accrue increment pay during absences from work
- 3 due to a work-related compensable injury.

- 4 (b) The director of the division of personnel shall propose
- 5 rules for legislative approval to implement the provisions of this
- 6 section.

CHAPTER 296

(Com. Sub. for H. B. 2742 — By Mr. Speaker, Mr. Kiss, and
Delegates Douglas, Mezzatesta, Michael, Doyle, Varner and Martin)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to authorize a roundhouse authority in Berkeley County; to be created as public corporation; acquisition of property; membership and management; general powers; promulgation of rules to regulate traffic and penalties; right of eminent domain; tax exemptions; indebtedness; disposition of surplus; contributions, participation; and dissolution of authority.

Be it enacted by the Legislature of West Virginia:

BERKELEY COUNTY ROUNDHOUSE AUTHORITY.

- §1. Regional roundhouse authority authorized.
- §2. Authority to be a public corporation.
- §3. Authority empowered and authorized to acquire, operate, etc., roundhouse property.
- §4. Management of authority vested in board; appointment and terms of members; vote of members, valuation of property contributed to the authority.
- §5. Substitution of members.
- §6. Qualification of members.
- §7. Compensation of members.
- §8. Powers of authority generally.
- §9. Rules and regulations to control vehicular and pedestrian traffic; violation of rule and regulations a misdemeanor; penalty.
- §10. Indebtedness of authority.
- §11. Agreements in connection with obtaining funds.
- §12. Authority to have right of eminent domain.
- §13. Property, bonds and obligations of authority exempt from taxation.
- §14. Authority may lease facilities.
- §15. Disposition of surplus of authority.
- §16. Contributions to authority; funds and accounts of authority.
- §17. Dissolution of authority; disposition of assets after payment of debts.
- §18. Employees to be covered by workers' compensation.
- §19. Liberal construction of act.

§1. Regional roundhouse authority authorized.

1 The county commissions of interested counties and
 2 governing bodies of the municipalities within the region of
 3 Berkeley County are hereby authorized to create and establish
 4 the Berkeley County roundhouse authority for the purpose of
 5 acquiring, establishing, constructing, equipping, improving,
 6 financing, maintaining and operating the historic Baltimore and
 7 Ohio Railroad roundhouse property located in the city of
 8 Martinsburg, for various uses: *Provided*, That no municipality
 9 or county may participate in the authority unless and until its
 10 governing body provides.

§2. Authority to be a public corporation.

1 The Berkeley County roundhouse authority when created
 2 and established, and the members thereof, shall constitute a
 3 public corporation and as such, shall have perpetual succession,
 4 may contract and be contracted with, sue and be sued, and have
 5 and use a common seal.

§3. Authority empowered and authorized to acquire, operate, etc., roundhouse property.

1 The authority is hereby empowered and authorized to
2 acquire, establish, construct, equip, improve, finance, maintain
3 and operate for purposes it considers appropriate, the Baltimore
4 and Ohio Railroad roundhouse located in the city of Martins-
5 burg with appurtenant facilities and any other property neces-
6 sary for the purposes of the authority.

§4. Management of authority vested in board; appointment and terms of members; vote of members, valuation of property contributed to the authority.

1 The management and control of the authority, its property,
2 operations, business and affairs shall be lodged in a board of not
3 less than five nor more than twenty-one individuals who shall
4 be known as members of the authority board and who shall be
5 appointed for terms of three years. Each participating county
6 and municipality may initially appoint three members. Thereaf-
7 ter, the authority may vary representation on the authority board
8 depending on the number of municipalities and counties that
9 choose to participate and to contribute moneys or property to
10 the authority, except that the county shall retain the right to
11 appointment of a majority of members of the board. Each
12 member shall serve at the will and pleasure of his or her
13 appointing body.

14 When property is contributed, the contributing municipality
15 or county and the authority shall agree in writing at the time the
16 contribution is made as to the fair market value of such prop-
17 erty.

§5. Substitution of members.

1 If any member of the authority board dies, resigns, is
2 removed or for any other reason ceases to be a member of the
3 authority, the municipality or the county commission which the
4 member represented shall appoint another individual to fill the
5 unexpired portion of the term of the member.

§6. Qualification of members.

1 Each member of the authority board shall be a resident of
2 the municipality or county that appointed the member.

§7. Compensation of members.

1 No member of the authority board shall receive any
2 compensation, whether in the form of salary, per diem allow-
3 ance or otherwise, for or in connection with his or her services
4 as a member. Each member shall be entitled to reimbursement
5 by the authority for all reasonable and necessary expenses
6 actually incurred in the performance of his or her duties as a
7 member.

§8. Powers of authority generally.

1 The authority shall have the following powers:

2 (1) To make and adopt all necessary bylaws and rules for its
3 organization and operations not inconsistent with law;

4 (2) To elect its own officers, to appoint committees and to
5 employ and fix the compensation for personnel necessary for its
6 operation;

7 (3) To enter into contracts with any person, including both
8 public and private corporations, or governmental department or
9 agency, and generally to do any and all things necessary or
10 convenient for the purpose of acquiring, establishing, construct-
11 ing, equipping, improving, financing, maintaining and operating
12 the roundhouse property with appurtenant facilities and other
13 property necessary for the purposes of the authority;

14 (4) To delegate any authority given to it by law to any of its
15 officers, committees, agents or employees;

16 (5) To apply for, receive and use grants-in-aid, donations
17 and contributions from any source or sources, including, but not
18 limited to, the federal government and any department or
19 agency thereof, and this state subject to any constitutional and
20 statutory limitations with respect thereto, and to accept and use
21 bequests, devises, gifts and donations from any person;

22 (6) To acquire lands and hold title thereto in its own name;

23 (7) To purchase, own, hold, sell and dispose of personal
24 property and to sell, lease or otherwise dispose of any real
25 property which it may own;

26 (8) To borrow money and execute and deliver negotiable
27 notes, mortgage bonds, other bonds, debentures and other
28 evidences of indebtedness therefor, and give security therefor
29 as shall be requisite, including giving a mortgage or deed of
30 trust on its properties and facilities or assigning or pledging the
31 gross or net revenues therefrom;

32 (9) To raise funds by the issuance and sale of revenue
33 bonds in the manner provided by the applicable provisions of
34 sections nine through seventeen, article sixteen, chapter eight
35 of the West Virginia code, it being hereby expressly provided
36 that for the purpose of the issuance and sale of revenue bonds,
37 the authority is a "governing body" as that term is used in said
38 article only;

39 (10) To establish, charge and collect reasonable fees and
40 charges for services or for the use of any part of its property or
41 facilities, or for both services and use;

42 (11) To expend its funds in the execution for the powers
43 herein given;

44 (12) To apply for, receive and use loans, grants, donations,
45 technical assistance and contributions from participating
46 municipalities and counties; and

47 (13) To prescribe by bylaw the manner of financial partici-
48 pation by participating municipalities and counties.

**§9. Rules and regulations to control vehicular and pedestrian
traffic; violation of rule and regulations a misdemeanor;
penalty.**

1 (a) The county commission of Berkeley County is hereby
2 empowered and authorized, upon request of the authority, to
3 adopt and promulgate rules to: (1) Control the movement and
4 disposition of vehicular and pedestrian traffic within the
5 property of the authority; (2) regulate and control vehicular

6 parking within the property by the installation of parking meters
7 or by other methods; and (3) impose reasonable charges for the
8 use of the parking space so metered or otherwise allocated, so
9 as to provide maximum opportunity for the public use thereof.

10 (b) Violation of any rule adopted pursuant to subsection (a)
11 of this section shall constitute a misdemeanor and the offender,
12 upon conviction in the manner provided by law, may be fined
13 not less than two dollars nor more than ten dollars for each
14 violation. Magistrates shall have concurrent jurisdiction with
15 statutory courts of record having criminal jurisdiction for the
16 trial of offenses under this section.

§10. Indebtedness of authority.

1 The authority may incur any proper indebtedness, issue any
2 obligations and give any security therefor that it may consider
3 necessary and advisable in connection with carrying out its
4 purposes.

5 No indebtedness or obligation incurred by the authority
6 shall give any right against any member of the governing body
7 of any participating municipality or county or any member of
8 the authority board. No indebtedness of any nature of the
9 authority shall constitute an indebtedness of the governing body
10 of any participating municipality or county or be a charge
11 against any property of any participating municipality or
12 county. The rights of creditors of the authority shall be solely
13 against the authority as a corporate body and shall be satisfied
14 only out of property held by it in its corporate capacity.

§11. Agreements in connection with obtaining funds.

1 The authority may, in connection with obtaining moneys or
2 property for its purposes, enter into any agreement with any
3 person, including the federal government, or any department,
4 agency or subdivision thereof, containing such provisions,
5 covenants, terms and conditions as the authority may consider
6 advisable.

§12. Authority to have right of eminent domain.

1 Whenever it shall be considered necessary by the authority,
2 in connection with the exercise of its powers herein conferred,
3 to take or acquire any lands, structures or buildings or other
4 rights, either in fee or as easements, for the purposes herein set
5 forth, the authority may purchase the same directly or through
6 its agents from the owner or owners thereof, or failing to agree
7 with the owner or owners thereof, the authority may exercise
8 the power of eminent domain in the manner provided for
9 condemnation proceedings in chapter fifty-four of the West
10 Virginia code, and such purposes are hereby declared to be
11 public uses for which private property may be taken or dam-
12 aged.

§13. Property, bonds and obligations of authority exempt from taxation.

1 The authority shall be exempt from the payment of any
2 taxes or fees to the state or any subdivisions thereof or any
3 municipality or to any officer or employee of the state or of any
4 subdivision thereof or of any municipality.

5 The property of the authority shall be exempt from all
6 municipal and county taxes. Bonds, notes, debentures and other
7 evidences of indebtedness of the authority are declared to be
8 issued for a public purpose and to be public instrumentalities,
9 and, together with interest thereon, shall be exempt from
10 taxation.

§14. Authority may lease facilities.

1 The authority may lease all or part of the property and all
2 or any part of the appurtenances and facilities therewith to any
3 available lessee, subject to all constitutional and statutory
4 limitations with respect thereto, at such rental and upon such
5 terms and conditions as the authority shall consider proper.

§15. Disposition of surplus of authority.

1 If the authority should realize a surplus, whether from
2 operating the property or leasing it for operation, over and
3 above the amount required for the equipping, improvement,
4 maintenance and operation of the property and for meeting all

5 required payments on its obligations, it shall set aside such
6 reserve for future equipping, improvements, maintenance,
7 operations and contingencies as it shall consider proper and
8 shall then apply the residue of the surplus, if any, to the
9 payment of any recognized and established obligations not then
10 due, and after all such recognized and established obligations
11 have been paid off and discharged in full, the authority shall, at
12 the end of each fiscal year, set aside the reserve for future
13 equipping, improvements, maintenance, operations and
14 contingencies, as aforesaid, and then pay the residue of such
15 surplus, if any, to the participating counties and municipalities
16 in direct proportion to their contribution for moneys and
17 property.

§16. Contributions to authority; funds and accounts of authority.

1 Contributions of moneys may be made to the authority from
2 time to time by the participating municipalities and counties
3 and persons that shall desire to do so. All such moneys and all
4 other moneys received by the authority shall be deposited in a
5 banking institution or banking institutions as the authority may
6 direct and shall be withdrawn therefrom in a manner as the
7 authority may direct. The authority shall keep strict account of
8 all of its receipts and expenditures and shall make an annual
9 report thereon to the participating municipalities and counties
10 contributing moneys or property, and the report shall contain an
11 itemized account of its receipts and disbursements for the
12 preceding fiscal year, and publish the same as a Class II-O legal
13 advertisement in compliance with the provision of article three,
14 chapter fifty-nine of the code of West Virginia, in a newspaper
15 of general circulation within Berkeley County. The books,
16 records and accounts of the authority shall be subject to audit
17 and examination by the office of the state tax commissioner and
18 by any other proper public official or body in the manner
19 provided by law.

20 The participating counties and municipalities are hereby
21 authorized to convey to the authority any and all real and
22 personal property to which they hold title and which property
23 will enhance the authority's ability to own, manage and operate
24 the aforesaid B&O Railroad roundhouse property with appurte-

25 nant facilities and other property necessary to the purposes of
26 the authority.

§17. Dissolution of authority; disposition of assets after payment of debts.

1 In the event full and adequate provision is made for the
2 payment of all of the debts of the authority, the participating
3 municipalities or counties or any combination thereof which
4 have contributed at least sixty percent of the total value of all
5 moneys and property (the value of which property is deter-
6 mined as specified in section four of this article) contributed to
7 the authority by the participating municipalities and counties
8 may by resolution provide for the dissolution of the authority
9 and for: (1) The conveyance of the real and tangible personal
10 property contributed to it to the participating municipalities and
11 counties that contributed the same; (2) equitable distribution
12 among the contributing municipalities and counties of any real
13 and tangible personal property purchased or condemned by the
14 authority or of the proceeds of sale thereof, or the fair value
15 thereof; and (3) the equitable distribution of all moneys on hand
16 to the participating municipalities and counties in direct
17 proportion to the contribution of moneys by them.

§18. Employees to be covered by workers' compensation.

1 All eligible employees of the authority shall be considered
2 to be within the workers' compensation system of this state and
3 premiums on their compensation shall be paid by the authority
4 as required by law.

§19. Liberal construction of act.

1 The purposes of this act are to provide for the acquisition,
2 establishment, construction, equipping, improvements, financ-
3 ing, maintenance and operation of the roundhouse property in
4 a prudent and economical manner, and this act shall be liberally
5 construed as giving to the authority created and established
6 hereunder full and complete power reasonably required to give
7 effect to the purposes hereof. The provisions of this act are in
8 addition to and not in derogation of any power granted to or

9 vested in municipalities and county commissions under any
 10 constitutional, statutory or charter provisions which may now
 11 or hereafter be in effect.

CHAPTER 297

(Com. Sub. for S. B. 638 — By Senators Minard, Sharpe, Kessler, Helmick,
 Ross, Bailey, Prezioso, Oliverio, Edgell, Hunter, Anderson, Dittmar,
 Bowman, Plymale, Walker, Cralgo, Jackson, Wooton, Schoonover,
 Love, Ball, Mitchell, McKenzie, McCabe, Redd, Boley, Mlinear, Sprouse,
 Unger, Chafin and Tomblin, Mr. President)

[Passed March 13, 1999; in effect from passage. Approved by the Governor.]

AN ACT to authorize Central West Virginia Chapter 418 of the Purple Heart Society to erect memorials to certain purple heart medal recipients at the Meadowbrook rest areas on Interstate 79 in Harrison County; and requiring commissioner of highways approval.

Be it enacted by the Legislature of West Virginia:

CENTRAL WEST VIRGINIA CHAPTER, PURPLE HEART SOCIETY.

§1. Memorial to certain purple heart medal recipients authorized at Meadowbrook rest areas on Interstate 79 in Harrison County; and requiring division of highways approval.

1 The Central West Virginia Chapter 418 of the Purple Heart
 2 Society is authorized to erect at the northbound and southbound
 3 Meadowbrook rest areas on Interstate 79 near mile post one
 4 hundred twenty-three in Harrison County and at the northbound
 5 and southbound rest areas near mile post eighty-three in Lewis
 6 County, suitable memorials to persons from Barbour, Braxton,
 7 Doddridge, Gilmer, Harrison, Lewis, Randolph, Ritchie and
 8 Upshur counties and part of Marion County, who have received
 9 purple heart medals. The society shall provide funding and
 10 construction of the memorials in accordance with a plan
 11 approved by the commissioner of highways. The commissioner
 12 of the division of highways shall approve the location, design
 13 and construction of the memorials.

CHAPTER 298

(S. B. 673 — By Senators Sprouse, McKenzie, Mitchell and Minear)

[Passed March 12, 1999; in effect from passage. Approved by the Governor.]

AN ACT authorizing the state building commission to sell the land, together with the improvements thereon, known as the Morris Square building in Charleston, Kanawha County.

Be it enacted by the Legislature of West Virginia:

SALE OF PROPERTY.

§1. Land sale; description.

1 (a) The executive director of the state building commission
2 is authorized to solicit interest in, enter into a contract for sale,
3 and to sell and convey, for good and valuable consideration as
4 negotiated by the executive director of the state building
5 commission, all of those certain lots or parcels of land, together
6 with the improvements thereon, the privileges thereof, and the
7 appurtenances thereunto belonging, known as Lot "A-1",
8 containing 1.118 Acres, more or less, and Lot "A-2", containing
9 0.507 Acres, more or less, situate in the city of Charleston,
10 Charleston East Tax District, Kanawha County, West Virginia,
11 being the same property being more accurately bounded and
12 described in a deed dated the 29th day of October, 1996, from
13 Charleston Building Corporation, to the State Building Com-
14 mission of West Virginia, duly of record in the Office of the
15 Clerk of the County Commission of Kanawha County, West
16 Virginia, in Deed Book No. 2399, at Page No. 79; subject,
17 however, to all restrictions, reservations, rights-of-way,
18 easements, utilities, covenants, restrictions, leases, exclusions
19 and other matters duly of record affecting the subject property.
20 Reference to the deed is here made for a more particular
21 description of the property, and for all pertinent purposes. The
22 money from the sale of the property shall be deposited in the
23 state general revenue fund.

24 (b) The executive director may engage the services of a
25 duly licensed real estate broker to sell the property, for a
26 commission not to exceed seven percent of the sale price, to be
27 paid from the proceeds of sale at the time of the closing of the
28 sale.

29 (c) Prior to the listing of the property with a real estate
30 broker and to the sale of the property, the executive director
31 shall have the property appraised by two independent licensed
32 commercial real estate appraisers. The property may not be sold
33 for less than the average of the fair market values of the
34 property as determined by the appraisals.

35 (d) All or any part of the funds realized from the sale may
36 be used for intermodal facilities within the state of West
37 Virginia.

CHAPTER 299

(S. B. 673 — By Delegates Flanigan, Frederick,
Kominar, H. White, Perdue, Yeager and Wright)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to establish the King Coal Highway (I73/74) Authority;
functions; members; appointment; powers and duties; officers;
bylaws; rules; compensation; authority as corporate body;
support, maintenance and operation; and severability.

Be it enacted by the Legislature of West Virginia:

KING COAL HIGHWAY AUTHORITY.

- §1. Highway authority created; functions.
- §2. Members; appointment; powers and duties generally; officers; bylaws; rules; compensation.
- §3. Body corporate.
- §4. Support, maintenance and operation.
- §5. Severability.

§1. Highway authority created; functions.

1 There is hereby created a King Coal Highway (I73/74)
2 Authority, to promote and advance the construction of a modern
3 highway through McDowell, Mercer, Mingo, Wyoming and
4 Wayne counties along currently existing state route fifty-two
5 and to coordinate with counties, municipalities, state and
6 federal agencies, public nonprofit corporations, private corpora-
7 tions, associations, partnerships and individuals for the purpose
8 of planning, assisting and establishing recreational, tourism,
9 industrial, economic and community development of the King
10 Coal Highway (I73/74) for the benefit of West Virginians.

**§2. Members; appointment; powers and duties generally; officers;
bylaws; rules; compensation.**

1 (a) The authority consists of fifteen voting members and
2 three ex officio nonvoting members. All members shall be
3 appointed before the first day of July, two thousand one. No
4 more than ten members of the authority may be from the same
5 political party.

6 (b) Each of the county commissions of the counties of
7 McDowell, Mercer, Mingo, Wyoming and Wayne shall appoint
8 three voting members to the commission. The terms of the
9 voting members initially appointed by a county commission are
10 as follows: One member from each county shall be appointed
11 for a term of one year and two members from each county shall
12 be appointed for a term of two years. All successive appoint-
13 ments shall be for a term of four years. Any voting member
14 may be removed for cause by the appointing county commis-
15 sion.

16 (c) The three ex officio nonvoting members are the com-
17 missioner of highways or his or her designee, the director of
18 natural resources or his or her designee and the executive
19 director of the West Virginia development office or his or her
20 designee. All terms of ex officio nonvoting members are for
21 four years.

22 (d) Should a vacancy occur, the person appointed to fill the
23 vacancy shall serve only for the unexpired portion thereof. All
24 members are eligible for reappointment.

§1. Highway authority created; functions.

1 There is hereby created a King Coal Highway (I73/74)
2 Authority, to promote and advance the construction of a modern
3 highway through McDowell, Mercer, Mingo, Wyoming and
4 Wayne counties along currently existing state route fifty-two
5 and to coordinate with counties, municipalities, state and
6 federal agencies, public nonprofit corporations, private corpora-
7 tions, associations, partnerships and individuals for the purpose
8 of planning, assisting and establishing recreational, tourism,
9 industrial, economic and community development of the King
10 Coal Highway (I73/74) for the benefit of West Virginians.

§2. Members; appointment; powers and duties generally; officers; bylaws; rules; compensation.

1 (a) The authority consists of fifteen voting members and
2 three ex officio nonvoting members. All members shall be
3 appointed before the first day of July, two thousand one. No
4 more than ten members of the authority may be from the same
5 political party.

6 (b) Each of the county commissions of the counties of
7 McDowell, Mercer, Mingo, Wyoming and Wayne shall appoint
8 three voting members to the commission. The terms of the
9 voting members initially appointed by a county commission are
10 as follows: One member from each county shall be appointed
11 for a term of one year and two members from each county shall
12 be appointed for a term of two years. All successive appoint-
13 ments shall be for a term of four years. Any voting member
14 may be removed for cause by the appointing county commis-
15 sion.

16 (c) The three ex officio nonvoting members are the com-
17 missioner of highways or his or her designee, the director of
18 natural resources or his or her designee and the executive
19 director of the West Virginia development office or his or her
20 designee. All terms of ex officio nonvoting members are for
21 four years.

22 (d) Should a vacancy occur, the person appointed to fill the
23 vacancy shall serve only for the unexpired portion thereof. All

3 sued, plead and be impleaded and may have and use a corporate
4 seal.

§4. Support, maintenance and operation.

1 The county commissions of the counties of McDowell,
2 Mercer, Mingo, Wyoming and Wayne may provide for the
3 support, maintenance and operation of the King Coal Highway
4 (I73/74) Authority and other related activities under the
5 jurisdiction of the authority hereby created.

§5. Severability.

1 If any provision hereof is held invalid, such invalidity shall
2 not affect other provisions hereof which can be given effect
3 without the invalid provision, and to this end the provisions of
4 this article are declared to be severable.

CHAPTER 300

(H. B. 2691 — By Delegates Flanigan, Wills and Frederick)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four and six, chapter two hundred twenty-eight, acts of the Legislature, regular session, one thousand nine hundred ninety-seven; and to further amend said chapter by adding thereto a new section, designated section seven, all relating to the Mercer County Governmental Council; expanding its authority; and changing its composition.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four and six, chapter two hundred twenty-eight, acts of the Legislature, regular session, one thousand nine hundred ninety-seven, be amended and reenacted; and that said chapter be further amended by adding thereto a new section, designated section seven, all to read as follows:

MERCER COUNTY GOVERNMENTAL COUNCIL.

§2. Purposes.

§3. Membership.

§4. Officers.

§6. Voting.

§7. Powers of the council.

§2. Purposes.

1 The purposes of the council are to:

2 (1) Foster and promote cooperation and understanding
3 among the various governing bodies and officials of Mercer
4 County, West Virginia, including the Mercer County legislative
5 delegation. A desired effect is for Mercer County to present a
6 unified voice and vision to the state and federal governments
7 for the betterment of Mercer County and to ensure that the
8 citizens of Mercer County are heard by their state and federal
9 representatives and receive a fair and equitable proportion of
10 resources available from these levels of government; and

11 (2) Develop strategies and plans for supporting solutions to
12 problems and meeting needs of the county.

§3. Membership.

1 (a) The Mercer County Governmental Council is composed
2 of full members and associate members.

3 (b) The full members are the elected members of the
4 governing bodies of the municipalities located within Mercer
5 County, the members of the Mercer County Commission, and
6 those members of the state Senate and the House of Delegates
7 elected to represent Mercer County, or a portion thereof, in the
8 Legislature. The terms of office for these members are coexten-
9 sive with the terms of their respective elected offices.

10 (c) The associate members are:

11 (1) Those individuals elected to the following Mercer
12 County public offices: Sheriff, county clerk, circuit clerk,
13 assessor and prosecuting attorney. The terms of office of these

14 members are coextensive with the terms of their respective
15 elected offices; and

16 (2) Those individuals who are elected or appointed to the
17 following offices or positions: Mercer County Economic
18 Development Authority; Bluefield city manager; Princeton city
19 manager; Region I Planning and Development Council; West
20 Virginia Division of Highways district office; Chambers of
21 Commerce; Mercer County Board of Education; Mercer County
22 Health Board; Bluestone Convention and Tourism Board;
23 Mercer County Emergency Services; hospital administrators of
24 hospitals located in Mercer County and others who may be
25 appointed from time to time, at the council's discretion. The
26 terms of office of these members shall be coextensive with the
27 terms of their elected or appointed offices or positions.

§4. Officers.

1 The Mercer County Governmental Council shall, at its
2 meeting in July, one thousand nine hundred ninety-nine, elect
3 from among its membership a president, vice president,
4 treasurer and secretary, who serve in their respective capacities
5 for terms of two years.

§6. Voting.

1 The council as a whole may take up for consideration any
2 matter brought before it by any member but only full members
3 of the council are entitled to vote on a matter. A simple
4 majority of the full members present voting in the affirmative
5 is sufficient for the measure to carry. However, no vote of the
6 council may have a binding effect upon any member in the
7 performance of his or her duties as an elected or appointed
8 official. The votes of the council are advisory only, except
9 when authorizing the expenditure of funds.

§7. Powers of the council.

1 (a) The council is authorized to receive appropriations, gifts
2 and grants from any source, including, but not limited to, any
3 municipality within the county and the county commission. It
4 may establish an account with a local bank for deposit of funds

12 County public offices: Sheriff, county clerk, circuit clerk,
13 assessor and prosecuting attorney. The terms of office of these
14 members are coextensive with the terms of their respective
15 elected offices; and

16 (2) Those individuals who are elected or appointed to the
17 following offices or positions: Mercer County Economic
18 Development Authority; Bluefield city manager; Princeton city
19 manager; Region I Planning and Development Council; West
20 Virginia Division of Highways district office; Chambers of
21 Commerce; Mercer County Board of Education; Mercer County
22 Health Board; Bluestone Convention and Tourism Board;
23 Mercer County Emergency Services; hospital administrators of
24 hospitals located in Mercer County and others who may be
25 appointed from time to time, at the council's discretion. The
26 terms of office of these members shall be coextensive with the
27 terms of their elected or appointed offices or positions.

§4. Officers.

1 The Mercer County Governmental Council shall, at its
2 meeting in July, one thousand nine hundred ninety-nine, elect
3 from among its membership a president, vice president,
4 treasurer and secretary, who serve in their respective capacities
5 for terms of two years.

§6. Voting.

1 The council as a whole may take up for consideration any
2 matter brought before it by any member but only full members
3 of the council are entitled to vote on a matter. A simple
4 majority of the full members present voting in the affirmative
5 is sufficient for the measure to carry. However, no vote of the
6 council may have a binding effect upon any member in the
7 performance of his or her duties as an elected or appointed
8 official. The votes of the council are advisory only, except
9 when authorizing the expenditure of funds.

§7. Powers of the council.

1 (a) The council is authorized to receive appropriations, gifts
2 and grants from any source, including, but not limited to, any

RESOLUTIONS

HOUSE JOINT RESOLUTION 30

(By Delegates Fleischauer, Kominar,
Leach, Pino, Houston and Overington)

[Adopted March 13, 1999.]

Proposing an amendment to the Constitution of the State of West Virginia, amending article eight thereof by adding thereto a new section, designated section sixteen, relating to authorizing the Legislature to establish a family court of original jurisdiction; authorizing the Legislature to determine the jurisdiction of family courts; providing for the election of family court judges; setting forth the required qualifications to serve as a family court judge; permitting the Legislature to determine the number of family court judges and family court circuits; permitting the Legislature to determine the arrangement of family court circuits; permitting the Legislature to establish staggered terms of office; providing that the supreme court of appeals will have general supervisory control over family courts; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment of the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year two thousand or in any special election prior thereto, which proposed amendment is that article eight thereof be amended by adding thereto a new section, designated section sixteen, to read as follows:

ARTICLE VIII. THE JUDICIARY.

§16. Family Courts.

1 There is hereby created under the general supervisory
2 control of the supreme court of appeals a unified family court
3 system in the State of West Virginia to rule on family law and
4 related matters. Family courts shall have original jurisdiction in
5 the areas of family law and related matters as may hereafter be
6 established by law. Family courts may also have such further
7 jurisdiction as established by law.

8 Family court judges shall be elected by the voters for a term
9 prescribed by law not to exceed eight years, unless sooner
10 removed or retired as authorized in this article. Family court
11 judges must be admitted to practice law in this state for at least
12 five years prior to their election. Family court judges shall
13 reside in the circuit for which he or she is a judge.

14 The necessary number of family court judges, the number
15 of family court circuits and the arrangement of circuits shall be
16 established by law. Staggered terms of office for family court
17 judges may also be established by law.

18 The supreme court of appeals shall have general supervi-
19 sory control over all family courts and may provide for the
20 assignment of a family court judge to another court for tempo-
21 rary service. The provisions of sections seven and eight of this
22 article applicable to circuit judges shall also apply to family
23 court judges.

24 *Resolved further*, That in accordance with the provisions of
25 article eleven, chapter three of the code of West Virginia, one
26 thousand nine hundred thirty-one, as amended, such proposed
27 amendment is hereby numbered "Amendment No. 1" and
28 designated as the "Unified Family Court Amendment" and the
29 purpose of the proposed amendment is summarized as follows:
30 "To amend the Constitution of West Virginia to permit the
31 Legislature to establish a unified system of family courts with
32 jurisdiction over family law and child welfare matters."

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 1999

CHAPTER 1

(H. B. 102 — By Delegate Michael)

[Passed March 22, 1999; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, to the bureau of commerce, West Virginia development office, fund 0256, fiscal year 1999, organization 0307, as originally appropriated by chapter six, acts of the Legislature, regular session, one thousand nine hundred ninety-eight, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

- 1 That the items of the total appropriations from the state
- 2 fund, general revenue, to the bureau of commerce, West
- 3 Virginia development office, fund 0256, fiscal year 1999,

4 organization 0307, be amended and reduced in the existing line
5 items as follows:

6 TITLE II—APPROPRIATIONS.

7 **Sec. 1. Appropriations from general revenue.**

8 BUREAU OF COMMERCE

9 *77—West Virginia Development Office—*

10 (WV Code Chapter 5B)

11 Fund 0256 FY 1999 Org 0307

			General Revenue Fund
		Act- ivity	
15	7	Local Economic Development	
16	8	Partnerships (R)	133 \$ 75,000
17	29	WV Partnership for Industrial	
18	30	Modernization (R)	592 \$ 125,000

19 And, that the items of the total appropriations from the state
20 fund, general revenue, to the bureau of commerce, West
21 Virginia development office, fund 0256, fiscal year 1999,
22 organization 0307, be amended and increased in a new line item
23 as follows:

24 TITLE II—APPROPRIATIONS.

25 **Sec. 1. Appropriations from general revenue.**

26 BUREAU OF COMMERCE

27 *77—West Virginia Development Office—*

28 (WV Code Chapter 5B)

29 Fund 0256 FY 1999 Org 0307

			General Revenue Fund
		Act- ivity	
33	35a	Office of Coalfield Community	
34	35b	Development (R)	326 \$ 125,000

35 Any unexpended balance remaining in the appropriation for
36 Office of Coalfield Community Development (fund 0256,
37 activity 326) at the close of the fiscal year 1999 is hereby
38 reappropriated for expenditure during the fiscal year 2000.

39 The purpose of this supplementary appropriation bill is to
40 supplement, amend, reduce and increase items of existing
41 appropriations in the aforesaid account for the designated
42 spending unit. The item for local economic development
43 partnerships (R) (activity 133) is reduced by seventy-five
44 thousand dollars. The item for partnerships for industrial
45 modernization (R) (activity 592) is reduced by one hundred
46 twenty-five thousand dollars. The item for office of coalfield
47 community development (activity 326) is increased by one
48 hundred twenty-five thousand dollars. The amounts as itemized
49 for expenditure in the fiscal year ending the thirtieth day of
50 June, one thousand nine hundred ninety-nine, shall be available
51 for expenditure immediately upon the effective date of this bill.

CHAPTER 2

(H. B. 104 — By Delegate Michael)

[Passed March 22, 1999; in effect July 1, 1999. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of education and the arts — office of secretary, fund 0294, fiscal year 2000, organization 0431, and to the department of health and human resources—division of human services, fund 0403, fiscal year 2000, organization 0511, all supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand.

WHEREAS, The governor, by executive message dated the twenty-second day of March, one thousand nine hundred ninety-nine, has

increased the revenue estimates for the fiscal year ending the thirtieth day of June, two thousand; therefore

Be it enacted by the Legislature of West Virginia:

1 That the total appropriation for the fiscal year ending the
2 thirtieth day of June, two thousand, to fund 0294, fiscal year
3 2000, organization 0431, be supplemented and amended by
4 increasing the total appropriation by one million dollars in a
5 new line item as follows:

6 TITLE II—APPROPRIATIONS.

7 **Sec. 1. Appropriations from general revenue.**

8 DEPARTMENT OF EDUCATION AND THE ARTS

9 *41—Department of Education and the Arts—*

10 *Office of the Secretary*

11 (WV Code Chapter 5F)

12 Fund 0294 FY 2000 Org 0431

		Act-	General
		ivity	Revenue
			Fund
16	14a Community and Technical College		
17	14b Pupil Support Adjustment	858	\$ 1,000,000

18 And, that the total appropriation for the fiscal year ending
19 the thirtieth day of June, two thousand, to fund 0403, fiscal year
20 2000, organization 0511, be supplemented and amended by
21 increasing the total appropriation by three million dollars in an
22 existing line item as follows:

23 TITLE II—APPROPRIATIONS.

24 **Sec. 1. Appropriations from general revenue.**

25 DEPARTMENT OF HEALTH AND HUMAN RESOURCES

26 *56—Division of Human Services—*

27 (WV Code Chapters 9, 48 and 49)

28	Fund <u>0403</u> FY <u>2000</u> Org <u>0511</u>		
29			General
30		Act-	Revenue
31		ivity	Fund
32	21	West Virginia Childrens Health	
33	21a	Fund-Transfer	714 \$ 3,000,000

34 The purpose of this bill is to supplement the department of
 35 education and the arts — office of secretary, fund 0294, fiscal
 36 year 2000, organization 0431, in the budget act for the fiscal
 37 year ending the thirtieth day of June, two thousand, by adding
 38 one million dollars to the existing appropriation in a new line
 39 item for community and technical college pupil support
 40 adjustment, and to supplement the department of health and
 41 human resources—division of human services, fund 0403,
 42 fiscal year 2000, organization 0511, in the budget act for the
 43 fiscal year ending the thirtieth day of June, two thousand, by
 44 adding three million dollars to the existing appropriation in an
 45 existing line item for West Virginia childrens health fund-
 46 transfer, all for expenditure during the fiscal year two thousand.



CHAPTER 3

(H. B. 103 — By Delegate Michael)

[Passed March 22, 1999; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, in the amount of one million two hundred sixty-six thousand dollars from the abandoned property claims trust, fund 1324, fiscal year 1999, organization 1300, and making supplementary appropriations of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth

15

8—*Governor's Office*—

16

Civil Contingent Fund

17

(WV Code Chapter 5)

18

Fund 0105 FY 1999 Org 0100

19

Act-

General

20

ivity

Revenue

21

Fund

22

1 Civil Contingent Fund - Total (R) . . 114 \$ 700,000

23

24 Any unexpended balance remaining in the appropriation for
 25 the civil contingent fund - Total (fund 0105, activity 114) at the
 26 close of fiscal year 1999 is hereby reappropriated for expendi-
 26 ture during the fiscal year 2000.

27

28 That the total appropriation for the fiscal year ending the
 29 thirtieth day of June, one thousand nine hundred ninety-nine, to
 30 fund 0294, organization 0431, be supplemented and amended
 31 by increasing the total appropriation by five hundred thousand
 31 dollars as follows:

32

TITLE II—APPROPRIATIONS.

33

Section 1. Appropriations from general revenue.

34

DEPARTMENT OF EDUCATION AND THE ARTS

35

40—Department of Education and the Arts—

36

Office of the Secretary

37

(WV Code Chapter 5F)

38

Fund 0294 FY 1999 Org 0431

39

General

40

Act-

Revenue

41

ivity

Fund

42

15a Underwood Youth Center (R) . . 341 \$ 500,000

44 Any unexpended balance remaining in the appropriation for
 45 Underwood youth center (fund 0294, activity 341) at the close
 46 of fiscal year 1999 is hereby reappropriated for expenditure
 47 during the fiscal year 2000.

48 That the total appropriation for the fiscal year ending the
 49 thirtieth day of June, one thousand nine hundred ninety-nine, to
 50 fund 0430, organization 0601, be supplemented and amended
 51 by increasing the total appropriation by sixteen thousand dollars
 52 as follows:

53 TITLE II—APPROPRIATIONS.

54 Section 1. Appropriations from general revenue.

55 DEPARTMENT OF MILITARY AFFAIRS
 56 AND PUBLIC SAFETY

57 *56—Department of Military Affairs and Public Safety—*

58 *Office of the Secretary*

59 (WV Code Chapter 5F)

60 Fund 0430 FY 1999 Org 0601

61			General
62		Act-	Revenue
63		ivity	Fund
64	2 Bland Memorial Fund (R)	332	\$ 16,000

65 Any unexpended balance remaining in the appropriation for
 66 the Bland memorial fund (fund 0430, activity 332) at the close
 67 of fiscal year 1999 is hereby reappropriated for expenditure
 68 during the fiscal year 2000.

69 That the total appropriation for the fiscal year ending the
 70 thirtieth day of June, one thousand nine hundred ninety-nine, to
 71 fund 0443, organization 0606, be supplemented and amended
 72 by increasing the total appropriation by fifty thousand dollars
 73 as follows:

74 TITLE II—APPROPRIATIONS.

74 **Section 1. Appropriations from general revenue.**75 DEPARTMENT OF MILITARY AFFAIRS
76 AND PUBLIC SAFETY77 59—*Office of Emergency Services*—

78 (WV Code Chapter 15)

79 Fund 0443 FY 1999 Org 0606

80			General
81		Act-	Revenue
82		ivity	Fund

83	4	Unclassified (R)	099	\$	50,000
----	---	----------------------------	-----	----	--------

84 Any unexpended balance remaining in the appropriation for
85 unclassified (fund 0443, activity 099) at the close of fiscal 1999
86 is hereby reappropriated for expenditure during the fiscal year
87 2000.

88 The purpose of this bill is to expire the sum of one million,
89 two hundred sixty-six thousand dollars from the abandoned
90 property claims trust, fund 1324, fiscal year 1999, organization
91 1300, and to supplement the governor's office—civil contingent
92 fund, fund 0105, fiscal year 1999, organization 0100, in the
93 budget act for the fiscal year ending the thirtieth day of June,
94 one thousand nine hundred ninety-nine, by adding seven
95 hundred thousand dollars to an existing item of appropriation;
96 department of education and the arts—office of the secretary,
97 fund 0294, fiscal year 1999, organization 0431, in the budget
98 act for the fiscal year ending the thirtieth day of June, one
99 thousand nine hundred ninety-nine, by adding five hundred
100 thousand dollars to a new item of appropriation for the Under-
101 wood youth center; to supplement the department of military
102 affairs and public safety—office of the secretary, fund 0430,
103 fiscal year 1999, organization 0601, in the budget act for the
104 fiscal year ending the thirtieth day of June, one thousand nine
105 hundred ninety-nine, by adding sixteen thousand dollars to a
106 new item of appropriation for the Bland memorial fund; and to
107 supplement the department of military affairs and public
108 safety—office of emergency services, fund 0443, fiscal year

109 1999, organization 0606, in the budget act for the fiscal year
 110 ending the thirtieth day of June, one thousand nine hundred
 111 ninety-nine, by adding fifty thousand dollars to the existing
 112 appropriation for unclassified; all for expenditure during the
 113 fiscal year ending the thirtieth day of June, one thousand nine
 114 hundred ninety-nine.

CHAPTER 4

(H. B. 101 — By Mr. Speaker, Mr. Kiss and Delegate Trump)
 [By Request of the Executive]

[Passed March 22, 1999; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, in the lottery net profits, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine.

WHEREAS, The governor has established that there now remains an unappropriated balance in the lottery net profits available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine; therefore

Be it enacted by the Legislature of West Virginia:

1 That chapter six, acts of the Legislature, regular session,
 2 one thousand nine hundred ninety-eight, known as the “Budget
 3 Bill”, be supplemented and amended by adding a new item of
 4 appropriations to Title II, section nine thereof as follows:

5 TITLE II—APPROPRIATIONS.

6 Section 9. Appropriations from lottery net profits.

7 213-Department of Education and the Arts

8 Office of the Secretary

9

Control Account

10

(WV Code Chapter 5F)

11

Fund 3507 FY 1999 Org 0431

12

Lottery

13

Act-

Net

14

ivity

Profits

15 7a Shepherd College—Capital

16 7b Improvements—Total (R) 764 \$ 700,000

17 Any unexpended balance remaining in the appropriation for
 18 Shepherd College—Capital Improvements—Total (fund 3507,
 19 activity 764) at the close of the fiscal year 1999 is hereby
 20 reappropriated for expenditure during the fiscal year 2000.

21 The purpose of this supplementary appropriation bill is to
 22 supplement this account in the budget bill for the fiscal year
 23 ending the thirtieth day of June, one thousand nine hundred
 24 ninety-nine, by providing for a new item of appropriation to be
 25 established therein to appropriate seven hundred thousand
 26 dollars to the department of education and the arts-office of the
 27 secretary, control account, fund 3507, fiscal year 1999, organi-
 28 zation 0431, to be expended during the fiscal year one thousand
 29 nine hundred ninety-nine.

CHAPTER 5

(S. B. 1002 — By Senators Tomblin, Mr. President, and Sprouse)
 [By Request of the Executive]

[Passed March 22, 1999; in effect from passage. Approved by the Governor.]

AN ACT to repeal article ten, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article one of said chapter; to amend and reenact sections thirteen, thirteen-e and fourteen,

article five of said chapter; to amend and reenact section six-a, article five-a of said chapter; to amend and reenact section four, article five-b of said chapter; to amend and reenact sections one, three, five and six, article five-e of said chapter; to further amend said article by adding thereto two new sections, designated sections five-a and eight; and to amend and reenact sections one and twenty-nine, article seven of said chapter, all relating to the state's system of child welfare and juvenile justice; stating purpose; defining certain responsibilities and duties of state agencies and courts; providing for proposal of a joint plan to the designated legislative task force for juvenile oversight by the department of health and human resources and the division of juvenile services regarding a coordinated system of child welfare and juvenile justice and requiring regular reports as to its progress before completion; clarifying provisions relating to juvenile proceedings; requiring certain plans be reported annually; requiring the development of criteria for determining the construction, renovation, expansion or replacement of regional detention facilities; requiring regular reports and annual updates of the plan to the designated legislative oversight committee; authorizing director of the division of juvenile services to seek modification of dispositional order; mandating certain cooperative arrangements or agreements between the division and the department; eliminating obsolete language regarding the Ohio County jail; specifying requirements relating to the medical and other care or treatment of juveniles committed to the division's custody; setting forth arrest authority of juvenile correctional officers; setting forth priority of hiring with regard to juvenile detention and corrections facilities; providing for confidentiality of records; directing the development of certain uniform court orders; and repealing article establishing child placement alternatives corporation.

Be it enacted by the Legislature of West Virginia:

That article ten, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section one, article one of said chapter be amended and reenacted; that sections thirteen, thirteen-e and fourteen, article five of said chapter be amended and reenacted; that section six-a, article five-a of said

chapter be amended and reenacted; that section four, article five-b of said chapter be amended and reenacted; that sections one, three, five and six, article five-e of said chapter be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections five-a and eight; and that sections one and twenty-nine, article seven of said chapter be amended and reenacted, all to read as follows:

Article

- 1. Purposes; Definitions.**
- 5. Juvenile Proceedings.**
- 5A. Juvenile Referee System.**
- 5B. West Virginia Juvenile Offender Rehabilitation Act.**
- 5E. Division of Juvenile Services.**
- 7. General Provisions.**

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-1. Purpose.

- 1 (a) The purpose of this chapter is to provide a coordinated
- 2 system of child welfare and juvenile justice for the children of
- 3 this state that has goals to:
 - 4 (1) Assure each child care, safety and guidance;
 - 5 (2) Serve the mental and physical welfare of the child;
 - 6 (3) Preserve and strengthen the child's family ties;
 - 7 (4) Recognize the fundamental rights of children and
 - 8 parents;
 - 9 (5) Adopt procedures and establish programs that are
 - 10 family-focused rather than focused on specific family members,
 - 11 except where the best interests of the child or the safety of the
 - 12 community are at risk;
 - 13 (6) Involve the child and his or her family or caregiver in
 - 14 the planning and delivery of programs and services;
 - 15 (7) Provide services that are community-based, in the least
 - 16 restrictive settings that are consonant with the needs and
 - 17 potentials of the child and his or her family;

18 (8) Provide for early identification of the problems of
19 children and their families, and respond appropriately with
20 measures and services to prevent abuse and neglect or delin-
21 quency;

22 (9) Provide a system for the rehabilitation of status offend-
23 ers and juvenile delinquents;

24 (10) Provide a system for the secure detention of certain
25 juveniles alleged or adjudicated delinquent;

26 (11) Provide a system for the secure incarceration of
27 juveniles adjudicated delinquent and committed to the custody
28 of the director of the division of juvenile services; and

29 (12) Protect the welfare of the general public.

30 (b) In pursuit of these goals it is the intention of the
31 Legislature to provide for removing the child from the custody
32 of his or her parents only when the child's welfare or the safety
33 and protection of the public cannot be adequately safeguarded
34 without removal; and, when the child has to be removed from
35 his or her family, to secure for the child custody, care and
36 discipline consistent with the child's best interests and other
37 goals herein set out. It is further the intention of the Legislature
38 to require that any reunification, permanency or preplacement
39 preventative services address the safety of the child.

40 (c) The child welfare service of the state shall be adminis-
41 tered by the department of health and human resources. The
42 division of juvenile services of the department of military
43 affairs and public safety shall administer the secure
44 predispositional juvenile detention and juvenile correctional
45 facilities of the state. Notwithstanding any other provision of
46 this code to the contrary, the administrative authority of the
47 division of juvenile services over any child in this state extends
48 only to those detained or committed to a secure detention
49 facility or secure correctional facility operated and maintained
50 by the division by an order of a court of competent jurisdiction
51 during the period of actual detention or confinement in the
52 facility.

53 (d) The department of health and human resources is
54 designated as the agency to cooperate with the United States
55 department of health and human services and United States
56 department of justice in extending and improving child welfare
57 services, to comply with regulations thereof, and to receive and
58 expend federal funds for these services. The division of juvenile
59 services of the department of military affairs and public safety
60 is designated as the agency to cooperate with the United States
61 department of health and human services and United States
62 department of justice in operating, maintaining and improving
63 juvenile correction facilities and centers for the predispositional
64 detention of children, to comply with regulations thereof, and
65 to receive and expend federal funds for these services.

66 (e) The department of health and human resources and the
67 division of juvenile services shall present a joint plan for a
68 coordinated system of child welfare and juvenile justice,
69 including specific provisions for juveniles who have been
70 accused of an act of delinquency through the filing of a formal
71 petition pursuant to section seven, article five of this chapter, to
72 the designated legislative task force for juvenile oversight on or
73 before the first day of September, one thousand nine hundred
74 ninety-nine. The department and division shall report regularly
75 during the interim period to the designated task force before
76 completion of the plan to advise the Legislature as to progress
77 of the plan's development.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-13. Disposition of juvenile delinquents; appeal.

§49-5-13e. Comprehensive plan for juveniles.

§49-5-14. Modification of dispositional orders.

§49-5-13. Disposition of juvenile delinquents; appeal.

1 (a) In aid of disposition of juvenile delinquents, the juvenile
2 probation officer assigned to the court shall, upon request of the
3 court, make an investigation of the environment of the juvenile
4 and the alternative dispositions possible. The court, upon its
5 own motion, or upon request of counsel, may order a psycho-
6 logical examination of the juvenile. The report of such exami-
7 nation and other investigative and social reports shall not be

8 made available to the court until after the adjudicatory hearing.
9 Unless waived, copies of the report shall be provided to counsel
10 for the petitioner and counsel for the juvenile no later than
11 seventy-two hours prior to the dispositional hearing.

12 (b) Following the adjudication, the court shall conduct the
13 dispositional proceeding, giving all parties an opportunity to be
14 heard. In disposition the court shall not be limited to the relief
15 sought in the petition and shall, in electing from the following
16 alternatives, consider the best interests of the juvenile and the
17 welfare of the public:

18 (1) Dismiss the petition;

19 (2) Refer the juvenile and the juvenile's parent or custodian
20 to a community agency for needed assistance and dismiss the
21 petition;

22 (3) Upon a finding that the juvenile is in need of ex-
23 tra-parental supervision: (A) Place the juvenile under the
24 supervision of a probation officer of the court or of the court of
25 the county where the juvenile has his or her usual place of
26 abode or other person while leaving the juvenile in custody of
27 his or her parent or custodian; and (B) prescribe a program of
28 treatment or therapy or limit the juvenile's activities under
29 terms which are reasonable and within the child's ability to
30 perform, including participation in the litter control program
31 established pursuant to section twenty-five, article seven,
32 chapter twenty of this code, or other appropriate programs of
33 community service;

34 (4) Upon a finding that a parent or custodian is not willing
35 or able to take custody of the juvenile, that a juvenile is not
36 willing to reside in the custody of his parent or custodian, or
37 that a parent or custodian cannot provide the necessary supervi-
38 sion and care of the juvenile, the court may place the juvenile
39 in temporary foster care or temporarily commit the juvenile to
40 the department or a child welfare agency. The court order shall
41 state that continuation in the home is contrary to the best
42 interest of the juvenile and why; and whether or not the
43 department made a reasonable effort to prevent the placement

44 or that the emergency situation made such efforts unreasonable
45 or impossible. Whenever the court transfers custody of a youth
46 to the department, an appropriate order of financial support by
47 the parents or guardians shall be entered in accordance with
48 section five, article seven of this chapter and guidelines
49 promulgated by the supreme court of appeals;

50 (5) Upon a finding that the best interests of the juvenile or
51 the welfare of the public require it, and upon an adjudication of
52 delinquency pursuant to subdivision (1), section four, article
53 one of this chapter, the court may commit the juvenile to the
54 custody of the director of the division of juvenile services for
55 placement in a juvenile correctional facility for the treatment,
56 instruction and rehabilitation of juveniles: *Provided*, That the
57 court maintains discretion to consider alternative sentencing
58 arrangements. Commitments shall not exceed the maximum
59 term for which an adult could have been sentenced for the same
60 offense and any such maximum allowable sentence to be served
61 in a juvenile correctional facility may take into account any
62 time served by the juvenile in a detention center pending
63 adjudication, disposition or transfer. The order shall state that
64 continuation in the home is contrary to the best interests of the
65 juvenile and why; and whether or not the state department made
66 a reasonable effort to prevent the placement or that the emer-
67 gency situation made such efforts unreasonable or impossible;
68 or

69 (6) After a hearing conducted under the procedures set out
70 in subsections (c) and (d), section four, article five, chapter
71 twenty-seven of this code, commit the juvenile to a mental
72 health facility in accordance with the juvenile's treatment plan;
73 the director of the mental health facility may release a juvenile
74 and return him or her to the court for further disposition. The
75 order shall state that continuation in the home is contrary to the
76 best interests of the juvenile and why; and whether or not the
77 state department made a reasonable effort to prevent the
78 placement or that the emergency situation made such efforts
79 unreasonable or impossible.

80 (c) The disposition of the juvenile shall not be affected by
81 the fact that the juvenile demanded a trial by jury or made a

82 plea of denial. Any dispositional order is subject to appeal to
83 the supreme court of appeals.

84 (d) Following disposition, the court shall inquire whether
85 the juvenile wishes to appeal and the response shall be tran-
86 scribed; a negative response shall not be construed as a waiver.
87 The evidence shall be transcribed as soon as practicable and
88 made available to the juvenile or his or her counsel, if the same
89 is requested for purposes of further proceedings. A judge may
90 grant a stay of execution pending further proceedings.

91 (e) Notwithstanding any other provision of this code to the
92 contrary, if a juvenile charged with delinquency under this
93 chapter is transferred to adult jurisdiction and there tried and
94 convicted, the court may make its disposition in accordance
95 with this section in lieu of sentencing such person as an adult.

§49-5-13e. Comprehensive plan for juveniles.

1 (a) The division of juvenile services shall develop and
2 annually update a comprehensive plan to establish a unified
3 state system for social and rehabilitative programming and
4 treatment of juveniles who are detained or incarcerated in
5 predispositional detention centers and in juvenile correction
6 facilities and a comprehensive plan for regional juvenile
7 detention facilities and programs. These plans and updates are
8 to be submitted to the West Virginia Legislature no later than
9 the first day of January each year.

10 (b) The comprehensive plan for regional detention pro-
11 grams and facilities shall be based on the need for secure
12 juvenile detention services in a given county or region. The
13 secretary of the department of health and human resources, the
14 secretary of the department of military affairs and public safety
15 and the executive director of the regional jail and correctional
16 facility authority shall develop and agree to the criteria to be
17 considered in determining the construction, renovation,
18 acquisition or repair of projects proposed after the effective date
19 of this article. These criteria are to be reviewed periodically and
20 included in the annual report required pursuant to this section.
21 The comprehensive plan may propose locating newly con-
22 structed detention facilities on or near a planned or existing

- 23 regional jail facility, with common facilities and administration
24 as permitted by federal law.

§49-5-14. Modification of dispositional orders.

1 (a) A dispositional order of the court may be modified:

2 (1) Upon the motion of the probation officer, a department
3 official, the director of the division of juvenile services or
4 prosecuting attorney; or

5 (2) Upon the request of the child or a child's parent or
6 custodian who alleges a change of circumstances relating to
7 disposition of the child.

8 (b) Upon such a motion or request, the court shall conduct
9 a review proceeding, except that if the last dispositional order
10 was within the previous six months the court may deny a
11 request for review. Notice in writing of a review proceeding
12 shall be given to the child, the child's parent or custodian and
13 all counsel not less than seventy-two hours prior to the proceed-
14 ing. The court shall review the performance of the child, the
15 child's parent or custodian, the child's social worker and other
16 persons providing assistance to the child or child's family. If
17 the motion or request for review of disposition is based upon an
18 alleged violation of a court order, the court may modify the
19 dispositional order to a more restrictive alternative if it finds
20 clear and convincing proof of substantial violation. In the
21 absence of such proof, the court may decline to modify the
22 dispositional order or may modify the order to one of the less
23 restrictive alternatives set forth in section thirteen of this article.
24 No juvenile may be required to seek a modification order as
25 provided in this section in order to exercise his or her right to
26 seek release by habeas corpus.

27 (c) In a hearing for modification of a dispositional order, or
28 in any other dispositional hearing, the court shall consider the
29 best interests of the child and the welfare of the public.

ARTICLE 5A. JUVENILE REFEREE SYSTEM.

§49-5A-6a. State plan for predispositional detention centers for juveniles.

1 (a) The division of juvenile services of the department of
2 military affairs and public safety shall develop a comprehensive
3 plan to maintain and improve a unified state system of regional
4 predispositional detention centers for juveniles. The plan shall
5 be predicated upon the maximum utilization of existing
6 resources, facilities and procedures and shall take into consider-
7 ation recommendations from the department of health and
8 human resources, the regional jail and correctional facility
9 authority, the division of corrections, the governor's committee
10 on crime, delinquency and correction, the supreme court of
11 appeals, the state board of education, detention center person-
12 nel, juvenile probation officers and judicial and law-enforce-
13 ment officials from throughout the state.

14 The principal purpose of the plan shall be, through state-
15 ments of policy and program goals, to provide first for the
16 effective and efficient use of existing regional juvenile deten-
17 tion facilities and the prudent allocation of resources for any
18 future expansion or addition.

19 (b) The plan shall identify operational problems of secure
20 detention centers, including, but not limited to, overcrowding,
21 security and violence within centers, difficulties in moving
22 juveniles through the centers within required time periods,
23 health needs, educational needs, transportation problems, staff
24 turnover and morale and other perceived problem areas. The
25 plan shall further provide recommendations directed to alleviate
26 the problems.

27 (c) The plan shall include, but not be limited to, statements
28 of policies and goals in the following areas:

29 (1) Licensing of secure detention centers;

30 (2) Criteria for placing juveniles in detention;

31 (3) Alternatives to secure detention;

32 (4) Allocation of fiscal resources to the costs of secure
33 detention facilities;

34 (5) Information and referral services; and

35 (6) Educational regulations developed and approved by the
36 West Virginia board of education.

37 (d) The president of the Senate and the speaker of the
38 House of Delegates shall designate a committee or task force
39 thereof, to act in a continuing capacity as an oversight commit-
40 tee, which shall assist the director of the division of juvenile
41 services in the development, periodic review and update of the
42 state plan for the predispositional detention centers for juve-
43 niles. To this end, the director shall make regular reports to the
44 designated legislative oversight body during the interim period
45 and immediately before any regular session of the Legislature,
46 which reports shall include any recommendations for legislative
47 enactment, together with drafts of any proposed legislation
48 necessary to effectuate those recommendations.

**ARTICLE 5B. WEST VIRGINIA JUVENILE OFFENDER REHABILITA-
TION ACT.**

**§49-5B-4. Responsibilities of the department of health and human
resources and division of juvenile services of the
department of military affairs and public safety.**

1 (a) The department of health and human resources and the
2 division of juvenile services of the department of military
3 affairs and public safety are empowered to jointly establish, and
4 shall establish, subject to the limits of funds available or
5 otherwise appropriated therefor, programs and services de-
6 signed to prevent juvenile delinquency, to divert juveniles from
7 the juvenile justice system, to provide community-based
8 alternatives to juvenile detention and correctional facilities and
9 to encourage a diversity of alternatives within the child welfare
10 and juvenile justice system. The development, maintenance and
11 expansion of programs and services may include, but not be
12 limited to, the following:

13 (1) Community-based programs and services for the
14 prevention and treatment of juvenile delinquency through the
15 development of foster-care and shelter-care homes, group
16 homes, halfway houses, homemaker and home health services,
17 twenty-four hour intake screening, volunteer and crisis home

18 programs, day treatment and any other designated community-
19 based diagnostic, treatment or rehabilitative service;

20 (2) Community-based programs and services to work with
21 parents and other family members to maintain and strengthen
22 the family unit so that the juvenile may be retained in his or her
23 home;

24 (3) Youth service bureaus and other community-based
25 programs to divert youth from the juvenile court or to support,
26 counsel, or provide work and recreational opportunities for
27 status offenders, juvenile delinquents and other youth to help
28 prevent delinquency;

29 (4) Projects designed to develop and implement programs
30 stressing advocacy activities aimed at improving services for
31 and protecting rights of youth affected by the juvenile justice
32 system;

33 (5) Educational programs or supportive services designed
34 to encourage status offenders, juvenile delinquents, and other
35 youth to remain in elementary and secondary schools or in
36 alternative learning situations;

37 (6) Expanded use of professional and paraprofessional
38 personnel and volunteers to work effectively with youth;

39 (7) Youth initiated programs and outreach programs
40 designed to assist youth who otherwise would not be reached by
41 traditional youth assistance programs; and

42 (8) A statewide program designed to reduce the number of
43 commitments of juveniles to any form of juvenile facility as a
44 percentage of the state juvenile population; to increase the use
45 of nonsecure community-based facilities as a percentage of
46 total commitments to juvenile facilities; and to discourage the
47 use of secure incarceration and detention.

48 (b) The department of health and human resources shall
49 establish, within the funds available, an individualized program
50 of rehabilitation for each status offender referred to the depart-
51 ment and to each alleged juvenile delinquent referred to the
52 department after being allowed an improvement period by the

53 juvenile court, and for each adjudicated juvenile delinquent
54 who, after adjudication, is referred to the department for
55 investigation or treatment or whose custody is vested in the
56 department. Such individualized program of rehabilitation shall
57 take into account the programs and services to be provided by
58 other public or private agencies or personnel which are avail-
59 able in the community to deal with the circumstances of the
60 particular juvenile. For alleged juvenile delinquents and status
61 offenders, such individualized program of rehabilitation shall
62 be furnished to the juvenile court and shall be available to
63 counsel for the juvenile; it may be modified from time to time
64 at the direction of the department or by order of the juvenile
65 court. The department may develop an individualized program
66 of rehabilitation for any juvenile referred for noncustodial
67 counseling under section five, article three of this chapter, for
68 any juvenile receiving counsel and advice under section three-a,
69 article five of this chapter, or for any other juvenile upon the
70 request of a public or private agency.

71 (c) The department of health and human resources and the
72 division of juvenile services are authorized and directed to enter
73 into cooperative arrangements and agreements with each other
74 and with private agencies or with agencies of the state and its
75 political subdivisions to fulfill their respective duties under this
76 article and chapter.

ARTICLE 5E. DIVISION OF JUVENILE SERVICES.

§49-5E-1. Policy.

§49-5E-3. Transfer of functions; duties and powers; employment of comprehensive strategy.

§49-5E-5. Rules for specialized training for juvenile corrections officers and detention center employees.

§49-5E-5a. Juvenile detention and corrections facilities; employees; priority of hiring.

§49-5E-6. Medical and other treatment of juveniles in custody of the division; coordination of care and claims processing and administration by the department; authorization of certain cooperative agreements.

§49-5E-8. Arrest authority of juvenile correctional and detention officers.

§49-5E-1. Policy.

1 It is the policy of the state to provide a coordinated contin-
2 uum of care for its children who have been charged with an

3 offense which would be a crime if committed by an adult,
4 whether they are taken into custody and securely detained or
5 released pending adjudication by the court. It is further the
6 policy of the state to ensure the safe and efficient custody of a
7 securely detained child through the entire juvenile justice
8 process, and this can best be accomplished by the state by
9 providing for cooperation and coordination between the
10 agencies of government which are charged with responsibilities
11 for the children of the state. Accordingly, whenever any
12 juvenile is ordered by the court to be transferred from the
13 custody of one of these agencies into the custody of the other,
14 the department of health and human resources and the division
15 of juvenile services shall cooperate with each other to the
16 maximum extent necessary in order to ease the child's transi-
17 tion and to reduce unnecessary cost, duplication and delay.

**§49-5E-3. Transfer of functions; duties and powers; employment
of comprehensive strategy.**

1 The division of juvenile services shall assume the following
2 duties previously performed by the department of health and
3 human resources as to juveniles in detention facilities or
4 juvenile corrections facilities:

5 (1) Cooperating with the United States department of
6 justice in operating, maintaining and improving juvenile
7 correction facilities and predispositional detention centers,
8 complying with regulations thereof, and receiving and expend-
9 ing federal funds for the services, as set forth in section one,
10 article one of this chapter;

11 (2) Providing care for children needing secure detention
12 pending disposition by a court having juvenile jurisdiction or
13 temporary care following such court action, as set forth in
14 section sixteen, article two of this chapter;

15 (3) Assigning the necessary personnel and providing
16 adequate space for the support and operation of any facility
17 providing for the secure detention of children committed to the
18 care of the division of juvenile services, as set forth in section
19 six, article five-a of this chapter;

20 (4) Proposing rules which outline policies and procedures
21 governing the operation of correctional, detention and other
22 facilities in its division wherein juveniles may be securely
23 housed, as set forth in section sixteen-a, article five of this
24 chapter;

25 (5) Assigning the necessary personnel and providing
26 adequate space for the support and operation of its facilities, as
27 set forth in section six, article five-a of this chapter;

28 (6) Developing a comprehensive plan to maintain and
29 improve a unified state system of regional predispositional
30 detention centers for juveniles, as set forth in section thirteen-e,
31 article five and section six-a, article five-a of this chapter;

32 (7) Working in cooperation with the department of health
33 and human resources in establishing, maintaining, and continu-
34 ously refining and developing a balanced and comprehensive
35 state program for children who have been adjudicated delin-
36 quent, as set forth in section two, article six-b of this chapter;

37 (8) In cooperation with the department of health and human
38 resources establishing programs and services within available
39 funds, designed to prevent juvenile delinquency, to divert
40 juveniles from the juvenile justice system, to provide
41 community-based alternatives to juvenile detention and
42 correctional facilities and to encourage a diversity of alterna-
43 tives within the juvenile justice system, as set forth in section
44 four, article five-b of this chapter.

45 Working in collaboration with the department of health and
46 human resources, the division of juvenile services shall employ
47 a comprehensive strategy for the social and rehabilitative
48 programming and treatment of juveniles, consistent with the
49 principles adopted by the office of juvenile justice and delin-
50 quency prevention of the office of justice programs of the
51 United States department of justice.

§49-5E-5. Rules for specialized training for juvenile corrections officers and detention center employees.

1 The division of juvenile services shall propose legislative
2 rules to be promulgated by the Legislature according to the
3 provisions of chapter twenty-nine-a of this code, to require
4 juvenile corrections officers and detention center employees to
5 complete specialized training and certification. The training
6 programs shall meet the standards of those offered or endorsed
7 by the office of juvenile justice and delinquency prevention of
8 the office of justice programs of the United States department
9 of justice.

**§49-5E-5a. Juvenile detention and corrections facilities; employ-
ees; priority of hiring.**

1 (a) Notwithstanding any provision of this code to the
2 contrary, the division, when employing any persons to complete
3 the approved staffing plan of any of its juvenile detention or
4 corrections facilities shall employ any person otherwise
5 qualified who applies for a position at the juvenile detention or
6 corrections facility who was also employed in good standing at
7 a county or local jail facility, at the time of its closing, that was
8 closed due to the completion of a regional jail.

9 (b) All persons employed at a juvenile detention or correc-
10 tions facility shall be employed at a salary and with benefits
11 consistent with the approved plan of compensation of the
12 division of personnel, created under section five, article six,
13 chapter twenty-nine of this code; all such employees shall also
14 be covered by the policies and procedures of the education and
15 state employees grievance board, created under section five,
16 article six-a, chapter twenty-nine of this code and the classified-
17 exempt service protection policies of the division of personnel.

**§49-5E-6. Medical and other treatment of juveniles in custody of
the division; coordination of care and claims
processing and administration by the department;
authorization of certain cooperative agreements.**

1 (a) Notwithstanding any other provision of law to the
2 contrary, the director, or his or her designee, is hereby autho-
3 rized to consent to the medical or other treatment of any
4 juvenile in the legal or physical custody of the director or the
5 division.

6 (b) In providing or arranging for the necessary medical and
7 other care and treatment of juveniles committed to the divi-
8 sion's custody, the director shall utilize service providers who
9 provide the same or similar services to juveniles under existing
10 contracts with the department of health and human resources.
11 In order to obtain the most advantageous reimbursement rates,
12 to capitalize on an economy of scale and to avoid duplicative
13 systems and procedures, the department shall administer and
14 process all claims for medical or other treatment of juveniles
15 committed to the division's custody.

16 (c) For purposes of implementing the mandates of this
17 section, the director is hereby authorized and directed to enter
18 into any necessary agreements with the department of health
19 and human resources. Any such agreement shall specify, at a
20 minimum, for the direct and incidental costs associated with
21 such care and treatment to be paid by the division of juvenile
22 services.

§49-5E-8. Arrest authority of juvenile correctional and detention officers.

1 (a) Persons employed by the division of juvenile services as
2 juvenile correctional officers or detention officers are autho-
3 rized and empowered to arrest persons already in the custody of
4 the division of juvenile services for violations of law that occur
5 in the officer's presence, including escape.

6 (b) Nothing in this section shall be construed as to make a
7 juvenile correctional or detention officer employed by the
8 division of juvenile services a law-enforcement officer as
9 defined in section one, article twenty-nine, chapter thirty of this
10 code.

ARTICLE 7. GENERAL PROVISIONS.

§49-7-1. Confidentiality of records.

§49-7-29. General provisions to read uniform court orders regarding custody;
promulgation of rules.

§49-7-1. Confidentiality of records.

1 (a) Except as otherwise provided in this chapter or by order
2 of the court, all records and information concerning a child or

3 juvenile which are maintained by the division of juvenile
4 services, the department of health and human resources, a child
5 agency or facility, court or law-enforcement agency shall be
6 kept confidential and shall not be released or disclosed to
7 anyone, including any federal or state agency.

8 (b) Notwithstanding the provisions of subsection (a) of this
9 section or any other provision of this code to the contrary,
10 records concerning a child or juvenile, except adoption records,
11 juvenile court records and records disclosing the identity of a
12 person making a complaint of child abuse or neglect shall be
13 made available:

14 (1) Where otherwise authorized by this chapter;

15 (2) To:

16 (A) The child;

17 (B) A parent whose parental rights have not been termi-
18 nated; or

19 (C) The attorney of the child or parent;

20 (3) With the written consent of the child or of someone
21 authorized to act on the child's behalf; or

22 (4) Pursuant to a subpoena or order of a court of record;
23 however, a subpoena for such records may be quashed by a
24 court for good cause.

25 (c) In addition to those persons or entities to whom infor-
26 mation may be disclosed under subsection (b) of this section,
27 information related to child abuse or neglect proceedings,
28 except information relating to the identity of the person
29 reporting or making a complaint of child abuse or neglect, shall
30 be made available, upon request, to:

31 (1) Federal, state or local government entities, or any agent
32 of such entities, including law-enforcement agencies and
33 prosecuting attorneys, having a need for such information in
34 order to carry out its responsibilities under law to protect
35 children from abuse and neglect;

36 (2) The child fatality review team;

37 (3) Child abuse citizen review panels;

38 (4) Multidisciplinary investigative and treatment teams; or

39 (5) A grand jury, circuit court or family law master, upon
40 a finding that information in the records is necessary for the
41 determination of an issue before the grand jury, circuit court or
42 family law master.

43 (d) In the event of a child fatality or near fatality due to
44 child abuse and neglect, information relating to such fatality or
45 near fatality shall be made public by the department of health
46 and human resources and to the entities described in subsection
47 (c) of this section, all under the circumstances described in that
48 subsection: *Provided*, That information released by the depart-
49 ment of health and human resources pursuant to this subsection
50 shall not include the identity of a person reporting or making a
51 complaint of child abuse or neglect. For purposes of this
52 subsection, "near fatality" means any medical condition of the
53 child which is certified by the attending physician to be life-
54 threatening.

55 (e) Except in juvenile proceedings which are transferred to
56 criminal proceedings, law-enforcement records and files
57 concerning a child or juvenile shall be kept separate from the
58 records and files of adults and not included within the court
59 files. Law-enforcement records and files concerning a child or
60 juvenile shall only be open to inspection pursuant to the
61 provisions of sections seventeen and eighteen, article five of
62 this chapter.

63 (f) Any person who willfully violates the provisions of this
64 section is guilty of a misdemeanor and, upon conviction
65 thereof, shall be fined not more than one thousand dollars, or
66 confined in the county or regional jail for not more than six
67 months, or be both fined and confined. A person convicted of
68 violating the provisions of this section shall also be liable for
69 damages in the amount of three hundred dollars or actual
70 damages, whichever is greater.

71 (g) Notwithstanding the provisions of this section, or any
72 other provision of this code to the contrary, the name and

73 identity of any juvenile adjudicated or convicted of a violent or
74 felonious crime shall be made available to the public.

§49-7-29. General provisions to read uniform court orders regarding custody; promulgation of rules.

1 The supreme court shall, in consultation with the depart-
2 ment of health and human resources and the division of juvenile
3 services, develop and cause to be implemented, as soon as
4 practicable but no later than the first day of September, one
5 thousand nine hundred ninety-nine, forms for court orders
6 which are consistent with the provision of chapter forty-nine of
7 this code, including provisions for authorizing disclosure and
8 transfer of juvenile records between agencies while requiring
9 maintenance of confidentiality, as well as the provisions of
10 Title 142 U.S.C. Section 620, et seq., and Title 42 U.S.C.
11 Section 670, et seq., relating to the promulgation of uniform
12 court orders for placement of minor children and the regulations
13 promulgated thereunder, for use in the magistrate and circuit
14 courts of the state.

CHAPTER 6

(H. B. 106 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed March 22, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend article twenty, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-one; and to amend article twenty-one of said chapter by adding thereto a new section, designated section thirty, all relating to charitable bingo and raffles; creating additional sanctions and authorizing the state tax commissioner to impose the additional sanctions upon licensees of charitable bingo or charitable raffles; providing for civil monetary penalties and fees; exempting certain licensees

from sanctions under certain circumstances; and providing for disposition of fines, money penalties and fees.

Be it enacted by the Legislature of West Virginia:

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

Article

20. Charitable Bingo.

21. Charitable Raffles.

ARTICLE 20. CHARITABLE BINGO.

§47-20-31. Additional remedies for the commissioner; administrative procedures; deposit of money penalties.

1 (a) *Additional remedies.* —Notwithstanding any provision
2 of this article to the contrary, the commissioner may:

3 (1) Revoke or refuse to renew any license issued under this
4 article for any material violation of the provisions of this article
5 or legislative rules of the commissioner promulgated for this
6 article;

7 (2) Suspend the license of any licensee for the period of
8 time the commissioner deems appropriate, not to be less than
9 one week nor more than twelve months, for any material
10 violation of the provisions of this article or legislative rule of
11 the commissioner promulgated for this article;

12 (3) Place a licensee on probation for not less than six
13 months nor more than five years: *Provided*, That in the event a
14 licensee is placed on probation, as a condition of the probation,
15 the licensee shall pay to the commissioner a probation supervi-
16 sion fee in an amount equal to two percent of the gross proceeds
17 derived by the licensee from the conduct of bingo occasions
18 during the period of the suspension, but, in no event, may the
19 probation supervision fee be less than two thousand dollars. All
20 probation supervision fee revenue shall be placed in a special
21 account and used by the commissioner, after appropriation by

22 the Legislature, to offset the expenses and costs incurred by the
23 tax division to supervise the licensee;

24 (4) Require a licensee to replace any officer who knew or
25 should have known of a material violation of the provisions of
26 this article or legislative rules of the commissioner promulgated
27 for this article;

28 (5) Require a licensee to prohibit one or more members,
29 supporters, volunteers or employees of the licensee involved in
30 acts of material violation of the provisions of this article or
31 legislative rules of the commissioner promulgated for this
32 article, from all future bingo occasions held under the license,
33 or for the period of time specified by the commissioner;

34 (6) Impose a civil money penalty in an amount not less than
35 one hundred dollars nor more than two times the annual gross
36 proceeds derived by the licensee, for each material violation of
37 the provisions of this article or legislative rules of the commis-
38 sioner: *Provided*, That in setting any monetary penalty for a
39 first offense, the commissioner shall take into consideration the
40 ability of the licensee to continue to exist and operate. For each
41 material violation which is a second or subsequent offense, the
42 amount of the civil penalty that may be imposed may not be
43 less than five hundred dollars and may not exceed two times the
44 annual gross proceeds of the licensee. Application of this
45 subdivision and the amount of civil money penalty levied shall
46 be determined in accordance with a legislative rule promulgated
47 by the commissioner pursuant to article three, chapter
48 twenty-nine-a of this code. The commissioner may file this rule
49 as an emergency rule. Any licensee aggrieved by the amount of
50 the civil penalty may surrender its license, or, after exhausting
51 all administrative remedies, have the matter reviewed in the
52 circuit court of the county where the offense giving rise to the
53 civil penalty occurred; or

54 (7) Order any one or more, or any combination, of the
55 penalties provided for in subdivisions (1) through (6) of this
56 subsection: *Provided*, That no sanctions or other remedy shall
57 be imposed under this article on a licensee which is exempt or
58 qualified to be exempt from federal income taxation under

59 subsection 501(c)(3) or 501(c)(4) of the Internal Revenue Code
60 of 1986, as amended, but does not have bona fide members, due
61 to failure to operate bingo occasions with members if the
62 occasions are or were operated by residents of this state who
63 have been employed by the licensee or been meaningfully
64 associated with the licensee for one or more years before the
65 date of the licensee's application for a license under this article,
66 or its last application for renewal of a license under this article.

67 (b) *Administrative procedures.*

68 (1) An order issued under this section shall be served by
69 certified mail or in the manner provided in rule 4(d) of the West
70 Virginia rules of civil procedure for trial courts of record, as
71 amended.

72 (2) A licensee may appeal an order of the commissioner
73 issued under this section by filing a written protest with the
74 commissioner, either in person or by certified mail, within
75 twenty days after the licensee is served with a copy of the order.

76 (3) When a written protest is filed timely, the provisions of
77 article five, chapter twenty-nine-a of this code shall apply. The
78 commissioner may by procedural rule specify the form and
79 content of a written protest.

80 (4) The burden of proof in any administrative or court
81 proceeding is on the licensee to show cause why the order of
82 the commissioner under this section should be modified, in
83 whole or in part, or set aside.

84 (c) *Deposit of money penalties.* —All fines, money penal-
85 ties and fees imposed pursuant to this section, except the
86 probation supervision fee imposed by subdivision (3), subsec-
87 tion (a) of this section, shall be deposited into the general
88 revenue fund of this state.

ARTICLE 21. CHARITABLE RAFFLES.

**§47-21-30. Additional remedies for the commissioner; adminis-
trative procedures; deposit of money penalties.**

1 (a) *Additional remedies.* —Notwithstanding any provision
2 of this article to the contrary, the commissioner may:

3 (1) Revoke or refuse to renew any license issued under this
4 article for any material violation of the provisions of this article
5 or legislative rules of the commissioner promulgated for this
6 article;

7 (2) Suspend the license of any licensee for the period of
8 time the commissioner deems appropriate, not to be less than
9 one week nor more than twelve months, for any material
10 violation of the provisions of this article or legislative rule of
11 the commissioner promulgated for this article;

12 (3) Place a licensee on probation for not less than six
13 months nor more than five years: *Provided*, That in the event a
14 licensee is placed on probation, as a condition of the probation,
15 the licensee shall pay to the commissioner a probation supervi-
16 sion fee in an amount equal to two percent of the gross proceeds
17 derived by the licensee from the conduct of raffle occasions
18 during the period of the suspension, but, in no event, may the
19 probation supervision fee be less than two thousand dollars. All
20 probation supervision fee revenue shall be placed in a special
21 account and used by the commissioner, after appropriation by
22 the Legislature, to offset the expenses and costs incurred by the
23 tax division to supervise the licensee;

24 (4) Require a licensee to replace any officer who knew or
25 should have known of a material violation of the provisions of
26 this article or legislative rules of the commissioner promulgated
27 for this article;

28 (5) Require a licensee to prohibit one or more members,
29 supporters, volunteers or employees of the licensee involved in
30 acts of material violation of the provisions of this article or
31 legislative rules of the commissioner promulgated for this
32 article, from all future raffle occasions held under the license,
33 or for the period of time specified by the commissioner;

34 (6) Impose a civil money penalty in an amount not less than
35 one hundred dollars nor more than two times the annual gross
36 proceeds derived by the licensee, for each material violation of
37 the provisions of this article or legislative rules of the commis-
38 sioner: *Provided*, That in setting any monetary penalty for a
39 first offense, the commissioner shall take into consideration the

40 ability of the licensee to continue to exist and operate. For each
41 material violation which is a second or subsequent offense, the
42 amount of the civil penalty that may be imposed may not be
43 less than five hundred dollars and may not exceed two times the
44 annual gross proceeds of the licensee. Application of this
45 subdivision and the amount of civil money penalty levied shall
46 be determined in accordance with a legislative rule promulgated
47 by the commissioner pursuant to article three, chapter
48 twenty-nine-a of this code. The commissioner may file this rule
49 as an emergency rule. Any licensee aggrieved by the amount of
50 the civil penalty may surrender its license, or, after exhausting
51 all administrative remedies, have the matter reviewed in the
52 circuit court of the county where the offense giving rise to the
53 civil penalty occurred; or

54 (7) Order any one or more, or any combination, of the
55 penalties provided for in subdivisions (1) through (6) of this
56 subsection: *Provided*, That no sanctions or other remedy shall
57 be imposed under this article on a licensee which is exempt or
58 qualified to be exempt from federal income taxation under
59 subsection 501(c)(3) or 501(c)(4) of the Internal Revenue Code
60 of 1986, as amended, but does not have bona fide members, due
61 to failure to operate raffle occasions with members if the
62 occasions are or were operated by residents of this state who
63 have been employed by the licensee or been meaningfully
64 associated with the licensee for one or more years before the
65 date of the licensee's application for a license under this article,
66 or its last application for renewal of a license under this article.

67 (b) *Administrative procedures.*

68 (1) An order issued under this section shall be served by
69 certified mail or in the manner provided in rule 4(d) of the West
70 Virginia rules of civil procedure for trial courts of record, as
71 amended.

72 (2) A licensee may appeal an order of the commissioner
73 issued under this section by filing a written protest with the
74 commissioner, either in person or by certified mail, within
75 twenty days after the licensee is served with a copy of the order.

76 (3) When a written protest is filed timely, the provisions of
77 article five, chapter twenty-nine-a of this code shall apply. The
78 commissioner may by procedural rule specify the form and
79 content of a written protest.

80 (4) The burden of proof in any administrative or court
81 proceeding is on the licensee to show cause why the order of
82 the commissioner under this section should be modified, in
83 whole or in part, or set aside.

84 (c) *Deposit of money penalties.* —All fines, money penal-
85 ties and fees imposed pursuant to this section, except the
86 probation supervision fee imposed by subdivision (3), subsec-
87 tion (a) of this section, shall be deposited into the general
88 revenue fund of this state.

CHAPTER 7

(S. B. 1000 — By Senators Tomblin, Mr. President, and Senator Sprouse)
[By Request of the Executive]

[Passed March 22, 1999; to take effect July 1, 1999. Approved by the Governor.]

AN ACT to amend and reenact section eight, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to tax credits available for investment in qualified West Virginia capital companies generally; reducing the total tax credits allowed for the fiscal year beginning the first day of July, one thousand nine hundred ninety-nine; and allocating a portion of the allowed credits during the first ninety days of each fiscal year to investment in certain small business investment companies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.**§5E-1-8. Tax credits.**

1 (a) The total amount of tax credits authorized for a single
2 qualified company may not exceed two million dollars.
3 Capitalization of the company may be increased pursuant to
4 rule of the authority.

5 (b)(1) The total credits authorized by the authority for all
6 companies may not exceed a total of ten million dollars each
7 fiscal year: *Provided*, That for the fiscal year beginning on the
8 first day of July, one thousand nine hundred ninety-seven, the
9 total credits authorized for all companies may not exceed a total
10 of five million five hundred thousand dollars: *Provided*,
11 *however*, That for the fiscal year beginning on the first day of
12 July, one thousand nine hundred ninety-eight, the total credits
13 authorized for all companies may not exceed a total of six
14 million dollars: *Provided further*, That for the fiscal year
15 beginning on the first day of July, one thousand nine hundred
16 ninety-nine, the total credits authorized for all companies may
17 not exceed a total of six million dollars: *And provided further*,
18 That the capital base of any such qualified company shall be
19 invested in accordance with the provisions of this article. The
20 authority shall allocate these credits to qualified companies in
21 the order that said companies are qualified.

22 (2) Beginning on the first day of July, one thousand nine
23 hundred ninety-nine, not more than one million seven hundred
24 fifty thousand dollars of the credits allowed under subdivision
25 (1) of this subsection may be allocated by the authority during
26 each fiscal year to one or more small business investment
27 companies described in this subdivision. The remainder of the
28 tax credits allowed during the fiscal year shall be allocated to
29 qualified companies other than those small business investment
30 companies. The portion of the tax credits allowed for small
31 business investment companies described in this subdivision
32 shall be allowed only if allocated by the authority during the
33 first ninety days of the fiscal year, and may only be allocated to
34 companies that: (A) Were organized on or after the first day of
35 January, one thousand nine hundred ninety-nine; (B) have

36 registered for licensure by the small business administration as
37 a small business investment company under the small business
38 investment act; and (C) have certified in writing to the authority
39 on the application for credits under this act that the company
40 will diligently seek to obtain and thereafter diligently seek to
41 invest leverage available to such small business investment
42 companies under the small business investment act. These
43 credits shall be allocated by the authority in the order that the
44 companies are qualified. Any credits which have not been
45 allocated to qualified companies meeting the requirements of
46 this subdivision relating to small business investment compa-
47 nies during the first ninety days of the fiscal year shall be made
48 available and allocated to other qualified companies in the
49 manner prescribed in this section for qualified companies
50 generally.

51 (c) Any investor, including an individual, partnership or
52 corporation who makes a capital investment in a qualified West
53 Virginia capital company, is entitled to a tax credit equal to
54 fifty percent of the investment, except as otherwise provided in
55 this section or in this article. The credit allowed by this article
56 shall be taken after all other credits allowed by chapter eleven
57 of this code. It shall be taken against the same taxes and in the
58 same order as set forth in subsections (c) through (i), inclusive,
59 section five, article thirteen-c, chapter eleven of this code. The
60 credit for investments by a partnership or by a corporation
61 electing to be treated as a Subchapter S corporation may be
62 divided pursuant to election of partners or shareholders.

63 (d) The tax credit allowed under this section is to be
64 credited against the taxpayer's tax liability for the taxable year
65 in which the investment in a qualified West Virginia capital
66 company is made. If the amount of the tax credit exceeds the
67 taxpayer's tax liability for the taxable year, the amount of the
68 credit which exceeds the tax liability for the taxable year may
69 be carried to succeeding taxable years until used in full, or until
70 forfeited: *Provided, That:* (i) Tax credits may not be carried
71 forward beyond fifteen years; and (ii) tax credits may not be
72 carried back to prior taxable years. Any tax credit remaining
73 after the fifteenth taxable year is forfeited.

74 (e) The tax credit provided for in this section is available
75 only to those taxpayers whose investment in a qualified West
76 Virginia capital company occurs after the first day of July, one
77 thousand nine hundred eighty-six.

78 (f) The tax credit allowed under this section may not be
79 used against any liability the taxpayer may have for interest,
80 penalties or additions to tax.

81 (g) Notwithstanding any provision in this code to the
82 contrary, the tax commissioner shall publish in the state register
83 the name and address of every taxpayer, and the amount, by
84 category, of any credit asserted under this article. The catego-
85 ries by dollar amount of credit received shall be as follows:

86 (1) More than \$1.00, but not more than \$50,000;

87 (2) More than \$50,000, but not more than \$100,000;

88 (3) More than \$100,000, but not more than \$250,000;

89 (4) More than \$250,000, but not more than \$500,000;

90 (5) More than \$500,000, but not more than \$1,000,000;

91 (6) More than \$1,000,000.

CHAPTER 8

(H. B. 105 — By Mr. Speaker, Mr. Kiss, and Delegates Martin,
Varner, Michael, Pino, Douglas and Doyle)

[Passed March 22, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter five-
f of the code of West Virginia, one thousand nine hundred thirty-
one, as amended; to amend and reenact sections two and two-a,
article seven, chapter six of said code; to amend and reenact
section one, article three, chapter eighteen of said code; to amend
and reenact section three, article four, chapter forty-eight-a of said
code; to amend and reenact section three, article one, chapter fifty

of said code; to amend and reenact section ten-a, article one, chapter fifty-one of said code; and to amend and reenact section thirteen, article two of said chapter, all relating to salary adjustments for certain public officials.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 5F. Reorganization of the Executive Branch of State Government.**
- 6. General Provisions Respecting Officers.**
- 18. Education.**
- 48A. Enforcement of Family Obligations.**
- 50. Magistrate Courts.**
- 51. Courts and Their Officers.**

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-3. Oath; bond; compensation.

- 1 (a) Each person appointed to serve as a secretary shall take
- 2 the oath or affirmation prescribed by section five, article four
- 3 of the constitution, and such oath shall be certified by the
- 4 person who administers the same and filed in the office of the
- 5 secretary of state.
- 6 (b) Each person so appointed shall give bond in the penalty
- 7 of twenty-five thousand dollars conditioned for the faithful

8 performance of the duties of the office, which bond shall be
9 approved by the attorney general as to form and by the governor
10 as to sufficiency. The surety of such bond may be a bonding or
11 surety company, in which case the premium shall be paid out of
12 the appropriation made for the administration of the depart-
13 ment.

14 (c) Each secretary shall receive a salary of seventy thousand
15 dollars per year. Beginning the first day of July, one thousand
16 nine hundred ninety-nine, the secretary of the department of
17 health and human resources shall receive an annual salary of
18 eighty-five thousand dollars.

19 (d) The salary and expenses necessary for each secretary
20 and all expenditures for personal services for the office of
21 secretary shall be paid from and within existing appropriations
22 made to the agencies and boards transferred to the department
23 headed by the secretary, and revised expenditure schedules
24 shall be submitted to the commissioner of finance and adminis-
25 tration and the legislative auditor stating the amount and source
26 of funds to be expended: *Provided*, That for fiscal years
27 beginning the first day of July, one thousand nine hundred
28 eighty-nine, such amounts shall follow the procedures described
29 in chapter five-a of this code.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2. Salaries of certain state officers.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications;
powers and salaries of such officers.

§6-7-2. Salaries of certain state officers.

1 The salaries for each of the state constitutional officers
2 shall be as follows:

3 (a) The salary of the governor shall be ninety thousand
4 dollars per year;

5 (b) The salary of the attorney general shall be seventy-five
6 thousand dollars per year;

7 (c) The salary of the auditor shall be seventy thousand
8 dollars per year;

9 (d) The salary of the secretary of state shall be sixty-five
10 thousand dollars per year;

11 (e) The salary of the commissioner of agriculture shall be
12 seventy thousand dollars per year; and

13 (f) The salary of the state treasurer shall be seventy
14 thousand dollars per year.

**§6-7-2a. Terms of certain appointive state officers; appointment;
qualifications; powers and salaries of such officers.**

1 (a) Each of the following appointive state officers named in
2 this subsection shall be appointed by the governor, by and with
3 the advice and consent of the Senate. Each of such appointive
4 state officers shall serve at the will and pleasure of the governor
5 for the term for which the governor was elected and until the
6 respective state officers' successors have been appointed and
7 qualified. Each of such appointive state officers shall be subject
8 to the existing qualifications for holding each such respective
9 office and each shall have and is hereby granted all of the
10 powers and authority and shall perform all of the functions and
11 services heretofore vested in and performed by virtue of
12 existing law respecting each such office.

13 Notwithstanding any other provision of this code to the
14 contrary, beginning on the first day of July, one thousand nine
15 hundred ninety-nine, the annual salary of each such named
16 appointive state officer shall be as follows:

17 Administrator, division of highways, eighty-five thousand
18 dollars; administrator, division of health, fifty-seven thousand
19 two hundred dollars; administrator, division of human services,
20 forty-seven thousand eight hundred dollars; administrator, state
21 tax division, sixty-five thousand dollars; administrator, division
22 of energy, sixty-five thousand dollars; administrator, division

23 of corrections, seventy thousand dollars; administrator, division
24 of natural resources, sixty-five thousand dollars; superinten-
25 dent, state police, seventy thousand dollars; administrator,
26 lottery division, seventy thousand dollars; director, public
27 employees insurance agency, seventy thousand dollars; admin-
28 istrator, division of banking, fifty-five thousand dollars;
29 administrator, division of insurance, fifty-five thousand dollars;
30 administrator, division of culture and history, fifty thousand
31 dollars; administrator, alcohol beverage control commission,
32 seventy thousand dollars; administrator, division of motor
33 vehicles, seventy thousand dollars; director, division of
34 personnel, fifty thousand dollars; adjutant general, seventy
35 thousand dollars; chairman, health care authority, sixty-five
36 thousand dollars; members, health care authority, sixty thou-
37 sand dollars; director, human rights commission, forty thousand
38 dollars; administrator, division of labor, fifty-five thousand
39 dollars; administrator, division of veterans affairs, forty
40 thousand dollars; administrator, division of emergency services,
41 forty thousand dollars; members, board of parole, forty thou-
42 sand dollars; members, employment security review board,
43 seventeen thousand dollars; members, workers' compensation
44 appeal board, seventeen thousand eight hundred dollars.

45 (b) Each of the state officers named in this subsection shall
46 continue to be appointed in the manner prescribed in this code,
47 and, prior to the first day of July, one thousand nine hundred
48 ninety-nine, each of the state officers named in this subsection
49 shall continue to receive the annual salaries they were receiving
50 as of the effective date of the enactment of this section in one
51 thousand nine hundred ninety-nine, and shall thereafter,
52 notwithstanding any other provision of this code to the contrary,
53 be paid an annual salary as follows: Administrator, division of
54 risk and insurance management, fifty thousand dollars; director,
55 division of rehabilitation services, fifty-five thousand dollars;
56 executive director, educational broadcasting authority, fifty-five
57 thousand dollars; secretary, library commission, sixty-two
58 thousand five hundred dollars; director, geological and eco-
59 nomic survey, forty-seven thousand five hundred dollars;
60 executive director, water development authority, fifty-four

61 thousand two hundred dollars; executive director, public
62 defender services, fifty-five thousand dollars; commissioner,
63 bureau of senior services, sixty-five thousand dollars; commis-
64 sioner, oil and gas conservation commission, forty thousand
65 dollars; director, farm management commission, thirty-two
66 thousand five hundred dollars; director, state rail authority, fifty
67 thousand dollars; executive secretary, women's commission,
68 thirty thousand one hundred dollars; director, regional jail and
69 correctional facility authority, seventy thousand dollars;
70 director, hospital finance authority, twenty-five thousand eight
71 hundred dollars.

72 (c) No increase in the salary of any appointive state officer
73 pursuant to this section shall be paid until and unless such
74 appointive state officer shall have first filed with the state
75 auditor and the legislative auditor a sworn statement, on a form
76 to be prescribed by the attorney general, certifying that his or
77 her spending unit is in compliance with any general law
78 providing for a salary increase for his or her employees. The
79 attorney general shall prepare and distribute such form to the
80 affected spending units.

CHAPTER 18. EDUCATION.

ARTICLE 3. STATE SUPERINTENDENT OF SCHOOLS.

§18-3-1. Appointment; qualifications; compensation; traveling expenses; office and residence.

1 There shall be appointed by the state board a state superin-
2 tendent of schools. The superintendent shall be a person of good
3 moral character, of recognized ability as a school administrator,
4 holding at least a master's degree in educational administration,
5 and shall have had not less than five years of experience in
6 public school work. The superintendent shall receive an annual
7 salary of one hundred thousand dollars: *Provided*, That begin-
8 ning the first day of July, two thousand, the superintendent shall
9 receive an annual salary of one hundred ten thousand dollars.
10 The state superintendent shall also receive necessary traveling
11 expenses incident to the performance of his or her duties, the
12 expenses to be paid out of the general school fund upon

- 13 warrants of the state auditor. The superintendent shall have his
14 or her office at the state capital.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

ARTICLE 4. PROCEEDINGS BEFORE A MASTER.

§48A-4-3. Compensation and expenses of family law masters and their staffs.

1 (a) Prior to the first day of July, one thousand nine hundred
2 ninety-four, a family law master shall receive as full compensa-
3 tion for his or her services an annual salary of thirty-five
4 thousand dollars.

5 (b) After the first day of July, one thousand nine hundred
6 ninety-four, a full-time family law master shall receive as full
7 compensation for his or her services an annual salary of fifty
8 thousand dollars and a part-time family law master shall receive
9 as full compensation for his or her services an annual salary of
10 thirty-seven thousand five hundred dollars: *Provided*, That on
11 and after the first day of July, one thousand nine hundred
12 ninety-nine, a full-time family law master shall receive as full
13 compensation for his or her services an annual salary of fifty-
14 four thousand dollars and a part-time family law master shall
15 receive as full compensation for his or her services an annual
16 salary of forty thousand five hundred dollars.

17 (c) The secretary-clerk of the family law master shall be
18 appointed by the family law master and serve at his or her will
19 and pleasure and shall receive an annual salary of seventeen
20 thousand five hundred dollars: *Provided*, That beginning the
21 first day of July, one thousand nine hundred ninety-seven, the
22 secretary-clerk of the family law master appointed by the
23 family law master shall receive an annual salary of twenty-two
24 thousand three hundred eight dollars: *Provided, however*, That
25 subsequent to the first day of July, one thousand nine hundred
26 ninety-three, the secretary-clerk may receive such percentage
27 or proportional salary increases as may be provided for by
28 general law for other public employees and shall receive the
29 annual incremental salary increase as provided for in article
30 five, chapter five of this code.

31 (d) A temporary or special family law master shall be
32 compensated by the supreme court of appeals at an hourly rate
33 not to exceed the hourly rate paid to panel attorneys for
34 performing work in court pursuant to the provisions of section
35 thirteen-a, article twenty-one, chapter twenty-nine of this code.

36 (e) Disbursement of salaries for family law masters and
37 members of their staffs shall be made by or pursuant to the
38 order of the director of the administrative office of the supreme
39 court of appeals.

40 (f) Family law masters, members of their staffs and
41 temporary family law masters shall be allowed their actual and
42 necessary expenses incurred in the performance of their duties.
43 Such expenses and compensation shall be determined and paid
44 by the director of the administrative office of the supreme court
45 of appeals under such guidelines as he or she may prescribe as
46 approved by the supreme court of appeals.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 1. COURTS AND OFFICERS.

§50-1-3. Salaries of magistrates.

1 (a) The Legislature finds and declares that:

2 (1) The West Virginia supreme court of appeals has held
3 that a salary system for magistrates which is based upon the
4 population that each magistrate serves does not violate the
5 equal protection clause of the Constitution of the United States;

6 (2) The West Virginia supreme court of appeals has held
7 that a salary system for magistrates which is based upon the
8 population that each magistrate serves does not violate article
9 VI, section 39 of the Constitution of West Virginia;

10 (3) The utilization of a two-tiered salary schedule for
11 magistrates is an equitable and rational manner by which
12 magistrates should be compensated for work performed;

13 (4) Organizing the two tiers of the salary schedule into one
14 tier for magistrates serving less than eight thousand five
15 hundred in population and the second tier for magistrates

16 serving eight thousand five hundred or more in population is
17 rational and equitable given current statistical information
18 relating to population and caseload; and

19 (5) That all magistrates who fall under the same tier should
20 be compensated equally.

21 (b) The salary of each magistrate shall be paid by the state.
22 Magistrates who serve less than ten thousand in population
23 shall be paid annual salaries of twenty thousand six hundred
24 twenty-five dollars and magistrates who serve ten thousand or
25 more in population shall be paid annual salaries of twenty-
26 seven thousand dollars: *Provided*, That on and after the first day
27 of January, one thousand nine hundred ninety-two, magistrates
28 who serve less than ten thousand in population shall be paid
29 annual salaries of twenty-one thousand six hundred twenty-five
30 dollars and magistrates who serve ten thousand or more in
31 population shall be paid annual salaries of twenty-eight
32 thousand dollars: *Provided, however*, That on and after the first
33 day of January, one thousand nine hundred ninety-three;
34 magistrates who serve less than eight thousand five hundred in
35 population shall be paid annual salaries of twenty-three
36 thousand six hundred twenty-five dollars and magistrates who
37 serve eight thousand five hundred or more in population shall
38 be paid annual salaries of thirty thousand dollars: *Provided*
39 *further*, That on and after the first day of January, one thousand
40 nine hundred ninety-seven, magistrates who serve less than
41 eight thousand five hundred in population shall be paid annual
42 salaries of twenty-six thousand six hundred twenty-five dollars
43 and magistrates who serve eight thousand five hundred or more
44 in population shall be paid annual salaries of thirty-three
45 thousand dollars: *And provided further*, That on and after the
46 first day of July, one thousand nine hundred ninety-nine,
47 magistrates who serve less than eight thousand five hundred in
48 population shall be paid annual salaries of thirty thousand six
49 hundred twenty-five dollars and magistrates who serve eight
50 thousand five hundred or more in population shall be paid
51 annual salaries of thirty-seven thousand dollars.

52 (c) For the purpose of determining the population served by
53 each magistrate, the number of magistrates authorized for each

54 county shall be divided into the population of each county. For
55 the purpose of this article, the population of each county is the
56 population as determined by the last preceding decennial census
57 taken under the authority of the United States government.

CHAPTER 51. COURTS AND THEIR OFFICERS.

Article

1. Supreme Court of Appeals.
2. Circuit Courts; Circuit Judges.

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-10a. Salary of justices.

1 The salary of each of the justices of the supreme court of
2 appeals shall be seventy-two thousand dollars per year: *Pro-*
3 *vided*, That beginning the first day of January, one thousand
4 nine hundred ninety-five, the salary of each of the justices of
5 the supreme court shall be eighty-five thousand dollars per
6 year: *Provided, however*, That beginning the first day of July,
7 one thousand nine hundred ninety-nine, the salary of each of the
8 justices of the supreme court shall be ninety-five thousand
9 dollars per year.

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-13. Salaries of judges of circuit courts.

1 The salaries of the judges of the various circuit courts shall
2 be paid solely out of the state treasury. No county, county
3 commission, board of commissioners or other political subdivi-
4 sion shall supplement or add to such salaries.

5 The annual salary of all circuit judges shall be sixty-five
6 thousand dollars per year: *Provided*, That beginning the first
7 day of January, one thousand nine hundred ninety-five, the
8 annual salary of all circuit judges shall be eighty thousand
9 dollars per year: *Provided, however*, That beginning the first
10 day of July, one thousand nine hundred ninety-nine, the annual
11 salary of all circuit judges shall be ninety thousand dollars per
12 year.

CHAPTER 9

(S. B. 1001 — By Senators Tomblin, Mr. President, and Senator Sprouse)
[By Request of the Executive]

[Passed March 22, 1999; in effect July 1, 1999. 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 increasing salaries of 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.

§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
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

Ch. 9]	SALARIES	1763
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

ANNUAL SALARY SCHEDULE (BASE PAY)
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 forth
64 in subsection (d) of this section, for grade in rank, based on
65 length of service, including that service served before and after
66 the effective date of this section with the West Virginia state
67 police as follows: At the end of five years of service with the
68 West Virginia state police, the member shall receive a salary
69 increase of three hundred dollars to be effective during his or
70 her next three years of service and a like increase at three-year
71 intervals thereafter, with the increases to be cumulative.

72 (f) In applying the salary schedules set forth in this section
73 where salary increases are provided for length of service,
74 members of the West Virginia state police in service at the time

75 the schedules become effective shall be given credit for prior
76 service and shall be paid such salaries as the same length of
77 service entitles them to receive under the provisions of this
78 section.

79 (g) The Legislature finds and declares that because of the
80 unique duties of members of the West Virginia state police, it
81 is not appropriate to apply the provisions of state wage and hour
82 laws to them. Accordingly, members of the West Virginia state
83 police are excluded from the provisions of state wage and hour
84 law. This express exclusion shall not be construed as any
85 indication that the members were or were not covered by the
86 wage and hour law prior to this exclusion.

87 In lieu of any overtime pay they might otherwise have
88 received under the wage and hour law, and in addition to their
89 salaries and increases for length of service, members who have
90 completed basic training and who are exempt from federal Fair
91 Labor Standards Act guidelines may receive supplemental pay
92 as provided in this section.

93 The superintendent shall, within thirty days after the
94 effective date of this section, propose a legislative rule for
95 promulgation in accordance with article three, chapter twenty-
96 nine-a of this code, to establish the number of hours per month
97 which constitute the standard work month for the members of
98 the West Virginia state police. The rule shall further establish,
99 on a graduated hourly basis, the criteria for receipt of a portion
100 or all of supplemental payment when hours are worked in
101 excess of the standard work month. The superintendent shall
102 certify monthly to the West Virginia state police's payroll
103 officer the names of those members who have worked in excess
104 of the standard work month and the amount of their entitlement
105 to supplemental payment.

106 The supplemental payment may not exceed two hundred
107 thirty-six dollars monthly. The superintendent and civilian
108 employees of the West Virginia state police are not eligible for
109 any supplemental payments.

110 (h) Each member of the West Virginia state police, except
111 the superintendent and civilian employees, shall execute, before

112 entering upon the discharge of his or her duties, a bond with
 113 security in the sum of five thousand dollars payable to the state
 114 of West Virginia, conditioned upon the faithful performance of
 115 his or her duties, and the bond shall be approved as to form by
 116 the attorney general and as to sufficiency by the governor.

117 (i) Any member of the West Virginia state police who is
 118 called to perform active duty for training or inactive duty
 119 training in the national guard or any reserve component of the
 120 armed forces of the United States annually shall be granted,
 121 upon request, leave time not to exceed thirty calendar days for
 122 the purpose of performing the active duty for training or
 123 inactive duty training and the time granted may not be deducted
 124 from any leave accumulated as a member of the West Virginia
 125 state police.

126 (j) Beginning on the first day of July, one thousand nine
 127 hundred ninety-nine, and continuing thereafter, members shall
 128 receive annual salaries as follows:

129 AMENDED ANNUAL SALARY SCHEDULE (BASE PAY)
 130 SUPERVISORY AND NONSUPERVISORY RANKS

131	Cadet During Training	\$1,913 Mo.	\$22,964
132	Cadet Trooper After Training	2,316 Mo.	27,800
133	Trooper Second Year		28,256
134	Trooper Third Year		28,628
135	Trooper Fourth & Fifth Year		28,928
136	Senior Trooper		31,016
137	Trooper First Class		33,104
138	Corporal		35,192
139	Sergeant		39,368
140	First Sergeant		41,456
141	Second Lieutenant		43,544
142	First Lieutenant		45,632

1766	SALARIES	[Ch. 9
143	Captain	47,720
144	Major	49,808
145	Lieutenant Colonel	51,896
146	AMENDED ANNUAL SALARY SCHEDULE (BASE PAY)	
147	ADMINISTRATION	
148	SUPPORT SPECIALIST CLASSIFICATION	
149	I	28,928
150	II	31,016
151	III	33,104
152	IV	35,192
153	V	39,368
154	VI	41,456
155	VII	43,544
156	VIII	45,632
157	AMENDED ANNUAL SALARY SCHEDULE (BASE PAY)	
158	CRIMINALIST CLASSIFICATION	
159	I	28,928
160	II	31,016
161	III	33,104
162	IV	35,192
163	V	39,368
164	VI	41,456
165	VII	43,544
166	Each member of the West Virginia state police whose	
167	salary is fixed and specified in the amended annual salary	
168	schedules is entitled to the length of service increases set forth	
169	in subsection (f) of this section and supplemental pay as	
170	provided in subsection (g) of this section.	

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND EXTRAORDINARY SESSION, 1999

CHAPTER 1

**(H. B. 205 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed May 19, 1999; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation in the state fund, general revenue, to the governor's office, fund 0101, fiscal year 2000, organization 0100, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand, to fund 0101, fiscal year 2000, organization 0100, be supplemented and amended to read as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 Section 1. Appropriations from general revenue.

3

EXECUTIVE

4

5 — *Governor's Office*

5

(WV Code Chapter 5)

6

Fund 0101 FY 2000 Org 0100

7

8

9

	Act-	General
	ivity	Revenue
		Fund

10	1	Personal Services	001	\$ 1,731,859
11	2	Salary of Governor	002	90,000
12	3	Annual Increment	004	17,250
13	4	Employee Benefits	010	444,904
14	5	Unclassified	099	1,000,118
15	6	National Governors' Association .	123	66,200
16	7	Southern States Energy Board	124	28,732
17	8	WV Human Resource Investment		
18	9	Council	294	262,438
19	10	Southern Growth Policies Board . .	299	24,339
20	11	Southern Technology Council	308	10,000
21	12	Southern Governors' Association .	314	5,740
22	13	National Governors' Association for		
23	14	State Budget Officers	315	<u>11,500</u>
24	15	Total		\$ 3,693,080

25 Any unexpended balances remaining in the appropriations
 26 for unclassified (fund 0101, activity 099) and Publication of
 27 Papers and Transition Expenses (fund 0101, activity 465) at the
 28 close of the fiscal year 1999 is hereby reappropriated for
 29 expenditure during the fiscal year 2000.

30 The purpose of this bill is to supplement this account in the
 31 budget act for the fiscal year ending the thirtieth day of June,
 32 two thousand, by amending language with no new money being
 33 appropriated.

CHAPTER 2

(H. B. 206 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed May 19, 1999; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the executive — governor's office — civil contingent fund, fund 0105, fiscal year 1999, organization 0100, in the amount of four million dollars, supplementing and amending the appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 13, 1999, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1998, and further included the estimate of revenues for fiscal year 1999, less net appropriation balances forwarded and regular appropriations for fiscal year 1999; and

WHEREAS, The governor, by executive message dated the eighteenth day of May, one thousand nine hundred ninety-nine, has increased the revenue estimates for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine; and

WHEREAS, It appears from the governor's executive budget document and executive message there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to the executive

— governor's office — civil contingent fund, fund 0105, fiscal year 1999, organization 0100, be supplemented and amended by increasing the total appropriation by four million dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 EXECUTIVE

4 8 — Governor's Office —

5 Civil Contingent Fund

6 (WV Code Chapter 5)

7 Fund 0105 FY 1999 Org 0100

8			General
9		Act-	Revenue
10		ivity	Fund
11	1	Civil Contingent Fund — Total (R)	114 \$ 4,000,000

12 Any unexpended balance remaining in the appropriation for
13 Civil Contingent Fund — Total (fund 0105, activity 114) at the
14 close of the fiscal year 1999 is hereby reappropriated for
15 expenditure during the fiscal year 2000.

16 The purpose of this supplementary appropriation bill is to
17 supplement this account in the budget act for the fiscal year
18 ending the thirtieth day of June, one thousand nine hundred
19 ninety-nine, by adding four million dollars to the existing
20 appropriation for expenditure during fiscal year one thousand
21 nine hundred ninety-nine.

CHAPTER 3

(S. B. 2001 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed May 20, 1999; in effect from passage. Approved by the Governor.]

6	Fund <u>0296</u> FY <u>2000</u> Org <u>0433</u>		
7			General
8		Act-	Revenue
9		ivity	Fund
10	9A Capital Outlay - HVAC System . .	889	\$ 891,500

11 The purpose of this supplementary appropriation bill is to
 12 supplement this account in the budget act for the fiscal year
 13 ending the thirtieth day of June, two thousand, by adding eight
 14 hundred ninety-one thousand five hundred dollars in a new line
 15 item to the existing appropriation for expenditure during fiscal
 16 year two thousand.

CHAPTER 4

(H. B. 203 — By Mr. Speaker, Mr. Kliss, and Delegate Trump)
 [By Request of the Executive]

[Passed May 19, 1999; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation in the state fund, general revenue, to the department of health and human resources — division of human services, fund 0403, fiscal year 2000, organization 0511, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand, to fund 0403, fiscal year 2000, organization 0511, be supplemented and amended to read as follows:

- 1 TITLE II — APPROPRIATIONS.
- 2 Section 1. Appropriations from general revenue.
- 3 DEPARTMENT OF HEALTH AND HUMAN RESOURCES

4		<i>56 — Division of Human Services</i>		
5		(WV Code Chapters 9, 48 and 49)		
6		Fund <u>0403</u> FY <u>2000</u> Org <u>0511</u>		
7				General
8			Act-	Revenue
9			ivity	Fund
10	1	Personal Services	001	\$ 19,692,117
11	2	Annual Increment	004	456,261
12	3	Employee Benefits	010	7,540,669
13	4	Unclassified	099	19,956,786
14	5	Child Care Development	144	1,437,213
15	6	Medical Services Contracts and		
16	7	Office of Managed Care	183	2,323,020
17	8	Medical Services	189	178,587,996
18	9	Women's Commission	191	131,104
19	10	Social Services	195	44,040,138
20	11	Family Preservation Program	196	1,565,000
21	12	Child Protective Services Case Workers	468	7,317,646
22	13	OSCAR and RAPIDS	515	3,373,242
23	14	Child Welfare System	603	2,500,449
24	15	Commission for the Deaf and		
25	16	Hard-of-Hearing	704	157,390
26	17	Child Support Enforcement	705	1,698,542
27	18	Medicaid Auditing	706	578,372
28	19	Temporary Assistance for Needy		
29	20	Families/Maintenance of Effort ...	707	29,689,373
30	21	Child Care—Maintenance of		
31	22	Effort and Match	708	4,409,643

32	23	WV Childrens' Health Fund—		
33	24	Transfer (R)	714	0
34	25	Grants for Licensed Domestic Violence		
35	26	Programs and Statewide Prevention	750	1,000,000
36	27	Indigent Burials (R)	851	680,000
37	28	Medical Services Trust		
38		Fund Transfer	452	10,000,000
39	29	James "Tiger" Morton Catastrophic		
40	30	Illness Fund	455	<u>1,000,000</u>
41	31	Total		\$338,134,961

42 Any unexpended balances remaining in the appropriations
 43 for Indigent Burials (fund 0403, activity 851) and West Virginia
 44 Childrens' Health Fund—Transfer (fund 0403, activity 714) at
 45 the close of fiscal year 1999 are hereby reappropriated for
 46 expenditure during fiscal year 2000.

47 The above appropriation for James "Tiger" Morton
 48 Catastrophic Illness Fund (activity 455) shall be transferred to
 49 the James "Tiger" Morton Catastrophic Illness Fund (fund
 50 5454) as provided by Chapter 16, Article 5Q, of the Code.

51 Notwithstanding the provisions of Title I, section three of
 52 this bill, the secretary of the department of health and human
 53 resources shall have the authority to transfer funds within the
 54 above account: *Provided*, That no more than ten percent of the
 55 funds appropriated to one line item may be transferred to other
 56 line items: *Provided, however*, That no funds from other line
 57 items shall be transferred to the personal services line item.

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

61 The purpose of this bill is to supplement this account in the
 62 budget act for the fiscal year ending the thirtieth day of June,
 63 two thousand, by amending language with no new money being
 64 appropriated.

CHAPTER 5

(S. B. 2002 — By Senators Tomblin, Mr. President, and Sprouse)
 [By Request of the Executive]

[Passed May 20, 1999; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, to the department of military affairs and public safety—division of corrections—correctional units, fund 0450, fiscal year 1999, organization 0608, as originally appropriated by chapter six, acts of the Legislature, regular session, one thousand nine hundred ninety-eight, known as the “Budget Bill”.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state fund, general revenue, to the department of military affairs and public safety—division of corrections—correctional units, fund 0450, fiscal year 1999, organization 0608, be amended and reduced in the line items as follows:

- 1 **TITLE II—APPROPRIATIONS.**
- 2 **Section 1. Appropriations from general revenue.**
- 3 DEPARTMENT OF MILITARY AFFAIRS
- 4 AND PUBLIC SAFETY
- 5 *61—Division of Corrections—*
- 6 *Correctional Units*
- 7 (WV Code Chapters 25, 28, 49 and 62)
- 8 Fund 0450 FY 1999 Org 0608
- 9

					General
					Revenue
					Fund
			Act-		
			ivity		
13	1	Personal Services	001	\$	500,000
14	3	Employee Benefits	010		375,000
15	7	St. Marys Correctional Center	839		555,000

16 And, that the items of the total appropriations from the state
 17 fund, general revenue, to the department of military affairs and
 18 public safety—division of corrections—correctional units, fund
 19 0450, fiscal year 1999, organization 0608, be amended and
 20 increased in the line items as follows:

21 **TITLE II—APPROPRIATIONS.**

22 **Section 1. Appropriations from general revenue.**

23 **DEPARTMENT OF MILITARY AFFAIRS**

24 **AND PUBLIC SAFETY**

25 *61—Division of Corrections—*

26 *Correctional Units*

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

28 Fund 0450 FY 1999 Org 0608

					General
					Revenue
					Fund
			Act-		
			ivity		
32	9	Denmar Facility	448	\$	220,000
33	10	Mt. Olive Correctional Complex . .	533		1,210,000

34 The purpose of this supplementary appropriation bill is to
 35 supplement, amend, reduce and increase items of existing
 36 appropriations in the aforesaid account for the designated
 37 spending unit. The line item for personal services (activity 001)
 38 is reduced by five hundred thousand dollars. The line item for
 39 employee benefits (activity 010) is reduced by three hundred
 40 seventy-five thousand dollars. The line item for St. Marys

41 Correctional Center (activity 839) is reduced by five hundred
42 fifty-five thousand dollars. The line item for the Denmar
43 Facility (activity 448) is increased by two hundred twenty
44 thousand dollars. The line item for Mt. Olive Correctional
45 Complex (activity 533) is increased by one million two hundred
46 ten thousand dollars. The amounts as itemized for expenditure
47 in the fiscal year ending the thirtieth day of June, one thousand
48 nine hundred ninety-nine, shall be available for expenditure
49 immediately upon the effective date of this bill.

CHAPTER 6

(H. B. 204 — By Mr. Speaker, Mr. Kliss, and Delegate Trump)
[By Request of the Executive]

[Passed May 19, 1999; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand, to the department of health and human resources — division of human services — James “Tiger” Morton catastrophic illness fund, fund 5454, fiscal year 2000, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources — division of human services — James “Tiger” Morton catastrophic illness fund, fund 5454, fiscal year 2000, organization 0511, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand; therefore

Be it enacted by the Legislature of West Virginia:

That chapter seven, acts of the Legislature, regular session, one thousand nine hundred ninety-nine, known as the “Budget Bill”, be

supplemented and amended by adding to title II, section three thereof, the following:

TITLE II—APPROPRIATIONS.

Section 3. Appropriations from other funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

141a — Division of Human Services —

James “Tiger” Morton Catastrophic Illness Fund

(WV Code Chapter 16)

Fund 5454 FY 2000 Org 0511

	Act- ivity	Other Funds
1 Unclassified - Total	096	\$ 1,250,000

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 providing for a new item of appropriation to be established therein to appropriate other funds in the amount of one million two hundred fifty thousand dollars for the James “Tiger” Morton Catastrophic Illness Fund.

CHAPTER 7

(H. B. 210 — By Mr. Speaker, Mr. Kiss, and Delegates Martin, Michael, Staton, Douglas, Varner and Trump)

[Passed May 20, 1999; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the auditor’s office—family law masters administration fund, fund

1780

APPROPRIATIONS

[Ch. 7

4

10—Auditor’s Office—

5

Family Law Masters

6

Administration Fund

7

(WV Code Chapter 48A)

8

Fund 0117 FY 2000 Org 1200

9

10

Act-

General

11

ivity

Revenue

Fund

12

1 Unclassified

099

\$ 500,000

13

1a Domestic Violence Legal

14

Services Fund- Transfer

xxx

\$ 150,000

15 The above appropriation for Unclassified (activity 099) shall
16 be expended for the administrative expenses of the family law
17 masters program, excluding personal services and employee
18 benefits. The above appropriation for Domestic Violence Legal
19 Services Fund-Transfer (activity xxx) shall be transferred to the
20 Domestic Violence Legal Services Fund, fund xxxx as created
21 pursuant to the provisions of section four-c, article two-c,
22 chapter forty-eight of the code of West Virginia.

23 And that chapter seven, acts of the Legislature, regular
24 session, one thousand nine hundred ninety-nine, known as the
25 “Budget Bill”, be supplemented and amended by adding to title
26 II, section three thereof, the following:

27 TITLE II—APPROPRIATIONS.

28 Section 3. Appropriations from other funds.

29 DEPARTMENT OF HEALTH AND HUMAN RESOURCES

30 *141b — Family Protection Services Board—*

31 *Domestic Violence Legal Services Fund*

32

(WV Code Chapter 48)

33

Fund xxxx FY 2000 Org xxxx

34		Act-	Other
35		ivity	Funds
36	1	Unclassified - Total	096 \$ 150,000

37 The purpose of this supplementary appropriation bill is to
 38 supplement and amend the account in the budget act for the
 39 fiscal year ending the thirtieth day of June, two thousand, for
 40 the auditor’s office-family law masters administration fund,
 41 fund 0117, fiscal year 2000, organization 1200, by adding a
 42 new line item of appropriation in the amount of one hundred
 43 fifty thousand dollars and adding new language to provide for
 44 the transfer of funds; and to provide for a new item of appropri-
 45 ation to be established in the department of health and human
 46 resources—family protection services board—domestic
 47 violence legal services fund, fund xxxx, fiscal year 2000,
 48 organization xxxx, in the amount of one hundred fifty thousand
 49 dollars for expenditure during fiscal year two thousand.



CHAPTER 8

(H. B. 211 — By Delegate Michael)



[Passed June 19, 1999; in effect from passage. Approved by the Governor.]



AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, to the West Virginia schools for the deaf and the blind, fund no. 0320, fiscal year 1999, organization 0403, as originally appropriated by chapter six, acts of the Legislature, regular session, one thousand nine hundred ninety-eight, known as the “Budget Bill”.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state fund, general revenue, to the West Virginia schools for the deaf and the blind, fund no. 0320, fiscal year 1999, organization 0403, be amended and reduced in the line item as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 1. Appropriations from general revenue.**

3 DEPARTMENT OF EDUCATION

4 39—*West Virginia Schools for the Deaf and the Blind*

5 (WV Code Chapters 18 and 18A)

6 Fund 0320 FY 1999 Org 0403

		Act-	General
		ivity	Revenue
			Fund
10	3 Employee Benefits	010	\$ 162,384

11 And, that the items of the total appropriations from the state
 12 fund, general revenue, to the West Virginia schools for the deaf
 13 and the blind, fund no. 0320, fiscal year 1999, organization
 14 0403, be amended and increased in the line item as follows:

15 TITLE II—APPROPRIATIONS.

16 **Sec. 1. Appropriations from general revenue.**

17 DEPARTMENT OF EDUCATION

18 39—*West Virginia Schools for the Deaf and the Blind*

19 (WV Code Chapters 18 and 18A)

20 Fund 0320 FY 1999 Org 0403

		Act-	General
		ivity	Revenue
			Fund
24	1 Personal Services	001	\$ 162,384

25 The purpose of this supplementary appropriation bill is to
 26 supplement, amend, reduce and increase existing items in the
 27 aforesaid account for the designated spending unit. The
 28 appropriation for employee benefits is reduced by one hundred
 29 sixty-two thousand three hundred eighty-four dollars. The
 30 appropriation for personal services is increased by one hundred
 31 sixty-two thousand three hundred eighty-four dollars. The
 32 amounts as itemized for expenditure in the fiscal year ending

33 the thirtieth day of June, one thousand nine hundred ninety-
 34 nine, shall be available for expenditure immediately upon the
 35 effective date of this bill.

CHAPTER 9

(H. B. 212 — By Delegate Michael)

[Passed June 19, 1999; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation in the state fund, general revenue, to the tax division, fund 0470, fiscal year 2000, organization 0702, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand, to fund 0470, fiscal year 2000, organization 0702, be supplemented and amended to read as follows:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	DEPARTMENT OF TAX AND REVENUE		
4	72— <i>Tax Division</i>		
5	(WV Code Chapter 11)		
6	Fund <u>0470</u> FY <u>2000</u> Org <u>0702</u>		
7			General
8		Act-	Revenue
9		ivity	Fund
10	1	Personal Services	001 \$ 9,730,830
11	2	Annual Increment	004 225,900
12	3	Employee Benefits	010 3,587,747

13	4	Unclassified	099	6,203,354
14	5	Remittance Processor	570	<u>297,800</u>
15	6	Total		\$ 20,045,631

16 Any unexpended balances remaining in the appropriations
 17 for Automation Project (fund 0470, activity 442), Automation
 18 Project—Total—Surplus (fund 0470, activity 673), Property
 19 Tax Electronic Data Processing System Network Project (fund
 20 0470, activity 684), Administrative Hearing Examiner Program
 21 (fund 0470, activity 713), Property Tax and Coal Reserve
 22 Valuation Automation Project (fund 0470, activity 831) and
 23 Property Tax Valuation and Assessment System (fund 0470,
 24 activity 477) at the close of the fiscal year 1999 are hereby
 25 reappropriated for expenditure during the fiscal year 2000.

26 The purpose of this bill is to supplement this account in the
 27 budget act for the fiscal year ending the thirtieth day of June,
 28 two thousand, by amending language with no new money being
 29 appropriated.

CHAPTER 10

(Com. Sub. for S. B. 2003 — By Senators Tomblin, Mr. President, and Sprouse)
 [By Request of the Executive]

[Passed May 20, 1999; in effect from passage. Approved by the Governor.]

AN ACT to repeal section ten-b, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal sections one, two, three, four, five and six, article four, chapter forty-eight-a of said code; to amend and reenact sections one, four-a, fifteen, sixteen, thirty-two and thirty-seven, article two, chapter forty-eight of said code; to amend and reenact sections three and six, article two-a of said chapter; to amend and reenact section four-c, article two-c of said chapter; to further amend said chapter by adding thereto a new article,

designated article eleven; to amend and reenact section three, article one, chapter forty-eight-a of said code; to amend and reenact sections nineteen and twenty-one, article one-a of said chapter; to amend and reenact sections three, six, seven, eleven, fourteen and sixteen, article one-b of said chapter; to further amend said article by adding thereto a new section, designated section seventeen; to amend article two of said chapter by adding thereto a new section, designated section seventeen; to amend and reenact section thirty-eight of said article; to amend and reenact sections nine, twenty and twenty-three, article four of said chapter; to amend chapter fifty-one of said code by adding thereto a new article, designated article two-a; to amend and reenact section fourteen, article three of said chapter; to amend and reenact sections eleven and twenty-eight-a, article one, chapter fifty-nine of said code; to amend and reenact section one, article two of said chapter; and to amend and reenact section twenty-nine, article five, chapter sixty-one of said code, all relating to revising the law of domestic relations generally; defining terms used in divorce, annulment and separate maintenance cases; establishing the styles of petitions in domestic cases; establishing effective date for style change; denominating parties in domestic actions; establishing presumptions regarding certain forms of alimony; providing for the reduction or termination of certain forms of alimony when de facto marriage exists; establishing effective date of change in alimony eligibility; establishing criteria for the award of alimony; eliminating certain property allocated by equitable distribution from availability for alimony payments; exceptions; establishing mandatory reporting of income changes; providing for the disposition of marital property; establishing a spouse's entitlement to future or contingent payments; establishing applicability of future or contingent provisions; providing for calculation of interest and effective date; precluding prejudgment interest in domestic relations matters; exceptions; establishing date magistrate court jurisdiction in domestic violence cases is to be limited; establishing a fee upon issuance of a protective order; requiring promulgation of time-keeping rules for magistrate courts in child support matters; transfer of jurisdiction to family court and circuit court judges; revising allocations to domestic violence legal services fund;

allocation of custodial and decision-making responsibility for children in domestic relations cases; establishing best interests of the child as primary objective; establishing criteria for being a party in an action for custody or decisionmaking; establishing mandatory parent education programs; requiring temporary and permanent parenting plans and agreements; providing for court-ordered services; mediation; limits on mediation; court-ordered investigations; appointment of guardians; judicial interviews of minor children; allocation of decision-making responsibility; modification of parenting plans; providing for dispute resolution; relocation of a parent constituting a material change of circumstances with regard to parental rights and responsibilities; enforcing parenting plans; providing for civil monetary sanctions for violations; providing for parental access to a child's records; requiring notice to obligor; designation of custody for purposes of other state and federal statutes; providing for effect of enactment and operative dates; calculation of interest; limitation on overtime pay for calculation of child support; excluding reimbursed moneys from definition of gross income; clarifying eligibility for certain federal services; creating updated guidelines for child support; requiring employers of obligors to report change of circumstance to agency; computation of child support; promulgating worksheets for determination of support obligations; providing for adjustment of child support in shared physical custody cases; providing for modification of child support; establishing notice requirements; documenting claims for modification; providing for an expedited process for modification; authorizing a court to disregard child support formula in some circumstances; requiring judicial findings regarding investment of child support moneys; establishing operative date of amendments; providing for notice to unemployed obligors; reporting employment income; proceedings before a family law master; requiring family law master to assess certain fees and costs; limiting continuances of scheduled final hearings; circuit court review of recommended order; providing for the family court fund; establishing family court division of circuit courts; initial appointments; effective dates; reporting requirements for enforcement division; assignment of family law masters by family law circuits; establishing qualifications for family law

masters; establishing terms of office of family law masters; schedule of elections; criteria for handling vacancies in office; disciplinary procedures; grounds for discipline; appeal procedures; setting compensation for family law masters and staff members; applicability of rules of practice and procedure and rules of evidence; authorizing promulgation of local circuit rules of practice and procedure; jurisdiction of family law masters; establishing contempt powers of family law masters; effect of repealers and reenactments; imposition of fees for modification proceedings and providing for the disposition thereof; creation of family court fund; providing for the transfer of court security funds to the family court fund; increasing certain filing fees; mandating financially able litigants to pay applicable fees and costs; providing for criminal penalties; and establishing inability to pay as an affirmative defense in actions for past due child support and alimony.

Be it enacted by the Legislature of West Virginia:

That section ten-b, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one, two, three, four, five and six, article four, chapter forty-eight-a of said code be repealed; that sections one, four-a, fifteen, sixteen, thirty-two and thirty-seven, article two, chapter forty-eight of said code be amended and reenacted; that sections three and six, article two-a of said chapter be amended and reenacted; that section four-c, article two-c of said chapter be amended and reenacted; that said chapter be further amended by adding thereto a new article, designated article eleven; that section three, article one, chapter forty-eight-a of said code be amended and reenacted; that sections nineteen and twenty-one, article one-a of said chapter be amended and reenacted; that sections three, six, seven, eleven, fourteen and sixteen, article one-b of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section seventeen; that section thirty-eight, article two of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section seventeen; that sections nine, twenty and twenty-three, article four of said chapter be amended and reenacted; that chapter fifty-one of said code be amended by adding thereto a new article, designated

article two-a; that section fourteen, article three of said chapter be amended and reenacted; that sections eleven and twenty-eight-a, article one, chapter fifty-nine of said code be amended and reenacted; that section one, article two of said chapter be amended and reenacted; and that section twenty-nine, article five, chapter sixty-one of said code be amended and reenacted, all to read as follows:

Chapter

48. Domestic Relations.

48A. Enforcement of Family Obligations.

51. Courts and Their Officers.

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

61. Crimes and Their Punishment.

CHAPTER 48. DOMESTIC RELATIONS.

Article

2. Divorce, Annulment and Separate Maintenance.

2A. Prevention and Treatment of Domestic and Family Law Violence.

2C. Domestic Violence Act.

11. Allocation of Custodial and Decision-making Responsibility for Children.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-1. Definitions.

§48-2-4a. Petition instituting a domestic relations action; answer.

§48-2-15. Relief upon ordering divorce or annulment or granting decree of separate maintenance.

§48-2-16. Effect of separation agreement; what considered in awarding alimony, child support or separate maintenance.

§48-2-32. Martial property disposition.

§48-2-37. Calculation of interest; accumulation of simple interest; prejudgment interest.

§48-2-1. Definitions.

1 For the purposes of this chapter and chapter forty-eight-a of
 2 this code, the words and phrases defined in the following
 3 subdivisions of this section, and any variation of those words
 4 and phrases required by the context, have the meanings ascribed

5 to them in this section. These definitions are applicable unless
6 a different meaning clearly appears from the context.

7 (1) "Alimony" means the allowance which a person pays to
8 or in behalf of the support of his or her spouse or divorced
9 spouse while they are separated or after they are divorced. The
10 payment of alimony may be required by court order or by the
11 terms of a separation agreement. Alimony may be paid in a
12 lump sum or paid in installments as periodic alimony. Alimony
13 includes temporary alimony as that term is used in section
14 thirteen of this article, as well as alimony as that term is used in
15 section fifteen of this article and elsewhere throughout this
16 article.

17 (2) "Alimony in gross" means alimony payable either in a
18 lump sum, or in periodic payments of a definite amount over a
19 specific period of time. An alimony award is "alimony in gross"
20 only if the award grants alimony in such terms that a determina-
21 tion can be made of the total amount to be paid as well as the
22 time such payments will cease.

23 (3) "Antenuptial agreement" or "prenuptial agreement"
24 means an agreement between a man and woman before mar-
25 riage, but in contemplation and generally in consideration of
26 marriage, whereby the property rights and interests of the
27 prospective husband and wife, or both of them, are determined,
28 or where property is secured to either or both of them, to their
29 separate estate, or to their children or other persons. An
30 antenuptial agreement may include provisions which define the
31 respective property rights of the parties during the marriage, or
32 in the event of the death of either or both of the parties, and
33 may provide for the disposition of marital property upon an
34 annulment of the marriage or a divorce or separation of the
35 parties. A prenuptial agreement is void if at the time it is made
36 either of the parties is a minor.

37 (4) "Caretaking functions" means tasks that involve
38 interaction with the child or care of the child, including the
39 direction of interaction and care by others. Caretaking functions
40 include the following:

41 (A) Feeding, bedtime and wake-up routines, care of the
42 child when sick or hurt, bathing, grooming, personal hygiene,
43 dressing, recreation and play, physical safety, transportation and
44 other functions that meet the daily physical needs of the child;

45 (B) Direction of the child's various developmental needs,
46 including the acquisition of motor and language skills, toilet
47 training, self-confidence and maturation;

48 (C) Discipline, instruction in manners, assignment and
49 supervision of chores and other tasks that attend to the child's
50 needs for behavioral control and self-restraint;

51 (D) Arrangements for the child's education, including
52 remedial or special services appropriate to the child's needs and
53 interests, communication with teachers and counselors and
54 supervision of homework;

55 (E) The development and maintenance of appropriate
56 interpersonal relationships with peers, siblings and adults;

57 (F) Arrangements for health care, including making
58 appointments, communication with health care providers,
59 medical follow-up and home health care;

60 (G) Moral guidance; and

61 (H) Arrangement of alternative care by a family member,
62 baby-sitter or other child care provider or facility, including
63 investigation of alternatives, communication with providers and
64 supervision.

65 (5) "Custodial responsibility" refers to physical custodian-
66 ship and supervision of a child. It usually includes, but does not
67 necessarily require, the exercise of residential or overnight
68 responsibility.

69 (6) "Decision-making responsibility" refers to authority for
70 making significant life decisions on behalf of a child, including,
71 but not limited to, the child's education, spiritual guidance and
72 health care.

73 (7) "Earnings" means compensation paid or payable for
74 personal services, whether denominated as wages, salary,

75 commission, bonus or otherwise, and includes periodic pay-
76 ments pursuant to a pension or retirement program. "Disposable
77 earnings" means that part of the earnings of any individual
78 remaining after the deduction from those earnings of any
79 amounts required by law to be withheld.

80 (8) "Family law master" means a commissioner of the
81 circuit court appointed or elected and authorized to hear certain
82 domestic relations actions under section ten, article two-a,
83 chapter fifty-one of this code.

84 (9) "Income" includes, but is not limited to, the following:

85 (A) Commissions, earnings, salaries, wages and other
86 income due or to be due in the future to an individual from his
87 employer and successor employers;

88 (B) Any payment due or to be due in the future to an
89 individual from a profit-sharing plan, a pension plan, an
90 insurance contract, an annuity, social security, unemployment
91 compensation, supplemental employment benefits, workers'
92 compensation benefits, state lottery winnings and prizes and
93 overtime pay; and

94 (C) Any amount of money which is owing to an individual
95 as a debt from an individual, partnership, association, public or
96 private corporation, the United States or any federal agency,
97 this state or any political subdivision of this state, any other
98 state or a political subdivision of another state, or any other
99 legal entity which is indebted to the obligor.

100 (10) "Legal parent" means an individual defined as a
101 parent, by law, on the basis of biological relationship, presumed
102 biological relationship, legal adoption or other recognized
103 grounds.

104 (11) "Marital property" means:

105 (A) All property and earnings acquired by either spouse
106 during a marriage, including every valuable right and interest,
107 corporeal or incorporeal, tangible or intangible, real or personal,
108 regardless of the form of ownership, whether legal or benefi-
109 cial, whether individually held, held in trust by a third party, or

110 whether held by the parties to the marriage in some form of co-
111 ownership such as joint tenancy or tenancy in common, joint
112 tenancy with the right of survivorship, or any other form of
113 shared ownership recognized in other jurisdictions without this
114 state, except that marital property shall not include separate
115 property as defined in subdivision (19) of this section; and

116 (B) The amount of any increase in value in the separate
117 property of either of the parties to a marriage, which increase
118 results from: (i) An expenditure of funds which are marital
119 property, including an expenditure of such funds which reduces
120 indebtedness against separate property, extinguishes liens, or
121 otherwise increases the net value of separate property; or (ii)
122 work performed by either or both of the parties during the
123 marriage.

124 The definitions of “marital property” and “separate
125 property” contained in this section shall have no application
126 outside of the provisions of this article, and the common law as
127 to the ownership of the respective property and earnings of a
128 husband and wife, as altered by the provisions of article three
129 of this chapter and other provisions of this code, are not
130 abrogated by implication or otherwise, except as expressly
131 provided for by the provisions of this article as such provisions
132 are applied in actions brought under this article or for the
133 enforcement of rights under this article.

134 (12) “Mediation” means a method of alternative dispute
135 resolution in which a neutral third person helps resolve a
136 dispute. Mediation is an informal, nonadversarial process
137 whereby the neutral third person, the mediator, assists parties to
138 a dispute to resolve, by agreement, some or all of the differ-
139 ences between them. The mediator has no authority to render a
140 judgment on any issue of the dispute.

141 (13) “Mediator” means a neutral third person who inter-
142 poses between two contending parties, with their consent, for
143 the purpose of assisting them in settling their differences.

144 (14) “Parent” means a legal parent as defined in subdivision
145 (10) of this section unless otherwise specified.

146 (15) "Parenting functions" means tasks that serve the needs
147 of the child or the child's residential family. Parenting functions
148 include caretaking functions, as defined in subdivision (4) of
149 this section. Parenting functions also include functions that are
150 not caretaking functions, including:

151 (A) Provision of economic support;

152 (B) Participation in decisionmaking regarding the child's
153 welfare;

154 (C) Maintenance or improvement of the family residence,
155 home or furniture repair, home-improvement projects, yard
156 work and house cleaning;

157 (D) Financial planning and organization, car repair and
158 maintenance, food and clothing purchasing, cleaning and
159 maintenance of clothing, and other tasks supporting the
160 consumption and savings needs of the family; and

161 (E) Other functions usually performed by a parent or
162 guardian that are important to the child's welfare and develop-
163 ment.

164 (16) "Parenting plan" means a temporary parenting plan as
165 defined in subdivision (22) of this section or a permanent
166 parenting plan as defined in subdivision (17) of this section.

167 (17) "Permanent parenting plan" means a plan for parenting
168 a child that is incorporated into a final order or subsequent
169 modification order in a domestic relations action. The plan
170 principally establishes, but is not limited to, the allocation of
171 custodial responsibility and significant decision-making
172 responsibility and provisions for resolution of subsequent
173 disputes between the parents.

174 (18) "Rehabilitative alimony" means alimony payable for
175 a specific and determinable period of time, designed to cease
176 when the payee is, after the exercise of reasonable efforts, in a
177 position of self-support.

178 (19) "Separate property" means:

179 (A) Property acquired by a person before marriage; or

180 (B) Property acquired by a person during marriage in
181 exchange for separate property which was acquired before the
182 marriage; or

183 (C) Property acquired by a person during marriage, but
184 excluded from treatment as marital property by a valid agree-
185 ment of the parties entered into before or during the marriage;
186 or

187 (D) Property acquired by a party during marriage by gift,
188 bequest, devise, descent or distribution; or

189 (E) Property acquired by a party during a marriage but after
190 the separation of the parties and before the granting of a
191 divorce, annulment or decree of separate maintenance; or

192 (F) Any increase in the value of separate property as
193 defined in paragraph (A), (B), (C), (D) or (E) of this subdivision
194 which is due to inflation or to a change in market value result-
195 ing from conditions outside the control of the parties.

196 (20) "Separation" or "separation of the parties" means the
197 separation of the parties next preceding the filing of an action
198 under the provisions of this article, which separation continues,
199 without the parties cohabiting or otherwise living together as
200 husband and wife, and without interruption.

201 (21) "Separation agreement" means a written agreement
202 entered into by a husband and wife whereby they agree to live
203 separate and apart from each other and, in connection therewith,
204 agree to settle their property rights; or to provide for the
205 custody and support of their minor child or children, if any; or
206 to provide for the payment or waiver of alimony by either party
207 to the other; or to otherwise settle and compromise issues
208 arising out of their marital rights and obligations. Insofar as an
209 antenuptial agreement as defined in subdivision (3) of this
210 section affects the property rights of the parties or the disposi-
211 tion of property upon an annulment of the marriage, or a
212 divorce or separation of the parties, such antenuptial agreement
213 shall be regarded as a separation agreement under the provi-
214 sions of this article.

215 (22) "Temporary parenting plan" means a plan incorporated
216 into a temporary or interlocutory order that provides for the
217 parenting of a child pending final resolution of a domestic
218 relations action.

§48-2-4a. Petition instituting a domestic relations action; answer.

1 (a) A domestic relations action is instituted by the filing of
2 a verified petition. On and after the first day of October, one
3 thousand nine hundred ninety-nine, the formal style of a
4 domestic relations petition and the caption for all subsequent
5 pleadings is as follows:

6 (1) In an action for divorce, separate maintenance or
7 annulment, the action may be styled "In Re the marriage of
8 _____ and _____"; and

9 (2) In an action to establish a child support obligation or to
10 allocate custodial responsibility and decision-making responsi-
11 bility when the parties are not married, the action may be styled
12 "In Re the Child(ren) of _____ and _____".

13 The parties are identified in all pleadings as "petitioner"
14 and "respondent".

15 (b) The responsive pleading to a petition instituting a
16 domestic relations action is denominated an answer. The form
17 and requisites for an answer to a petition for divorce or any
18 other responsive pleading shall be verified in accordance with
19 the provisions of section ten, article two of this chapter and are
20 governed by the rules of civil procedure.

21 (c) The provisions of this section will become effective on
22 the first day of October, one thousand nine hundred ninety-nine.

**§48-2-15. Relief upon ordering divorce or annulment or granting
decree of separate maintenance.**

1 (a) Upon ordering a divorce or granting a decree of separate
2 maintenance, the court may require either party to pay alimony
3 in the form of periodic installments, or a lump sum, or both, for
4 the maintenance of the other party. Payments of alimony are to
5 be ordinarily made from a party's income, but when the income

6 is not sufficient to adequately provide for those payments, the
7 court may, upon specific findings set forth in the order, order
8 the party required to make those payments to make them from
9 the corpus of his or her separate estate. An award of alimony
10 shall not be disproportionate to a party's ability to pay as
11 disclosed by the evidence before the court.

12 (b) Upon ordering the annulment of a marriage or a divorce
13 or granting of decree of separate maintenance, the court may
14 further order all or any part of the following relief:

15 (1) The court may provide for the custody of minor children
16 of the parties, subject to such rights of visitation, both in and
17 out of the residence of the custodial parent or other person or
18 persons having custody, as may be appropriate under the
19 circumstances. In every action where visitation is awarded, the
20 court shall specify a schedule for visitation by the noncustodial
21 parent: *Provided*, That with respect to any existing order which
22 provided for visitation but which does not provide a specific
23 schedule for visitation by the noncustodial parent, upon motion
24 of any party, notice of hearing and hearing, the court shall issue
25 an order which provides a specific schedule of visitation by the
26 noncustodial parent;

27 (2) When the action involves a minor child or children, the
28 court shall require either party to pay child support in the form
29 of periodic installments for the maintenance of the minor
30 children of the parties in accordance with support guidelines
31 promulgated pursuant to article one-b, chapter forty-eight-a of
32 this code. Payments of child support are to be ordinarily made
33 from a party's income, but in cases when the income is not
34 sufficient to adequately provide for those payments, the court
35 may, upon specific findings set forth in the order, order the
36 party required to make those payments to make them from the
37 corpus of his or her separate estate;

38 (3) When the action involves a minor child or children, the
39 court shall provide for medical support for any minor children
40 in accordance with section fifteen-a of this article;

41 (4) As an incident to requiring the payment of alimony or
42 child support, the court may order either party to continue in

43 effect existing policies of insurance covering the costs of health
44 care and hospitalization of the other party: *Provided*, That if the
45 other party is no longer eligible to be covered by such insurance
46 because of the granting of an annulment or divorce, the court
47 may require a party to substitute such insurance with a new
48 policy to cover the other party or may consider the prospective
49 cost of such insurance in awarding alimony to be paid in
50 periodic installments. Payments made to an insurer pursuant to
51 this subdivision, either directly or by a deduction from wages,
52 shall be deemed to be alimony or installment payments for the
53 distribution of marital property, in such proportion as the court
54 shall direct: *Provided, however*, That if the court does not set
55 forth in the order that a portion of such payments is to be
56 deemed installment payments for the distribution of marital
57 property, then all such payments made pursuant to this subdivi-
58 sion shall be deemed to be alimony: *Provided further*, That the
59 designation of insurance coverage as alimony under the
60 provisions of this subdivision shall not, in and of itself, give rise
61 to a subsequent modification of the order to provide for alimony
62 other than insurance for covering the costs of health care and
63 hospitalization;

64 (5) The court may grant the exclusive use and occupancy of
65 the marital home to one of the parties, together with all or a
66 portion of the household goods, furniture and furnishings
67 reasonably necessary for such use and occupancy. Such use and
68 occupancy shall be for a definite period, ending at a specific
69 time set forth in the order, subject to modification upon the
70 petition of either party. Except in extraordinary cases supported
71 by specific findings set forth in the order granting relief, a grant
72 of the exclusive use and occupancy of the marital home shall be
73 limited to those situations when such use and occupancy is
74 reasonably necessary to accommodate the rearing of minor
75 children of the parties. The court may require payments to third
76 parties in the form of home loan installments, land contract
77 payments, rent, property taxes and insurance coverage if the
78 amount of such coverage is reduced to a fixed monetary amount
79 set forth in the court's order. When such third party payments
80 are ordered, the court shall specify whether such payments or

81 portions of payments are alimony, child support, a partial
82 distribution of marital property or an allocation of marital debt:
83 *Provided*, That if the court does not set forth in the order that a
84 portion of such payments is to be deemed child support or
85 installment payments for the distribution of marital property,
86 then all such payments made pursuant to this subdivision shall
87 be deemed to be alimony. When such third party payments are
88 ordered, the court shall specify whether such payments or
89 portions of payments are alimony, child support, a partial
90 distribution of marital property or an allocation of marital debt.
91 If the payments are not designated in an order and the parties
92 have waived any right to receive alimony, the court may
93 designate the payments upon motion by any party. Nothing
94 contained in this subdivision shall abrogate an existing contract
95 between either of the parties and a third party or affect the
96 rights and liabilities of either party or a third party under the
97 terms of such contract;

98 (6) As an incident to requiring the payment of alimony, the
99 court may grant the exclusive use and possession of one or
100 more motor vehicles to either of the parties. The court may
101 require payments to third parties in the form of automobile loan
102 installments or insurance coverage if available at reasonable
103 rates, and any such payments made pursuant to this subdivision
104 for the benefit of the other party shall be deemed to be alimony
105 or installment payments for the distribution of marital property,
106 as the court may direct. Nothing contained in this subdivision
107 shall abrogate an existing contract between either of the parties
108 and a third party or affect the rights and liabilities of either
109 party or a third party under the terms of such contract;

110 (7) When the pleadings include a specific request for
111 specific property or raise issues concerning the equitable
112 division of marital property as defined in section one of this
113 article, the court shall order such relief as may be required to
114 effect a just and equitable distribution of the property and to
115 protect the equitable interests of the parties therein;

116 (8) Unless a contrary disposition is ordered pursuant to
117 other provisions of this section, then upon the motion of either

118 party, the court may compel the other party to deliver to the
119 moving party any of his or her separate estate which may be in
120 the possession or control of the respondent party and may make
121 such further order as is necessary to prevent either party from
122 interfering with the separate estate of the other;

123 (9) When allegations of abuse have been proven, the court
124 shall enjoin the offending party from molesting or interfering
125 with the other, or otherwise imposing any restraint on the
126 personal liberty of the other or interfering with the custodial or
127 visitation rights of the other. Such order may permanently
128 enjoin the offending party from entering the school, business or
129 place of employment of the other for the purpose of molesting
130 or harassing the other; or from contacting the other, in person
131 or by telephone, for the purpose of harassment or threats; or
132 from harassing or verbally abusing the other in a public place;
133 and

134 (10) The court may order either party to take necessary
135 steps to transfer utility accounts and other accounts for recur-
136 ring expenses from the name of one party into the name of the
137 other party or from the joint names of the parties into the name
138 of one party. Nothing contained in this subdivision shall affect
139 the liability of the parties for indebtedness on any such account
140 incurred before the transfer of such account.

141 (c) When an annulment or divorce is denied, the court shall
142 retain jurisdiction of the case and may order all or any portion
143 of the relief provided for in subsections (a) and (b) of this
144 section which has been demanded or prayed for in the plead-
145 ings.

146 (d) When a divorce or annulment is granted in this state
147 upon constructive service of process and personal jurisdiction
148 is thereafter obtained of the defendant in such case, the court
149 may order all or any portion of the relief provided for in
150 subsections (a) and (b) of this section which has been demanded
151 or prayed for in the pleadings.

152 (e) After the entry of an order pursuant to the provisions of
153 this section, the court may revise the order concerning the

154 maintenance of the parties and enter a new order concerning the
155 same, as the circumstances of the parties may require.

156 The court may also from time to time afterward, upon
157 motion of either of the parties and upon proper service, revise
158 such order to grant relief pursuant to subdivision (9), subsection
159 (b) of this section, and enter a new order concerning the same,
160 as the circumstances of the parties and the benefit of children
161 may require. The court may also from time to time afterward,
162 upon the motion of either of the parties or other proper person
163 having actual or legal custody of the minor child or children of
164 the parties, revise or alter the order concerning the custody and
165 support of the children, and make a new order concerning the
166 same, issuing it forthwith, as the circumstances of the parents
167 or other proper person or persons and the benefit of the children
168 may require: *Provided*, That all orders modifying child support
169 shall be in conformance with the requirements of support
170 guidelines promulgated pursuant to article one-b, chapter
171 forty-eight-a of this code: *Provided, however*, That an order
172 providing for child support payments may be revised or altered
173 for the reason, inter alia, that the existing order provides for
174 child support payments in an amount that is less than
175 eighty-five percent or more than one hundred fifteen percent of
176 the amount that would be required to be paid under the child
177 support guidelines promulgated pursuant to the provisions of
178 said section: *Provided further*, That the child support enforce-
179 ment division may review a child support order and, if appro-
180 priate, file a motion with the circuit court for modification of
181 the child support order pursuant to the provisions of section
182 thirty-five, article two, chapter forty-eight-a of this code.

183 In granting relief under this subsection, the court may,
184 when other means are not conveniently available, alter any prior
185 order of the court with respect to the distribution of marital
186 property, if such property is still held by the parties, and if
187 necessary to give effect to a modification of alimony, child
188 support or child custody or necessary to avoid an inequitable or
189 unjust result which would be caused by the manner in which the
190 modification will affect the prior distribution of marital
191 property.

192 (f) (1) When a separation agreement is the basis for an
193 award of alimony, the court, in approving the agreement, shall
194 examine the agreement to ascertain whether it clearly provides
195 for alimony to continue beyond the death of the payor or the
196 payee or to cease in such event. When alimony is to be paid
197 pursuant to the terms of a separation agreement which does not
198 state whether the payment of alimony is to continue beyond the
199 death of the payor or payee or is to cease, or when the parties
200 have not entered into a separation agreement and alimony is
201 awarded, the court shall have the discretion to determine, as a
202 part of its order, whether such payments of alimony are to be
203 continued beyond the death of the payor or payee or cease. In
204 the event neither an agreement nor an order makes provision for
205 the death of the payor or payee, alimony other than rehabilita-
206 tive alimony or alimony in gross shall cease on the death of the
207 payor or payee. In the event neither an agreement nor an order
208 makes provision for the death of the payor, rehabilitative
209 alimony continues beyond the payor's death, in the absence of
210 evidence that the payor's estate is likely to be insufficient to
211 meet other obligations or that other matters would make
212 continuation after death inequitable. Rehabilitative alimony
213 ceases with the payee's death. In the event neither an agreement
214 nor an order makes provision for the death of the payor or
215 payee, alimony in gross continues beyond the payor's or
216 payee's death.

217 (2) When a separation agreement is the basis for an award
218 of alimony, the court, in approving the agreement, shall
219 examine the agreement to ascertain whether it clearly provides
220 for alimony to continue beyond the remarriage of the payee or
221 to cease in such event. When alimony is to be paid pursuant to
222 the terms of a separation agreement which does not state
223 whether the payment of alimony is to continue beyond the
224 remarriage of the payee or is to cease, or when the parties have
225 not entered into a separation agreement and alimony is
226 awarded, the court shall have the discretion to determine, as a
227 part of its order, whether such payments of alimony are to be
228 continued beyond the remarriage of the payee. In the event
229 neither an agreement nor an order makes provision for the

230 remarriage of the payee, alimony other than rehabilitative
231 alimony or alimony in gross shall cease on the remarriage of the
232 payee. Rehabilitative alimony does not cease upon the remarriage
233 of the payee during the first four years of a rehabilitative
234 period. In the event neither an agreement nor an order makes
235 provision for the remarriage of the payee, alimony in gross
236 continues beyond the payee's remarriage.

237 (g)(1) In the discretion of the court, an award of alimony
238 may be reduced or terminated upon specific written findings by
239 the court that since the granting of a divorce and the award of
240 alimony a de facto marriage has existed between the alimony
241 payee and another person.

242 (2) In determining whether an existing award of alimony or
243 spousal support should be reduced or terminated because of an
244 alleged de facto marriage between a payee and another person,
245 the court should elicit the nature and extent of the relationship
246 in question. The court should give consideration, without
247 limitation, to circumstances such as the following in determining
248 the relationship of an ex-spouse to another person:

249 (A) The extent to which the ex-spouse and the other person
250 have held themselves out as a married couple by engaging in
251 conduct such as using the same last name, using a common
252 mailing address, referring to each other in terms such as "my
253 husband" or "my wife", or otherwise conducting themselves in
254 a manner that evidences a stable marriage-like relationship;

255 (B) The period of time that the ex-spouse has resided with
256 another person not related by consanguinity or affinity in a
257 permanent place of abode;

258 (C) The duration and circumstances under which the ex-spouse
259 has maintained a continuing conjugal relationship with
260 the other person;

261 (D) The extent to which the ex-spouse and the other person
262 have pooled their assets or income or otherwise exhibited
263 financial interdependence;

264 (E) The extent to which the ex-spouse or the other person
265 has supported the other, in whole or in part;

266 (F) The extent to which the ex-spouse or the other person
267 has performed valuable services for the other;

268 (G) The extent to which the ex-spouse or the other person
269 has performed valuable services for the other's company or
270 employer;

271 (H) Whether the ex-spouse and the other person have
272 worked together to create or enhance anything of value;

273 (I) Whether the ex-spouse and the other person have jointly
274 contributed to the purchase of any real or personal property;

275 (J) Evidence in support of a claim that the ex-spouse and
276 the other person have an express agreement regarding property
277 sharing or support; or

278 (K) Evidence in support of a claim that the ex-spouse and
279 the other person have an implied agreement regarding property
280 sharing or support.

281 (3) On the issue of whether alimony should be reduced or
282 terminated under this subsection, the burden is on the payor to
283 prove by a preponderance of the evidence that a de facto
284 marriage exists. If the court finds that the payor has failed to
285 meet burden of proof on the issue, the court may award
286 reasonable attorney's fees to a payee who prevails in an action
287 that sought to reduce or terminate alimony on the ground that
288 a de facto marriage exists.

289 (4) The court shall order that a reduction or termination of
290 alimony is retroactive to the date of service of the petition on
291 the payee, unless the court finds that reimbursement of amounts
292 already paid would cause an undue hardship on the payee.

293 (5) An award of rehabilitative alimony shall not be reduced
294 or terminated because of the existence of a de facto marriage
295 between the alimony payee and another person.

296 (6) An award of alimony in gross shall not be reduced or
297 terminated because of the existence of a de facto marriage
298 between the alimony payee and another person.

299 (7) An award of alimony shall not be reduced or terminated
300 under the provisions of this subsection for conduct by an
301 alimony payee that occurred before the first day of October, one
302 thousand nine hundred ninety-nine.

303 (8) Nothing in this subsection shall be construed to abrogate
304 the requirement that every marriage in this state be solemnized
305 under a license or construed to recognize a common law
306 marriage as valid.

307 (h) In addition to the disclosure requirements set forth in
308 section thirty-three of this article, the court may order accounts
309 to be taken as to all or any part of marital property or the
310 separate estates of the parties and may direct that the accounts
311 be taken as of the date of the marriage, the date upon which the
312 parties separated or any other time in assisting the court in the
313 determination and equitable division of property.

314 (i) In determining whether alimony is to be awarded, or in
315 determining the amount of alimony, if any, to be awarded under
316 the provisions of this section, the court shall consider and
317 compare the fault or misconduct of either or both of the parties
318 and the effect of such fault or misconduct as a contributing
319 factor to the deterioration of the marital relationship. However,
320 alimony shall not be awarded when both parties prove grounds
321 for divorce and are denied a divorce, nor shall an award of
322 alimony under the provisions of this section be ordered which
323 directs the payment of alimony to a party determined to be at
324 fault, when, as a grounds granting the divorce, such party is
325 determined by the court:

326 (1) To have committed adultery; or

327 (2) To have been convicted for the commission of a crime
328 which is a felony, subsequent to the marriage if such conviction
329 has become final; or

330 (3) To have actually abandoned or deserted his or her
331 spouse for six months.

332 (j) Whenever under the terms of this section or section
333 thirteen of this article a court enters an order requiring the

334 payment of alimony or child support, if the court anticipates the
335 payment of such alimony or child support or any portion thereof
336 to be paid out of "disposable retired or retainer pay" as that
337 term is defined in 10 U. S. C. §1408, relating to members or
338 former members of the uniformed services of the United States,
339 the court shall specifically provide for the payment of an
340 amount, expressed in dollars or as a percentage of disposable
341 retired or retainer pay, from the disposable retired or retainer
342 pay of the payor party to the payee party.

343 (k) Any order which provides for the custody or support of
344 a minor child shall include:

345 (1) The name of the custodian;

346 (2) The amount of the support payments;

347 (3) The date the first payment is due;

348 (4) The frequency of the support payments;

349 (5) The event or events which trigger termination of the
350 support obligation;

351 (6) A provision regarding wage withholding;

352 (7) The address where payments shall be sent;

353 (8) A provision for medical support; and

354 (9) When child support guidelines are not followed, a
355 specific written finding pursuant to section fourteen, article
356 one-b, chapter forty-eight-a of this code.

357 (l) Effective the first day of October, one thousand nine
358 hundred ninety-nine, any order entered that provides for the
359 payment of child support shall also include a statement that
360 requires both parties to report any changes in gross income,
361 either in source of employment or in the amount of gross
362 income, to the child support enforcement division and to the
363 other party. The notice shall not be required if the change in
364 gross income is less than a fifteen percent change in gross
365 income.

§48-2-16. Effect of separation agreement; what considered in awarding alimony, child support or separate maintenance.

1 (a) In cases where the parties to an action commenced
2 under the provisions of this article have executed a separation
3 agreement, if the court finds that the agreement is fair and
4 reasonable, and not obtained by fraud, duress or other uncon-
5 scionable conduct by one of the parties, and further finds that
6 the parties, through the separation agreement, have expressed
7 themselves in terms which, if incorporated into a judicial order,
8 would be enforceable by a court in future proceedings, then the
9 court shall conform the relief which it is authorized to order
10 under the provisions of sections thirteen and fifteen of this
11 article to the separation agreement of the parties. The separation
12 agreement may contractually fix the division of property
13 between the parties and may determine whether alimony shall
14 be awarded, whether an award of alimony, other than an award
15 of rehabilitative alimony or alimony in gross, may be reduced
16 or terminated because a de facto marriage exists between the
17 alimony payee and another person, whether a court shall have
18 continuing jurisdiction over the amount of an alimony award so
19 as to increase or decrease the amount of alimony to be paid,
20 whether alimony shall be awarded as a lump sum settlement in
21 lieu of periodic payments, whether alimony shall continue
22 beyond the death of the payor party or the remarriage of the
23 payee party, or whether the alimony award shall be enforceable
24 by contempt proceedings or other judicial remedies aside from
25 contractual remedies. Any award of periodic payments of
26 alimony shall be deemed to be judicially decreed and subject to
27 subsequent modification unless there is some explicit, well
28 expressed, clear, plain and unambiguous provision to the
29 contrary set forth in the court-approved separation agreement
30 or the order granting the divorce. Child support shall, under all
31 circumstances, always be subject to continuing judicial modifi-
32 cation.

33 (b) In cases where the parties to an action commenced
34 under the provisions of this article have not executed a separa-
35 tion agreement; or have executed an agreement which is

36 incomplete or insufficient to resolve the outstanding issues
37 between the parties, or where the court finds the separation
38 agreement of the parties not to be fair and reasonable or clear
39 and unambiguous, the court shall proceed to resolve the issues
40 outstanding between the parties. The court shall consider the
41 following factors in determining the amount of alimony, child
42 support or separate maintenance, if any, to be ordered under the
43 provisions of sections thirteen and fifteen of this article, as a
44 supplement to or in lieu of the separation agreement:

45 (1) The length of time the parties were married;

46 (2) The period of time during the marriage when the parties
47 actually lived together as husband and wife;

48 (3) The present employment income and other recurring
49 earnings of each party from any source;

50 (4) The income-earning abilities of each of the parties,
51 based upon such factors as educational background, training,
52 employment skills, work experience, length of absence from the
53 job market and custodial responsibilities for children;

54 (5) The distribution of marital property to be made under
55 the terms of a separation agreement or by the court under the
56 provisions of section thirty-two of this article, insofar as the
57 distribution affects or will affect the earnings of the parties and
58 their ability to pay or their need to receive alimony, child
59 support or separate maintenance: *Provided*, That for the
60 purposes of determining a spouse's ability to pay alimony, the
61 court may not consider the income generated by property
62 allocated to the payor spouse in connection with the division of
63 marital property unless the court makes specific findings that a
64 failure to consider income from the allocated property would
65 result in substantial inequity;

66 (6) The ages and the physical, mental and emotional
67 condition of each party;

68 (7) The educational qualifications of each party;

69 (8) Whether either party has foregone or postponed
70 economic, education or employment opportunities during the
71 course of the marriage;

- 72 (9) The standard of living established during the marriage;
- 73 (10) The likelihood that the party seeking alimony, child
74 support or separate maintenance can substantially increase his
75 or her income-earning abilities within a reasonable time by
76 acquiring additional education or training;
- 77 (11) Any financial or other contribution made by either
78 party to the education, training, vocational skills, career or
79 earning capacity of the other party;
- 80 (12) The anticipated expense of obtaining the education and
81 training described in subdivision (10) above;
- 82 (13) The costs of educating minor children;
- 83 (14) The costs of providing health care for each of the
84 parties and their minor children;
- 85 (15) The tax consequences to each party;
- 86 (16) The extent to which it would be inappropriate for a
87 party, because said party will be the custodian of a minor child
88 or children, to seek employment outside the home;
- 89 (17) The financial need of each party;
- 90 (18) The legal obligations of each party to support himself
91 or herself and to support any other person;
- 92 (19) Costs and care associated with a minor or adult child's
93 physical or mental disabilities; and
- 94 (20) Such other factors as the court deems necessary or
95 appropriate to consider in order to arrive at a fair and equitable
96 grant of alimony, child support or separate maintenance.

§48-2-32. Marital property disposition.

- 1 (a) Except as otherwise provided in this section, upon every
2 judgment of annulment, divorce or separation, the court shall
3 divide the marital property of the parties equally between the
4 parties.
- 5 (b) In cases where the parties to an action commenced
6 under the provisions of this article have executed a separation

7 agreement, then the court shall divide the marital property in
8 accordance with the terms of the agreement, unless the court
9 finds:

10 (1) That the agreement was obtained by fraud, duress or
11 other unconscionable conduct by one of the parties; or

12 (2) That the parties, in the separation agreement, have not
13 expressed themselves in terms which, if incorporated into a
14 judicial order, would be enforceable by a court in future
15 proceedings; or

16 (3) That the agreement, viewed in the context of the actual
17 contributions of the respective parties to the net value of the
18 marital property of the parties, is so inequitable as to defeat the
19 purposes of this section, and such agreement was inequitable at
20 the time the same was executed.

21 (c) In the absence of a valid agreement, the court shall
22 presume that all marital property is to be divided equally
23 between the parties, but may alter this distribution, without
24 regard to any attribution of fault to either party which may be
25 alleged or proved in the course of the action, after a consider-
26 ation of the following:

27 (1) The extent to which each party has contributed to the
28 acquisition, preservation and maintenance, or increase in value
29 of marital property by monetary contributions, including, but
30 not limited to:

31 (A) Employment income and other earnings; and

32 (B) Funds which are separate property.

33 (2) The extent to which each party has contributed to the
34 acquisition, preservation and maintenance or increase in value
35 of marital property by nonmonetary contributions, including,
36 but not limited to:

37 (A) Homemaker services;

38 (B) Child care services;

39 (C) Labor performed without compensation, or for less than
40 adequate compensation, in a family business or other business
41 entity in which one or both of the parties has an interest;

42 (D) Labor performed in the actual maintenance or improve-
43 ment of tangible marital property; and

44 (E) Labor performed in the management or investment of
45 assets which are marital property.

46 (3) The extent to which each party expended his or her
47 efforts during the marriage in a manner which limited or
48 decreased such party's income-earning ability or increased the
49 income-earning ability of the other party, including, but not
50 limited to:

51 (A) Direct or indirect contributions by either party to the
52 education or training of the other party which has increased the
53 income-earning ability of such other party; and

54 (B) Foregoing by either party of employment or other
55 income-earning activity through an understanding of the parties
56 or at the insistence of the other party.

57 (4) The extent to which each party, during the marriage,
58 may have conducted himself or herself so as to dissipate or
59 depreciate the value of the marital property of the parties:
60 *Provided*, That except for a consideration of the economic
61 consequences of conduct as provided for in this subdivision,
62 fault or marital misconduct shall not be considered by the court
63 in determining the proper distribution of marital property.

64 (d) After considering the factors set forth in subsection (c)
65 of this section, the court shall:

66 (1) Determine the net value of all marital property of the
67 parties as of the date of the separation of the parties or as of
68 such later date determined by the court to be more appropriate
69 for attaining an equitable result. Where the value of the marital
70 property portion of a spouse's entitlement to future payments
71 can be determined at the time of entering a final order in a
72 domestic relations action, the court may include it in reckoning
73 the worth of the marital property assigned to each spouse. In the

74 absence of an agreement between the parties, when the value of
75 the future payments is not known at the time of entering a final
76 order in a domestic relations action, if their receipt is contingent
77 on future events or not reasonably assured, or if for other
78 reasons it is not equitable under the circumstances to include
79 their value in the property assigned at the time of dissolution,
80 the court may decline to do so; and

81 (A) Fix the spouses' respective shares in such future
82 payments if and when received; or

83 (B) If it is not possible and practical to fix their share at the
84 time of entering a final order in a domestic relations action,
85 reserve jurisdiction to make an appropriate order at the earliest
86 practical date;

87 If a valuation is made after a contingent or other future fee
88 has been earned through the personal services or skills of a
89 spouse, the portion that is marital property shall be in the same
90 proportion to the total fee that the personal services or skills
91 expended before the separation of the parties bears to the total
92 personal skills or services expended. The provisions of this
93 subdivision apply to pending cases when the issues of contin-
94 gent fees or future earned fees have not been finally adjudi-
95 cated.

96 (2) Designate the property which constitutes marital
97 property, and define the interest therein to which each party is
98 entitled and the value of their respective interest therein. In the
99 case of an action wherein there is no agreement between the
100 parties and the relief demanded requires the court to consider
101 such factors as are described in subdivisions (1), (2), (3) and
102 (4), subsection (c) of this section, if a consideration of factors
103 only under said subdivisions (1) and (2) would result in an
104 unequal division of marital property, and if an examination of
105 the factors described in said subdivisions (3) and (4) produce a
106 finding that a party: (A) Expended his or her efforts during the
107 marriage in a manner which limited or decreased such party's
108 income-earning ability or increased the income-earning ability
109 of the other party; or (B) conducted himself or herself so as to
110 dissipate or depreciate the value of the marital property of the

111 parties, then the court may, in the absence of a fair and just
112 alimony award under the provisions of section fifteen of this
113 article which adequately takes into account the facts which
114 underlie the factors described in subdivisions (3) and (4),
115 subsection (c) of this section, equitably adjust the definition of
116 the parties' interest in marital property, increasing the interest
117 in marital property of a party adversely affected by the factors
118 considered under said subdivisions who would otherwise be
119 awarded less than one half of the marital property, to an interest
120 not to exceed one half of the marital property;

121 (3) Designate the property which constitutes separate
122 property of the respective parties or the separate property of
123 their children;

124 (4) Determine the extent to which marital property is
125 susceptible to division in accordance with the findings of the
126 court as to the respective interests of the parties therein;

127 (5) In the case of any property which is not susceptible to
128 division, ascertain the projected results of a sale of such
129 property;

130 (6) Ascertain the projected effect of a division or transfer of
131 ownership of income-producing property, in terms of the
132 possible pecuniary loss to the parties or other persons which
133 may result from an impairment of the property's capacity to
134 generate earnings; and

135 (7) Transfer title to such component parts of the marital
136 property as may be necessary to achieve an equitable distribu-
137 tion of the marital property. To make such equitable distribu-
138 tion, the court may:

139 (A) Direct either party to transfer their interest in specific
140 property to the other party;

141 (B) Permit either party to purchase from the other party
142 their interest in specific property;

143 (C) Direct either party to pay a sum of money to the other
144 party in lieu of transferring specific property or an interest
145 therein, if necessary to adjust the equities and rights of the

146 parties, which sum may be paid in installments or otherwise, as
147 the court may direct;

148 (D) Direct a party to transfer his or her property to the other
149 party in substitution for property of the other party of equal
150 value which the transferor is permitted to retain and assume
151 ownership of; or

152 (E) Order a sale of specific property and an appropriate
153 division of the net proceeds of such sale: *Provided*, That such
154 sale may be by private sale, or through an agent or by judicial
155 sale, whichever would facilitate a sale within a reasonable time
156 at a fair price.

157 (e) In order to achieve the equitable distribution of marital
158 property, the court shall, unless the parties otherwise agree,
159 order, when necessary, the transfer of legal title to any property
160 of the parties, giving preference to effecting equitable distribu-
161 tion through periodic or lump sum payments: *Provided*, That
162 the court may order the transfer of legal title to motor vehicles,
163 household goods and the former marital domicile without
164 regard to such preference where the court determines it to be
165 necessary or convenient. In any case involving the equitable
166 distribution of: (1) Property acquired by bequest, devise,
167 descent, distribution or gift; or (2) ownership interests in a
168 business entity, the court shall, unless the parties otherwise
169 agree, give preference to the retention of the ownership interests
170 in such property. In the case of such business interests, the court
171 shall give preference to the party having the closer involvement,
172 larger ownership interest or greater dependency upon the
173 business entity for income or other resources required to meet
174 responsibilities imposed under this article, and shall also
175 consider the effects of transfer or retention in terms of which
176 alternative will best serve to preserve the value of the business
177 entity or protect the business entity from undue hardship or
178 from interference caused by one of the parties or by the divorce,
179 annulment or decree of separate maintenance: *Provided*,
180 *however*, That the court may, unless the parties otherwise agree,
181 sever the business relationship of the parties and order the
182 transfer of legal title to ownership interests in the business

183 entity from one party to the other, without regard to the
184 limitations on the transfer of title to such property otherwise
185 provided in this subsection, if such transfer is required to
186 achieve the other purposes of this article: *Provided further*, That
187 in all such cases the court shall order, or the agreement of the
188 parties shall provide for, equitable payment or transfer of legal
189 title to other property, of fair value in money or moneys' worth,
190 in lieu of any ownership interests in a business entity which are
191 ordered to be transferred under this subsection: *And provided*
192 *further*, That the court may order the transfer of such business
193 interests to a third party (such as the business entity itself or
194 another principal in the business entity) where the interests of
195 the parties under this article can be protected and at least one
196 party consents thereto.

197 (f) In any order which divides or transfers the title to any
198 property, determines the ownership or value of any property,
199 designates the specific property to which any party is entitled
200 or grants any monetary award, the court shall set out in detail its
201 findings of fact and conclusions of law, and the reasons for
202 dividing the property in the manner adopted.

203 (g) If an order entered in accordance with the provisions of
204 this article requires the transfer of title to property and a party
205 fails or refuses to execute a deed or other instrument necessary
206 to convey title to such property, the deed or other instrument
207 shall be executed by a special commissioner appointed by the
208 court for the purpose of effecting such transfer of title pursuant
209 to section seven, article twelve, chapter fifty-five of this code.

210 (h) As to any third party, the doctrine of equitable distribu-
211 tion of marital property and the provisions of this article shall
212 be construed as creating no interest or title in property until and
213 unless an order is entered under this article judicially defining
214 such interest or approving a separation agreement which defines
215 such interest. Neither this article nor the doctrine of equitable
216 distribution of marital property shall be construed to create
217 community property nor any other interest or estate in property
218 except those previously recognized in this state. A husband or
219 wife may alienate property at any time prior to the entry of an

220 order under the provisions of this article or prior to the
221 recordation of a notice of lis pendens in accordance with the
222 provisions of section thirty-five of this article, and at anytime
223 and in any manner not otherwise prohibited by an order under
224 this article, in like manner and with like effect as if this article
225 and the doctrine of equitable distribution had not been adopted:
226 *Provided*, That as to any transfer prior to the entry of an order
227 under the provisions of this article, a transfer other than to a
228 bona fide purchaser for value shall be voidable if the court finds
229 such transfer to have been effected to avoid the application of
230 the provisions of this article or to otherwise be a fraudulent
231 conveyance. Upon the entry of any order under this article or
232 the admission to record of any notice with respect to an action
233 under this article, restraining the alienation of property of a
234 party, a bona fide purchaser for value shall take such title or
235 interest as he or she might have taken prior to the effective date
236 of this section and no purchaser for value need see to the
237 application of the proceeds of such purchase except to the
238 extent he or she would have been required so to do prior to the
239 effective date of this section: *Provided, however*, That as to
240 third parties nothing in this section shall be construed to limit
241 or otherwise defeat the interests or rights to property which any
242 husband or wife would have had in property prior to the
243 enactment of this section or prior to the adoption of the doctrine
244 of equitable distribution by the supreme court of appeals on the
245 twenty-fifth day of May, one thousand nine hundred eighty-
246 three: *Provided further*, That no order entered under this article
247 shall be construed to defeat the title of a third party transferee
248 thereof except to the extent that the power to effect such a
249 transfer of title or interest in such property is secured by a valid
250 and duly perfected lien and, as to any personal property,
251 secured by a duly perfected security interest.

252 (i) Notwithstanding the provisions of chapter eleven of this
253 code, no transfer of interest in or title to property under this
254 section shall be taxable as a transfer of property without
255 consideration nor, except as to alimony, create liability for
256 sales, use, inheritance and transfer or income taxes due the state
257 or any political subdivision nor require the payment of the

258 excise tax imposed under article twenty-two, chapter eleven of
259 this code.

260 (j) Whenever under the terms of this article a court enters
261 an order requiring a division of property, if the court anticipates
262 the division of property will be effected by requiring sums to be
263 paid out of "disposable retired or retainer pay" as that term is
264 defined in 10 U. S. C. §1408, relating to members or former
265 members of the uniformed services of the United States, the
266 court shall specifically provide for the payment of an amount,
267 expressed in dollars or as a percentage of disposable retired or
268 retainer pay, from the disposable retired or retainer pay of the
269 payor party to the payee party.

270 (k) A court may not award alimony or order equitable
271 distribution of property between individuals who are not
272 married to one another in accordance with the provisions of
273 article one of this chapter.

274 (l) The amendments to this section effected by the
275 reenactment of this section during the regular session of the
276 Legislature, one thousand nine hundred ninety-six, are to be
277 applied prospectively and shall have no application to any
278 action for annulment, divorce or separate maintenance that was
279 commenced on or before the effective date of this section.

§48-2-37. Calculation of interest; accumulation of simple interest; prejudgment interest.

1 (a) If an obligation to pay interest arises under this chapter
2 and the rate is not specified, the rate is that specified in section
3 thirty-one, article six, chapter fifty-six of this code. On or after
4 the ninth day of June, one thousand nine hundred ninety-five,
5 interest shall accrue only upon the outstanding principal of such
6 obligation. This section shall be construed to permit the
7 accumulation of simple interest, and may not be construed to
8 permit the compounding of interest. Interest which has accrued
9 on unpaid installments accruing before the ninth day of June,
10 one thousand nine hundred ninety-five, may not be modified by
11 any court, irrespective of whether such installment accrued
12 simple or compound interest: *Provided*, That unpaid install-
13 ments upon which interest was compounded before the ninth

14 day of June, one thousand nine hundred ninety-five, shall
15 accrue only simple interest thereon on and after the ninth day of
16 June, one thousand nine hundred ninety-five.

17 (b) Except as otherwise provided in this subsection,
18 prejudgment interest shall not be awarded in a domestic
19 relations action. The circuit court may only award prejudgment
20 interest in a domestic relations action against a party if the court
21 finds, in writing, that the party engaged in conduct that would
22 violate subsection (b), rule eleven of the West Virginia rules of
23 civil procedure. If prejudgment interest is awarded, the court
24 shall calculate prejudgment interest from the date the offending
25 representation was presented to the court.

**ARTICLE 2A. PREVENTION AND TREATMENT OF DOMESTIC AND
FAMILY LAW VIOLENCE.**

§48-2A-3. Jurisdiction; venue; effect of petitioner's leaving residence; priority of
petitions filed under this article; who may file; full faith and credit;
process.

§48-2A-6. Protective orders.

**§48-2A-3. Jurisdiction; venue; effect of petitioner's leaving
residence; priority of petitions filed under this
article; who may file; full faith and credit; pro-
cess.**

1 (a) *Jurisdiction.* — Circuit courts and magistrate courts, as
2 constituted under chapter fifty of this code, have concurrent
3 jurisdiction over proceedings under this article: *Provided*, That
4 on and after the first day of April, two thousand one, magistrate
5 court jurisdiction shall be limited, and thereafter, full hearings
6 wherein a protective order is sought shall be heard before a
7 circuit judge or a family law master.

8 (b) *Venue.* — The action may be heard in the county in
9 which the domestic or family violence occurred, in the county
10 in which the respondent is living or in the county in which the
11 petitioner is living, either temporarily or permanently. If the
12 parties are married to each other, the action may also be brought
13 in the county in which an action for divorce between the parties
14 may be brought as provided by section eight, article two of this
15 chapter.

16 (c) *Petitioner's rights.* — The petitioner's right to relief
17 under this article shall not be affected by his or her leaving a
18 residence or household to avoid further abuse.

19 (d) *Priority of petitions.* — Any petition filed under the
20 provisions of this article shall be given priority over any other
21 civil action before the court, except actions in which trial is in
22 progress, and shall be docketed immediately upon filing. Any
23 appeal to the circuit court of a magistrate's judgment on a
24 petition for relief under this article shall be heard within ten
25 working days of the filing of the appeal.

26 (e) *Full faith and credit.* — Any protective order issued
27 pursuant to this article shall be effective throughout the state in
28 every county. Any protective order issued by any other state,
29 territory or possession of the United States, Puerto Rico, the
30 District of Columbia or Indian tribe shall be accorded full faith
31 and credit and enforced as if it were an order of this state
32 whether or not such relief is available in this state. A protective
33 order from another jurisdiction is presumed to be valid if the
34 order appears authentic on its face and shall be enforced in this
35 state. If the validity of the order is contested, the court or law
36 enforcement to which the order is presented shall, prior to the
37 full hearing, determine the existence, validity and terms of such
38 order in the issuing jurisdiction. A protective order from
39 another jurisdiction may be enforced even if the order is not
40 entered into the state law-enforcement information system
41 described by section twelve of this article.

42 (f) *Service by publication.* — A protective order may be
43 served on the respondent by means of a Class I legal advertise-
44 ment published notice, with the publication area being the
45 county in which the respondent resides, published in accordance
46 with the provisions of section two, article three, chapter fifty-
47 nine of this code if: (i) The petitioner files an affidavit with the
48 court stating that an attempt at personal service pursuant to rule
49 four of the West Virginia rules of civil procedure has been
50 unsuccessful or evidence is adduced at the hearing for the
51 protective order that the respondent has left the state of West
52 Virginia; and (ii) a copy of the order is mailed by certified or

53 registered mail to the respondent at the respondent's last known
54 residence and returned undelivered.

§48-2A-6. Protective orders.

1 (a) At the conclusion of the hearing, if the petitioner has
2 proven the allegations of domestic or family violence, or that he
3 or she reported or witnessed domestic or family violence
4 against another and has, as a result, been abused, threatened,
5 harassed or has been the subject of other actions to attempt to
6 intimidate him or her, by a preponderance of the evidence, the
7 court shall issue a protective order directing the respondent to
8 refrain from abusing, harassing, stalking, threatening or
9 otherwise intimidating the petitioner, the person who reported
10 or witnessed family or domestic violence or the minor children,
11 or engaging in other conduct that would place the petitioner, the
12 person who reported or witnessed family or domestic violence
13 or the minor children in reasonable fear of bodily injury. Where
14 the respondent is present at the hearing and elects not to contest
15 the allegations of domestic or family violence or does not
16 contest the relief sought, the petitioner is not required to adduce
17 evidence and prove the allegations of domestic or family
18 violence and the court may directly address the issues of the
19 relief requested.

20 (b) Where the petitioner is the victim of domestic or family
21 violence, the terms of a protective order may include:

22 (1) Granting possession to the petitioner of the residence or
23 household jointly resided in at the time the abuse occurred;

24 (2) Awarding temporary custody of or establishing tempo-
25 rary visitation rights with regard to minor children named in the
26 order;

27 (3) Establishing terms of temporary visitation with regard
28 to the minor children named in the order including, but not
29 limited to, requiring third-party supervision of visitations if
30 necessary to protect the petitioner and/or the minor children;

31 (4) Ordering the noncustodial parent to pay to the custodial
32 parent a sum for temporary support and maintenance of the
33 petitioner and children, if any;

34 (5) Ordering the respondent to pay to the petitioner a sum
35 for temporary support and maintenance of the petitioner, where
36 appropriate;

37 (6) Ordering the respondent to refrain from entering the
38 school, business or place of employment of the petitioner or
39 household or family members for the purpose of violating the
40 protective order;

41 (7) Ordering the respondent to participate in an intervention
42 program for perpetrators;

43 (8) Ordering the respondent to refrain from contacting,
44 telephoning, communicating, harassing or verbally abusing the
45 petitioner;

46 (9) Providing for either party to obtain personal property or
47 other items from a location, including granting temporary
48 possession of motor vehicles owned by either or both of the
49 parties, and providing for the safety of the parties while this
50 occurs, including ordering a law-enforcement officer to
51 accompany one or both of the parties;

52 (10) Prohibiting the respondent from using or possessing a
53 firearm or other weapon, notwithstanding the fact that the
54 respondent has a valid license to possess such firearm or other
55 weapon;

56 (11) Informing the respondent that possession of a firearm
57 while subject to a protective order is a violation of federal law;

58 (12) Ordering the respondent to reimburse the petitioner or
59 other person for any expenses incurred as a result of the
60 domestic or family violence, including, but not limited to,
61 medical expenses, transportation and shelter; and

62 (13) Ordering the petitioner and respondent to refrain from
63 transferring, conveying, alienating, encumbering or otherwise
64 dealing with property which could otherwise be subject to the
65 jurisdiction of the court or another court in an action for divorce
66 or support, partition or in any other action affecting their
67 interests in property.

68 (c) Where the petitioner or other person to be protected
69 reported or was a witness to the family or domestic violence,
70 the terms of a protective order may include:

71 (1) Ordering the respondent to refrain from abusing,
72 contacting, telephoning, communicating, harassing, verbally
73 abusing or otherwise intimidating the petitioner or other person
74 to be protected; and

75 (2) Ordering the respondent to refrain from entering the
76 school, business or place of employment of the petitioner or
77 other person to be protected, for the purpose of violating the
78 protective order.

79 (d) Except as otherwise provided by subsection (d), section
80 three-a of this article, a protective order issued by a magistrate,
81 family law master or circuit judge pursuant to this article or
82 subdivision (13), subsection (a), article two of this chapter, is
83 effective for either ninety days or one hundred eighty days, in
84 the discretion of the court. If the court enters an order for a
85 period of ninety days, upon receipt of a written request from the
86 petitioner prior to the expiration of the ninety-day period, the
87 court shall extend its order for an additional ninety-day period.

88 (e) To be effective, a written request to extend an order
89 from ninety days to one hundred eighty days must be submitted
90 to the court prior to the expiration of the original ninety-day
91 period. A notice of the extension shall be sent by the clerk of
92 the court to the respondent by first class mail, addressed to the
93 last known address of the respondent as indicated by the court's
94 case filings. The extension of time is effective upon mailing of
95 the notice.

96 (f) The court may amend the terms of a protective order at
97 any time upon subsequent petition filed by either party. The
98 protective order shall be in full force and effect in every county
99 of this state and shall so state.

100 (g) No order under this article shall in any manner affect
101 title to any real property.

102 (h) Certified copies of any order or extension notice made
103 under the provisions of this section shall be issued to the
104 petitioner, the respondent and any law-enforcement agency
105 having jurisdiction to enforce the order, including the city
106 police, the county sheriff's office or local office of the West
107 Virginia state police within twenty-four hours of the entry of
108 the order.

109 (i) Mutual protective orders are prohibited unless both
110 parties have filed a petition under section four of this article and
111 have proven the allegations of domestic or family violence by
112 a preponderance of the evidence. This shall not prevent other
113 persons, including the respondent, from filing a separate
114 petition. The court may consolidate two or more petitions if he
115 or she determines that consolidation will further the interests of
116 justice and judicial economy. The court shall enter a separate
117 order for each petition filed.

118 (j) Any protective order issued pursuant to this article shall
119 contain on its face the following statement, printed in bold-
120 faced type or in capital letters:

121 **"VIOLATION OF THIS ORDER MAY BE PUNISHED**
122 **BY CONFINEMENT IN A REGIONAL OR COUNTY**
123 **JAIL FOR AS LONG AS ONE YEAR AND BY A FINE OF**
124 **AS MUCH AS TWO THOUSAND DOLLARS"**

125 (k) Any person against whom a protective order is issued
126 after a full hearing pursuant to this section shall be assessed a
127 fee of twenty-five dollars. Such fee shall be paid to the family
128 court fund established pursuant to section twenty-three, article
129 four, chapter forty-eight-a of this code.

130 (l) The supreme court of appeals shall promulgate a
131 procedural rule to establish time-keeping requirements for
132 magistrates, magistrate court clerks and magistrate assistants so
133 as to assure the maximum funding of incentive payments,
134 grants and other funding sources available to the state for the
135 processing of cases filed for the establishment of temporary
136 orders of child support pursuant to the provisions of this
137 section.

ARTICLE 2C. DOMESTIC VIOLENCE ACT.**§48-2C-4c. Domestic violence legal services fund.**

1 There is hereby established in the state treasury a special
2 revenue account, designated as the “domestic violence legal
3 services fund”, which shall be an appropriated fund for receipt
4 of grants, gifts, fees, or federal or state funds designated for
5 legal services for domestic violence victims. Expenditures
6 from the fund shall be limited to attorneys employed by
7 domestic violence shelters, or employed by nonprofit agencies
8 which establish a collaborative relationship with a domestic
9 violence shelter, that provide civil legal services to victims of
10 domestic violence.

**ARTICLE 11. ALLOCATION OF CUSTODIAL AND DECISION-MAKING
RESPONSIBILITY FOR CHILDREN.**

- §48-11-101. Scope of article; legislative findings and declarations.
- §48-11-102. Objectives; best interests of the child defined.
- §48-11-103. Parties to an action under this article.
- §48-11-104. Parent education classes.
- §48-11-201. Parenting agreements.
- §48-11-202. Court-ordered services.
- §48-11-203. Proposed temporary parenting plan; temporary order; amendment;
vacation of order.
- §48-11-204. Criteria for temporary parenting plan.
- §48-11-205. Permanent parenting plan.
- §48-11-206. Allocation of custodial responsibility.
- §48-11-207. Allocation of significant decision-making responsibility.
- §48-11-208. Criteria for parenting plan; dispute resolution.
- §48-11-209. Parenting plan; limiting factors.
- §48-11-301. Court-ordered investigation.
- §48-11-302. Appointment of guardian.
- §48-11-303. Interview of the child by the court.
- §48-11-401. Modification upon showing of changed circumstances or harm.
- §48-11-402. Modification without showing of changed circumstances.
- §48-11-403. Relocation of a parent.
- §48-11-501. Enforcement of parenting plans.
- §48-11-601. Access to a child's records.
- §48-11-602. Designation of custody for the purpose of other state and federal
statutes.
- §48-11-603. Effect of enactment; operative dates.
- §48-11-604. Effect of enactment; modification of child visitation privileges in
certain cases.

PART 1. SCOPE, OBJECTIVES, DEFINITIONS AND PARTIES.

§48-11-101. Scope of article; legislative findings and declarations.

1 (a) This article sets forth principles governing the allocation
2 of custodial and decision-making responsibility for a minor
3 child when the parents do not live together.

4 (b) The Legislature finds and declares that it is the public
5 policy of this state to assure that the best interest of children is
6 the court's primary concern in allocating custodial and
7 decision-making responsibilities between parents who do not
8 live together. In furtherance of this policy, the Legislature
9 declares that a child's best interest will be served by assuring
10 that minor children have frequent and continuing contact with
11 parents who have shown the ability to act in the best interest of
12 their children, to educate parents on their rights and responsibil-
13 ities and the effect their separation may have on children, to
14 encourage mediation of disputes, and to encourage parents to
15 share in the rights and responsibilities of rearing their children
16 after the parents have separated or divorced.

§48-11-102. Objectives; best interests of the child defined.

1 (a) The primary objective of this article is to serve the
2 child's best interests, by facilitating:

3 (1) Stability of the child;

4 (2) Parental planning and agreement about the child's
5 custodial arrangements and upbringing;

6 (3) Continuity of existing parent-child attachments;

7 (4) Meaningful contact between a child and each parent;

8 (5) Caretaking relationships by adults who love the child,
9 know how to provide for the child's needs, and who place a
10 high priority on doing so;

11 (6) Security from exposure to physical or emotional harm;
12 and

13 (7) Expeditious, predictable decisionmaking and avoidance
14 of prolonged uncertainty respecting arrangements for the
15 child's care and control.

15 (b) A secondary objective of article is to achieve fairness
16 between the parents.

§48-11-103. Parties to an action under this article.

1 (1) Persons who have a right to be notified of and partici-
2 pate as a party in an action filed by another are:

3 (a) A legal parent of the child, as defined in section one,
4 article two of this chapter;

5 (b) An adult allocated custodial responsibility or decision-
6 making responsibility under a parenting plan regarding the child
7 that is then in effect; or

8 (c) Persons who were parties to a prior order establishing
9 custody and visitation, or who, under a parenting plan, were
10 allocated custodial responsibility or decision-making responsi-
11 bility.

12 (2) In exceptional cases the court may, in its discretion,
13 grant permission to intervene to other persons or public
14 agencies whose participation in the proceedings under this
15 article it determines is likely to serve the child's best interests.
16 The court may place limitations on participation by the inter-
17 vening party as the court determines to be appropriate. Such
18 persons or public agencies do not have standing to initiate an
19 action under this article.

§48-11-104. Parent education classes.

1 (a) A circuit court shall, by administrative rule or order, and
2 with the approval of the supreme court of appeals, designate an
3 organization or agency to establish and operate education
4 programs designed for parents who have filed an action for
5 divorce, paternity, support, separate maintenance or other
6 custody proceeding and who have minor children. The educa-
7 tion programs shall be designed to instruct and educate parents
8 about the effects of divorce and custody disputes on their
9 children and to teach parents ways to help their children and
10 minimize their trauma.

11 (b) The circuit court shall issue an order requiring parties to
12 an action for divorce involving a minor child or children to
13 attend parent education classes established pursuant to subsection
14 (a) of this section unless the court determines that attendance
15 is not appropriate or necessary based on the conduct or
16 circumstances of the parties. The court may, by order, establish
17 sanctions for failure to attend. The court may also order parties
18 to an action involving paternity, separate maintenance or
19 modification of a divorce decree to attend such classes.

20 (c) The circuit court may require that each person attending
21 a parent education class pay a fee, not to exceed twenty-five
22 dollars, to the clerk of such court to defray the cost of materials
23 and of hiring teachers: *Provided*, That where it is determined
24 that a party is indigent and unable to pay for such classes, the
25 court shall waive the payment of the fee for such party. The
26 clerk of the circuit court shall, on or before the tenth day of
27 each month, transmit all fees collected under this subsection to
28 the state treasurer for deposit in the state treasury to the credit
29 of special revenue fund to be known as the “parent education
30 fund”, which is hereby created. All moneys collected and
31 received under this subsection and paid into the state treasury
32 and credited to the parent education fund shall be used by the
33 administrative office of the supreme court of appeals solely for
34 reimbursing the provider of parent education classes for the
35 costs of materials and of providing such classes. Such moneys
36 shall not be treated by the auditor and treasurer as part of the
37 general revenue of the state.

38 (d) The administrative office of the supreme court of
39 appeals shall submit a report to the joint committee on govern-
40 ment and finance summarizing the effectiveness of any program
41 of parent education no later than two years from the initiation
42 of the program.

43 PART 2. PARENTING PLANS.

§48-11-201. Parenting agreements.

1 (a) If the parents agree to one or more provisions of a
2 parenting plan, the court shall so order, unless it makes specific
3 findings that:

4 (1) The agreement is not knowing or voluntary; or

5 (2) The plan would be harmful to the child.

6 (b) The court, at its discretion and on any basis it deems
7 sufficient, may conduct an evidentiary hearing to determine
8 whether there is a factual basis for a finding under subdivision
9 (1) or (2), subsection (a) of this section. When there is credible
10 information that child abuse as defined by section three, article
11 one, chapter forty-nine of this code or domestic violence as
12 defined by section two, article two-a, chapter forty-eight-a of
13 this code has occurred, a hearing is mandatory and if the court
14 determines that abuse has occurred, appropriate protective
15 measures shall be ordered.

16 (c) If an agreement, in whole or in part, is not accepted by
17 the court under the standards set forth in subsection (a) of this
18 section, the court shall allow the parents the opportunity to
19 negotiate another agreement.

§48-11-202. Court-ordered services.

1 (a) (1) The court shall inform the parents, or require them
2 to be informed, about:

3 (A) How to prepare a parenting plan;

4 (B) The impact of family dissolution on children and how
5 the needs of children facing family dissolution can best be
6 addressed;

7 (C) The impact of domestic abuse on children, and re-
8 sources for addressing domestic abuse; and

9 (D) Mediation or other nonjudicial procedures designed to
10 help them achieve an agreement.

11 (2) The court shall require the parents to attend parent
12 education classes.

13 (3) If parents are unable to resolve issues and agree to a
14 parenting plan, the court shall require mediation, unless
15 application of the procedural rules promulgated pursuant to the

16 provisions of subsection (b) of this section indicates that
17 mediation is inappropriate in the particular case.

18 (b) The supreme court of appeals shall make and promul-
19 gate rules that will provide for premediation screening proce-
20 dures to determine whether domestic violence, child abuse or
21 neglect, acts or threats of duress or coercion, substance abuse,
22 mental illness or other such elements would adversely affect the
23 safety of a party, the ability of a party to meaningfully partici-
24 pate in the mediation, or the capacity of a party to freely and
25 voluntarily consent to any proposed agreement reached as a
26 result of the mediation. Such rules shall authorize a family law
27 master or judge to consider alternatives to mediation which may
28 aid the parties in establishing a parenting plan. Such rules shall
29 not establish a per se bar to mediation if domestic violence,
30 child abuse or neglect, acts or threats of duress or coercion,
31 substance abuse, mental illness or other such elements exist, but
32 may be the basis for the court, in its discretion, not to order
33 services under subsection (a) of this section, or not to require a
34 parent to have face-to-face meetings with the other parent.

35 (c) A mediator shall not make a recommendation to the
36 court and may not reveal information that either parent has
37 disclosed during mediation under a reasonable expectation of
38 confidentiality, except that a mediator may reveal to the court
39 credible information that he or she has received concerning
40 domestic violence or child abuse.

41 (d) Mediation services authorized under subsection (a) of
42 this section shall be ordered at an hourly cost that is reasonable
43 in light of the financial circumstances of each parent, assessed
44 on a uniform sliding scale. Where one parent's ability to pay for
45 such services is significantly greater than the other, the court
46 may order that parent to pay some or all of the expenses of the
47 other. State revenues shall not be used to defray the costs for
48 the services of a mediator: *Provided*, That the supreme court of
49 appeals may use a portion of its budget to pay administrative
50 costs associated with establishing and operating mediation
51 programs: *Provided, however*, That grants and gifts to the state

52 that may be used to fund mediation are not to be considered as
53 state revenues for purposes of this subsection.

54 (e) The supreme court of appeals shall establish standards
55 for the qualification and training of mediators.

**§48-11-203. Proposed temporary parenting plan; temporary
order; amendment; vacation of order.**

1 (a) A parent seeking a temporary order relating to
2 parenting shall file and serve a proposed temporary parenting
3 plan by motion. The other parent, if contesting the proposed
4 temporary parenting plan, shall file and serve a responsive
5 proposed parenting plan. Either parent may move to have a
6 proposed temporary parenting plan entered as part of a tempo-
7 rary order. The parents may enter an agreed temporary
8 parenting plan at any time as part of a temporary order. The
9 proposed temporary parenting plan may be supported by
10 relevant evidence and shall be verified and shall state at a
11 minimum the following:

12 (1) The name, address and length of residence with the
13 person or persons with whom the child has lived for the
14 preceding twelve months;

15 (2) The performance by each parent during the last twelve
16 months of the parenting functions relating to the daily needs of
17 the child;

18 (3) The parents' work and child-care schedules for the
19 preceding twelve months;

20 (4) The parents' current work and child-care schedules; and

21 (5) Any of the circumstances set forth in section two
22 hundred nine of this article that are likely to pose a serious risk
23 to the child and that warrant limitation on the award to a parent
24 of temporary residence or time with the child pending entry of
25 a permanent parenting plan.

26 (b) At the hearing, the court shall enter a temporary
27 parenting order incorporating a temporary parenting plan which
28 includes:

- 29 (1) A schedule for the child's time with each parent when
30 appropriate;
- 31 (2) Designation of a temporary residence for the child;
- 32 (3) Allocation of decision-making authority, if any. Absent
33 allocation of decision-making authority consistent with section
34 two hundred seven of this article, neither party shall make any
35 decision for the child other than those relating to day-to-day or
36 emergency care of the child, which shall be made by the party
37 who is present with the child;
- 38 (4) Provisions for temporary support for the child; and
- 39 (5) Restraining orders, if applicable.
- 40 (c) A parent may make a motion for an order to show cause
41 and the court may enter a temporary order, including a tempo-
42 rary parenting plan, upon a showing of necessity.
- 43 (d) A parent may move for amendment of a temporary
44 parenting plan, and the court may order amendment to the
45 temporary parenting plan, if the amendment conforms to the
46 limitations of section two hundred nine of this article and is in
47 the best interest of the child.

§48-11-204. Criteria for temporary parenting plan.

- 1 (a) After considering the proposed temporary parenting
2 plan filed pursuant to section two hundred three of this article
3 and other relevant evidence presented, the court shall make a
4 temporary parenting plan that is in the best interest of the child.
5 In making this determination, the court shall give particular
6 consideration to:
- 7 (1) Which parent has taken greater responsibility during the
8 last twelve months for performing caretaking functions relating
9 to the daily needs of the child; and
- 10 (2) Which parenting arrangements will cause the least
11 disruption to the child's emotional stability while the action is
12 pending.

13 (b) The court shall also consider the factors used to
14 determine residential provisions in the permanent parenting
15 plan.

16 (c) Upon credible evidence of one or more of the circum-
17 stances set forth in subsection (a), section two hundred nine of
18 this article, the court shall issue a temporary order limiting or
19 denying access to the child as required by that section, in order
20 to protect the child or the other party, pending adjudication of
21 the underlying facts.

22 (d) Expedited procedures shall be instituted to facilitate the
23 prompt issuance of a parenting plan.

§48-11-205. Permanent parenting plan.

1 (a) A party seeking a judicial allocation of custodial
2 responsibility or decision-making responsibility under this
3 article shall file a proposed parenting plan with the court.
4 Parties may file a joint plan. A proposed plan shall be verified
5 and shall state, to the extent known or reasonably discoverable
6 by the filing party or parties:

7 (1) The name, address and length of residence of any adults
8 with whom the child has lived for one year or more, or in the
9 case of a child less than one year old, any adults with whom the
10 child has lived since the child's birth;

11 (2) The name and address of each of the child's parents and
12 any other individuals with standing to participate in the action
13 under section one hundred three of this article;

14 (3) A description of the allocation of caretaking and other
15 parenting responsibilities performed by each person named in
16 subdivisions (1) and (2) of this subsection during the twenty-
17 four months preceding the filing of an action under this article;

18 (4) A description of the work and child-care schedules of
19 any person seeking an allocation of custodial responsibility, and
20 any expected changes to these schedules in the near future;

21 (5) A description of the child's school and extracurricular
22 activities;

23 (6) A description of any of the limiting factors as described
24 in section two hundred nine of this article that are present,
25 including any restraining orders against either parent to prevent
26 domestic or family violence, by case number and jurisdiction;

27 (7) Required financial information; and

28 (8) A description of the known areas of agreement and
29 disagreement with any other parenting plan submitted in the
30 case.

31 The court shall maintain the confidentiality of any informa-
32 tion required to be filed under this section when the person
33 giving that information has a reasonable fear of domestic abuse
34 and disclosure of the information would increase that fear.

35 (b) The court shall develop a process to identify cases in
36 which there is credible information that child abuse or neglect,
37 as defined in section three, article one, chapter forty-nine of this
38 code, or domestic or family violence as defined in section one
39 hundred twenty-one, article two of this chapter has occurred.
40 The process shall include assistance for possible victims of
41 domestic abuse in complying with subdivision (6), subsection
42 (a) of this section, and referral to appropriate resources for safe
43 shelter, counseling, safety planning, information regarding the
44 potential impact of domestic abuse on children, and information
45 regarding civil and criminal remedies for domestic abuse. The
46 process shall also include a system for ensuring that jointly
47 submitted parenting plans that are filed in cases in which there
48 is credible information that child abuse or domestic abuse has
49 occurred receive the court review that is mandated by subdivi-
50 sion (b), section two hundred one of this article.

51 (c) Upon motion of a party and after consideration of the
52 evidence, the court shall order a parenting plan consistent with
53 the provisions of sections two hundred six through two hundred
54 nine of this article, containing:

55 (1) A provision for the child's living arrangements and each
56 parent's custodial responsibility, which shall include either:

57 (A) A custodial schedule that designates in which parent's
58 home each minor child will reside on given days of the year; or

59 (B) A formula or method for determining such a schedule
60 in sufficient detail that, if necessary, the schedule can be
61 enforced in subsequent proceedings by the court;

62 (2) An allocation of decision-making responsibility as to
63 significant matters reasonably likely to arise with respect to the
64 child; and

65 (3) A provision consistent with section two hundred two of
66 this article for resolution of disputes that arise under the plan,
67 and remedies for violations of the plan.

68 (d) A parenting plan may, at the court's discretion, contain
69 provisions that address matters that are expected to arise in the
70 event of a party's relocation, or provide for future modifications
71 in the parenting plan if specified contingencies occur.

§48-11-206. Allocation of custodial responsibility.

1 (a) Unless otherwise resolved by agreement of the parents
2 under section two hundred one of this article or unless mani-
3 festly harmful to the child, the court shall allocate custodial
4 responsibility so that the proportion of custodial time the child
5 spends with each parent approximates the proportion of time
6 each parent spent performing caretaking functions for the child
7 prior to the parents' separation or, if the parents never lived
8 together, before the filing of the action, except to the extent
9 required under section two hundred nine of this article or
10 necessary to achieve any of the following objectives:

11 (1) To permit the child to have a relationship with each
12 parent who has performed a reasonable share of parenting
13 functions;

14 (2) To accommodate the firm and reasonable preferences of
15 a child who is fourteen years of age or older, and with regard to
16 a child under fourteen years of age, but sufficiently matured
17 that he or she can intelligently express a voluntary preference
18 for one parent, to give that preference such weight as circum-
19 stances warrant;

20 (3) To keep siblings together when the court finds that
21 doing so is necessary to their welfare;

22 (4) To protect the child's welfare when, under an otherwise
23 appropriate allocation, the child would be harmed because of a
24 gross disparity in the quality of the emotional attachments
25 between each parent and the child or in each parent's demon-
26 strated ability or availability to meet a child's needs;

27 (5) To take into account any prior agreement of the parents
28 that, under the circumstances as a whole including the reason-
29 able expectations of the parents in the interest of the child,
30 would be appropriate to consider;

31 (6) To avoid an allocation of custodial responsibility that
32 would be extremely impractical or that would interfere substan-
33 tially with the child's need for stability in light of economic,
34 physical or other circumstances, including the distance between
35 the parents' residences, the cost and difficulty of transporting
36 the child, the parents' and child's daily schedules, and the
37 ability of the parents to cooperate in the arrangement;

38 (7) To apply the principles set forth in subsection (d),
39 section four hundred three of this article if one parent relocates
40 or proposes to relocate at a distance that will impair the ability
41 of a parent to exercise the amount of custodial responsibility
42 that would otherwise be ordered under this section; and

43 (8) To consider the stage of a child's development.

44 (b) In determining the proportion of caretaking functions
45 each parent previously performed for the child under subsection
46 (a) of this section, the court shall not consider the divisions of
47 functions arising from temporary arrangements after separation,
48 whether those arrangements are consensual or by court order.
49 The court may take into account information relating to the
50 temporary arrangements in determining other issues under this
51 section.

52 (c) If the court is unable to allocate custodial responsibility
53 under subsection (a) of this section because the allocation under
54 that subsection would be manifestly harmful to the child, or

65 (d) In determining how to schedule the custodial time
66 allocated to each parent, the court shall take account of the
67 economic, physical and other practical circumstances such as
68 those listed in subdivision (6), subsection (a) of this section.

§48-11-207. Allocation of significant decision-making responsibility.

1 (a) Unless otherwise resolved by agreement of the parents
2 under section two hundred one of this article, the court shall
3 allocate responsibility for making significant life decisions on
4 behalf of the child, including the child's education and health
5 care, to one parent or to two parents jointly, in accordance with
6 the child's best interest, in light of:

7 (1) The allocation of custodial responsibility under section
8 two hundred six of this article;

9 (2) The level of each parent's participation in past decision-
10 making on behalf of the child;

11 (3) The wishes of the parents;

12 (4) The level of ability and cooperation the parents have
13 demonstrated in decision-making on behalf of the child;

14 (5) Prior agreements of the parties; and

15 (6) The existence of any limiting factors, as set forth in
16 section two hundred nine of this article.

17 (b) If each of the child's legal parents has been exercising
18 a reasonable share of parenting functions for the child, the court
19 shall presume that an allocation of decision-making responsibil-
20 ity to both parents jointly is in the child's best interests. The
21 presumption is overcome if there is a history of domestic abuse,
22 or by a showing that joint allocation of decision-making
23 responsibility is not in the child's best interest.

24 (c) Unless otherwise provided or agreed by the parents,
25 each parent who is exercising custodial responsibility shall be
26 given sole responsibility for day-to-day decisions for the child,
27 while the child is in that parent's care and control, including
28 emergency decisions affecting the health and safety of the child.

19 shall presume that an allocation of decision-making responsibil-
20 ity to both parents jointly is in the child's best interests. The
21 presumption is overcome if there is a history of domestic abuse,
22 or by a showing that joint allocation of decision-making
23 responsibility is not in the child's best interest.

24 (c) Unless otherwise provided or agreed by the parents,
25 each parent who is exercising custodial responsibility shall be
26 given sole responsibility for day-to-day decisions for the child,
27 while the child is in that parent's care and control, including
28 emergency decisions affecting the health and safety of the child.

§48-11-208. Criteria for parenting plan; dispute resolution.

1 (a) If provisions for resolving parental disputes are not
2 ordered by the court pursuant to parenting agreement under
3 section two hundred one of this article, the court shall order a
4 method of resolving disputes that serves the child's best interest
5 in light of:

6 (1) The parents' wishes and the stability of the child;

7 (2) Circumstances, including, but not limited to, financial
8 circumstances, that may affect the parents ability to participate
9 in a prescribed dispute resolution process; and

10 (3) The existence of any limiting factor, as set forth in
11 section two hundred nine of this article.

12 (b) The court may order a nonjudicial process of dispute
13 resolution by designating with particularity the person or
14 agency to conduct the process or the method for selecting such
15 a person or agency. The disposition of a dispute through a
16 nonjudicial method of dispute resolution that has been ordered
17 by the court without prior parental agreement is subject to de
18 novo judicial review. If the parents have agreed in a parenting
19 plan or by agreement thereafter to a binding resolution of their
20 dispute by nonjudicial means, a decision by such means is
21 binding upon the parents and must be enforced by the court,
22 unless it is shown to be contrary to the best interests of the
23 child, beyond the scope of the parents' agreement, or the result
24 of fraud, misconduct, corruption or other serious irregularity.

25 (c) This section is subject to the limitations imposed by
26 section two hundred two of this article.

§48-11-209. Parenting plan; limiting factors.

1 (a) If either of the parents so requests, or upon receipt of
2 credible information thereof, the court shall determine whether
3 a parent who would otherwise be allocated responsibility under
4 a parenting plan:

5 (1) Has abused, neglected or abandoned a child, as defined
6 by state law;

7 (2) Has sexually assaulted or sexually abused a child as
8 those terms are defined in articles eight-b and eight-d, chapter
9 sixty-one of this code;

10 (3) Has committed domestic violence, as defined in section
11 two, article two-a of this chapter;

12 (4) Has interfered persistently with the other parent's access
13 to the child, except in the case of actions taken for the purpose
14 of protecting the safety of the child or the interfering parent or
15 another family member, pending adjudication of the facts
16 underlying that belief; or

17 (5) Has repeatedly made fraudulent reports of domestic
18 violence or child abuse.

19 (b) If a parent is found to have engaged in any activity
20 specified by subsection (a) of this section, the court shall
21 impose limits that are reasonably calculated to protect the child
22 or child's parent from harm. The limitations that the court shall
23 consider include, but are not limited to:

24 (1) An adjustment of the custodial responsibility of the
25 parents, including the allocation of exclusive custodial respon-
26 sibility to one of them;

27 (2) Supervision of the custodial time between a parent and
28 the child;

29 (3) Exchange of the child between parents through an
30 intermediary, or in a protected setting;

31 (4) Restraints on the parent from communication with or
32 proximity to the other parent or the child;

33 (5) A requirement that the parent abstain from possession
34 or consumption of alcohol or nonprescribed drugs while
35 exercising custodial responsibility and in the twenty-four hour
36 period immediately preceding such exercise;

37 (6) Denial of overnight custodial responsibility;

38 (7) Restrictions on the presence of specific persons while
39 the parent is with the child;

40 (8) A requirement that the parent post a bond to secure
41 return of the child following a period in which the parent is
42 exercising custodial responsibility or to secure other perfor-
43 mance required by the court;

44 (9) A requirement that the parent complete a program of
45 intervention for perpetrators of domestic violence, for drug or
46 alcohol abuse, or a program designed to correct another factor;
47 or

48 (10) Any other constraints or conditions that the court
49 deems necessary to provide for the safety of the child, a child's
50 parent or any person whose safety immediately affects the
51 child's welfare.

52 (c) If a parent is found to have engaged in any activity
53 specified in subsection (a) of this section, the court may not
54 allocate custodial responsibility or decision-making responsibil-
55 ity to that parent without making special written findings that
56 the child and other parent can be adequately protected from
57 harm by such limits as it may impose under subsection (b) of
58 this section. The parent found to have engaged in the behavior
59 specified in subsection (a) of this section has the burden of
60 proving that an allocation of custodial responsibility or
61 decision-making responsibility to that parent will not endanger
62 the child or the other parent.

PART 3. FACT FINDING.

§48-11-301. Court-ordered investigation.

1 (a) In its discretion, the court may order a written investiga-
2 tion and report to assist it in determining any issue relevant to
3 proceedings under this article. The investigation and report may
4 be made by the guardian ad litem, the staff of the court or other
5 professional social service organization experienced in counsel-
6 ing children and families. The court shall specify the scope of
7 the investigation or evaluation and the authority of the investi-
8 gator.

9 (b) In preparing the report concerning a child, the investiga-
10 tor may consult any person who may have information about
11 the child and the potential parenting or custodian arrangements.
12 Upon order of the court, the investigator may refer the child to
13 professional personnel for diagnosis. The investigator may
14 consult with and obtain information from medical, psychiatric
15 or other expert persons who have served the child in the past
16 without obtaining the consent of the parent or the child's
17 custodian; but the child's consent must be obtained if the child
18 has reached the age of twelve, unless the court finds that the
19 child lacks mental capacity to consent. If the requirements of
20 subsection (c) of this section are fulfilled, the investigator's
21 report may be received in evidence at the hearing.

22 (c) The investigator shall deliver the investigator's report to
23 counsel and to any party not represented by counsel at least ten
24 days prior to the hearing unless a shorter time is ordered by the
25 court for good cause shown. The investigator shall make
26 available to counsel and to any party not represented by counsel
27 the investigator's file of underlying data and reports, complete
28 texts of diagnostic reports made to the investigator pursuant to
29 the provisions of subsection (b) of this section, and the names
30 and addresses of all persons whom the investigator has con-
31 sulted. Any party to the proceeding may call the investigator
32 and any person whom the investigator has consulted for
33 cross-examination. A party may not waive the right of
34 cross-examination prior to the hearing.

35 (d) Services and tests ordered under this section shall be
36 ordered only if at no cost to the individuals involved, or at a
37 cost that is reasonable in light of the available financial
38 resources.

§48-11-302. Appointment of guardian.

1 (a) In its discretion, the court may appoint a guardian ad
2 litem to represent the child's best interests. The court shall
3 specify the terms of the appointment, including the guardian's
4 role, duties and scope of authority.

5 (b) In its discretion, the court may appoint a lawyer to
6 represent the child, if the child is competent to direct the terms
7 of the representation and court has a reasonable basis for
8 finding that the appointment would be helpful in resolving the
9 issues of the case. The court shall specify the terms of the
10 appointment, including the lawyer's role, duties and scope of
11 authority.

12 (c) When substantial allegations of domestic abuse have
13 been made, the court shall order an investigation under section
14 three hundred one of this article or make an appointment under
15 subsection (a) or (b) of this section, unless the court is satisfied
16 that the information necessary to evaluate the allegations will
17 be adequately presented to the court without such order or
18 appointment.

19 (d) Subject to whatever restrictions the court may impose
20 or that may be imposed by the attorney-client privilege or by
21 subsection (d), section two hundred two of this article, the court
22 may require the child or parent to provide information to an
23 individual or agency appointed by the court under section three
24 hundred one of this article or subsection (a) or (b) of this
25 section, and it may require any person having information about
26 the child or parent to provide that information, even in the
27 absence of consent by a parent or by the child, except if the
28 information is otherwise protected by law.

29 (e) The investigator who submits a report or evidence to the
30 court that has been requested under section three hundred one
31 of this article and a guardian ad litem appointed under subsec-
32 tion (a) of this section who submits information or recommen-
33 dations to the court are subject to cross-examination by the
34 parties. A lawyer appointed under subsection (b) of this section

35 may not be a witness in the proceedings, except as allowed
36 under standards applicable in other civil proceedings.

37 (f) Services and tests ordered under this section shall be
38 ordered only if at no cost to the individuals involved, or at a
39 cost that is reasonable in light of the available financial
40 resources.

§48-11-303. Interview of the child by the court.

1 The court, in its discretion, may interview the child in
2 chambers or direct another person to interview the child, in
3 order to obtain information relating to the issues of the case.
4 The interview shall be conducted in accordance with rule 16 of
5 the rules of practice and procedure for family law, as promul-
6 gated by the supreme court of appeals.

7 PART 4. MODIFICATION OF PARENTING PLAN.

**§48-11-401. Modification upon showing of changed circumstances
or harm.**

1 (a) Except as provided in section four hundred two or four
2 hundred three of this article, a court shall modify a parenting
3 plan order if it finds, on the basis of facts that were not known
4 or have arisen since the entry of the prior order and were not
5 anticipated therein, that a substantial change has occurred in the
6 circumstances of the child or of one or both parents and a
7 modification is necessary to serve the best interests of the child.

8 (b) In exceptional circumstances, a court may modify a
9 parenting plan if it finds that the plan is not working as contem-
10 plated and in some specific way is manifestly harmful to the
11 child, even if a substantial change of circumstances has not
12 occurred.

13 (c) Unless the parents have agreed otherwise, the following
14 circumstances do not justify a significant modification of a
15 parenting plan except where harm to the child is shown:

16 (1) Circumstances resulting in an involuntary loss of
17 income, by loss of employment or otherwise, affecting the
18 parent's economic status;

19 (2) A parent's remarriage or cohabitation; and

20 (3) Choice of reasonable caretaking arrangements for the
21 child by a legal parent, including the child's placement in day
22 care.

23 (d) For purposes of subsection (a) of this section, the
24 occurrence or worsening of a limiting factor, as defined in
25 subsection (a), section two hundred nine of this article, after a
26 parenting plan has been ordered by the court, constitutes a
27 substantial change of circumstances and measures shall be
28 ordered pursuant to section two hundred nine of this article to
29 protect the child or the child's parent.

**§48-11-402. Modification without showing of changed circum-
stances.**

1 (a) The court shall modify a parenting plan in accordance
2 with a parenting agreement, unless it finds that the agreement
3 is not knowing and voluntary or that it would be harmful to the
4 child.

5 (b) The court may modify any provisions of the parenting
6 plan without the showing of change circumstances required by
7 subsection (a), section four hundred one of this article if the
8 modification is in the child's best interests, and the modifica-
9 tion:

10 (1) Reflects the de facto arrangements under which the
11 child has been receiving care from the petitioner, without
12 objection, in substantial deviation from the parenting plan, for
13 the preceding six months before the petition for modification is
14 filed, provided the arrangement is not the result of a parent's
15 acquiescence resulting from the other parent's domestic abuse;

16 (2) Constitutes a minor modification in the plan; or

17 (3) Is necessary to accommodate the reasonable and firm
18 preferences of a child who has attained the age of fourteen.

19 (c) Evidence of repeated filings of fraudulent reports of
20 domestic violence or child abuse is admissible in a domestic
21 relations action between the involved parties when the alloca-

22 tion of custodial responsibilities is in issue, and the fraudulent
23 accusations may be a factor considered by the court in making
24 the allocation of custodial responsibilities.

§48-11-403. Relocation of a parent.

1 (a) The relocation of a parent constitutes a substantial
2 change in the circumstances under subsection (a), section four
3 hundred one of this article of the child only when it signifi-
4 cantly impairs either parent's ability to exercise responsibilities
5 that the parent has been exercising.

6 (b) Unless otherwise ordered by the court, a parent who has
7 responsibility under a parenting plan who changes, or intends
8 to change, residences for more than ninety days must give a
9 minimum of sixty days' advance notice, or the most notice
10 practicable under the circumstances, to any other parent with
11 responsibility under the same parenting plan. Notice shall
12 include:

13 (1) The relocation date;

14 (2) The address of the intended new residence;

15 (3) The specific reasons for the proposed relocation;

16 (4) A proposal for how custodial responsibility shall be
17 modified, in light of the intended move; and

18 (5) Information for the other parent as to how he or she may
19 respond to the proposed relocation or modification of custodial
20 responsibility.

21 Failure to comply with the notice requirements of this
22 section without good cause may be a factor in the determination
23 of whether the relocation is in good faith under subsection (d)
24 of this section, and is a basis for an award of reasonable
25 expenses and reasonable attorneys fees to another parent that
26 are attributable to such failure.

27 The supreme court of appeals shall make available through
28 the offices of the circuit clerks and the family law masters a
29 form notice that complies with the provisions of this subsection.
30 The supreme court of appeals shall promulgate procedural rules

31 that provide for an expedited hearing process to resolve issues
32 arising from a relocation or proposed relocation.

33 (c) When changed circumstances are shown under subsection
34 tion (a) of this section, the court shall, if practical, revise the
35 parenting plan so as to both accommodate the relocation and
36 maintain the same proportion of custodial responsibility being
37 exercised by each of the parents. In making such revision, the
38 court may consider the additional costs that a relocation
39 imposes upon the respective parties for transportation and
40 communication, and may equitably allocate such costs between
41 the parties.

42 (d) When the relocation constituting changed circumstances
43 under subsection (a) of this section renders it impractical to
44 maintain the same proportion of custodial responsibility as that
45 being exercised by each parent, the court shall modify the
46 parenting plan in accordance with the child's best interests and
47 in accordance with the following principles:

48 (1) A parent who has been exercising a significant majority
49 of the custodial responsibility for the child should be allowed
50 to relocate with the child so long as that parent shows that the
51 relocation is in good faith for a legitimate purpose and to a
52 location that is reasonable in light of the purpose. The percent-
53 age of custodial responsibility that constitutes a significant
54 majority of custodial responsibility is seventy percent or more.
55 A relocation is for a legitimate purpose if it is to be close to
56 significant family or other support networks, for significant
57 health reasons, to protect the safety of the child or another
58 member of the child's household from significant risk of harm,
59 to pursue a significant employment or educational opportunity,
60 or to be with one's spouse who is established, or who is
61 pursuing a significant employment or educational opportunity,
62 in another location. The relocating parent has the burden of
63 proving of the legitimacy of any other purpose. A move with a
64 legitimate purpose is reasonable unless its purpose is shown to
65 be substantially achievable without moving, or by moving to a
66 location that is substantially less disruptive of the other parent's
67 relationship to the child.

68 (2) If a relocation of the parent is in good faith for legiti-
69 mate purpose and to a location that is reasonable in light of the
70 purpose, and if neither has been exercising a significant
71 majority of custodial responsibility for the child, the court shall
72 reallocate custodial responsibility based on the best interest of
73 the child, taking into account all relevant factors including the
74 effects of the relocation on the child.

75 (3) If a parent does not establish that the purpose for that
76 parent's relocation is in good faith for a legitimate purpose into
77 a location that is reasonable in light of the purpose, the court
78 may modify the parenting plan in accordance with the child's
79 best interests and the effects of the relocation on the child.
80 Among the modifications the court may consider is a realloca-
81 tion of primary custodial responsibility, effective if and when
82 the relocation occurs, but such a reallocation shall not be
83 ordered if the relocating parent demonstrates that the child's
84 best interests would be served by the relocation.

85 (4) The court shall attempt to minimize impairment to a
86 parent-child relationship caused by a parent's relocation
87 through alternative arrangements for the exercise of custodial
88 responsibility appropriate to the parents' resources and circum-
89 stances and the developmental level of the child.

90 (e) In determining the proportion of caretaking functions
91 each parent previously performed for the child under the
92 parenting plan before relocation, the court shall not consider a
93 division of functions arising from any arrangements made after
94 a relocation but before a modification hearing on the issues
95 related to relocation.

96 (f) In determining the effect of the relocation or proposed
97 relocation on a child, any interviewing or questioning of the
98 child shall be conducted in accordance with the provisions of
99 rule 16 of the rules of practice and procedure for family law, as
100 promulgated by the supreme court of appeals.

PART 5. ENFORCEMENT OF PARENTING PLANS.

§48-11-501. Enforcement of parenting plans.

1 (a) If, upon a parental complaint, the court finds a parent
2 intentionally and without good cause violated a provision of the
3 court-ordered parenting plan, it shall enforce the remedy
4 specified in the plan or, if no remedies are specified or they are
5 clearly inadequate, it shall find the plan has been violated and
6 order an appropriate remedy, which may include:

7 (1) In the case of interference with the exercise of custodial
8 responsibility for a child by the other parent, substitute time for
9 that parent to make up for time missed with the child;

10 (2) In the case of missed time by a parent, costs in recogni-
11 tion of lost opportunities by the other parent, in child care costs
12 and other reasonable expenses in connection with the missed
13 time;

14 (3) A modification of the plan, if the requirements for a
15 modification are met under section two hundred nine, four
16 hundred one, four hundred two or four hundred three of this
17 article, including an adjustment of the custodial responsibility
18 of the parents or an allocation of exclusive custodial responsi-
19 bility to one of them;

20 (4) An order that the parent who violated the plan obtain
21 appropriate counseling;

22 (5) A civil penalty, in an amount of not more than one
23 hundred dollars for a first offense, not more than five hundred
24 dollars for a second offense, or not more than one thousand
25 dollars for a third or subsequent offense, to be paid to the parent
26 education fund as established under section one hundred four of
27 this article;

28 (6) Court costs, reasonable attorney's fees and any other
29 reasonable expenses in enforcing the plan; and

30 (7) Any other appropriate remedy.

31 (b) Except as provided in a jointly submitted plan that has
32 been ordered by the court, obligations established in a parenting
33 plan are independent obligations, and it is not a defense to an
34 action under this section by one parent that the other parent

35 failed to meet obligations under a parenting plan or child
36 support order.

37 (c) An agreement between the parents to depart from the
38 parenting plan can be a defense to a claim that the plan has been
39 violated, even though the agreement was not made part of a
40 court order, but only as to acts or omissions consistent with the
41 agreement that occur before the agreement is disaffirmed by
42 either parent.

PART 6. MISCELLANEOUS PROVISIONS.

§48-11-601. Access to a child's records.

1 (a) (1) Each parent has full and equal access to a child's
2 educational records absent a court order to the contrary. Neither
3 parent may veto the access requested by the other parent.
4 Educational records are academic, attendance and disciplinary
5 records of public and private schools in all grades kindergarten
6 through twelve and any form of alternative school. Educational
7 records are any and all school records concerning the child that
8 would otherwise be properly released to the primary custodial
9 parent, including, but not limited to, report cards and progress
10 reports, attendance records, disciplinary reports, results of the
11 child's performance on standardized tests and statewide tests
12 and information on the performance of the school that the child
13 attends on standardized statewide tests; curriculum materials of
14 the class or classes in which the child is enrolled; names of the
15 appropriate school personnel to contact if problems arise with
16 the child; information concerning the academic performance
17 standards, proficiencies, or skills the child is expected to
18 accomplish; school rules, attendance policies, dress codes and
19 procedures for visiting the school; and information about any
20 psychological testing the school does involving the child.

21 (2) In addition to the right to receive school records, the
22 nonresidential parent has the right to participate as a member of
23 a parent advisory committee or any other organization com-
24 prised of parents of children at the school that the child attends.

25 (3) The nonresidential parent or noncustodial parent has the
26 right to question anything in the child's record that the parent

27 feels is inaccurate or misleading or is an invasion of privacy
28 and to receive a response from the school.

29 (4) Each parent has a right to arrange appointments for
30 parent-teacher conferences absent a court order to the contrary.
31 Neither parent can be compelled against their will to exercise
32 this right by attending conferences jointly with the other parent.

33 (b) (1) Each parent has full and equal access to a child's
34 medical records absent a court order to the contrary. Neither
35 parent may veto the access requested by the other parent. If
36 necessary, either parent is required to authorize medical
37 providers to release to the other parent copies of any and all
38 information concerning medical care provided to the child
39 which would otherwise be properly released to either parent.

40 (2) If the child is in the actual physical custody of one
41 parent, that parent is required to promptly inform the other
42 parent of any illness of the child which requires medical
43 attention.

44 (3) Each parent is required to consult with the other parent
45 prior to any elective surgery being performed on the child, and
46 in the event emergency medical procedures are undertaken for
47 the child which require the parental consent of either parent, if
48 time permits, the other parent shall be consulted, or if time does
49 not permit such consultation, the other parent shall be promptly
50 informed of the emergency medical procedures: *Provided*, That
51 nothing contained herein alters or amends the law of this state
52 as it otherwise pertains to physicians or health care facilities
53 obtaining parental consent prior to providing medical care or
54 performing medical procedures.

55 (c) Each parent has full and equal access to a child's
56 juvenile court records, process and pleadings, absent a court
57 order to the contrary. Neither parent may veto any access
58 requested by the other parent. Juvenile court records are limited
59 to those records which are normally available to a parent of a
60 child who is a subject of the juvenile justice system.

**§48-11-602. Designation of custody for the purpose of other state
and federal statutes.**

1 Solely for the purposes of all other state and federal statutes
2 which require a designation or determination of custody, a
3 parenting plan shall designate the parent with whom the child
4 is scheduled to reside the majority of the time as the custodian
5 of the child. However, this designation shall not affect either
6 parent's rights and responsibilities under a parenting plan. In
7 the absence of such a designation, the parent with whom the
8 child is scheduled to reside the majority of the time shall be
9 deemed to be the custodian of the child for the purposes of such
10 federal and state statutes.

§48-11-603. Effect of enactment; operative dates.

1 (a) The enactment of this article during the second extraor-
2 dinary session of the Legislature, one thousand nine hundred
3 ninety-nine, is prospective in operation unless otherwise
4 expressly indicated.

5 (b) The provisions of section two hundred two of this
6 article, insofar as they provide for parent education and
7 mediation, become operative on the first day of January, two
8 thousand. Until that date, parent education and mediation with
9 regard to custody issues are discretionary unless made manda-
10 tory under a particular program or pilot project by rule or
11 direction of the supreme court of appeals or a circuit court.

12 (c) The provisions of this article that authorize a circuit
13 court in the absence of an agreement of the parents to order an
14 allocation of custodial responsibility and an allocation of
15 significant decision-making responsibility, become operative on
16 the first day of January, two thousand, at which time the
17 primary caretaker doctrine shall be replaced with a system that
18 allocates custodial and decision-making responsibility to the
19 parents in accordance with this article.

**§48-11-604. Effect of enactment; modification of child visitation
privileges in certain cases.**

1 (a) Parents who are parties to an order that establishes
2 visitation privileges with a child and that is in existence on the
3 first day of January, two thousand, may move for a modifica-
4 tion of the order, even without a change of circumstances, in

5 accordance with the provisions of this section, if the motion for
6 modification is made before the first day of July, two thousand,
7 moving the court to establish a parenting plan in accordance
8 with the provisions of this article.

9 (b) Modification of an order that awards visitation privi-
10 leges may be reconsidered on a motion for modification if the
11 court first makes a preliminary finding that the following
12 factors are present:

13 (1) Visitation was based, in whole or in part, on a schedule
14 or guidelines;

15 (2) The party petitioning for modification has consistently
16 exercised or attempted to exercise the ordered visitation;

17 (3) The visitation provisions of the order sought to be
18 modified have been in effect for less than five years; and

19 (4) The facts as alleged in the motion, if taken as true,
20 would result in a parenting plan that is substantially different
21 from the result reached by application of the visitation schedule
22 or guidelines that the prior order was based on.

23 (c) If the court makes a preliminary finding that the factors
24 described in subsection (b) of this section are present, the case
25 shall proceed under the provisions of this article to establish a
26 parenting plan: *Provided*, That in no case shall the parent
27 petitioning for modification of a prior order of visitation be
28 allocated more than fifty percent of the custodial responsibility.
29 Nothing contained in this subsection shall be construed to
30 authorize the continued application of the primary caretaker
31 standard to modifications made under this section.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

Article

1. General Provisions.

1A. Definitions.

1B. Guidelines for Child Support Awards.

2. **West Virginia Support Enforcement Commission; Child Support Enforcement Division; Establishment and Organization.**

4. **Proceeding Before a Family Law Master.**

ARTICLE 1. GENERAL PROVISIONS.

§48A-1-3. Calculation of interest.

1 (a) If an obligation to pay interest arises under this chapter,
2 the rate of interest is that specified in section thirty-one, article
3 six, chapter fifty-six of this code. Interest shall accrue only
4 upon the outstanding principal of such obligation. On and after
5 the ninth day of June, one thousand nine hundred ninety-five,
6 this section shall be construed to permit the accumulation of
7 simple interest, and may not be construed to permit the com-
8 pounding of interest. Interest which accrued on unpaid install-
9 ments accruing before the ninth day of June, one thousand nine
10 hundred ninety-five, may not be modified by any court,
11 irrespective of whether such installment accrued simple or
12 compound interest: *Provided*, That unpaid installments upon
13 which interest was compounded before the effective date of this
14 section shall accrue only simple interest thereon on and after
15 the ninth day of June, one thousand nine hundred ninety-five.

16 (b) Except as otherwise provided in this subsection,
17 prejudgment interest shall not be awarded in a domestic
18 relations action. The circuit court may only award prejudgment
19 interest in a domestic relations action against a party if the court
20 finds, in writing, that the party engaged in conduct that would
21 violate subsection (b), rule eleven of the West Virginia rules of
22 civil procedure. If prejudgment interest is awarded, the court
23 shall calculate prejudgment interest from the date the offending
24 representation was presented to the court.

ARTICLE 1A. DEFINITIONS.

§48A-1A-19. Gross income.

§48A-1A-21. Individual entitled to support enforcement services under the provisions of this chapter and the provisions of Title IV-D of the federal Social Security Act.

§48A-1A-19. Gross income.

1 (a) "Gross income" means all earned and unearned income.
2 The word "income" means gross income unless the word is

3 otherwise qualified or unless a different meaning clearly
4 appears from the context. When determining whether an
5 income source should be included in the child support calcula-
6 tion, the court shall consider the income source if it would have
7 been available to pay child-rearing expenses had the family
8 remained intact or, in cases involving a nonmarital birth, if a
9 household had been formed.

10 (b) "Gross income" includes, but is not limited to, the
11 following:

12 (1) Earnings in the form of salaries, wages, commissions,
13 fees, bonuses, profit sharing, tips and other income;

14 (2) Any payment from a pension plan, an insurance
15 contract, an annuity, social security benefits, unemployment
16 compensation, supplemental employment benefits, workers'
17 compensation benefits and state lottery winnings and prizes;

18 (3) Interest, dividends or royalties;

19 (4) In kind payments such as business expense accounts,
20 business credit accounts and tangible property such as automo-
21 biles and meals, to the extent that they provide the parent with
22 property or services he or she would otherwise have to provide:
23 *Provided*, That reimbursement of actual expenses incurred and
24 documented shall not be included as gross income;

25 (5) Attributed income of the parent, calculated in accor-
26 dance with the provisions of section three, article one-a of this
27 chapter;

28 (6) An amount equal to fifty percent of the average com-
29 pensation paid for personal services as overtime compensation
30 during the preceding thirty-six months: *Provided*, That
31 overtime compensation may be excluded from gross income if
32 the parent with the overtime income demonstrates to the court
33 that the overtime work is voluntarily performed and that he or
34 she did not have a previous pattern of working overtime hours
35 prior to separation or the birth of a nonmarital child;

36 (7) Income from self-employment or the operation of a
37 business, minus ordinary and necessary expenses which are not
38 reimbursable, and which are lawfully deductible in computing
39 taxable income under applicable income tax laws, and minus

40 FICA and medicare contributions made in excess of the amount
41 that would be paid on an equal amount of income if the parent
42 was not self-employed: *Provided*, That the amount of monthly
43 income to be included in gross income shall be determined by
44 averaging the income from such employment during the
45 previous thirty-six-month period or during a period beginning
46 with the month in which the parent first received such income,
47 whichever period is shorter;

48 (8) Income from seasonal employment or other sporadic
49 sources: *Provided*, That the amount of monthly income to be
50 included in gross income shall be determined by averaging the
51 income from seasonal employment or other sporadic sources
52 received during the previous thirty-six-month period or during
53 a period beginning with the month in which the parent first
54 received such compensation, whichever period is shorter; and

55 (9) Alimony and separate maintenance receipts.

56 (c) Depending on the circumstances of the particular case,
57 the court may also include severance pay, capital gains and net
58 gambling, gifts or prizes as gross income.

59 (d) "Gross income" does not include:

60 (1) Income received by other household members such as
61 a new spouse;

62 (2) Child support received for the children of another
63 relationship;

64 (3) Means-tested assistance such as temporary assistance
65 for needy families, supplemental security income and food
66 stamps; and

67 (4) A child's income unless the court determines that the
68 child's income substantially reduces the family's living
69 expenses.

**§48A-1A-21. Individual entitled to support enforcement services
under the provisions of this chapter and the
provisions of Title IV-D of the federal Social
Security Act.**

1 (a) "Individual entitled to support enforcement services
2 under the provisions of this chapter and the provisions of Title
3 IV-D of the federal Social Security Act" means:

4 (1) An individual who has applied for or is receiving
5 services from the child support enforcement division and who
6 is the custodial parent of a child, or the primary caretaker of a
7 child, or the guardian of the property of a child when:

8 (A) Such child has a parent and child relationship with an
9 obligor who is not such custodial parent, primary caretaker or
10 guardian; and

11 (B) The obligor with whom the child has a parent and child
12 relationship is not meeting an obligation to support the child, or
13 has not met such obligation in the past; or

14 (2) An individual who has applied for or is receiving
15 services from the child support enforcement division and who
16 is an adult or an emancipated minor whose spouse or former
17 spouse has been ordered by a court of competent jurisdiction to
18 pay spousal support to the individual, whether such support is
19 denominated alimony or separate maintenance, or is identified
20 by some other terminology, thus establishing a support obliga-
21 tion with respect to such spouse, when the obligor required to
22 pay such spousal support is not meeting the obligation, or has
23 not met such obligation in the past; or

24 (3) Any individual who is an obligee in a support order,
25 entered by a court of competent jurisdiction after the thirty-first
26 day of December, one thousand nine hundred ninety-three.

27 (b) The filing of an action wherein the establishment or
28 enforcement of child support is an issue constitutes an applica-
29 tion to receive services from the child support enforcement
30 division, if the individual filing the action is otherwise eligible
31 for such services: *Provided*, That any such individual has the
32 option to decline the receipt of such services.

ARTICLE 1B. GUIDELINES FOR CHILD SUPPORT AWARDS.

§48A-1B-3. Basic child support obligation.

§48A-1B-6. Computation of child support order in sole custody cases.

§48A-1B-7. Shared physical custody adjustment.

§48A-1B-11. Modification.

§48A-1B-14. Disregard of formula.

§48A-1B-16. Investment of child support.

§48A-1B-17. Operative date of certain amendments.

§48A-1B-3. Basic child support obligation.

- 1 (a) The basic child support obligation is determined from
 2 the following table of monthly basic child support obligations:

West Virginia						
Monthly Basic Child Support Obligations						
(Adjusted for West Virginia's Income Relative to U.S. Averages)						
COMBINED						
GROSS	ONE	TWO	THREE	FOUR	FIVE	SIX
MONTHLY	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
INCOME						
550	127	185	219	242	263	281
600	137	200	237	262	284	304
650	147	214	253	280	303	325
700	156	227	268	296	321	344
750	163	238	282	311	337	361
800	171	249	295	326	353	378
850	179	261	309	341	370	395
900	188	273	323	357	387	414
950	197	286	338	374	405	433
1000	205	299	353	390	423	452
1050	214	311	368	406	440	471
1100	223	324	382	423	458	490
1150	231	336	397	439	476	509
1200	240	349	412	455	493	528
1250	248	361	426	471	511	547
1300	257	373	441	487	528	565
1350	265	386	456	503	546	584
1400	274	398	470	519	563	602
1450	282	410	484	534	579	620
1500	291	422	498	550	596	638
1550	299	434	512	565	613	656
1600	307	446	526	581	630	674
1650	316	458	540	596	646	692
1700	324	470	554	612	663	709
1750	332	482	568	627	680	727
1800	341	494	581	643	697	745
1850	349	506	595	658	713	763
1900	357	517	609	673	730	781

COMBINED						
GROSS	ONE	TWO	THREE	FOUR	FIVE	SIX
MONTHLY	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
INCOME						
1950	366	529	623	689	747	799
2000	373	540	636	703	762	816
2050	381	551	649	717	778	832
2100	388	562	662	731	793	848
2150	395	573	674	745	808	864
2200	403	583	687	759	823	881
2250	410	594	700	773	838	897
2300	417	605	712	787	853	913
2350	425	616	725	801	869	929
2400	432	626	738	815	884	946
2450	440	637	750	829	899	962
2500	447	648	763	843	914	978
2550	454	658	776	857	929	994
2600	460	667	786	868	941	1007
2650	465	674	794	877	951	1018
2700	471	682	803	887	962	1029
2750	475	688	810	895	970	1038
2800	479	694	816	902	978	1046
2850	484	700	823	909	986	1055
2900	488	705	830	917	994	1063
2950	492	711	836	924	1002	1072
3000	496	717	843	931	1010	1080
3050	500	723	850	939	1018	1089
3100	504	729	856	946	1026	1097
3150	509	735	863	953	1033	1106
3200	513	740	869	961	1041	1114
3250	517	746	876	968	1049	1123
3300	521	752	882	975	1057	1131
3350	524	757	888	981	1064	1138
3400	527	761	893	987	1070	1145
3450	531	766	899	993	1077	1152
3500	534	771	904	999	1083	1159
3550	537	775	910	1006	1090	1166

COMBINED						
GROSS	ONE	TWO	THREE	FOUR	FIVE	SIX
MONTHLY	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
INCOME						
3600	541	780	916	1012	1097	1173
3650	544	785	921	1018	1103	1180
3700	547	790	927	1024	1110	1187
3750	550	794	932	1030	1116	1194
3800	554	799	937	1036	1123	1201
3850	557	803	943	1041	1129	1208
3900	560	808	948	1047	1135	1215
3950	563	812	953	1053	1142	1222
4000	566	817	959	1059	1148	1229
4050	570	822	964	1065	1155	1236
4100	574	828	972	1074	1164	1245
4150	579	834	979	1082	1172	1254
4200	583	841	986	1090	1181	1264
4250	588	847	993	1098	1190	1273
4300	592	853	1001	1106	1199	1283
4350	597	860	1008	1114	1207	1292
4400	601	866	1015	1122	1216	1301
4450	606	873	1023	1130	1225	1311
4500	610	879	1030	1138	1234	1320
4550	615	885	1037	1146	1242	1329
4600	619	892	1044	1154	1251	1339
4650	624	898	1052	1162	1260	1348
4700	628	904	1059	1170	1269	1357
4750	633	911	1066	1178	1277	1367
4800	637	917	1074	1186	1286	1376
4850	642	924	1082	1195	1296	1386
4900	647	931	1090	1204	1305	1397
4950	651	938	1098	1213	1315	1407
5000	656	945	1106	1222	1325	1418
5050	661	951	1114	1231	1335	1428
5100	666	958	1123	1240	1345	1439
5150	670	965	1131	1249	1354	1449
5200	675	972	1139	1259	1364	1460

COMBINED						
GROSS	ONE	TWO	THREE	FOUR	FIVE	SIX
MONTHLY	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
INCOME						
5250	680	979	1147	1268	1374	1470
5300	685	986	1155	1277	1384	1481
5350	689	993	1163	1285	1393	1491
5400	694	999	1171	1294	1403	1501
5450	698	1006	1179	1302	1412	1511
5500	703	1012	1186	1311	1421	1521
5550	707	1019	1194	1319	1430	1530
5600	712	1025	1201	1328	1439	1540
5650	716	1031	1208	1335	1447	1548
5700	719	1036	1214	1341	1454	1556
5750	723	1042	1220	1348	1462	1564
5800	727	1047	1226	1355	1469	1572
5850	731	1052	1233	1362	1477	1580
5900	735	1058	1239	1369	1484	1588
5950	739	1063	1245	1376	1492	1596
6000	743	1069	1251	1383	1499	1604
6050	747	1074	1258	1390	1506	1612
6100	751	1080	1265	1397	1515	1621
6150	755	1086	1272	1405	1523	1630
6200	760	1093	1279	1413	1531	1639
6250	764	1099	1286	1420	1540	1648
6300	768	1105	1292	1428	1548	1657
6350	773	1111	1299	1436	1556	1665
6400	777	1117	1306	1444	1565	1674
6450	781	1123	1313	1451	1573	1683
6500	785	1129	1320	1459	1582	1692
6550	789	1135	1327	1467	1590	1701
6600	793	1140	1334	1474	1598	1710
6650	797	1146	1341	1482	1607	1719
6700	801	1152	1348	1490	1615	1728
6750	806	1158	1355	1498	1623	1737
6800	810	1164	1362	1505	1632	1746
6850	814	1170	1369	1513	1640	1755

COMBINED						
GROSS	ONE	TWO	THREE	FOUR	FIVE	SIX
MONTHLY	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
INCOME						
6900	818	1176	1376	1521	1649	1764
6950	822	1182	1383	1529	1657	1773
7000	826	1188	1390	1536	1665	1782
7050	830	1194	1397	1544	1674	1791
7100	834	1200	1404	1552	1682	1800
7150	838	1206	1411	1560	1691	1809
7200	842	1212	1418	1567	1699	1818
7250	847	1218	1425	1575	1707	1827
7300	851	1224	1432	1583	1716	1836
7350	855	1230	1439	1591	1724	1845
7400	859	1236	1446	1598	1733	1854
7450	863	1242	1453	1606	1741	1863
7500	867	1248	1460	1614	1749	1872
7550	871	1253	1468	1622	1758	1881
7600	875	1259	1475	1629	1766	1890
7650	879	1265	1482	1637	1775	1899
7700	883	1271	1489	1645	1783	1908
7750	887	1277	1496	1653	1792	1917
7800	891	1283	1503	1661	1800	1926
7850	895	1289	1510	1669	1809	1935
7900	899	1295	1517	1676	1817	1944
7950	903	1300	1524	1684	1826	1954
8000	907	1306	1531	1692	1834	1963
8050	911	1312	1538	1700	1843	1972
8100	915	1318	1545	1708	1851	1981
8150	919	1324	1553	1716	1860	1990
8200	923	1330	1560	1723	1868	1999
8250	927	1336	1567	1731	1877	2008
8300	931	1342	1574	1739	1885	2017
8350	935	1348	1581	1747	1894	2026
8400	939	1353	1588	1755	1902	2035
8450	943	1359	1595	1763	1911	2044
8500	947	1365	1602	1770	1919	2053

COMBINED						
GROSS	ONE	TWO	THREE	FOUR	FIVE	SIX
MONTHLY	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
INCOME						
8550	951	1371	1609	1778	1928	2062
8600	954	1377	1616	1786	1936	2072
8650	958	1383	1623	1794	1944	2081
8700	962	1389	1630	1802	1953	2090
8750	966	1395	1638	1809	1961	2099
8800	970	1401	1645	1817	1970	2108
8850	974	1406	1652	1825	1978	2117
8900	978	1412	1659	1833	1987	2126
8950	982	1418	1666	1840	1995	2135
9000	985	1423	1672	1847	2002	2142
9050	989	1428	1678	1854	2010	2150
9100	992	1433	1684	1861	2017	2158
9150	996	1438	1690	1867	2024	2166
9200	999	1443	1696	1874	2032	2174
9250	1003	1448	1702	1881	2039	2182
9300	1006	1453	1708	1888	2046	2189
9350	1010	1458	1714	1894	2053	2197
9400	1013	1463	1720	1901	2061	2205
9450	1016	1469	1727	1908	2068	2213
9500	1020	1474	1733	1915	2075	2221
9550	1023	1479	1739	1921	2083	2228
9600	1027	1484	1745	1928	2090	2236
9650	1030	1489	1751	1935	2097	2244
9700	1034	1494	1757	1942	2105	2252
9750	1037	1499	1763	1948	2112	2260
9800	1041	1504	1769	1955	2119	2268
9850	1044	1509	1775	1962	2127	2275
9900	1047	1514	1781	1969	2134	2283
9950	1051	1519	1788	1975	2141	2291
10000	1054	1524	1794	1982	2148	2299
10050	1058	1529	1800	1989	2156	2307
10100	1061	1534	1806	1995	2163	2315
10150	1065	1539	1812	2002	2170	2322

COMBINED						
GROSS	ONE	TWO	THREE	FOUR	FIVE	SIX
MONTHLY	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
INCOME						
10200	1068	1545	1818	2009	2178	2330
10250	1072	1550	1824	2016	2185	2338
10300	1075	1555	1830	2022	2192	2346
10350	1078	1560	1836	2029	2200	2354
10400	1082	1565	1842	2036	2207	2361
10450	1086	1570	1849	2043	2215	2370
10500	1089	1576	1855	2050	2222	2378
10550	1093	1581	1861	2057	2230	2386
10600	1097	1586	1868	2064	2237	2394
10650	1101	1592	1874	2071	2245	2402
10700	1104	1597	1880	2078	2252	2410
10750	1108	1602	1887	2085	2260	2418
10800	1112	1608	1893	2092	2268	2426
10850	1115	1613	1899	2099	2275	2434
10900	1119	1619	1906	2106	2283	2443
10950	1123	1624	1912	2113	2290	2451
11000	1127	1629	1918	2120	2298	2459
11050	1130	1635	1925	2127	2306	2467
11100	1134	1640	1931	2134	2313	2475
11150	1138	1645	1937	2141	2321	2483
11200	1142	1651	1944	2148	2328	2491
11250	1145	1656	1950	2155	2336	2499
11300	1149	1662	1956	2162	2343	2507
11350	1153	1667	1963	2169	2351	2516
11400	1156	1672	1969	2176	2359	2524
11450	1160	1678	1975	2183	2366	2532
11500	1163	1682	1981	2189	2373	2539
11550	1167	1687	1987	2196	2380	2547
11600	1170	1692	1993	2202	2387	2554
11650	1174	1697	1999	2208	2394	2561
11700	1177	1702	2004	2215	2401	2569
11750	1180	1707	2010	2221	2408	2576
11800	1184	1712	2016	2228	2415	2584

COMBINED						
GROSS	ONE	TWO	THREE	FOUR	FIVE	SIX
MONTHLY	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
INCOME						
11850	1187	1717	2022	2234	2422	2591
11900	1191	1722	2027	2240	2428	2598
11950	1193	1725	2031	2245	2433	2604
12000	1195	1729	2035	2249	2438	2609
12050	1198	1732	2039	2254	2443	2614
12100	1200	1735	2043	2258	2448	2619
12150	1202	1739	2047	2262	2452	2624
12200	1205	1742	2051	2267	2457	2629
12250	1207	1746	2055	2271	2462	2634
12300	1210	1749	2059	2276	2467	2640
12350	1212	1752	2063	2280	2472	2645
12400	1214	1756	2067	2285	2476	2650
12450	1217	1759	2071	2289	2481	2655
12500	1219	1763	2075	2293	2486	2660
12550	1221	1766	2079	2298	2491	2665
12600	1224	1770	2083	2302	2496	2670
12650	1226	1773	2088	2307	2500	2675
12700	1228	1776	2092	2311	2505	2681
12750	1231	1780	2096	2316	2510	2686
12800	1233	1783	2100	2320	2515	2691
12850	1236	1787	2104	2324	2520	2696
12900	1238	1790	2108	2329	2524	2701
12950	1240	1793	2112	2333	2529	2706
13000	1243	1797	2116	2338	2534	2711
13050	1245	1800	2120	2342	2539	2717
13100	1247	1804	2124	2347	2544	2722
13150	1250	1807	2128	2351	2548	2727
13200	1252	1811	2132	2355	2553	2732
13250	1255	1814	2136	2360	2558	2737
13300	1257	1817	2140	2364	2563	2742
13350	1259	1821	2144	2369	2568	2747
13400	1262	1824	2148	2373	2572	2753
13450	1264	1828	2152	2378	2577	2758

COMBINED						
GROSS	ONE	TWO	THREE	FOUR	FIVE	SIX
MONTHLY	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
INCOME						
13500	1266	1831	2156	2382	2582	2763
13550	1269	1834	2160	2386	2587	2768
13600	1271	1838	2164	2391	2592	2773
13650	1274	1841	2168	2395	2596	2778
13700	1276	1845	2172	2400	2601	2783
13750	1278	1848	2176	2404	2606	2789
13800	1281	1852	2180	2409	2611	2794
13850	1283	1855	2184	2413	2616	2799
13900	1285	1858	2188	2417	2620	2804
13950	1288	1862	2192	2422	2625	2809
14000	1290	1865	2196	2426	2630	2814
14050	1292	1869	2200	2431	2635	2819
14100	1295	1872	2204	2435	2640	2824
14150	1297	1875	2208	2440	2645	2830
14200	1300	1879	2212	2444	2649	2835
14250	1302	1882	2216	2448	2654	2840
14300	1304	1886	2220	2453	2659	2845
14350	1307	1889	2224	2457	2664	2850
14400	1309	1893	2228	2462	2669	2855
14450	1311	1896	2232	2466	2673	2860
14500	1314	1899	2236	2471	2678	2866
14550	1316	1903	2240	2475	2683	2871
14600	1319	1906	2244	2479	2688	2876
14650	1321	1910	2248	2484	2693	2881
14700	1323	1913	2252	2488	2697	2886
14750	1326	1916	2256	2493	2702	2891
14800	1328	1920	2260	2497	2707	2896
14850	1330	1923	2264	2502	2712	2902
14900	1333	1927	2268	2506	2717	2907
14950	1335	1930	2272	2510	2721	2912
15000	1338	1934	2276	2515	2726	2917

3 (b) This subsection provides for incomes below table. If
4 combined adjusted gross income is below five hundred fifty

5 dollars per month, which is the lowest amount of income
6 considered in the table of monthly basic child support obliga-
7 tions set forth in subsection (a) of this section, the basic child
8 support obligation shall be set at fifty dollars per month or a
9 discretionary amount determined by the court based on the
10 resources and living expenses of the parents and the number of
11 children due support.

12 (c) This subsection provides for incomes above table. If
13 combined adjusted gross income is above fifteen thousand
14 dollars per month, which is the highest amount of income
15 considered in the table of monthly basic child support obliga-
16 tions set forth in subsection (a) of this section, the basic child
17 support obligation shall not be less than it would be based on a
18 combined adjusted gross income of fifteen thousand dollars.
19 The court may also compute the basic child support obligation
20 for combined adjusted gross incomes above fifteen thousand
21 dollars by the following:

22 (1) One child — $\$1,338 + 0.088 \times$ combined adjusted gross
23 income above fifteen thousand dollars per month;

24 (2) Two children — $\$1,934 + 0.129 \times$ combined adjusted
25 gross income above fifteen thousand dollars per month;

26 (3) Three children — $\$2,276 + 0.153 \times$ combined adjusted
27 gross income above fifteen thousand dollars per month;

28 (4) Four children — $\$2,515 + 0.169 \times$ combined adjusted
29 gross income above fifteen thousand dollars per month;

30 (5) Five children — $\$2,726 + 0.183 \times$ combined adjusted
31 gross income above fifteen thousand dollars per month; and

32 (6) Six children — $\$2,917 + 0.196 \times$ combined adjusted
33 gross income above fifteen thousand dollars per month.

§48A-1B-6. Computation of child support order in sole custody cases.

1 (a) For sole custody cases, the total child support obligation
2 consists of the basic child support obligation plus the child's
3 share of any unreimbursed health care expenses, work-related

4 child care expenses and any other extraordinary expenses
 5 agreed to by the parents or ordered by the court less any
 6 extraordinary credits agreed to by the parents or ordered by the
 7 court.

8 (b) In a sole custody case, the total basic child support
 9 obligation is divided between the parents in proportion to their
 10 income. From this amount is subtracted the obligor's direct
 11 expenditures of any items which were added to the basic child
 12 support obligation to arrive at the total child support obligation.

13 (c) Child support for sole custody cases shall be calculated
 14 using the following worksheet:

WORKSHEET A: SOLE PHYSICAL CUSTODY

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA
 CASE NO. _____

Mother: _____ SS No.: _____ Primary Custodial parent? Yes No
 Father: _____ SS No.: _____ Primary Custodial parent? Yes No

Children	SSN	Date of Birth	Children	SSN	Date of Birth
PART I. CHILD SUPPORT ORDER			Mother	Father	Combined
1. MONTHLY GROSS INCOME (Exclusive of overtime compensation)			\$	\$	
a. Minus preexisting child support payment			-	-	
b. Minus maintenance paid			-	-	
c. Plus overtime compensation, if not excluded, and not to exceed 50%, pursuant to W. Va. Code §48A-1A-19(b)(6)			+	+	
2. MONTHLY ADJUSTED GROSS INCOME			\$	\$	\$
3. PERCENTAGE SHARE OF INCOME (Each parent's income from line 2 divided by Combined Income)					100%
			%	%	

4. BASIC OBLIGATION (Use Line 2 combined to find amount from schedule.)			\$
5. ADJUSTMENTS (Expenses paid directly by each parent)			
a. Work-Related Child Care Costs Adjusted for Federal Tax Credit (0.75 x actual work-related child care costs.)	\$	\$	
b. Extraordinary Medical Expenses (Uninsured only) and Children's Portion of Health Insurance Premium Costs.	\$	\$	
c. Extraordinary Expenses (Agreed to by parents or by order of the court.)	\$	\$	
d. Minus Extraordinary Adjustments (Agreed to by parents or by order of court.)			
e. Total Adjustments (For each column, add 5a, 5b, and 5c. Subtract Line 5d. Add the parent's totals together for Combined amount.)	\$	\$	\$
6. TOTAL SUPPORT OBLIGATION (Add line 4 and line 5e Combined.)			\$
7. EACH PARENT'S SHARE OF THE TOTAL CHILD SUPPORT OBLIGATION (Line 3 x line 6 for each parent.)	\$	\$	
8. NONCUSTODIAL PARENT ADJUSTMENT (Enter noncustodial parent's line 5e.)	\$	\$	
9. RECOMMENDED CHILD SUPPORT ORDER (Subtract line 8 from line 7 for the noncustodial parent only. Leave custodial parent column blank.)	\$	\$	
PART II. ABILITY TO PAY CALCULATION (Complete if the noncustodial parent's adjusted monthly gross income is below \$1,550.)			
10. Spendable Income (0.80 x line 2 for noncustodial parent only.)			
11. Self Support Reserve	\$500	\$500	
12. Income Available for Support (Line 10 - line 11. If less than \$50, then \$50)			

13. Adjusted Child Support Order (Lessor of Line 9 and Line 12.)			
Comments, calculations, or rebuttals to schedule or adjustments if noncustodial parent directly pays extraordinary expenses.			
PREPARED BY:			Date:

1 (d) In cases where the noncustodial parent's adjusted gross
 2 income is below one thousand five hundred fifty dollars per
 3 month, an additional calculation in Worksheet A, Part II shall
 4 be made. This additional calculation sets the child support order
 5 at whichever is lower: (i) Child support at the amount deter-
 6 mined in Part I; or (ii) the difference between eighty percent of
 7 the noncustodial parent's adjusted gross income and five
 8 hundred dollars, or fifty dollars, whichever is more.

§48A-1B-7. Shared physical custody adjustment.

1 (a) Child support for cases with shared physical custody
 2 shall be calculated using Worksheet B. The following method
 3 should be used only for shared physical custody as defined in
 4 section twenty-six, article one-a of this chapter: That is, cases
 5 where each parent has the child for more than one hundred
 6 twenty-seven days per year (thirty-five percent).

7 (b) The basic child support obligation shall be multiplied by
 8 1.5 to arrive at a shared custody basic child support obligation.
 9 The shared custody basic child support obligation is appor-
 10 tioned to each parent according to his or her income. In turn, a
 11 child support obligation is computed for each parent by
 12 multiplying that parent's portion of the shared custody child
 13 support obligation by the percentage of time the child spends
 14 with the other parent. The respective basic child support
 15 obligations are then offset, with the parent owing more basic
 16 child support paying the difference between the two amounts.

17 The transfer for the basic obligation for the parent owing less
18 basic child support shall be set at zero dollars.

19 (c) Adjustments for each parent's additional direct expenses
20 on the child are made by apportioning the sum of the parent's
21 direct expenditures on the child's share of any unreimbursed
22 child health care expenses, work-related child care expenses
23 and any other extraordinary expenses agreed to by the parents
24 or ordered by the court or master less any extraordinary credits
25 agreed to by the parents or ordered by the court or master to
26 each parent according to their income share. In turn each
27 parent's net share of additional direct expenses is determined by
28 subtracting the parent's actual direct expenses on the child's
29 share of any unreimbursed child health care expenses, work-
30 related child care expenses and any other extraordinary ex-
31 penses agreed to by the parents or by the court or master less
32 any extraordinary credits agreed to by the parents or ordered by
33 the court or master from their share. The parent with a positive
34 net share of additional direct expenses owes the other parent the
35 amount of his or her net share of additional direct expenses. The
36 parent with zero or a negative net share of additional direct
37 expenses owes zero dollars for additional direct expenses.

38 (d) The final amount of the child support order is deter-
39 mined by summing what each parent owes for the basic support
40 obligation and additional direct expenses as defined in subsec-
41 tions (b) and (c) of this section. The respective sums are then
42 offset, with the parent owing more paying the other parent the
43 difference between the two amounts.

44 (e) Child support for shared physical custody cases shall be
45 calculated using the following worksheet:

WORKSHEET B: SHARED PHYSICAL CUSTODY

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

CASE NO. _____

Mother: _____ SS No.: _____ Primary Custodial parent? Yes No

Father: _____ SS No.: _____ Primary Custodial parent? Yes No

Children	SSN	Date of Birth	Children	SSN	Date of Birth

PART I. BASIC OBLIGATION		Mother	Father	Combined
1. MONTHLY GROSS INCOME (Exclusive of overtime compensation)	\$	\$		
a. Minus preexisting child support payment	-	-		
b. Minus maintenance paid	-	-		
c. Plus overtime compensation, if not excluded, and not to exceed 50%, pursuant to W. Va. Code §48A-1A-19(b)(6)	+	+		
2. MONTHLY ADJUSTED GROSS INCOME	\$	\$	\$	
3. PERCENTAGE SHARE OF INCOME (Each parent's income from line 2 divided by Combined Income)		%	%	100%
4. BASIC OBLIGATION (Use line 2 Combined to find amount from Child Support Schedule.)			\$	

PART II. SHARED CUSTODY ADJUSTMENT			
5. Shared Custody Basic Obligation (line 4 x 1.50)			\$
6. Each Parent's Share (Line 5 x each parent's line 3)	\$	\$	
7. Overnights with Each Parent (must total 365)			365
8. Percentage with Each Parent (Line 7 divided by 365)		%	%
9. Amount Retained (Line 6 x line 8 for each parent)	\$	\$	
10. Each Parent's Obligation (Line 6 - line 9)	\$	\$	
11. AMOUNT TRANSFERRED FOR BASIC OBLIGATION (Subtract smaller amount on line 10 from larger amount on line 10. Parent with larger amount on line 10 owes the other parent the difference. Enter \$0 for other parent.)	\$	\$	

PART III. ADJUSTMENTS FOR ADDITIONAL EXPENSES (Expenses paid directly by each parent.)			

12a. Work-Related Child Care Costs Adjusted for Federal Tax Credit (0.75 x actual work-related child care costs.)	\$	\$	
12b. Extraordinary Medical Expenses (Uninsured only) and Children's Portion of Health Insurance Premium Costs.	\$	\$	
12c. Extraordinary Additional Expenses (Agreed to by parents or by order of the court or master.)	\$	\$	
12d. Minus Extraordinary Adjustments (Agreed to by parents or by order of the court or master.)	\$	\$	
12e. Total Adjustments (For each column, add 11a, 11b, and 11c. Subtract line 11d. Add the parent's totals together for Combined amount.)	\$	\$	\$
13. Each Parent's Share of Additional Expenses (Line 3 x line 12e Combined.)	\$	\$	
14. Each Parent's Net Share of Additional Direct Expenses (Each parent's line 13-line 12e. If negative number, enter \$0)	\$	\$	
15. AMOUNT TRANSFERRED FOR ADDITIONAL EXPENSES (Subtract smaller amount on line 14 from larger amount on line 14. Parent with larger amount on line 14 owes the other parent the difference. Enter \$0 for other parent.	\$	\$	
PART IV. RECOMMENDED CHILD SUPPORT ORDER			
16. TOTAL AMOUNT TRANSFERRED (Line 11 + line 15)	\$	\$	
17. RECOMMENDED CHILD SUPPORT ORDER (Subtract smaller amount on line 16 from larger amount on line 16. Parent with larger amount on line 16 owes the other parent the difference.	\$	\$	
Comments, calculations, or rebuttals to schedule or adjustments			
PREPARED BY:			Date:

§48A-1B-11. Modification.

1 (a) The provisions of a child support order may be modified
2 if there is a substantial change of circumstances. For purposes
3 of this section, if application of the guideline would result in a
4 new order that is more than fifteen percent different, then the
5 circumstances are considered to be a substantial change.

6 (b) An expedited process for modification of a child support
7 order may be utilized if either parent experiences a substantial
8 change of circumstances resulting in a decrease in income due
9 to loss of employment or other involuntary cause or an increase
10 in income due to promotion, change in employment,
11 reemployment, or other such change in employment status. The
12 party seeking the recalculation of support and modification of
13 the support order shall file a description of the decrease or
14 increase in income and an explanation of the cause of the
15 decrease or increase on a standardized form to be provided by
16 the secretary-clerk or other employee of the family court. The
17 standardized form shall be verified by the filing party. Any
18 available documentary evidence shall be filed with the stan-
19 dardized form. Based upon the filing and information available
20 in the case record, the amount of support shall be tentatively
21 recalculated. The secretary-clerk shall cause a notice of the
22 filing, a copy of the standardized form, and the support calcula-
23 tions to be served upon the other party and upon the local office
24 of the child support enforcement division for the county in
25 which the circuit court is located in the same manner as original
26 process under rule 4(d) of the rules of civil procedure. The
27 notice shall fix a date fourteen days from the date of mailing,
28 and inform the party that unless the recalculation is contested
29 and a hearing request is made on or before the date fixed, the
30 proposed modification will be made effective. If the filing is
31 contested, the proposed modification shall be set for hearing;
32 otherwise, the family law master shall prepare a recommended
33 default order for entry by the circuit judge. Either party may
34 move to set aside a default entered by the circuit clerk or a
35 judgment by default entered by the clerk or the court, pursuant
36 to the provisions of rule 55 or rule 60(b) of the rules of civil

37 procedure. If an obligor uses the provisions of this section to
38 expeditiously reduce his or her child support obligation, the
39 order that effected the reduction shall also require the obligor
40 to notify the obligee of reemployment, new employment or
41 other such change in employment status that results in an
42 increase in income. If an obligee uses the provisions of this
43 section to expeditiously increase his or her child support
44 obligation, the order that effected the increase shall also require
45 the obligee to notify the obligor of reemployment, new employ-
46 ment or other such change in employment status that results in
47 an increase in income of the obligee.

48 (c) The supreme court of appeals shall develop the stan-
49 dardized form required by subsection (b) of this section.

§48A-1B-14. Disregard of formula.

1 (a) If the court finds that the guidelines are inappropriate in
2 a specific case, the court may either disregard the guidelines or
3 adjust the guidelines-based award to accommodate the needs of
4 the child or children or the circumstances of the parent or
5 parents. In either case, the reason for the deviation and the
6 amount of the calculated guidelines award must be stated on the
7 record (preferably in writing on the worksheet or in the order).
8 Such findings clarify the basis of the order if appealed or
9 modified in the future.

10 (b) These guidelines do not take into account the economic
11 impact of the following factors and can be possible reasons for
12 deviation:

13 (1) Special needs of the child or support obligor, including,
14 but not limited to, the special needs of a minor or adult child
15 who is physically or mentally disabled;

16 (2) Educational expenses for the child or the parent (i.e.
17 those incurred for private, parochial, or trade schools, other
18 secondary schools, or post-secondary education where there is
19 tuition or costs beyond state and local tax contributions);

20 (3) Families with more than six children;

- 21 (4) Long distance visitation costs;
- 22 (5) The child resides with third party;
- 23 (6) The needs of another child or children to whom the
24 obligor owes a duty of support;
- 25 (7) The extent to which the obligor's income depends on
26 nonrecurring or nonguaranteed income; or
- 27 (8) Whether the total of alimony, child support and child
28 care costs subtracted from an obligor's income reduces that
29 income to less than the federal poverty level and conversely,
30 whether deviation from child support guidelines would reduce
31 the income of the child's household to less than the federal
32 poverty level.

§48A-1B-16. Investment of child support.

- 1 (a) A circuit judge has the discretion, in appropriate cases,
2 to direct that a portion of child support be placed in trust and
3 invested for future educational or other needs of the child. The
4 family law master may recommend and the circuit judge may
5 order such investment when all of the child's day-to-day needs
6 are being met such that, with due consideration of the age of the
7 child, the child is living as well as his or her parents.
- 8 (b) If the amount of child support ordered per child exceeds
9 the sum of two thousand dollars per month, the court is required
10 to make a finding, in writing, as to whether investments shall be
11 made as provided for in subsection (a) of this section.
- 12 (c) A trustee named by the court shall use the judgment and
13 care under the circumstances then prevailing that persons of
14 prudence, discretion and intelligence exercise in the manage-
15 ment of their own affairs, not in regard to speculation but in
16 regard to the permanent disposition of their funds, considering
17 the probable income as well as the probable safety of their
18 capital. A trustee shall be governed by the provisions of the
19 uniform prudent investor act as set forth in article six-c, chapter
20 forty-four of this code. The court may prescribe the powers of
21 the trustee and provide for the management and control of the

22 trust. Upon petition of a party or the child's guardian or next
23 friend and upon a showing of good cause, the court may order
24 the release of funds in the trust from time to time.

§48A-1B-17. Operative date of certain amendments.

1 The amendments to this article made during the second
2 extraordinary session of the Legislature, one thousand nine
3 hundred ninety-nine, are operable after the thirtieth day of
4 September, one thousand nine hundred ninety-nine.

**ARTICLE 2. WEST VIRGINIA SUPPORT ENFORCEMENT COMMISSION;
CHILD SUPPORT ENFORCEMENT DIVISION; ESTAB-
LISHMENT AND ORGANIZATION.**

§48A-2-17. Notice to unemployed obligor.

§48A-2-38. Acceptance of federal purposes; compliance with federal requirements
and standards.

§48A-2-17. Notice to unemployed obligor.

1 Upon receipt of a report from an employer stating that a
2 support obligor has been discharged or laid off or has resigned
3 or voluntarily quit, the child support enforcement division shall
4 send a notice to the obligor, informing the obligor of the
5 availability of a modification of the support award and of the
6 services that may be available to him or her from the division.
7 The division shall also inform the obligor of his or her possible
8 entitlement to a reduction in court-ordered support payments;
9 that a failure to obtain a modification will result in the
10 previously-ordered award remaining in effect; and that substan-
11 tial arrearage might accumulate and remain as judgments
12 against him or her.

**§48A-2-38. Acceptance of federal purposes; compliance with
federal requirements and standards.**

1 (a) The state assents to the purposes of the federal laws
2 regarding child support and establishment of paternity and
3 agrees to accept federal appropriations and other forms of
4 assistance made under or pursuant thereto, and authorizes the
5 receipt of such appropriations into the state treasury and the

6 receipt of other forms of assistance by the child support
7 enforcement division for expenditure, disbursement and
8 distribution by the division in accordance with the provisions of
9 this chapter and the conditions imposed by applicable federal
10 laws, rules and regulations.

11 (b) Insofar as such actions are consistent with the laws of
12 this state granting authority to the division and the director, the
13 division shall comply with such requirements and standards as
14 the secretary of the federal department of health and human
15 services may have determined, as of the effective date of this
16 section, to be necessary for the establishment of an effective
17 program for locating obligors, establishing paternity, obtaining
18 support orders and collecting support payments.

19 (c) The director shall propose for promulgation a legislative
20 rule in accordance with the provisions of chapter twenty-nine-a
21 of this code, to establish time-keeping requirements to assure
22 the maximum funding of incentive payments, grants and other
23 funding sources available to the state for the processing of cases
24 filed for the location of absent parents, the establishment of
25 paternity, and the establishment, modification or enforcement
26 of orders of child support.

ARTICLE 4. PROCEEDING BEFORE A FAMILY LAW MASTER.

§48A-4-9. Hearing procedures.

§48A-4-20. Circuit court review of family law master's recommended order.

§48A-4-23. Family court fund.

§48A-4-9. Hearing procedures.

1 (a) This section applies, according to the provisions thereof,
2 to hearings required by section ten, article two-a, chapter fifty-
3 one of this code to be conducted by a family law master.

4 (b) A family law master to whom a matter is referred
5 pursuant to the provisions of section ten, article two-a, chapter
6 fifty-one of this code shall preside at the taking of evidence.

7 (c) A family law master presiding at a hearing under the
8 provisions of this chapter may:

9 (1) Administer oaths and affirmations, compel the atten-
10 dence of witnesses and the production of documents, examine
11 witnesses and parties and otherwise take testimony, receive
12 relevant evidence and establish a record;

13 (2) Rule on motions for discovery and offers of proof;

14 (3) Take depositions or have depositions taken when the
15 ends of justice may be served;

16 (4) Regulate the course of the hearing;

17 (5) Hold pretrial conferences for the settlement or simplifi-
18 cation of issues and enter time-frame orders which shall
19 include, but not be limited to, discovery cut-offs, exchange of
20 witness lists and agreements on stipulations, contested issues
21 and hearing schedules;

22 (6) Make and enter temporary orders on procedural matters,
23 including, but not limited to, substitution of counsel, amend-
24 ment of pleadings, requests for hearings and other similar
25 matters;

26 (7) Accept voluntary acknowledgments of support liability
27 or paternity;

28 (8) Accept stipulated agreements;

29 (9) Prepare default orders for entry if the person against
30 whom an action is brought does not respond to notice or process
31 within the time required;

32 (10) Recommend orders in accordance with the provisions
33 of section thirteen of this article;

34 (11) Require the issuance of subpoenas and subpoenas
35 duces tecum, issue writs of attachment, hold hearings in aid of
36 execution and propound interrogatories in aid of execution and
37 fix bond or other security in connection with an action for
38 enforcement in a child or spousal support matter; and

39 (12) Take other action authorized by general order of the
40 circuit court or the chief judge thereof consistent with the
41 provisions of this chapter.

42 (d) Except as otherwise provided by law, a moving party
43 has the burden of proof on a particular question presented. Any
44 oral or documentary evidence may be received, but the family
45 law master shall exclude irrelevant, immaterial or unduly
46 repetitious evidence. A party is entitled to present his or her
47 case or defense by oral or documentary evidence, to submit
48 rebuttal evidence and to conduct such cross-examination as may
49 be required for a full and true disclosure of the facts. In
50 determining claims for money due or the amount of payments
51 to be made, when a party will not be prejudiced thereby, the
52 family law master may adopt procedures for the submission of
53 all or part of the evidence in written form.

54 (e) Hearings before a family law master shall be recorded
55 electronically. A magnetic tape or other electronic recording
56 medium on which a hearing is recorded shall be indexed and
57 securely preserved by the secretary-clerk of the family law
58 master and shall not be placed in the case file in the office of
59 the circuit clerk: *Provided*, That upon the request of the family
60 law master, such magnetic tapes or other electronic recording
61 media shall be stored by the clerk of the circuit court. When
62 requested by either of the parties, a family law master shall
63 provide a duplicate copy of the tape or other electronic record-
64 ing medium of each hearing held. For evidentiary purposes, a
65 duplicate of such electronic recording prepared by the secre-
66 tary-clerk shall be a "writing" or "recording" as those terms are
67 defined in rule 1001 of the West Virginia rules of evidence, and
68 unless the duplicate is shown not to reflect the contents accu-
69 rately, it shall be treated as an original in the same manner that
70 data stored in a computer or similar data is regarded as an
71 "original" under such rule. The party requesting the copy shall
72 pay to the family law master an amount equal to the actual cost
73 of the tape or other medium or the sum of five dollars, which-
74 ever is greater. Unless otherwise ordered by the court, the

75 preparation of a transcript and the payment of the cost thereof
76 shall be the responsibility of the party requesting the transcript.

77 (f) The recording of the hearing or the transcript of testi-
78 mony, as the case may be, and the exhibits, together with all
79 papers and requests filed in the proceeding, constitute the
80 exclusive record for recommending an order in accordance with
81 section thirteen of this article, and on payment of lawfully
82 prescribed costs, shall be made available to the parties. When
83 a family law master's final recommended order rests on official
84 notice of a material fact not appearing in the evidence in the
85 record, a party is entitled, on timely request, to an opportunity
86 to show the contrary.

87 (g) After a temporary parenting plan has been agreed to by
88 the parties or ordered by the family law master, or after a
89 temporary support order has been entered by the court, a
90 scheduled final evidentiary hearing cannot be continued without
91 the agreement of the parties or without a review of the tempo-
92 rary parenting plan and the temporary support order.

93 (h) In any case in which a party has filed an affidavit that he
94 or she is financially unable to pay the fees or costs, the family
95 law master shall determine whether either party is financially
96 able to pay such fees and costs based on the information set
97 forth in the affidavit or on any evidence submitted at the
98 hearing. If the family law master determines that either party is
99 financially able to pay the fees and costs, the family law master
100 shall assess the payment of such fees and costs accordingly as
101 part of a recommended order. The provisions of this subsection
102 do not alter or diminish the provisions of section one, article
103 two, chapter fifty-nine of this code.

**§48A-4-20. Circuit court review of family law master's recom-
mended order.**

1 (a) The circuit court shall proceed to a review of the
2 recommended order of the family law master when:

3 (1) No petition has been filed within the time allowed, or
4 the parties have expressly waived the right to file a petition;

5 (2) A petition and an answer in opposition have been filed,
6 or the time for filing an answer in opposition has expired, or the
7 parties have expressly waived the right to file an answer in
8 opposition, as the case may be.

9 (b) To the extent necessary for decision and when pre-
10 sented, the circuit court shall decide all relevant questions of
11 law, interpret constitutional and statutory provisions and
12 determine the appropriateness of the terms of the recommended
13 order of the family law master.

14 (c) The circuit court shall examine the recommended order
15 of the family law master, along with the findings and conclu-
16 sions of the family law master, and may enter the recommended
17 order, may recommit the case, with instructions, for further
18 hearing before the master or may, in its discretion, enter an
19 order upon different terms, as the ends of justice may require.
20 Conclusions of law of the family law master shall be subject to
21 de novo review by the circuit court. The circuit court shall be
22 held to the clearly erroneous standard in reviewing findings of
23 fact. The circuit court shall not follow the recommendation,
24 findings and conclusions of a master found to be:

25 (1) Arbitrary, capricious, an abuse of discretion or other-
26 wise not in conformance with the law;

27 (2) Contrary to constitutional right, power, privilege or
28 immunity;

29 (3) In excess of statutory jurisdiction, authority or limita-
30 tions or short of statutory right;

31 (4) Without observance of procedure required by law;

32 (5) Unsupported by substantial evidence; or

33 (6) Unwarranted by the facts.

34 (d) In making its determinations under this section, the
35 circuit court shall review the whole record or those parts of it
36 cited by a party. If the circuit court finds that a family law
37 master's recommended order is deficient as to matters which

38 might be affected by evidence not considered or inadequately
39 developed in the family law master's recommended order, the
40 court may recommit the recommended order to the family law
41 master, with instructions indicating the court's opinion, or the
42 circuit court may proceed to take such evidence without
43 recommitting the matter.

44 (e) The order of the circuit court entered pursuant to the
45 provisions of subsection (d) of this section shall be entered not
46 later than ten days after the time for filing pleadings or briefs
47 has expired or after the filing of a notice or notices waiving the
48 right to file such pleading or brief.

49 (f) If a case is recommitted by the circuit court, the family
50 law master shall retry the matter within twenty days.

51 (g) At the time a case is recommitted, the circuit court shall
52 enter appropriate temporary orders awarding custody, visitation,
53 child support, spousal support or such other temporary relief as
54 the circumstances of the parties may require.

§48A-4-23. Family court fund.

1 The office and the clerks of the circuit courts shall, on or
2 before the tenth day of each month, transmit all fees and costs
3 received for the services of the office under this chapter to the
4 state treasurer for deposit in the state treasury to the credit of a
5 special revenue fund to be known as the "family court fund",
6 which is hereby created. All moneys collected and received
7 under this chapter and paid into the state treasury and credited
8 to the "family court fund" shall be used by the administrative
9 office of the supreme court of appeals solely for paying the
10 costs associated with the duties imposed upon the family law
11 masters under the provisions of this chapter which require
12 activities by the family law masters which are not subject to
13 being matched with federal funds or subject to reimbursement
14 by the federal government. Such moneys shall not be treated by
15 the auditor and treasurer as part of the general revenue of the
16 state.

CHAPTER 51. COURTS AND THEIR OFFICERS.**Article****2A. Circuit Courts; Family Court Division.****3. Courts in General.****ARTICLE 2A. CIRCUIT COURTS; FAMILY COURT DIVISION.**

§51-2A-1. Family court division established in circuit court; designation of division.

§51-2A-2. Appointment of commissioners to be designated as family law masters; administrative and judicial functions of family law master.

§51-2A-3. Assignment of family law masters by family court circuits,

§51-2A-4. Qualifications of family law masters.

§51-2A-5. Term of office of family law master; elections.

§51-2A-6. Vacancy in the office of family law master.

§51-2A-6a. Terms of family law masters continued.

§51-2A-7. Procedure for removal, suspension or discipline of family law master; appeal; grounds.

§51-2A-8. Compensation and expenses of family law masters and their staffs.

§51-2A-9. Rules of practice and procedure; applicability of rules of evidence; local administrative rules.

§51-2A-10. Matters to be heard by a family law master.

§51-2A-11. Contempt powers of family law master.

§51-2A-12. Effects of certain repealers or reenactments.

§51-2A-1. Family court division established in circuit court; designation of division.

- 1 There is hereby created in the circuit court of each county
- 2 in this state, a division of the circuit court to be designated as
- 3 "The Family Court of _____ County, West Virginia".

§51-2A-2. Appointment of commissioners to be designated as family law masters; administrative and judicial functions of family law master.

- 1 (a) In each of the family court circuits, family law masters
- 2 shall be appointed as follows:

- 3 (1) If a family law master serves a single judicial circuit
- 4 that has one circuit judge, the circuit judge shall appoint the
- 5 family law master;

- 6 (2) If a family law master serves a single judicial circuit
- 7 that has two or more circuit court judges, the chief judge of the
- 8 circuit shall appoint the family law master or masters;

9 (3) If a family law master serves more than one judicial
10 circuit, the chief judges of the judicial circuits shall appoint the
11 family law master or masters;

12 (4) If the chief judge or chief judges of the judicial circuits
13 cannot agree, all of the circuit judges of the affected judicial
14 circuits shall appoint the family law master or masters; or

15 (5) If the circuit judges of the affected judicial circuits
16 cannot agree, the supreme court of appeals shall appoint the
17 family law master or masters.

18 (b) A commissioner appointed under subsection (a) of this
19 section may be designated by the name "family law master".

20 (c) The family law master will conduct hearings in family
21 court cases, take testimony, hear the parties, enter orders of a
22 temporary or interlocutory nature, make findings of fact and
23 conclusions of law on the record, formulate recommendations,
24 and report to the circuit court. The family law master will
25 exercise any other power or authority provided for in this article
26 or article four, chapter forty-eight-a of this code.

27 (d) The family law master, as a commissioner of the circuit
28 court, has both administrative and judicial functions to perform,
29 as described in subsections (e) and (f) of this section.

30 (e) The family law master has responsibility for the
31 administration of the family court division of the circuit court.
32 A circuit court judge or judges whose circuit is served by a
33 family law master or masters must monitor the administration
34 of the family court divisions within the judicial circuit and
35 regulate those activities, including naming one or more circuit
36 judges to serve as administrative supervisor of the family law
37 master, through appropriate administrative orders. The adminis-
38 trative orders of the administrative supervisor regarding a
39 family court division will be compiled and indexed in the office
40 of the circuit clerk and be available for public inspection.

41 (f) In exercising the judicial function of the family court,
42 the family law master, free of direct oversight by a circuit

43 judge, is responsible for the preparation or preliminary consid-
44 eration of issues requiring judicial decision, subject only to a
45 subsequent review by a circuit judge. Conclusions of law of the
46 family law master are subject to de novo review by the circuit
47 court. In reviewing the findings of fact of a family law master,
48 the circuit court is held to the clearly erroneous standard.

49 (g) A family law master shall not be eligible to participate
50 in the judges retirement system under the provisions of article
51 nine of this chapter.

52 (h) Beginning the first day of January, two thousand, each
53 family law master is required to file a quarterly activity report
54 with the supreme court of appeals and the joint committee on
55 government and finance. The report shall include, but is not
56 limited to, the number of cases heard before the family law
57 master, the date the case was heard, the date the case was filed
58 and the number and types of hearings held before the family
59 law master in a particular case.

60 (i) The supreme court of appeals shall promulgate a
61 procedural rule to establish time-keeping requirements for
62 family law masters, family case coordinators and secretary-
63 clerks of family law masters so as to assure the maximum
64 funding of incentive payments, grants and other funding
65 sources available to the state for the processing of cases filed
66 for the location of absent parents, the establishment of paternity
67 and the establishment, modification, and enforcement of child
68 support orders.

**§51-2A-3. Assignment of family law masters by family court
circuits.**

1 (a) A total of thirty-three family law masters will serve
2 throughout the state. The state will be divided into twenty-four
3 family court circuits with the number of family law masters
4 allocated as follows:

5 The counties of Brooke, Hancock and Ohio shall constitute
6 the first family court circuit and shall have two family law
7 masters; the counties of Marshall, Wetzel and Tyler shall

8 constitute the second family court circuit and shall have one
9 family law master; the counties of Pleasants, Wood, Wirt,
10 Ritchie and Doddridge shall constitute the third family court
11 circuit and shall have two family law masters; the counties of
12 Jackson, Roane, Calhoun and Gilmer shall constitute the fourth
13 family court circuit and shall have one family law master; the
14 counties of Mason and Putnam shall constitute the fifth family
15 court circuit and shall have one family law master; the county
16 of Cabell shall constitute the sixth family court circuit and shall
17 have two family law masters; the county of Wayne shall
18 constitute the seventh family court circuit and shall have one
19 family law master; the county of Mingo shall constitute the
20 eighth family court circuit and shall have one family law
21 master; the county of Logan shall constitute the ninth family
22 court circuit and shall have one family law master; the counties
23 of Lincoln and Boone shall constitute the tenth family court
24 circuit and shall have one family law master; the county of
25 Kanawha shall constitute the eleventh family court circuit and
26 shall have four family law masters; the counties of McDowell
27 and Mercer shall constitute the twelfth family court circuit and
28 shall have two family law masters; the counties of Raleigh and
29 Wyoming shall constitute the thirteenth family court circuit and
30 shall have two family law masters; the counties of Fayette and
31 Summers shall constitute the fourteenth family court circuit and
32 shall have one family law master; the counties of Greenbrier,
33 Monroe and Pocahontas shall constitute the fifteenth family
34 court circuit and shall have one family law master; the counties
35 of Clay, Nicholas and Webster shall constitute the sixteenth
36 family court circuit and shall have one family law master; the
37 counties of Braxton, Lewis and Upshur shall constitute the
38 seventeenth family court circuit and shall have one family law
39 master; the county of Harrison shall constitute the eighteenth
40 family court circuit and shall have one family law master; the
41 county of Marion shall constitute the nineteenth family court
42 circuit and shall have one family law master; the county of
43 Monongalia shall constitute the twentieth family court circuit
44 and shall have one family law master; the counties of Barbour,
45 Preston and Taylor shall constitute the twenty-first family court

46 circuit and shall have one family law master; the counties of
47 Grant, Tucker and Randolph shall constitute the twenty-second
48 family court circuit and shall have one family law master; the
49 counties of Mineral, Hampshire, Hardy and Pendleton shall
50 constitute the twenty-third family court circuit and shall have
51 one family law master; and the counties of Berkeley, Jefferson
52 and Morgan shall constitute the twenty-fourth family court
53 circuit and shall have two family law masters.

54 (b) The chief justice of the supreme court of appeals may
55 temporarily assign a family law master from one family court
56 circuit to another family court circuit, as caseload, disqualifica-
57 tion, recusal, vacation or illness may dictate. In each case of
58 temporary assignment, the chief justice shall appoint only a
59 family law master who is actually serving at the time of such
60 appointment.

§51-2A-4. Qualifications of family law masters.

1 (a) An individual serving as a family law master prior to the
2 initial election of family law masters, as set forth in section five
3 of this article, must be a member in good standing of the West
4 Virginia state bar and must have at least five years' experience
5 as a practicing attorney prior to taking office. An individual
6 elected as a family law master at the initial election of family
7 law masters or at any subsequent election of family law
8 masters, as set forth in section five of this article, or an individ-
9 ual appointed as a family law master at any time after the initial
10 election of family law masters must be a member in good
11 standing of the West Virginia state bar, must have at least five
12 years' experience as a practicing attorney prior to taking office,
13 and must, at the time he or she takes office, and thereafter
14 during his or her continuance in office, be a resident of the state
15 of West Virginia.

16 (b) Upon assuming his or her duties, a family law master
17 with no prior experience as a family law master shall, as soon
18 as is practicable, attend and complete a course of instruction in
19 principles of family law and procedure that is given in accord-
20 dance with the supervisory rules of the supreme court of

21 appeals. All family law masters shall attend courses of continu-
22 ing educational instruction as may be required by supervisory
23 rule of the supreme court of appeals. Failure to attend the
24 required courses of continuing educational instruction without
25 good cause constitutes neglect of duty. Persons attending such
26 courses outside of the county of their residence will be reim-
27 bursed by the supreme court of appeals for expenses actually
28 incurred in accordance with the supervisory rules of the
29 supreme court of appeals.

30 (c) A family law master may not engage in any other
31 business, occupation or employment inconsistent with the
32 expeditious, proper and impartial performance of his or her
33 duties as a judicial officer. A family law master is not permitted
34 to engage in the outside practice of law and shall devote full
35 time to his or her duties as a judicial officer.

§51-2A-5. Term of office of family law master; elections.

1 (a) Before the first day of September, one thousand nine
2 hundred ninety-nine, family law masters shall be appointed to
3 serve in the family court circuits as provided for in section three
4 of this article. The initial term of office for the family law
5 masters first appointed shall commence on the first day of
6 October, one thousand nine hundred ninety-nine, and end on the
7 thirty-first day of December, two thousand two.

8 (b) Beginning with the primary and general elections to be
9 conducted in the year two thousand two, family law masters
10 shall be elected. In family court circuits having two or more
11 family law masters there shall be, for election purposes,
12 numbered divisions corresponding to the number of family law
13 masters in each area. Each family law master shall be elected at
14 large by the entire family court area. In each numbered division
15 of a judicial circuit, the candidates for nomination or election
16 shall be voted upon and the votes cast for the candidates in each
17 division shall be tallied separately from the votes cast for
18 candidates in other numbered divisions within the family court
19 area. The candidate or candidates receiving the highest number

20 of the votes cast within a numbered division shall be nominated
21 or elected, as the case may be.

22 (c) The term of office for all family law masters elected in
23 two thousand two shall be for four years, commencing on the
24 first day of January, two thousand three, and ending on the
25 thirty-first day of December, two thousand six. Subsequent
26 terms of office for family law masters elected thereafter shall be
27 for four years.

§51-2A-6. Vacancy in the office of family law master.

1 If a vacancy occurs in the office of family law master, the
2 chief judge or judges of the affected circuit courts, as the case
3 may be, shall, within thirty days after the vacancy occurs, fill
4 the vacancy by appointment for the unexpired term. If the chief
5 judge or judges of the affected circuit court fail to act timely to
6 fill a vacancy, the chief justice of the supreme court of appeals
7 may fill the vacancy for the unexpired term.

§51-2A-6a. Terms of family law masters continued.

1 The family law masters holding office on the first day of
2 June, one thousand nine hundred ninety-nine, by virtue of
3 appointments made under the prior enactments of article four,
4 chapter forty-eight-a of this code are continued in their term of
5 office through the thirtieth day of September, one thousand nine
6 hundred ninety-nine.

§51-2A-7. Procedure for removal, suspension or discipline of family law master; appeal; grounds.

1 (a) A family law master appointed pursuant to section two
2 of this article may be removed from office in the manner
3 provided in this section for official misconduct, malfeasance in
4 office, incompetence, neglect of duty, gross immorality or
5 inability to serve.

6 (b) Charges may be preferred by:

7 (1) A circuit judge of a county that constitutes all or a part
8 of the family law master's region;

9 (2) By the administrative director of the supreme court of
10 appeals; or

11 (3) By any person as provided in rule two of the rules of
12 judicial disciplinary procedure. If a formal charge is filed by the
13 judicial investigation commission, such charge may recommend
14 removal and the convening of a three-judge court as provided
15 for in this section.

16 (c) The charges must be reduced to writing in the form of
17 a petition, duly verified by the charging party, and filed with the
18 supreme court of appeals. The petition must request the
19 impaneling or convening of a three-judge court consisting of
20 three circuit judges of the state. The chief justice of the supreme
21 court of appeals shall, without delay, designate and appoint
22 three circuit judges within the state, none of whom is from the
23 region in which the family law master serves. In the order of
24 appointment, the chief justice shall designate the date, time and
25 place for the convening of the three-judge court. The date and
26 time of hearing on the petition must be more than twenty days
27 from the date of the filing of the petition.

28 The three-judge court shall, without a jury, hear the charges
29 and all evidence offered in support thereof or in opposition
30 thereto and upon satisfactory proof of the charges shall remove
31 the family law master from office and place the records, papers
32 and property of his or her office in the possession of some other
33 officer or person for safekeeping or in the possession of the
34 person appointed as hereinafter provided to fill the office
35 temporarily. Final orders shall set out the court's decision to
36 dismiss the charges or to suspend or remove the family law
37 master, with or without recommendations to refer the matter for
38 investigation by the office of disciplinary counsel under the
39 rules of judicial disciplinary procedure, or to provide other
40 disposition appropriate to the case.

41 (d) An appeal from a final order of a three-judge court
42 removing or refusing to remove a family law master from office
43 pursuant to this section may be taken to the supreme court of
44 appeals within thirty days from the date of entry of the order

45 from which the appeal is to be taken. The supreme court of
46 appeals shall consider and decide the appeal upon the original
47 papers and documents, without requiring the same to be printed
48 and shall enforce its findings by proper writ. From the date of
49 any order of the three-judge court removing an officer under
50 this section until the expiration of thirty days thereafter, and, if
51 an appeal be taken, until the date of suspension of such order,
52 if suspended by the three-judge court and if not suspended, until
53 the final adjudication of the matter by the supreme court of
54 appeals, the circuit court judge or judges having power to fill a
55 vacancy in such office may fill the same by a temporary
56 appointment until a final decision of the matter, and if a final
57 decision is made by the supreme court of appeals affirming the
58 removal of the family law master, shall fill the vacancy in the
59 manner provided by law for such office.

60 (e) For purposes of subsections (a) through (d), inclusive,
61 of this section, "neglect of duty" includes, but is not limited to,
62 failure to make findings of fact and conclusions of law either on
63 the record or in writing to be filed as part of the record.

64 (f) Notwithstanding any other provision, the conduct of
65 family law masters who begin serving terms of office on the
66 first day of January, two thousand three, and thereafter, shall be
67 governed by the code of judicial conduct adopted by the
68 supreme court of appeals and any complaint of violation of the
69 code of judicial conduct against a family law judge shall be
70 filed and considered in accordance with the rules of judicial
71 disciplinary procedure adopted by the supreme court of appeals.

**§51-2A-8. Compensation and expenses of family law masters and
their staffs.**

1 (a) Beginning the first day of October, one thousand nine
2 hundred ninety-nine, until the thirty-first day of December, two
3 thousand two, a family law master is entitled to receive as
4 compensation for his or her services an annual salary of sixty
5 thousand dollars. Beginning the first day of January, two
6 thousand three, a family law master is entitled to receive as

7 compensation for his or her services, an annual salary of sixty-
8 two thousand five hundred dollars.

9 (b) The secretary-clerk of the family law master is ap-
10 pointed by the family law master and serves at his or her will
11 and pleasure. The secretary-clerk of the family law master is
12 entitled to receive an annual salary of twenty-two thousand
13 three hundred eight dollars. In addition, beginning the first day
14 of October, one thousand nine hundred ninety-nine, any
15 secretary-clerk who is employed by a family law master on the
16 effective date of this section who has been so employed for at
17 least two years prior to such effective date, shall receive an
18 additional five hundred dollars per year up to ten years of such
19 prior employment. Further, the secretary-clerk will receive such
20 percentage or proportional salary increases as may be provided
21 for by general law for other public employees and is entitled to
22 receive the annual incremental salary increase as provided for
23 in article five, chapter five of this code.

24 (c) After the first day of October, one thousand nine
25 hundred ninety-nine, the family law master may employ not
26 more than one family case coordinator who serves at his or her
27 will and pleasure: *Provided*, That for purposes of the initial
28 employment of family case coordinators, the administrative
29 director of the supreme court of appeals shall designate twenty
30 family law masters who are authorized to employ family case
31 coordinators, and the additional thirteen family case coordina-
32 tors may only be employed when authorized by the administra-
33 tive director of the supreme court of appeals. The annual salary
34 of the family case coordinator of the family law master shall be
35 established by the administrative director of the supreme court
36 of appeals but may not exceed thirty-five thousand dollars. The
37 family case coordinator will receive such percentage or
38 proportional salary increases as may be provided for by general
39 law for other public employees and is entitled to receive the
40 annual incremental salary increase as provided for in article
41 five, chapter five of this code.

42 (d) Subject to the approval of the chief judge of the circuit,
43 the sheriff or his or her designated deputy, shall serve as a
44 bailiff for a family law master. The sheriff of each county shall
45 serve or designate persons to serve so as to assure that a bailiff
46 is available when a family law master determines the same is
47 necessary for the orderly and efficient conduct of the business
48 of the family court division of the circuit court.

49 (e) A special commissioner of the court appointed pursuant
50 to subdivision (4), subsection (a), section ten of this article is
51 entitled to be compensated by the supreme court of appeals at
52 an hourly rate not to exceed the hourly rate paid to panel
53 attorneys for performing work in court pursuant to the provi-
54 sions of section thirteen-a, article twenty-one, chapter
55 twenty-nine of this code.

56 (f) Disbursement of salaries for family law masters and
57 members of their staffs are made by or pursuant to the order of
58 the director of the administrative office of the supreme court of
59 appeals.

60 (g) Family law masters, members of their staffs and special
61 commissioners of the court are allowed their actual and
62 necessary expenses incurred in the performance of their duties.
63 The expenses and compensation will be determined and paid by
64 the director of the administrative office of the supreme court of
65 appeals under such guidelines as he or she may prescribe, as
66 approved by the supreme court of appeals.

**§51-2A-9. Rules of practice and procedure; applicability of rules
of evidence; local administrative rules.**

1 (a) Pleading, practice and procedure in matters before a
2 family law master are governed by rules of practice and
3 procedure for family law promulgated by the supreme court of
4 appeals pursuant to section four, article one of this chapter.

5 (b) The West Virginia rules of evidence apply to proceed-
6 ings before a family law master.

7 (c) The chief judge of a circuit court may promulgate local
8 administrative rules governing the conduct and administration
9 of family courts serving the circuit court. Local administrative
10 rules are subordinate and subject to the rules of the supreme
11 court of appeals or the orders of the chief justice. Rules
12 promulgated by the chief judge of a circuit court are made by
13 order entered upon the order book of the circuit court, and are
14 effective when filed with the clerk of the supreme court of
15 appeals.

§51-2A-10. Matters to be heard by a family law master.

1 (a) A chief judge of a circuit court shall refer to the family
2 law master the following matters for hearing:

3 (1) Actions to obtain orders of support brought under the
4 provisions of section one, article five, chapter forty-eight-a of
5 this code;

6 (2) All actions to establish paternity brought under the
7 provisions of article six, chapter forty-eight-a of this code, and
8 any dependent claims related to such action regarding child
9 support, custody and visitation;

10 (3) All petitions for writs of habeas corpus wherein the
11 issue contested is child custody;

12 (4) All motions for temporary relief affecting child custody,
13 visitation, child support, spousal support or domestic or family
14 violence, wherein either party has requested such referral or the
15 court on its own motion in individual cases or by general order
16 has referred such motions to the family law master: *Provided,*
17 That if the family law master determines, in his or her discre-
18 tion, that the pleadings raise substantial issues concerning the
19 identification of separate property or the division of marital
20 property which may have a bearing on an award of support, the
21 family law master shall notify the appropriate circuit court of
22 this fact and the circuit court may refer the case to a special
23 commissioner chosen by the circuit court to serve in such
24 capacity;

25 (5) All petitions for modification of an order involving
26 child custody, child visitation, child support or spousal support;

27 (6) All actions for divorce, annulment or separate mainte-
28 nance brought pursuant to article two, chapter forty-eight of this
29 code: *Provided*, That an action for divorce, annulment or
30 separate maintenance which does not involve child custody or
31 child support shall be heard by a circuit judge if, at the time of
32 the filing of the action, the parties file a written property
33 settlement agreement which has been signed by both parties;

34 (7) All actions wherein an obligor is contesting the enforce-
35 ment of an order of support through the withholding from
36 income of amounts payable as support or is contesting an
37 affidavit of accrued support, filed with a circuit clerk, which
38 seeks to collect arrearage;

39 (8) All actions commenced under chapter forty-eight-b of
40 this code or the interstate family support act of another state;

41 (9) Proceedings for the enforcement of support, custody or
42 visitation orders;

43 (10) All actions to establish custody of a minor child or
44 visitation with a minor child, including actions brought pursu-
45 ant to the uniform child custody jurisdiction act and actions
46 brought to establish grandparent visitation: *Provided*, That any
47 action instituted under article six, chapter forty-nine of this
48 code shall be heard by a circuit judge;

49 (11) On and after the first day of October, one thousand
50 nine hundred ninety-nine, civil contempt and direct contempts:
51 *Provided*, That criminal contempts must be heard by a circuit
52 judge; and

53 (12) On and after the first day of April, two thousand one,
54 full hearings in domestic or family violence proceedings
55 wherein a protective order is sought.

56 (b) On its own motion or upon motion of a party, the circuit
57 court may revoke the referral of a particular matter to a family
58 law master if the family law master is recused, if the matter is

59 uncontested, or for other good cause, or if the matter will be
60 more expeditiously and inexpensively heard by a circuit judge
61 without substantially affecting the rights of parties.

§51-2A-11. Contempt powers of family law master.

1 (a) A family law master, acting in his or her capacity as a
2 commissioner of the circuit court, may:

3 (1) Sanction persons through civil contempt proceedings
4 when necessary to preserve and enforce the rights of private
5 parties or to administer remedies granted by the court;

6 (2) Regulate all proceedings in a hearing before the family
7 law master; and

8 (3) Punish direct contempts that are offered in the presence
9 of the court or that obstruct or corrupt the proceedings of the
10 court.

11 (b) A family law master may enforce compliance with his
12 or her lawful orders with remedial or coercive sanctions
13 designed to compensate a complainant for losses sustained and
14 to coerce obedience for the benefit of the complainant. Sanc-
15 tions must give the contemnor an opportunity to purge himself
16 or herself. In selecting sanctions, the court must use the least
17 possible power adequate to the end proposed. A person who
18 lacks the present ability to comply with the order of the court
19 may not be confined for a civil contempt. Sanctions may
20 include, but are not limited to, seizure or impoundment of
21 property to secure compliance with a prior order. Ancillary
22 relief may provide for an award of attorney's fees.

§51-2A-12. Effects of certain repealers or reenactments.

1 The repeal or reenactment of sections in article four,
2 chapter forty-eight of this code effected during the second
3 extraordinary session of the Legislature, one thousand nine
4 hundred ninety-nine, become operable on the first day of July,
5 one thousand nine hundred ninety-nine. It is intended that the
6 family law master system in existence on the eighteenth day of
7 May, one thousand nine hundred ninety-nine, will continue to

8 function under the prior enactment of article four, chapter forty-
9 eight-a of this code, notwithstanding the repeal or the amend-
10 ment and reenactment of sections of that article, until the first
11 day of October, one thousand nine hundred ninety-nine, when
12 the family law master system is replaced with the system of
13 family law masters provided for in this article.

ARTICLE 3. COURTS IN GENERAL.

§51-3-14. Court security fund.

1 (a) The offices and the clerks of the magistrate courts and
2 the circuit courts shall, on or before the tenth day of each
3 month, transmit all fees and costs received for the court security
4 fund in accordance with the provisions of sections one and two,
5 article three, chapter fifty of this code and section eleven,
6 article one, chapter fifty-nine of this code for deposit in the
7 state treasury to the credit of a special revenue fund to be
8 known as the "court security fund", which is hereby created
9 under the department of military affairs and public safety. The
10 court security fund may receive any gifts, grants, contributions
11 or other money from any source which is specifically desig-
12 nated for deposit in the fund. All moneys collected and received
13 and paid into the state treasury and credited to the court security
14 fund shall be expended by the board exclusively to implement
15 the improvement measures agreed upon in accordance with the
16 security plans submitted pursuant to section sixteen of this
17 article and in accordance with an appropriation by the Legisla-
18 ture. Amounts collected which are found from time to time to
19 exceed the funds needed for the purposes set forth in this article
20 may be transferred to other accounts or funds and redesignated
21 for other purposes upon appropriation by the Legislature.

22 (b) Notwithstanding any provision of this code to the
23 contrary, during fiscal year two thousand, all fees and costs
24 received for the court security fund in accordance with the
25 provisions of sections one and two, article three, chapter fifty
26 of this code, section eleven, article one, chapter fifty-nine of
27 this code, and any other provision of this code, for deposit in
28 the state treasury to the credit of the court security fund shall

29 not be deposited in the court security fund, but shall instead be
30 transmitted by the offices and the clerks of the magistrate courts
31 and the circuit courts, on or before the tenth day of each month,
32 for deposit in the state treasury to the credit of the family court
33 fund established under section twenty-three, article four,
34 chapter forty-eight-a of this code. The fees and costs that are
35 deposited in the family court fund under the provisions of this
36 subsection shall be expended for the purposes set forth in said
37 section twenty-three.

38 (c) Notwithstanding any provision of this code to the
39 contrary, after the thirtieth day of June, two thousand, the court
40 security board shall transfer such amounts from the court
41 security fund as may from time to time be directed by the
42 Legislature in an appropriation act to the domestic violence
43 legal services fund created in section four-c, article two-c,
44 chapter forty-eight of this code. Any moneys transferred to the
45 domestic violence legal services fund pursuant to the provisions
46 of this section shall be expended for the purposes specified in
47 said section four-c.

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

Article

1. Fees and Allowances.
2. Costs Generally.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-11. Fees to be charged by clerk of circuit court.

§59-1-28a. Disposition of filing fees in divorce and other civil actions and fees for services in criminal cases.

§59-1-11. Fees to be charged by clerk of circuit court.

1 (a) The clerk of a circuit court shall charge and collect for
2 services rendered as such clerk the following fees, and such
3 fees shall be paid in advance by the parties for whom such
4 services are to be rendered:

5 (1) For instituting any civil action under the rules of civil
6 procedure, any statutory summary proceeding, any extraordi-

7 nary remedy, the docketing of civil appeals, or any other action,
8 cause, suit or proceeding, seventy-five dollars: *Provided*, That
9 the fee for instituting an action for divorce shall be one hundred
10 five dollars;

11 (2) Beginning on and after the first day of July, one
12 thousand nine hundred ninety-nine, for instituting an action for
13 divorce, separate maintenance or annulment, one hundred
14 twenty-five dollars; and

15 (3) For petitioning for the modification of an order involv-
16 ing child custody, child visitation, child support or spousal
17 support, seventy-five dollars.

18 (b) In addition to the foregoing fees, the following fees
19 shall likewise be charged and collected:

20 (1) For preparing an abstract of judgment, five dollars;

21 (2) For any transcript, copy or paper made by the clerk for
22 use in any other court or otherwise to go out of the office, for
23 each page, fifty cents;

24 (3) For action on suggestion, ten dollars;

25 (4) For issuing an execution, ten dollars;

26 (5) For issuing or renewing a suggestee execution, includ-
27 ing copies, postage, registered or certified mail fees and the fee
28 provided by section four, article five-a, chapter thirty-eight of
29 this code, three dollars;

30 (6) For vacation or modification of a suggestee execution,
31 one dollar;

32 (7) For docketing and issuing an execution on a transcript
33 of judgment from magistrate's court, three dollars;

34 (8) For arranging the papers in a certified question, writ of
35 error, appeal or removal to any other court, five dollars;

36 (9) For postage and express and for sending or receiving
37 decrees, orders or records, by mail or express, three times the
38 amount of the postage or express charges;

39 (10) For each subpoena, on the part of either plaintiff or
40 defendant, to be paid by the party requesting the same, fifty
41 cents; and

42 (11) For additional service (plaintiff or appellant) where
43 any case remains on the docket longer than three years, for each
44 additional year or part year, twenty dollars.

45 (c) The clerk shall tax the following fees for services in any
46 criminal case against any defendant convicted in such court:

47 (1) In the case of any misdemeanor, fifty-five dollars; and

48 (2) In the case of any felony, sixty-five dollars.

49 (d) No such clerk shall be required to handle or accept for
50 disbursement any fees, cost or amounts, of any other officer or
51 party not payable into the county treasury, except it be on order
52 of the court or in compliance with the provisions of law
53 governing such fees, costs or accounts.

**§59-1-28a. Disposition of filing fees in divorce and other civil
actions and fees for services in criminal cases.**

1 (a) Except for those payments to be made from amounts
2 equaling filing fees received for the institution of divorce
3 actions as prescribed in subsection (b) of this section, and
4 except for those payments to be made from amounts equaling
5 filing fees received for the institution of actions for divorce,
6 separate maintenance and annulment as prescribed in subsec-
7 tion (c) of this section, for each civil action instituted under the
8 rules of civil procedure, any statutory summary proceeding, any
9 extraordinary remedy, the docketing of civil appeals, or any
10 other action, cause, suit or proceeding in the circuit court, the
11 clerk of the court shall, at the end of each month, pay into the
12 funds or accounts described in this subsection an amount equal
13 to the amount set forth in this subsection of every filing fee
14 received for instituting such action as follows:

15 (1) Into the regional jail and correctional facility develop-
16 ment fund in the state treasury established pursuant to the

17 provisions of section ten, article twenty, chapter thirty-one of
18 this code, the amount of sixty dollars; and

19 (2) Into the court security fund in the state treasury estab-
20 lished pursuant to the provisions of section fourteen, article
21 three, chapter fifty-one of this code, the amount of five dollars.

22 (b) For each divorce action instituted in the circuit court,
23 the clerk of the court shall, at the end of each month, pay into
24 the funds or accounts in this subsection an amount equal to the
25 amount set forth in this subsection of every filing fee received
26 for instituting such divorce action as follows:

27 (1) Into the regional jail and correctional facility develop-
28 ment fund in the state treasury established pursuant to the
29 provisions of section ten, article twenty, chapter thirty-one of
30 this code, the amount of ten dollars;

31 (2) Into the special revenue account of the state treasury,
32 established pursuant to section twenty-four, article one, chapter
33 forty-eight of this code, an amount of thirty dollars;

34 (3) Into the family court fund established under section
35 twenty-three, article four, chapter forty-eight-a of this code, an
36 amount of fifty dollars; and

37 (4) Into the court security fund in the state treasury,
38 established pursuant to the provisions of section fourteen,
39 article three, chapter fifty-one of this code, the amount of five
40 dollars.

41 (c) This subsection applies to filing fees paid after the
42 thirtieth day of June, one thousand nine hundred ninety-nine.
43 For each action for divorce, separate maintenance or annulment
44 instituted in the circuit court, the clerk of the court shall, at the
45 end of each month, pay into the funds or accounts in this
46 subsection an amount equal to the amount set forth in this
47 subsection of every filing fee received for instituting such
48 divorce action as follows:

49 (1) Into the regional jail and correctional facility develop-
50 ment fund in the state treasury established pursuant to the

51 provisions of section ten, article twenty, chapter thirty-one of
52 this code, the amount of ten dollars;

53 (2) Into the special revenue account of the state treasury,
54 established pursuant to section twenty-four, article one, chapter
55 forty-eight of this code, an amount of thirty dollars;

56 (3) Into the family court fund established under section
57 twenty-three, article four, chapter forty-eight-a of this code, an
58 amount of seventy dollars; and

59 (4) Into the court security fund in the state treasury,
60 established pursuant to the provisions of section fourteen,
61 article three, chapter fifty-one of this code, the amount of five
62 dollars.

63 (d) Notwithstanding any provision of subsection (a) or (b)
64 of this section to the contrary, the clerk of the court shall, at the
65 end of each month, pay into the family court fund established
66 under section twenty-three, article four, chapter forty-eight-a of
67 this code an amount equal to the amount of every fee received
68 for petitioning for the modification of an order involving child
69 custody, child visitation, child support or spousal support as
70 determined by subdivision (3), subsection (a), section eleven of
71 this article.

72 (e) The clerk of the court from which a protective order is
73 issued shall, at the end of each month, pay into the family court
74 fund established under section twenty-three, article four,
75 chapter forty-eight-a of this code an amount equal to every fee
76 received pursuant to the provisions of subsection (k), section
77 six, article two-a, chapter forty-eight of this code.

78 (f) The clerk of each circuit court shall, at the end of each
79 month, pay into the regional jail and prison development fund
80 in the state treasury an amount equal to forty dollars of every
81 fee for service received in any criminal case against any
82 defendant convicted in such court and shall pay an amount
83 equal to five dollars of every such fee into the court security
84 fund in the state treasury established pursuant to the provisions
85 of section fourteen, article three, chapter fifty-one of this code.

ARTICLE 2. COSTS GENERALLY.**§59-2-1. Suits by persons financially unable to pay.**

1 (a) A natural person who is financially unable to pay the
2 fees or costs attendant to the commencement, prosecution or
3 defense of any civil action or proceeding, or an appeal therein,
4 is permitted to proceed without prepayment in any court of this
5 state, after filing with the court an affidavit that he or she is
6 financially unable to pay the fees or costs or give security
7 therefor.

8 (1) The clerk of the court and all other officers of the court
9 shall issue and serve all process and perform all duties in such
10 cases.

11 (2) Judgment may be rendered for costs at the conclusion
12 of the action, where otherwise authorized by law, and be
13 taxable against a losing party who has not been determined to
14 be financially unable to pay.

15 (3) Upon the filing of an affidavit in accordance with this
16 subsection, seeking an appeal in a civil case from a circuit court
17 to the supreme court of appeals, the supreme court of appeals
18 may direct payment by the administrative office of the supreme
19 court of appeals of the expenses of duplicating the record on
20 appeal after it is transmitted by the clerk of the circuit court.
21 The transcript of proceedings before the circuit court, if the
22 petition for appeal is to be filed with the transcript, shall be
23 provided by the court reporter without cost: *Provided*, That
24 actual expenses of the court reporter for supplies used in
25 preparing the transcript may be paid when authorized by the
26 director of the administrative office of the supreme court of
27 appeals.

28 (b) The supreme court of appeals or the chief justice thereof
29 shall establish and periodically review and update financial
30 guidelines for determining the eligibility of civil litigants to
31 proceed in forma pauperis.

32 (c) The supreme court of appeals shall adopt a financial
33 affidavit form for use by persons seeking a waiver of fees, costs

34 or security pursuant to the provisions of this section. Copies of
35 the form shall be available to the public in the offices of the
36 clerk of any court of this state. The affidavit shall state the
37 nature of the action, defense or appeal and the affiant's belief
38 that he or she is entitled to redress. The form shall elicit
39 information from the affiant which will enable the court in
40 which it is filed to consider the following factors in determining
41 whether the affiant is financially unable to pay fees, costs or
42 security:

43 (1) Current income prospects, taking into account seasonal
44 variations in income;

45 (2) Liquid assets, assets which may provide collateral to
46 obtain funds and other assets which may be liquidated to
47 provide funds to pay fees, costs or security;

48 (3) Fixed debts and obligations, including federal, state and
49 local taxes and medical expenses;

50 (4) Child care, transportation and other expenses necessary
51 for employment;

52 (5) Age or physical infirmity of resident family members;

53 (6) Whether the person has paid or will pay counsel fees, or
54 whether counsel will be provided by a private attorney on a
55 contingent fee basis, an attorney pro bono, a legal services
56 attorney, or some other attorney at no cost or a reduced cost to
57 the affiant; and

58 (7) The consequences for the individual if a waiver of fees,
59 costs or security is denied.

60 (d) When the information set forth in the affidavit or the
61 evidence submitted in the action reveals that the person filing
62 the affidavit is financially able to pay the fees and costs, the
63 court or the family law master shall order the person to pay the
64 fees and costs in the action.

65 (e) No other party in any proceeding may initiate an inquiry
66 by motion or other pleading or participate in any proceeding
67 relevant to the issues raised pursuant to this section.

68 (f) The making of an affidavit subject to inquiry under this
69 section does not in any event give rise to criminal remedies
70 against the affiant nor occasion any civil action against the
71 affiant except for the recovery of costs as in any other case
72 where costs may be recovered and the recovery of the value of
73 services, if any, provided pursuant to this section. A person who
74 has made an affidavit knowing the contents thereof to be false
75 may be prosecuted for false swearing as provided by law.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-29. Failure to meet an obligation to provide support to a minor; penalties.

1 (1) A person who: (a) Persistently fails to provide support
2 which he or she can reasonably provide and which he or she
3 knows he or she has a duty to provide to a minor; or (b) is
4 subject to court order to pay any amount for the support of a
5 minor child and is delinquent in meeting the full obligation
6 established by the order and has been delinquent for a period of
7 at least six months' duration, is guilty of a misdemeanor and,
8 upon conviction thereof, shall be fined not less than one
9 hundred dollars nor more than one thousand dollars, or confined
10 in the county or regional jail for not more than one year, or both
11 fined and confined.

12 (2) A person who persistently fails to provide support
13 which he or she can reasonably provide and which he or she
14 knows he or she has a duty to provide to a minor by virtue of a
15 court or administrative order and the failure results in: (a) An
16 arrearage of not less than eight thousand dollars; or (b) twelve
17 consecutive months without payment of support, is guilty of a
18 felony and, upon conviction thereof, shall be fined not less than
19 one hundred dollars nor more than one thousand dollars, or

20 imprisoned for not less than one year nor more than three years,
21 or both fined and imprisoned.

22 (3) In a prosecution under this section, the defendant's
23 alleged inability to reasonably provide the required support may
24 be raised only as an affirmative defense, after reasonable notice
25 to the state.

CHAPTER 11

(H. B. 202 — By Mr. Speaker, Mr. Kliss, and Delegate Trump)
[By Request of the Executive]

[Passed May 20, 1999; in effect July 1, 1999. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the compensation of the state superintendent of schools.

Be it enacted by the Legislature of West Virginia:

That section one, article three, 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 3. STATE SUPERINTENDENT OF SCHOOLS.

§18-3-1. Appointment; qualifications; compensation; traveling expenses; office and residence.

1 There shall be appointed by the state board a state superin-
2 tendent of schools. He or she shall be a person of good moral
3 character, of recognized ability as a school administrator,
4 holding at least a master's degree in educational administration,
5 and shall have had not less than five years of experience in
6 public school work. He or she shall receive an annual salary set
7 by the state board, to be paid monthly: *Provided*, That the
8 annual salary may not exceed one hundred forty-six thousand
9 one hundred dollars. The state superintendent shall also receive

10 necessary traveling expenses incident to the performance of his
11 or her duties, the traveling expenses to be paid out of the
12 general school fund upon warrants of the state auditor. The
13 superintendent shall have his or her office at the state capital.
14 The state board shall report to the legislative oversight commis-
15 sion on education accountability upon request concerning its
16 progress during any hiring process for a state superintendent.

LEGISLATURE OF WEST VIRGINIA

ACTS

THIRD EXTRAORDINARY SESSION, 1999

CHAPTER 1

**(H. B. 301 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed August 17, 1999; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the governor's office - civil contingent fund, fund 0105, fiscal year 2000, organization 0100, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated August 17, 1999, setting forth therein the cash balance as of July 1, 1999, and further included the estimate of revenues for the fiscal year 2000, less net appropriation

balances forwarded and regular appropriations for the fiscal year 2000; and

WHEREAS, It appears from the governor's statement there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand, to fund 0105, fiscal year 2000, organization 0100, be supplemented and amended by increasing the total appropriation by fourteen million five hundred fifty thousand dollars in an existing line item as follows:

1	TITLE II — APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	EXECUTIVE		
4	<i>8—Governor's Office—</i>		
5	<i>Civil Contingent Fund</i>		
6	(WV Code Chapter 5)		
7	Fund <u>0105</u> FY <u>2000</u> Org <u>0100</u>		
8			General
9		Act-	Revenue
10		ivity	Funds
11	1	Civil Contingent Fund—Total (R) . . 114	\$14,550,000

12 The purpose of this bill is to supplement this account in the
 13 budget act for the fiscal year ending the thirtieth day of June,
 14 two thousand, by adding fourteen million five hundred fifty
 15 thousand dollars to the existing appropriation for Civil Contingent
 16 Fund—Total for expenditure during the fiscal year two
 17 thousand.

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, 1999

HOUSE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
2004	43	2359	228	2676	259
2005	208	2364	76	2682	49
2022	194	2392	158	2684	122
2034	264	2397	33	2685	289
2043	144	2401	102	2689	58
2082	210	2402	100	2691	300
2084	77	2424	170	2693	274
2136	234	2425	190	2695	117
2140	229	2438	103	2697	114
2141	236	2448	186	2699	51
2143	187	2453	224	2703	65
2170	155	2455	115	2707	125
2200	7	2468	67	2712	263
2206	2	2471	109	2713	246
2251	225	2472	133	2719	233
2253	196	2474	201	2726	217
2254	226	2475	75	2730	87
2257	227	2477	86	2731	173
2258	178	2478	37	2732	293
2262	48	2479	261	2733	254
2263	81	2480	250	2742	296
2269	139	2481	35	2743	198
2274	191	2482	116	2744	68
2277	284	2533	163	2746	123
2278	288	2535	169	2749	268
2281	38	2565	166	2757	145
2292	147	2570	167	2758	79
2293	55	2610	253	2759	159
2294	285	2612	105	2765	47
2295	180	2615	91	2774	152
2307	52	2617	175	2777	80
2311	193	2627	119	2790	6
2312	69	2636	245	2791	237
2324	72	2637	161	2793	301
2339	60	2670	265	2796	212
2347	59	2672	216	2802	215
2348	74	2673	242	2805	1
2349	104	2674	257	2826	134
2358	56	2675	256	2836	143

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2855	96	3009	108	3029	130
2856	299	3010	22	3030	89
2867	214	3011	25	3031	281
2871	232	3012	10	3032	221
2880	189	3013	21	3033	160
2884	267	3014	23	3034	280
2919	54	3015	26	3035	239
2924	279	3016	24	3040	138
2961	211	3017	11	3042	9
2972	4	3019	107	3043	12
2985	150	3021	85	3044	8
2996	53	3023	5	3045	14
		3024	98		

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Regular Session, 1909

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18	57	244	177	474	197
36	213	269	168	479	46
40	113	272	162	483	71
74	207	284	164	488	50
79	206	305	165	492	135
82	78	351	295	497	192
90	140	355	181	503	278
117	40	356	204	507	73
123	176	357	182	510	266
137	223	358	275	513	255
138	93	359	258	514	244
139	111	360	238	515	248
143	273	361	247	516	222
144	276	362	262	521	41
148	290	363	241	522	277
149	83	366	184	524	174
150	199	369	84	525	205
155	70	372	282	534	287
161	112	374	172	539	66
165	270	380	131	540	188
166	151	384	183	549	124
170	42	391	106	550	136
171	62	400	28	552	61
178	82	401	29	555	128
184	249	402	30	564	148
185	243	406	153	572	292
186	251	412	231	579	294
188	203	420	230	587	20
198	154	427	126	588	97
211	39	428	286	589	101
214	142	431	95	591	118
219	3	437	260	597	127
222	200	438	252	600	44
223	185	439	240	601	218
225	179	440	121	606	64
240	129	455	141	608	171
241	202	456	297	612	137
242	235	466	63	623	272

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The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 1999**SENATE BILLS**

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638	291	677	88	688	19
643	219	678	45	689	32
650	271	681	120	690	31
653	146	682	90	697	283
663	36	683	13	702	220
664	132	684	15	703	195
666	92	685	16	704	157
669	110	686	17	705	94

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Senate Bills = 2, 3 Digits

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2	2206	37	2478	72	2324
3	219	38	2281	73	507
4	2972	39	211	74	2348
5	3023	40	117	75	2475
6	2790	41	521	76	2364
7	2200	42	170	77	2084
8	3044	43	2004	78	82
9	3042	44	600	79	2758
10	3012	45	678	80	2777
11	3017	46	479	81	2263
12	3043	47	2765	82	178
13	683	48	2262	83	149
14	3045	49	2682	84	369
15	684	50	488	85	3021
16	685	51	2699	86	2477
17	686	52	2307	87	2730
18	687	53	2996	88	677
19	688	54	2919	89	3030
20	587	55	2293	90	682
21	3013	56	2358	91	2615
22	3010	57	18	92	666
23	3014	58	2689	93	138
24	3016	59	2347	94	705
25	3011	60	2339	95	431
26	3015	61	552	96	2855
27	3026	62	171	97	588
28	400	63	466	98	3024
29	401	64	606	99	3025
30	402	65	2703	100	2402
31	690	66	539	101	589
32	689	67	2468	102	2401
33	2397	68	2744	103	2438
34	635	69	2312	104	2349
35	2481	70	155	105	2612

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107	3019	150	2985	193	2311
108	3009	151	166	194	2022
109	2471	152	2774	195	703
110	669	153	406	196	2253
111	139	154	198	197	474
112	161	155	2170	198	2743
113	40	156	2854	199	150
114	2697	157	704	200	222
115	2455	158	2392	201	2474
116	2482	159	2759	202	241
117	2695	160	3033	203	188
118	591	161	2637	204	356
119	2627	162	272	205	525
120	681	163	2533	206	79
121	440	164	284	207	74
122	2684	165	305	208	2005
123	2746	166	2565	209	3006
124	549	167	2570	210	2082
125	2707	168	269	211	2961
126	427	169	2535	212	2796
127	597	170	2424	213	36
128	555	171	608	214	2867
129	240	172	374	215	2802
130	3029	173	2731	216	2672
131	380	174	524	217	2726
132	664	175	2617	218	601
133	2472	176	123	219	643
134	2826	177	244	220	702
135	492	178	2258	221	3032
136	550	179	225	222	516
137	612	180	2295	223	137
138	3040	181	355	224	2453
139	2269	182	357	225	2251
140	90	183	384	226	2254
141	455	184	366	227	2257
142	214	185	223	228	2359
143	2836	186	2448	229	2140
144	2043	187	2143	230	420
145	2757	188	540	231	412
146	653	189	2880	232	2871
147	2292	190	2425	233	2719
148	564	191	2274	234	2136

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236	2141	259	2676	281	3031
237	2791	260	437	282	372
238	360	261	2479	283	697
239	3035	262	362	284	2277
240	439	263	2712	285	2294
241	363	264	2034	286	428
242	2673	265	2670	287	534
243	185	266	510	288	2278
244	514	267	2884	289	2685
245	2636	268	2749	290	148
246	2713	269	2999	291	638
247	361	270	165	292	572
248	515	271	650	293	2732
249	184	272	623	294	579
250	2480	273	143	295	351
251	186	274	2693	296	2742
252	438	275	358	297	456
253	2610	276	144	298	673
254	2733	277	522	299	2856
255	513	278	503	300	2691
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HOUSE BILLS

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1002	5

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4	101	8	105
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Second Extraordinary Session, 1999

HOUSE BILLS

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203	4	210	7
204	6	211	8
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SENATE BILLS

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Second Extraordinary Session, 1999

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Third Extraordinary Session, 1999

HOUSE BILLS

Bill No.	Chapter
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Third Extraordinary Session, 1999

HOUSE BILLS

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